

By: Schwertner, et al.

S.B. No. 1368

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the continuation and functions of the Public Utility
3 Commission of Texas and the Office of Public Utility Counsel, and
4 the functions of the independent organization certified for the
5 ERCOT power region.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 12.005, Utilities Code, is amended to
8 read as follows:

9 Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility
10 Commission of Texas is subject to Chapter 325, Government Code
11 (Texas Sunset Act). Unless continued in existence as provided by
12 that chapter or by Chapter 39, the commission is abolished [~~and this~~
13 ~~title expires~~] September 1, 2029 [2023].

14 SECTION 2. Section 12.059, Utilities Code, is amended to
15 read as follows:

16 Sec. 12.059. TRAINING PROGRAM FOR COMMISSIONERS. (a) A
17 person who is appointed to and qualifies for office as a member of
18 the commission may not vote, deliberate, or be counted as a member
19 in attendance at a meeting of the commission until the person
20 completes a [~~Before a commissioner may assume the commissioner's~~
21 ~~duties and before the commissioner may be confirmed by the senate,~~
22 ~~the commissioner must complete at least one course of the~~] training
23 program that complies with [~~established under~~] this section.

24 (b) The [~~A~~] training program must [~~established under this~~

1 ~~section shall]~~ provide the person with information [~~to the~~
2 ~~commissioner]~~ regarding:

3 (1) the law governing [~~enabling legislation that~~
4 ~~created the]~~ commission operations [~~and its policymaking body to~~
5 ~~which the commissioner is appointed to serve]~~;

6 (2) the programs, functions, rules, and budget of
7 [~~operated by]~~ the commission;

8 (3) the scope [~~role and functions]~~ of and limitations
9 on the rulemaking authority of the commission;

10 (4) the results [~~rules]~~ of the most recent formal
11 audit of the commission [~~with an emphasis on the rules that relate~~
12 ~~to disciplinary and investigatory authority]~~;

13 (5) the requirements of:

14 (A) laws relating to open meetings, public
15 information, administrative procedure, and disclosing conflicts of
16 interest; and

17 (B) other laws applicable to members of a state
18 policy-making body in performing their duties [~~current budget for~~
19 ~~the commission]~~; and

20 (6) [~~the results of the most recent formal audit of the~~
21 ~~commission,~~

22 [~~(7) the requirements of Chapters 551, 552, and 2001,~~
23 ~~Government Code,~~

24 [~~(8) the requirements of the conflict of interest laws~~
25 ~~and other laws relating to public officials, and~~

26 [~~(9)] any applicable ethics policies adopted by the~~

27 commission or the Texas Ethics Commission.

1 (c) A person [~~who is~~] appointed to the commission is
2 entitled to reimbursement, as provided by the General
3 Appropriations Act, for the travel expenses incurred in attending
4 the training program regardless of whether the attendance at the
5 program occurs before or after the person qualifies for office.

6 (d) The executive director of the commission shall create a
7 training manual that includes the information required by
8 Subsection (b). The executive director shall distribute a copy of
9 the training manual annually to each member of the commission. Each
10 member of the commission shall sign and submit to the executive
11 director a statement acknowledging that the member received and has
12 reviewed the training manual.

13 SECTION 3. Section 12.202, Utilities Code, is amended by
14 adding Subsections (a-1) and (a-2) to read as follows:

15 (a-1) The policies adopted under this section must require
16 the agenda for each regular commission meeting to include public
17 testimony as a meeting agenda item and allow members of the public
18 to comment on:

19 (1) each meeting agenda item unrelated to a contested
20 case; and

21 (2) other matters under the commission's jurisdiction.

22 (a-2) The commission may prohibit public comment at a
23 regular commission meeting on a meeting agenda item related to a
24 contested case.

25 SECTION 4. Section 12.203, Utilities Code, is amended to
26 read as follows:

27 Sec. 12.203. BIENNIAL REPORT. (a) Not later than January

1 15 of each odd-numbered year, the commission shall prepare a
2 written report that includes:

3 (1) suggestions regarding modification and
4 improvement of the commission's statutory authority and for the
5 improvement of utility regulation in general, including the
6 regulation of water and sewer service under Chapter 13, Water Code,
7 that the commission considers appropriate for protecting and
8 furthering the interest of the public;

9 (2) a report on the scope of competition in the
10 electric and telecommunications markets that includes:

11 (A) an assessment of:

12 (i) the effect of competition and industry
13 restructuring on customers in both competitive and noncompetitive
14 electric markets; and

15 (ii) the effect of competition on the rates
16 and availability of electric services for residential and small
17 commercial customers;

18 (B) an assessment of the effect of competition
19 on:

20 (i) customers in both competitive and
21 noncompetitive telecommunications markets, with a specific focus
22 on rural markets; and

23 (ii) the rates and availability of
24 telecommunications services for residential and business
25 customers, including any effects on universal service; and

26 (C) a summary of commission action over the
27 preceding two years that reflects changes in the scope of

1 competition in regulated electric and telecommunications markets;
2 and
3 (3) recommendations for legislation that the
4 commission determines appropriate to promote the public interest in
5 the context of partially competitive electric and
6 telecommunications markets.

7 (b) A telecommunications utility, as defined by Section
8 51.002, shall cooperate with the commission as necessary for the
9 commission to satisfy the requirements of this section.

10 SECTION 5. Subchapter E, Chapter 12, Utilities Code, is
11 amended by adding Section 12.205 to read as follows:

12 Sec. 12.205. STRATEGIC COMMUNICATIONS PLAN. The commission
13 shall:

14 (1) develop an agency-wide plan for:
15 (A) improving the effectiveness of commission
16 communications with the public, market participants, and other
17 relevant audiences; and

18 (B) responding to changing communications needs;
19 (2) include in the plan required by Subdivision (1)
20 goals, objectives, and metrics to assess commission efforts; and

21 (3) update the plan required by Subdivision (1) at
22 least once every two years.

23 SECTION 6. Section 13.002, Utilities Code, is amended to
24 read as follows:

25 Sec. 13.002. APPLICATION OF SUNSET ACT. The Office of
26 Public Utility Counsel is subject to Chapter 325, Government Code
27 (Texas Sunset Act). Unless continued in existence as provided by

1 that chapter, the office is abolished [~~and this chapter expires~~]
2 September 1, 2029 [~~2023~~].

3 SECTION 7. Section 39.151, Utilities Code, is amended by
4 amending Subsections (d), (g-1), and (g-6) and adding Subsection
5 (g-7) to read as follows:

6 (d) The commission shall adopt and enforce rules relating to
7 the reliability of the regional electrical network and accounting
8 for the production and delivery of electricity among generators and
9 all other market participants, or may delegate those
10 responsibilities to an independent organization [~~responsibilities~~
11 ~~for adopting or enforcing such rules. Rules adopted by an~~
12 ~~independent organization and enforcement actions taken by the~~
13 ~~organization under delegated authority from the commission are~~
14 ~~subject to commission oversight and review and may not take effect~~
15 ~~before receiving commission approval~~]. An independent organization
16 certified by the commission is directly responsible and accountable
17 to the commission. The commission has complete authority to
18 oversee and investigate the independent organization's finances,
19 budget, and operations as necessary to ensure the organization's
20 accountability and to ensure that the organization adequately
21 performs the organization's functions and duties. The independent
22 organization shall fully cooperate with the commission in the
23 commission's oversight and investigatory functions. The
24 commission may take appropriate action against an independent
25 organization that does not adequately perform the organization's
26 functions or duties or does not comply with this section, including
27 decertifying the organization or assessing an administrative

1 penalty against the organization. The commission by rule shall
2 adopt procedures governing decertification of an independent
3 organization, selecting and certifying a successor organization,
4 and transferring assets to the successor organization to ensure
5 continuity of operations in the region. The commission may not
6 implement, by order or by rule, a requirement that is contrary to an
7 applicable federal law or rule.

8 (g-1) The [~~independent organization's~~] bylaws of an
9 independent organization certified for the ERCOT power region [~~or~~
10 ~~protocols~~] must be approved by [~~the commission~~] and [~~must~~] reflect
11 the input of the commission. The bylaws must require that every
12 member of the governing body be a resident of this state and must
13 prohibit a legislator from serving as a member. The governing body
14 must be composed of:

15 (1) two members [~~the chairman~~] of the commission as
16 [~~an~~] ex officio nonvoting members:

17 (A) one of whom must be the presiding officer of
18 the commission; and

19 (B) one of whom must be designated by the
20 presiding officer of the commission to serve a one-year term on the
21 governing body [~~member~~];

22 (2) the counsellor as an ex officio voting member
23 representing residential and small commercial consumer interests;

24 (3) the chief executive officer of the independent
25 organization as an ex officio nonvoting member; and

26 (4) eight members selected by the selection committee
27 under Section [39.1513](#) with executive-level experience in any of the

1 following professions:

2 (A) finance;

3 (B) business;

4 (C) engineering, including electrical
5 engineering;

6 (D) trading;

7 (E) risk management;

8 (F) law; or

9 (G) electric market design.

10 (g-6) In this subsection, a reference to a protocol includes
11 a rule. Protocols adopted by an independent organization and
12 enforcement actions taken by the organization under delegated
13 authority from the commission are subject to commission oversight
14 and review and may not take effect before receiving commission
15 approval. To maintain certification as an independent organization
16 under this section, the organization's governing body must
17 establish and implement a formal process for adopting new protocols
18 or revisions to existing protocols. The process must require that
19 new or revised protocols may not take effect until the commission
20 approves a market impact statement describing the new or revised
21 protocols. The commission may approve, reject, or remand with
22 suggested modifications to the independent organization's
23 governing body protocols adopted by the organization.

24 (g-7) The presiding officer of the commission shall
25 designate commissioners to serve terms on the independent
26 organization's governing body under Subsection (g-1)(1)(B) in the
27 order in which the commissioners were first appointed to the

1 commission. A commissioner may not serve an additional term until
2 each commissioner has served a term.

3 SECTION 8. Section 39.1511, Utilities Code, is amended by
4 amending Subsection (a) and adding Subsection (a-1) to read as
5 follows:

6 (a) Meetings of the governing body of an independent
7 organization certified under Section 39.151 and meetings of a
8 subcommittee that includes a member of the governing body must be
9 open to the public. The bylaws of the independent organization and
10 the rules of the commission may provide for the governing body or
11 subcommittee to enter into executive session closed to the public
12 only to address [~~sensitive matters such as confidential personnel~~
13 ~~information,~~] contracts, [~~lawsuits,~~] competitively sensitive
14 information, [~~or other~~] information related to the security of the
15 regional electrical network, or a matter which the commission would
16 be authorized to consider in a closed meeting under Chapter 551,
17 Government Code.

18 (a-1) An independent organization's governing body or a
19 subcommittee may adopt a policy allowing the governing body or
20 subcommittee to enter into an executive session closed to the
21 public and commissioners, including the commissioners serving as ex
22 officio nonvoting members, in specific circumstances to address a
23 matter authorized under Subsection (a). A policy described by this
24 subsection is not subject to approval by the commission.

25 SECTION 9. Subchapter D, Chapter 39, Utilities Code, is
26 amended by adding Section 39.1514 to read as follows:

27 Sec. 39.1514. COMMISSION DIRECTIVES TO INDEPENDENT

1 ORGANIZATION. (a) The commission may not use a verbal directive
2 to direct an independent organization certified under Section
3 39.151 to take an official action. The commission may direct the
4 organization to take an official action only through:

5 (1) a contested case;

6 (2) rulemaking;

7 (3) a memorandum; or

8 (4) a written order.

9 (b) The commission by rule shall:

10 (1) specify the types of directives the commission may
11 issue through a contested case, rulemaking, memorandum, or written
12 order;

13 (2) establish the conditions under which a commission
14 vote is required before issuing a directive;

15 (3) require that proposed commission directives be
16 included as an item on a commission meeting agenda and require the
17 commission to allow members of the public an opportunity to comment
18 on the agenda item; and

19 (4) establish a reasonable timeline for the release
20 before a commission meeting of discussion materials relevant to
21 any proposed commission directives included as agenda items for
22 that meeting.

23 (c) Notwithstanding another provision of this section, the
24 commission may use a verbal directive to direct an independent
25 organization to take an official action in an urgent or emergency
26 situation that poses an imminent threat to public health, public
27 safety, or the reliability of the power grid. The commission by rule

1 shall establish criteria for determining whether a situation is
2 urgent or an emergency under this subsection and establish a
3 process by which the commission will issue directives to the
4 independent organization under this subsection. If an independent
5 organization follows a verbal directive for more than 72 hours, the
6 commission shall use a process adopted under this section to
7 provide written documentation of the directive to the independent
8 organization.

9 SECTION 10. Section 39.155(d), Utilities Code, is amended
10 to read as follows:

11 (d) In a qualifying power region, the report [~~reports~~]
12 required by Subsection (c) [~~Subsections (b) and (c)~~] shall be
13 submitted by the independent organization or organizations having
14 authority over the power region or discrete areas thereof.

15 SECTION 11. Section 39.157(f), Utilities Code, is amended
16 to read as follows:

17 (f) Following review of the annual report [~~reports~~]
18 submitted to it under Section 39.155(c) [~~Sections 39.155(b) and~~
19 ~~(c)~~], the commission shall determine whether specific transmission
20 or distribution constraints or bottlenecks within this state give
21 rise to market power in specific geographic markets in the state.
22 The commission, on a finding that specific transmission or
23 distribution constraints or bottlenecks within this state give rise
24 to market power, may order reasonable mitigation of that potential
25 market power by ordering, under Section 39.203(e), one or more
26 electric utilities or transmission and distribution utilities to
27 construct additional transmission or distribution capacity, or

1 both, subject to the certification provisions of this title.

2 SECTION 12. (a) This section takes effect only if the Act
3 of the 88th Legislature, Regular Session, 2023, relating to
4 nonsubstantive additions to and corrections in enacted codes
5 becomes law.

6 (b) Subchapter D, Chapter 39, Utilities Code, is amended by
7 adding Sections 39.166 and 39.167 to read as follows:

8 Sec. 39.166. ELECTRIC INDUSTRY REPORT. (a) Not later than
9 January 15 of each odd-numbered year, the commission, in
10 consultation with the independent organization certified under
11 Section 39.151 for the ERCOT power region, shall prepare and submit
12 to the legislature an electric industry report.

13 (b) Each electric industry report submitted under this
14 section must:

15 (1) identify existing and potential transmission and
16 distribution constraints and system needs within the ERCOT power
17 region, alternatives for meeting system needs, and recommendations
18 for meeting system needs;

19 (2) summarize key findings from:

20 (A) the grid reliability assessment conducted
21 under Section 39.165; and

22 (B) the report required by Section 39.904(k);

23 (3) outline basic information regarding the electric
24 grid and market in this state, including generation capacity,
25 customer demand, and transmission capacity currently installed on
26 the grid and projected in the future; and

27 (4) be presented in plain language that is readily

1 understandable by a person with limited knowledge of the electric
2 industry.

3 Sec. 39.167. CONFLICTS OF INTEREST REPORT. The commission
4 and the independent organization certified under Section 39.151 for
5 the ERCOT power region annually shall review statutes, rules,
6 protocols, and bylaws that apply to conflicts of interest for
7 commissioners and for members of the governing body of the
8 independent organization and submit to the legislature a report on
9 the effects the statutes, rules, protocols, and bylaws have on the
10 ability of the commission and the independent organization to
11 fulfill their duties.

12 SECTION 13. (a) This section takes effect only if the Act of
13 the 88th Legislature, Regular Session, 2023, relating to
14 nonsubstantive additions to and corrections in enacted codes does
15 not become law.

16 (b) Subchapter D, Chapter 39, Utilities Code, is amended by
17 adding Sections 39.166 and 39.167 to read as follows:

18 Sec. 39.166. ELECTRIC INDUSTRY REPORT. (a) Not later than
19 January 15 of each odd-numbered year, the commission, in
20 consultation with the independent organization certified under
21 Section 39.151 for the ERCOT power region, shall prepare and submit
22 to the legislature an electric industry report.

23 (b) Each electric industry report submitted under this
24 section must:

25 (1) identify existing and potential transmission and
26 distribution constraints and system needs within the ERCOT power
27 region, alternatives for meeting system needs, and recommendations

1 for meeting system needs;

2 (2) summarize key findings from:

3 (A) the grid reliability assessment conducted
4 under Section 39.159, as added by Chapter 876 (S.B. 1281), Acts of
5 the 87th Legislature, Regular Session, 2021; and

6 (B) the report required by Section 39.904(k);

7 (3) outline basic information regarding the electric
8 grid and market in this state, including generation capacity,
9 customer demand, and transmission capacity currently installed on
10 the grid and projected in the future; and

11 (4) be presented in plain language that is readily
12 understandable by a person with limited knowledge of the electric
13 industry.

14 Sec. 39.167. CONFLICTS OF INTEREST REPORT. The commission
15 and the independent organization certified under Section 39.151 for
16 the ERCOT power region annually shall review statutes, rules,
17 protocols, and bylaws that apply to conflicts of interest for
18 commissioners and for members of the governing body of the
19 independent organization and submit to the legislature a report on
20 the effects the statutes, rules, protocols, and bylaws have on the
21 ability of the commission and the independent organization to
22 fulfill their duties.

23 SECTION 14. Section 39.203(i), Utilities Code, is amended
24 to read as follows:

25 (i) The commission, in cooperation with transmission and
26 distribution utilities and the ERCOT independent system operator,
27 shall study whether existing transmission and distribution

1 planning processes are sufficient to provide adequate
2 infrastructure for seawater desalination projects. If the
3 commission determines that statutory changes are needed to ensure
4 that adequate infrastructure is developed for projects of that
5 kind, the commission shall include recommendations in the report
6 required by Section 12.203 [~~31.003~~].

7 SECTION 15. Section 39.206(q), Utilities Code, is amended
8 to read as follows:

9 (q) The commission shall, in conjunction with the Nuclear
10 Regulatory Commission, investigate the development of a mechanism
11 whereby the State of Texas could ensure that funds for
12 decommissioning will be obtained when necessary in the same manner
13 as if the State of Texas were the licensee under federal law. [~~The
14 commission shall file legislative recommendations regarding any
15 changes in law that may be necessary to carry out the purposes of
16 this subsection prior to January 15, 2009, which may be combined
17 with the report required by Section 31.003.~~]

18 SECTION 16. Section 39.904(k), Utilities Code, is amended
19 to read as follows:

20 (k) The commission and the independent organization
21 certified under Section 39.151 for the ERCOT power region [~~for
22 ERCOT~~] shall study the need for increased transmission and
23 generation capacity throughout this state and report to the
24 legislature the results of the study and any recommendations for
25 legislation. The report must be filed with the legislature not
26 later than December 31 of each even-numbered year [~~and may be filed
27 as a part of the report required by Subsection (j)~~].

1 SECTION 17. Section [39.9055](#), Utilities Code, is amended to
2 read as follows:

3 Sec. 39.9055. EXAMINATION OF DEMAND RESPONSE POTENTIAL OF
4 SEAWATER DESALINATION PROJECTS. The commission and the ERCOT
5 independent system operator shall study the potential for seawater
6 desalination projects to participate in existing demand response
7 opportunities in the ERCOT market. To the extent feasible, the
8 study shall determine whether the operational characteristics of
9 seawater desalination projects enable projects of that kind to
10 participate in ERCOT-operated ancillary services markets or other
11 competitively supplied demand response opportunities. The study
12 shall also determine the potential economic benefit to a seawater
13 desalination project if the project is able to reduce its demand
14 during peak pricing periods. The commission shall include the
15 results of the study in the report required by Section [12.203](#)
16 [~~[31.003](#)~~].

17 SECTION 18. Section [39.908](#), Utilities Code, is amended to
18 read as follows:

19 Sec. 39.908. EFFECT OF SUNSET PROVISION. [~~(a)~~] If the
20 commission is abolished under Section [12.005](#) or other law, the [~~and~~
21 ~~the other provisions of this title expire as provided by Chapter~~
22 ~~[325](#), Government Code (Texas Sunset Act), this subchapter, including~~
23 ~~the provisions of this title referred to in this subchapter,~~
24 ~~continues in full force and effect and does not expire.~~

25 [~~(b) The~~] authorities, duties, and functions of the
26 commission under this chapter shall be performed and carried out by
27 a successor agency to be designated by the legislature before

1 abolition of the commission or, if the legislature does not
2 designate the successor, by the secretary of state.

3 SECTION 19. Section 52.060, Utilities Code, is amended to
4 read as follows:

5 Sec. 52.060. ADMINISTRATIVE FEE OR ASSESSMENT. The
6 commission may prescribe and collect a fee or assessment from local
7 exchange companies necessary to recover the cost to the commission
8 and to the office of activities carried out and services provided
9 under this subchapter and Section 12.203 [~~52.006~~].

10 SECTION 20. Section 13.4132, Water Code, is amended by
11 adding Subsection (b-1) to read as follows:

12 (b-1) Notwithstanding Section 5.505, the term of an
13 emergency order issued under this section by the utility commission
14 or the commission may not exceed 360 days. The emergency order may
15 be renewed:

- 16 (1) once for a period not to exceed 360 days; or
17 (2) if the utility is undergoing a sale, transfer,
18 merger, consolidation, or acquisition required to be reported to
19 the utility commission under Section 13.301, for a reasonable time
20 until the sale, transfer, merger, consolidation, or acquisition is
21 complete.

22 SECTION 21. (a) The following provisions are repealed:

- 23 (1) Section 304.201, Business & Commerce Code;
24 (2) Section 31.003, Utilities Code;
25 (3) Section 39.155(b), Utilities Code;
26 (4) Section 39.904(j), Utilities Code; and
27 (5) Section 52.006, Utilities Code.

1 (b) Section 34, Chapter 426 (S.B. 3), Acts of the 87th
2 Legislature, Regular Session, 2021, is repealed.

3 SECTION 22. The presiding officer of the Public Utility
4 Commission of Texas shall designate a commissioner to serve a term
5 on the governing body of the independent organization certified
6 under Section 39.151, Utilities Code, for the ERCOT power region
7 that begins January 1, 2024, to comply with Section 39.151(g-1),
8 Utilities Code, as amended by this Act.

9 SECTION 23. (a) Except as provided by Subsection (b) of
10 this section, Section 12.059, Utilities Code, as amended by this
11 Act, applies to a member of the Public Utility Commission of Texas
12 appointed before, on, or after the effective date of this Act.

13 (b) A member of the Public Utility Commission of Texas who,
14 before the effective date of this Act, completed the training
15 program required by Section 12.059, Utilities Code, as that law
16 existed before the effective date of this Act, is only required to
17 complete additional training on the subjects added by this Act to
18 the training program required by Section 12.059, Utilities Code. A
19 commission member described by this subsection may not vote,
20 deliberate, or be counted as a member in attendance at a meeting of
21 the commission held on or after December 1, 2023, until the member
22 completes the additional training.

23 SECTION 24. This Act takes effect September 1, 2023.