

## **BILL ANALYSIS**

Senate Research Center

S.B. 1148  
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Natural Resources & Economic Development  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The 83rd Legislature, Regular Session, 2013, transferred the economic regulation of water and sewer rates from the Texas Commission on Environmental Quality to the Public Utility Commission (PUC). S.B. 1148 cleans up some provisions of the Water Code to conform water rate setting to PUC's current processes. S.B. 1148 clarifies PUC's authority and process to issue an emergency order if necessary and grants additional time for processing certain rate cases.

As proposed, S.B. 1148 amends current law relating to the functions of the Public Utility Commission of Texas in relation to the economic regulation of water and sewer service.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 8 (Sections 13.451 and 13.453, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 5.315, Water Code, to require that, in a contested hearing delegated by the Texas Commission on Environmental Quality (TCEQ) to the State Office of Administrative Hearings (SOAH) that uses prefiled written testimony, all discovery to be completed before the deadline for the submission of that testimony. Deletes an exception for water and sewer ratemaking proceedings.

SECTION 2. Amends Section 13.041(d), Water Code, to authorize the Public Utility Commission (PUC), in accordance with Subchapter K-1, to issue emergency orders, with or without a certain hearing. Makes nonsubstantive change.

SECTION 3. Amends Section 13.043, Water Code, by adding Subsections (b-1) and (b-2), as follows:

(b-1) Requires a municipally owned utility to:

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

(b-2) Prohibits the municipally owned utility from charging a fee for disclosing the information under Subsection (b-1)(1). Authorizes the municipally owned utility to charge a reasonable fee for providing information under Subsection (b-1)(2). Requires the municipally owned utility to provide information requested under Subsection (b-1)(1) by telephone or in writing as preferred by the person making the request.

SECTION 4. Amends Section 13.187(g-1), Water Code, by authorizing PUC to delegate to an administrative law judge of SOAH the responsibility and authority to give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. Makes no further changes to this subsection.

SECTION 5. Amends Sections 13.1871(g), (h), (j), (m), and (p), Water Code, as follows:

(g)-(j) Changes references to 205 days to 265 days. Makes conforming changes.

(m) Requires the regulatory authority to give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. Authorizes PUC to delegate to an administrative law judge of SOAH the responsibility and authority to give reasonable notice for the hearing, including notice to the governing body of each affected municipality and county. Provides that the utility is not required to provide a formal answer or file any other formal pleading in response to the notice, and the absence of an answer does not affect an order for a hearing.

(p) Changes a reference to 206th day after the date to 266th day after the date the rate change would otherwise be effective.

SECTION 6. Amends Sections 13.301(a) and (h), Water Code, as follows:

(a) Requires a utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system owned by an entity that is required by law to possess a certificate of public convenience and necessity or the effective date of a sale or acquisition of or merger or consolidation with such an entity, to file a written application with PUC, and unless public notice is waived by PUC for good cause shown, give public notice of the action. Makes a nonsubstantive change.

(h) Provides that a sale, acquisition, lease, or rental of any water or sewer system owned by an entity required by law to possess a certificate of public convenience and necessity or a sale or acquisition of or merger or consolidation with such an entity that is not completed in accordance with the provisions of this section is void.

SECTION 7. Amends Sections 13.4133(a) and (c), Water Code, as follows:

(a) Requires the Texas Commission on Environmental Quality (TCEQ) and PUC to coordinate as needed to carry out this section.

(c) Authorizes an emergency order to be issued under this section for a term not to exceed 15 months. Makes no further change to this subsection.

SECTION 8. Amends Chapter 13, Water Code, by adding Subchapter K-1, as follows:

#### SUBCHAPTER K-1. EMERGENCY ORDERS

Sec. 13.451. ISSUANCE OF EMERGENCY ORDER. (a) Authorizes PUC to issue an emergency order authorized under this chapter after providing the notice and opportunity for a hearing that PUC considers practicable under the circumstances or without notice or opportunity for a hearing. Requires PUC to provide the notice not later than the 10th day before the date set for the hearing if PUC considers the provision of notice and opportunity for a hearing practicable.

(b) Authorizes PUC by order or rule to delegate to PUC's executive director the authority to:

(1) receive applications and issue emergency orders under this subchapter; and

(2) authorize, in writing, a representative or representatives to act on behalf of PUC's executive director under this subchapter.

(c) Provides that Chapter 2001 (Administrative Procedure), Government Code, does not apply to the issuance of an emergency order under this subchapter without a hearing.

(d) Provides that a law under which PUC acts that requires notice of hearing or that prescribes procedures for the issuance of emergency orders does not apply to a hearing on an emergency order issued under this subchapter unless the law specifically requires notice for an emergency order. Requires PUC to give notice of the hearing as it determines is practicable under the circumstances.

(e) Provides that an emergency order issued under this subchapter does not vest any rights in a person affected by the order and the order expires according to its terms.

(f) Authorizes PUC to adopt rules necessary to administer this subchapter.

Sec. 13.452. APPLICATION FOR EMERGENCY ORDER. Requires a person other than PUC or the staff of PUC who desires the issuance of an emergency order under this subchapter to submit a sworn written application to PUC. Requires the application to meet the requirements set forth in this section.

Sec. 13.453. NOTICE OF ISSUANCE. Requires that notice of the issuance of an emergency order be provided as required by PUC rule.

Sec. 13.454. HEARING TO AFFIRM, MODIFY, OR SET ASIDE ORDER. (a) Requires a hearing to be held to affirm, modify, or set aside the emergency order unless the person affected by the order waives the right to a hearing if PUC or PUC's executive director issues an emergency order under this subchapter without a hearing. Requires PUC or PUC's executive director to set a time and place for a hearing to be held before PUC or the SOAH, which must be as soon as practicable after the order is issued, if the person does not waive the right to a hearing.

(b) Requires PUC to affirm, modify, or set aside the emergency order at a hearing required under Subsection (a) or within a reasonable time after the hearing.

(c) Requires a hearing to affirm, modify, or set aside an emergency order to be conducted in accordance with Chapter 2001, Government Code, and PUC rules. Requires that PUC rules relating to a hearing to affirm, modify, or set aside an emergency order provide for presentation of evidence by the applicant, if any, under oath, presentation of rebuttal evidence under oath, and cross-examination of witnesses under oath.

Sec. 13.455. TERM OF ORDER. Requires that an emergency order issued under this subchapter be limited to a reasonable time as specified in the order. Provides that, except as otherwise provided by this chapter, the term of an emergency order may not exceed 180 days. Authorizes an emergency order to be renewed once for a period not to exceed 180 days.

SECTION 9. Amends Section 5.507, Water Code, as follows:

Sec. 5.507. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. Authorizes TCEQ, rather than TCEQ or PUC, to issue an emergency order appointing a willing person to temporarily manage and operate a utility under Section 13.4132. Makes no further change to this section.

SECTION 10. Repealer: Section 5.508 (Emergency Order for Rate Increase in Certain Situations), Water Code.

SECTION 11. Effective date: September 1, 2015.