

CHAPTER 539

H.B. No. 1459

AN ACT

relating to the regulation of water and sewer utilities; providing administrative and civil penalties.

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

SECTION 1. Section 13.002(18), Water Code, is amended to read as follows:

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

SECTION 2. Section 13.002, Water Code, is amended by adding Subdivision (21) to read as follows:

(21) "*Member*" means a record owner of a fee simple title to a lot in an area served by a water supply or sewer service corporation. The term does not include a person or entity that holds an interest in a lot solely as security for the performance of an obligation, or that only builds on or develops the lot for sale to others.

SECTION 3. Section 13.015, Water Code, is amended to read as follows:

Sec. 13.015. **INFORMAL PROCEEDING.** A proceeding involving a water or sewer utility or[,] a retail public [~~water or sewer~~] utility as defined by Section 13.241 of this code [~~49, Public Utility Regulatory Act (Article 1446e, 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.

SECTION 4. Subchapter B, Chapter 13, Water Code, is amended by adding Section 13.016 to read as follows:

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

SECTION 5. Section 13.041, Water Code, is amended by adding Subsection (d) to read as follows:

(d) *The commission may issue emergency orders, with or without a hearing, to compel a water or sewer service provider that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act. If an order is issued without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the commission.*

SECTION 6. Section 13.042, Water Code, is amended to read as follows:

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.]~~

~~[(e) 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.

(c) ~~[(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.

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

SECTION 7. Section 13.043, Water Code, is amended to read as follows:

Sec. 13.043. APPELLATE JURISDICTION [~~MUNICIPALITY-OWNED UTILITIES~~].

(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. This subsection does not apply to a municipally owned utility.

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

(1) a nonprofit water supply or sewer service corporation created and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes);

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

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

(4) a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution that provides water or sewer service to household users. For the purposes of this section ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries.

(c) An appeal under this section must be initiated within 60 days after the date of the final decision of the governing body by filing a petition for review with the commission and by serving copies on all parties to the original rate proceeding. The

petition must be signed by the lesser of 10,000 or 10 percent of the ratepayers eligible to appeal, unless the petition is filed under Subsection (a) of this section.

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

(e) The commission shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken.

(f) A district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution that receives water or sewer service from a utility, municipally owned utility, or political subdivision of the state may appeal to the commission a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 60 days after the date of the decision of the provider of water or sewer service by filing a petition supported by resolution of the board of directors of the petitioning district or authority.

(g) An applicant for service from a water supply or sewer service corporation may appeal to the commission a decision of the water supply or sewer service corporation affecting the amount to be paid to obtain service in addition to the regular membership or tap fees. If the commission finds the amount charged to be unreasonable, it shall establish the fee to be paid. ~~[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.]~~

SECTION 8. Section 13.136, Water Code, is amended to read as follows:

Sec. 13.136. **FILING TARIFFS [SCHEDULE] OF RATES, RULES, AND REGULATIONS; ANNUAL FINANCIAL REPORT.** (a) Every utility shall file with each regulatory authority *tariffs [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 *tariffs [schedules]* all rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished by the utility.

(b) Before April 1 of each year, each public utility under the commission's jurisdiction shall file a financial report in a form specified by commission rules.

SECTION 9. Section 13.183, Water Code, is amended to read as follows:

Sec. 13.183. **FIXING OVERALL REVENUES.** In fixing the rates *for water and sewer services [of a public utility]*, the regulatory authority shall fix its overall revenues at a level that will:

- (1) permit the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses; and*
- (2) preserve the financial integrity of the utility.*

SECTION 10. Section 13.185, Water Code, is amended by adding Subsection (i) to read as follows:

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

SECTION 11. Section 13.187, Water Code, is amended to read as follows:

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 delivering a statement of intent to each ratepayer and with the regulatory authority having original jurisdiction at least 30 days before the effective date of the proposed change. The effective date of the new rates must be the first day of a billing period, and the new rates may not apply to service received before the effective date of the new rates. The statement of intent must include proposed revisions of tariffs and schedules, and any other information required by the regulatory authority's rules. A copy of the statement of intent shall be mailed or delivered to the appropriate offices of each affected municipality, and to any other affected persons as required by the regulatory authority's rules. When the statement of intent is delivered, the utility shall file with the regulatory authority an application to change rates. The application must include information the regulatory authority requires by rule. If the application does not comply with the regulatory authority's rules, it may be rejected and the effective date of the rate change may be suspended until a properly completed application is accepted by the regulatory authority.*

(b) *If, within 60 days after the effective date of the rate change, the regulatory authority receives a complaint from any affected municipality, or from the lesser of 250 or 10 percent of the ratepayers of the utility over whose rates the regulatory authority has original jurisdiction, the regulatory authority shall set the matter for hearing. The regulatory authority may set the matter for hearing on its own motion. The hearing may be informal. If, after hearing, the regulatory authority finds the rates to be unreasonable or in violation of law, the regulatory authority shall determine the rates to be charged by the utility and shall fix the rates by order served on the utility.*

(c) *The regulatory authority, pending final action in a rate proceeding, may order the utility to deposit all or part of the rate increase received or to be received into an escrow account with a financial institution approved by the regulatory authority. The utility shall refund or credit against future bills all sums collected during the pendency of the rate proceeding in excess of the rate finally ordered plus interest as determined by the regulatory authority. For good cause shown, the regulatory authority may authorize the release of funds to the utility from the escrow account during the pendency of the proceeding. At any time during the pendency of the rate proceeding, the regulatory authority may fix interim rates to remain in effect until a final determination is made.*

(d) *A utility may not file a statement of intent and increase its rates more than once in a 12-month period.* ~~[(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.]~~

SECTION 12. Section 13.241(2), Water Code, is amended to read as follows:

(2) "Public utility" means a water supply or sewer service corporation and any person, corporation, cooperative corporation, or any combination of those persons or entities that meets the definition of a public utility under Section 13.002(3) of this code ~~[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].~~

SECTION 13. Section 13.242, Water Code, is amended to read as follows:

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 water or sewer ~~[public]~~ utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

SECTION 14. Section 13.243(a), Water Code, is amended to read as follows:

(a) A retail public utility is not required to secure a certificate of public convenience and necessity for:

- (1) an extension into territory contiguous to that already served by it and not receiving similar service from another retail public utility and not within the area of public convenience and necessity of another retail public utility ~~[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.

SECTION 15. Section 13.246, Water Code, is amended to read as follows:

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 ~~cause~~ ~~[give]~~ notice of the application to ~~be given to affected~~ ~~[interested]~~ parties and, if requested, shall fix a time and place for a hearing and give notice of the hearing. Any person ~~affected by~~ ~~[interested in]~~ the application may intervene at the hearing.

(b) ~~The~~ ~~[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 ~~currently provided to the requested area~~, the need for additional service ~~in the requested area~~, 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, ~~the ability of the applicant to provide adequate service~~ ~~[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.

SECTION 16. Section 13.250, Water Code, is amended by adding Subsection (d) to read as follows:

(d) *A retail public utility that has not been granted but is required by law to possess a certificate of public convenience and necessity may not discontinue retail water or sewer service to any ratepayer without approval of the regulatory authority except for:*

- (1) *nonpayment of charges;*
- (2) *nonuse; or*
- (3) *other similar reasons in the usual course of business.*

SECTION 17. Section 13.251, Water Code, is amended to read as follows:

Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE. *A public utility may not sell, assign, or lease a certificate of public convenience and necessity or any right obtained under a certificate unless the commission has determined that the purchaser, assignee, or lessee is capable of rendering adequate and continuous service to every consumer within the certified area, after considering the factors under Section 13.246(c) of this code. [If the commission determines that a purchaser, assignee, or lessee is capable of rendering adequate service, a public utility may sell, assign, or lease a certificate of public convenience and necessity or any rights obtained under the certificate.]* The sale, assignment, or lease shall be on the conditions prescribed by the commission.

SECTION 18. Section 13.252, Water Code, is amended to read as follows:

Sec. 13.252. INTERFERENCE WITH OTHER *RETAIL* PUBLIC UTILITY. *If a retail public utility in constructing or extending a line, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of public convenience and necessity, the commission may issue an order prohibiting the construction or extension or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of the service.*

SECTION 19. Section 13.253, Water Code, is amended to read as follows:

Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE. After notice and hearing, the commission may:

- (1) *order any retail [a] public utility that is required by law to possess a certificate of public convenience and necessity 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 retail public utility [company] to provide the improved service; and*
- (2) *order two or more public utilities to establish specified facilities for the interconnecting service.*

SECTION 20. Section 13.254(a), Water Code, is amended to read as follows:

(a) *The commission at any time after notice and hearing may revoke or amend any certificate of public convenience and necessity if it finds that the certificate holder has never provided, [or] is no longer providing, or has failed to provide continuous and adequate service in the area, or part of the area, covered by the certificate.*

SECTION 21. Section 13.301, Water Code, is amended to read as follows:

Sec. 13.301. REPORT OF SALE, MERGER, ETC.; INVESTIGATION; DISALLOWANCE OF TRANSACTION. (a) *A public utility shall notify the commission at least 60 days before the effective date of any sale, acquisition, lease, or rental of any water or sewer system required by law to possess a certificate of public convenience and necessity or of any merger or consolidation with such a public utility.*

(b) *The commission shall investigate the transaction with or without public hearing, to determine whether the transfer will serve the public interest.*

(c) *Before the expiration of the 60-day notification period, the commission shall notify all known parties to the transaction of any facts or conditions discovered that would have an adverse effect on a proceeding under Section 13.251 of this code. If no*

adverse facts or conditions are discovered the executive director shall notify all known parties of that fact. A notification under this subsection does not prohibit the executive director from making adverse recommendations in a subsequent proceeding under Section 13.251 of this code.

(d) This section does not apply to the purchase of replacement property or to the addition of facilities by construction. [~~(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.]~~

SECTION 22. Subchapter K, Chapter 13, Water Code, is amended by adding Section 13.4151 to read as follows:

Sec. 13.4151. ADMINISTRATIVE PENALTY. (a) If a person or entity subject to the jurisdiction of the commission violates this chapter or a rule or order adopted under this chapter, the commission may assess a penalty against that person or entity as provided by this section. The penalty may be in an amount not to exceed \$500 a day. Each day a violation continues may be considered a separate violation.

(b) In determining the amount of the penalty, the commission shall consider:

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

(2) with respect to the alleged violator:

(A) the history and extent of previous violations;

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

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

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

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

(3) any other matters that justice requires.

(c) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report stating the facts on which that conclusion is based, recommending that a penalty under this section be imposed on the person 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 (b) of this section, and shall analyze each factor for the benefit of the commission.

(d) 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, the amount of the penalty, or both.

(e) Not later than the 20th day after the date on which notice is received, the person charged may give the commission written consent to the executive director's report, including the recommended penalty, or may make a written request for a hearing.

(f) 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.

(g) 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 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 (b) of this section.

(h) 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 penalty, the commission shall give written notice to the person charged of its findings, of the amount of the penalty, and of the person's right to judicial review of the commission's order. If the commission is required to give notice of a penalty under this subsection or Subsection (f) 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.

(i) 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 the fact of the violation, the amount of the penalty, or both:
 - (A) forward the amount of the penalty to the commission for placement in an escrow account; or
 - (B) 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.

(j) Failure to forward the money to or to post the bond with the commission within the time provided by Subsection (i) of this section constitutes a waiver of all legal rights to judicial review. If the person or entity charged fails to forward the money or post the bond as provided by Subsection (i) of this section, the commission or the executive director may forward the matter to the attorney general for enforcement.

(k) Judicial review of the order or decision of the commission assessing the penalty shall be under the substantial evidence rule and may be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(l) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(m) Notwithstanding any other provision of law, the commission may compromise, modify, extend the time for payment of, or remit, with or without condition, any penalty imposed under this section.

(n) *Payment of a penalty under this section is full and complete satisfaction of the violation for which the penalty is assessed and precludes any other civil or criminal penalty for the same violation.*

SECTION 23. Subchapter L, Chapter 13, Water Code, is amended by adding Section 13.4521 to read as follows:

Sec. 13.4521. FILING RATE CHANGE REQUEST; FEE. (a) A rate change application filed with the commission must be accompanied by a filing fee, the amount of which is based on the number of connections to which the change applies as follows:

- (1) *fewer than 100 connections—\$50*
- (2) *100–200 connections—\$100*
- (3) *201–500 connections—\$200*
- (4) *more than 500 connections—\$500.*

(b) *This fee is in lieu of the application fee required by Section 5.235(d) of this code.*

SECTION 24. Subchapter L, Chapter 13, Water Code, is amended by adding Section 13.4522 to read as follows:

Sec. 13.4522. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY; SALE, TRANSFER, OR MERGER; APPLICATION FEE. (a) An application for sale, assignment, or lease of a certificate of public convenience and necessity under Section 13.251 of this code or for a sale, acquisition, lease, or rental of a water or sewer system under Section 13.301 of this code must be accompanied by an application fee the amount of which is based on the number of connections affected as follows:

- (1) *fewer than 100 connections—\$50*
- (2) *100–200 connections—\$100*
- (3) *201–500 connections—\$200*
- (4) *more than 500 connections—\$500.*

(b) *The fee under this section is in lieu of the application fee required by Section 5.235(b) of this code.*

SECTION 25. Section 13.453(a), Water Code, is amended to read as follows:

(a) All fees, penalties, and interest paid under Sections 13.451, [and] 13.452, 13.4521, and 13.4522 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.

SECTION 26. Subchapter M, Chapter 13, Water Code, is amended to read as follows:

**SUBCHAPTER M. SUBMETERING IN APARTMENTS AND
MOBILE HOME PARKS**

[MISCELLANEOUS PROVISIONS]

Sec. 13.501. DEFINITIONS. In this subchapter:

(1) *“Apartment house” means one or more buildings containing more than five dwelling units all of which are occupied primarily for nontransient use, including a residential condominium whether rented or owner occupied, and having rental paid, if a dwelling unit is rented, at intervals of one week or longer.*

(2) *“Dwelling unit” means:*

(A) *one or more rooms in an apartment house, suitable for occupancy as a residence, and containing kitchen and bathroom facilities; or*

(B) *a mobile home in a mobile home park.*

Sec. 13.502. SUBMETERING. An apartment house owner or a mobile home park owner may provide for submetering of each dwelling unit for the measurement of the quantity of water, if any, consumed by the occupants of that dwelling unit.

Sec. 13.503. COMMISSION TO ADOPT RULES. Notwithstanding any other law, the commission shall adopt rules and standards under which an owner, operator, or manager of an apartment house or mobile home park that is not individually metered for water for each dwelling unit may install submetering equipment for each individual dwelling unit for the purpose of fairly allocating the cost of each individual dwelling unit's water consumption, including wastewater charges based on water consumption. In addition to other appropriate safeguards for the tenant, the rules shall require that an apartment house owner or mobile home park owner may not impose on the tenant any extra charges, over and above the cost per gallon that is charged by the utility to the owner, and that the apartment house owner shall maintain adequate records regarding submetering and make the records available for inspection by the tenant during reasonable business hours. All submetering equipment is subject to the rules and standards established by the commission for accuracy, testing, and record keeping of meters installed by utilities and to the meter-testing requirements of Section 13.140 of this code.

Sec. 13.504. IMPROPER RENTAL RATE INCREASE. If, during the 90-day period preceding the installation of individual meters or submeters, an owner, operator, or manager of an apartment house has increased rental rates and the increase is attributable to increased costs of utilities, the owner, operator, or manager shall immediately reduce the rental rate by the amount of the increase and refund all of the increase that has previously been collected within the 90-day period.

Sec. 13.505. ENFORCEMENT. In addition to the enforcement provisions contained in Subchapter K of this chapter, if a landlord violates a rule of the commission regarding submetering of utility service consumed exclusively within the tenant's dwelling unit, the tenant may recover three times the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees, and court costs. However, a landlord is not liable for a civil penalty if the landlord proves the violation was a good faith, unintentional mistake.

~~[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.]~~

SECTION 27. Chapter 13, Water Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. CENTRAL SYSTEM UTILITIES

Sec. 13.511. *DEFINITIONS. In this subchapter:*

(1) "Apartment house" means one or more buildings containing five or more dwelling units that are rented primarily for nontransient use, with rental paid at intervals of one week or longer.

(2) "Customer" means the individual, firm, or corporation in whose name a master meter has been connected by the utility.

(3) "Dwelling unit" means a room suitable for occupancy as a residence containing kitchen and bathroom facilities.

(4) "Nonsubmetered master metered utility service" means water utility service that is master metered for the apartment house but not submetered, and wastewater utility service based on master metered water utility service.

(5) "Owner" means the legal titleholder of an apartment house and any individual, firm, or corporation that purports to be the landlord of tenants in the apartment house.

(6) "Tenant" means a person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

(7) "Utility" means a public, private, or member-owned utility furnishing water or wastewater service to an apartment house served by a master meter.

Sec. 13.512. *RULES. Notwithstanding any other law, the commission shall adopt rules and standards governing billing systems or methods used by apartment house owners for prorating or allocating among tenants nonsubmetered master metered utility service costs. In addition to other appropriate safeguards for the tenant, those rules shall require that:*

(1) the rental agreement contain a clear written description of the method of calculation of the allocation of nonsubmetered master metered utilities for the apartment house;

(2) the rental agreement contain a statement of the average apartment unit monthly bill for all apartment units for any allocation of those utilities for the previous calendar year;

(3) an apartment house owner may not impose additional charges on a tenant in excess of the actual charges imposed on the owner for utility consumption by the apartment house;

(4) the apartment house owner shall maintain adequate records regarding the utility consumption of the apartment house, the charges assessed by the utility, and the allocation of the utility costs to the tenants; and

(5) the apartment house owner shall maintain all necessary records concerning utility allocations, including the utility's bills, and shall make the records available for inspection by the tenants during normal business hours.

Sec. 13.513. *ENFORCEMENT. In addition to the enforcement provisions contained in Subchapter K of this chapter, if a landlord violates a rule of the commission regarding allocating nonsubmetered master metered utility costs, the tenant may recover three times the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees, and court costs. However, the landlord is not liable for a civil penalty if the landlord proves the violation was a good faith, unintentional mistake.*

SECTION 28. Section 2(c), Chapter 353, Acts of the 65th Legislature, Regular Session, 1977 (Article 1446d, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) An apartment house owner and a mobile home park owner may provide for submetering of each dwelling unit for the measurement of the quantity of electricity [~~or water~~], if any, consumed by the occupants within that dwelling unit.

SECTION 29. Section 3, Chapter 353, Acts of the 65th Legislature, Regular Session, 1977 (Article 1446d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. Notwithstanding any law to the contrary, the Public Utility Commission of Texas shall promulgate rules, regulations, and standards under which any owner, operator, or manager of an apartment house or mobile home park which is not individually metered for electricity [~~and water~~] for each dwelling unit may install submetering equipment for each individual dwelling unit for the purpose of fairly allocating the cost of each individual dwelling unit's electrical [~~or water~~] consumption [~~, including wastewater charges based on water consumption~~]. In addition to other appropriate safeguards for the tenant, such rules and regulations shall require (a) that an apartment house owner or mobile home park owner shall not impose on the tenant any extra charges, over and above the cost per kilowatt hour [~~or gallon~~] which is charged by the utility to the owner, and (b) that the apartment house owner shall maintain adequate records regarding submetering and shall make such records available for inspection by the tenant during reasonable business hours. Any rule, regulation, or standard promulgated by the commission pursuant to this section shall be deemed to have been entered or adopted under the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), and for purposes of enforcement, both utility companies and the owners, operators, or managers of apartment houses included in this Act are subject to enforcement pursuant to Sections 71, 72, 73, 74, 75, 76, and 77 of the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes). All electric [~~and water~~] submetering equipment shall be subject to the same rules, regulations, and standards established by the Public Utility Commission for accuracy, testing, and record keeping of meters installed by electric utilities and shall be subject to the meter testing requirements of Section 36 of the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes).

SECTION 30. Section 1(5), Article 1446f, Revised Statutes, is amended to read as follows:

(5) "Nonsubmetered master metered utility service" means electric [~~and water~~] utility service that is master metered for the apartment house but not submetered [~~, and wastewater utility service based on master metered water utility service~~].

SECTION 31. Article 1446g, Revised Statutes, is amended to read as follows:

Art. 1446g. *PENALTIES; SUBMETERING OR ALLOCATION OF CENTRAL SYSTEM COSTS.* If a landlord violates any Public Utility Commission of Texas rule regarding (1) submetering of *electric* utilities consumed exclusively within the tenant's dwelling unit, or (2) allocating central system utility costs or nonsubmetered master metered *electric* utility costs, the tenant may recover treble the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees, and court costs. However, the landlord shall not be liable for a civil penalty when the violation was a good faith, unintentional mistake. The landlord shall have the burden of proving the violation was a good faith, unintentional mistake.

SECTION 32. Sections 13.012, 13.013, 13.044, 13.086, 13.131(g), 13.245, and 13.249, Water Code, are repealed.

SECTION 33. This Act takes effect September 1, 1987.

SECTION 34. 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 by the House on May 22, 1987, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 1459 on May 31, 1987, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1459 on June 1, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 30, 1987, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the

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two houses; and that the Senate adopted the conference committee report on H.B. No. 1459 on June 1, 1987, by a viva-voce vote.

Approved June 17, 1987.

Effective Sept. 1, 1987.