

By: Perry

S.B. No. 2441

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the transfer of functions relating to the economic
3 regulation of water and sewer service from the Public Utility
4 Commission of Texas and the Office of Public Utility Counsel to the
5 Water Public Utility Commission and the Office of Water Public
6 Utility Counsel; creating a criminal offense.

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

8 SECTION 1. Section 11.041(f), Water Code, is amended to
9 read as follows:

10 (f) The commission shall hold a hearing on the complaint at
11 the time and place stated in the order. It may hear evidence orally
12 or by affidavit in support of or against the complaint, and it may
13 hear arguments. The Water Public Utility Commission [~~utility~~
14 ~~commission~~] may participate in the hearing if necessary to present
15 evidence on the price or rental demanded for the available water.
16 On completion of the hearing, the commission shall render a written
17 decision.

18 SECTION 2. Section 12.013(b), Water Code, is amended to
19 read as follows:

20 (b) In this section:

21 (1) "Utility commission" means the Water Public
22 Utility Commission.

23 (2) "Political [~~political~~ subdivision" means
24 incorporated cities, towns or villages, counties, river

1 authorities, water districts, and other special purpose districts.

2 SECTION 3. Section 13.002(22-a), Water Code, is amended to
3 read as follows:

4 (22-a) "Utility commission" means the Water Public
5 Utility Commission [~~of Texas~~].

6 SECTION 4. Section 13.017, Water Code, is amended to read as
7 follows:

8 Sec. 13.017. OFFICE OF WATER PUBLIC UTILITY COUNSEL; POWERS
9 AND DUTIES. (a) In this section, "counsellor" and "office" have
10 the meanings assigned by Section 14A.002 [~~11.003, Utilities Code~~].

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

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

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

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

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

25 (B) small commercial consumers, as a class, in
26 any proceeding in which the counsellor determines that small
27 commercial consumers are in need of representation, including an

1 alternative dispute resolution proceeding;

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

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

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

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

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

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

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

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

26 (c) This section does not:

27 (1) affect a duty the office is required to perform

1 under other law; or

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

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

8 SECTION 5. Subtitle B, Title 2, Water Code, is amended by
9 adding Chapters 14 and 14A to read as follows:

10 CHAPTER 14. WATER PUBLIC UTILITY COMMISSION

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 14.001. WATER PUBLIC UTILITY COMMISSION. The Water
13 Public Utility Commission exercises the jurisdiction and powers
14 conferred by this subtitle.

15 Sec. 14.002. DEFINITIONS. In this chapter:

16 (1) "Affiliate" has the meaning assigned by Section
17 13.002.

18 (2) "Commission" means the Water Public Utility
19 Commission.

20 (3) "Commissioner" means a member of the Water Public
21 Utility Commission.

22 (4) "Executive director" means the executive director
23 of the commission.

24 (5) "Retail public utility" has the meaning assigned
25 by Section 13.002.

26 Sec. 14.003. COMMISSION OFFICE. (a) The principal office
27 of the commission is in Austin.

1 (b) The commission's office shall be open daily during usual
2 business hours. The commission's office is not required to be open
3 on Saturday, Sunday, or a legal holiday.

4 Sec. 14.004. SEAL. (a) The commission has a seal bearing
5 the inscription: "Water Public Utility Commission."

6 (b) The seal shall be affixed to each record and to an
7 authentication of a copy of a record. The commission may require
8 the seal to be affixed to other instruments.

9 (c) A court of this state shall take judicial notice of the
10 seal.

11 Sec. 14.005. REPRESENTATION BY ATTORNEY GENERAL. The
12 attorney general shall represent the commission in a matter before
13 a state court, a court of the United States, or a federal public
14 utility regulatory commission.

15 Sec. 14.006. APPLICATION OF SUNSET ACT. The Water Public
16 Utility Commission is subject to Chapter 325, Government Code
17 (Texas Sunset Act). Unless continued in existence as provided by
18 that chapter, the commission is abolished September 1, 2035.

19 SUBCHAPTER B. COMMISSION APPOINTMENT AND FUNCTIONS

20 Sec. 14.051. APPOINTMENT; TERM. (a) The commission is
21 composed of five commissioners appointed by the governor with the
22 advice and consent of the senate.

23 (b) An appointment to the commission shall be made without
24 regard to the race, color, disability, sex, religion, age, or
25 national origin of the appointee.

26 (c) In making appointments to the commission, the governor
27 shall appoint:

1 (1) one individual with expertise in rural retail
2 public utilities;

3 (2) one individual with expertise in urban retail
4 public utilities;

5 (3) one individual with expertise in financial matters
6 of retail public utilities;

7 (4) one individual with expertise in legal matters of
8 retail public utilities; and

9 (5) one individual with general expertise in retail
10 public utilities.

11 (d) Commissioners serve staggered six-year terms.

12 Sec. 14.052. PRESIDING OFFICER. (a) The governor shall
13 designate a commissioner as the presiding officer.

14 (b) The presiding officer serves in that capacity at the
15 pleasure of the governor.

16 Sec. 14.053. PRESIDING OFFICER QUALIFICATIONS. The
17 commissioner designated as the presiding officer must be a resident
18 of this state.

19 Sec. 14.054. MEMBERSHIP QUALIFICATIONS. (a) To be
20 eligible for appointment, a commissioner must:

21 (1) be a qualified voter;

22 (2) be a citizen of the United States;

23 (3) be a resident of this state; and

24 (4) be a competent and experienced administrator.

25 (b) A person is not eligible for appointment as a
26 commissioner if the person:

27 (1) at any time during the one year preceding

1 appointment:

2 (A) personally served as an officer, director,
3 owner, employee, partner, or legal representative of a retail
4 public utility regulated by the commission or of an affiliate or
5 direct competitor of a retail public utility regulated by the
6 commission;

7 (B) owned or controlled, directly or indirectly,
8 more than a 10 percent interest in a retail public utility regulated
9 by the commission or in an affiliate or direct competitor of a
10 retail public utility regulated by the commission; or

11 (C) served as an executive officer listed under
12 Section 1, Article IV, Texas Constitution, other than the secretary
13 of state, or a member of the legislature; or

14 (2) is not qualified to serve under Section 14.151,
15 14.152, or 14.153.

16 Sec. 14.055. REMOVAL OF COMMISSIONER. (a) It is a ground
17 for removal from the commission if a commissioner:

18 (1) does not have at the time of appointment or
19 maintain during service on the commission the qualifications
20 required by Section 14.053;

21 (2) violates a prohibition provided by Section 14.054
22 or by Subchapter D;

23 (3) cannot discharge the commissioner's duties for a
24 substantial part of the term for which the commissioner is
25 appointed because of illness or disability; or

26 (4) is absent from more than half of the regularly
27 scheduled commission meetings that the commissioner is eligible to

1 attend during a calendar year unless the absence is excused by
2 majority vote of the commission.

3 (b) The validity of an action of the commission is not
4 affected by the fact that the action is taken when a ground for
5 removal of a commissioner exists.

6 (c) If the executive director has knowledge that a potential
7 ground for removal exists, the executive director shall notify the
8 presiding officer of the commission of the potential ground. The
9 presiding officer shall then notify the governor and the attorney
10 general that a potential ground for removal exists. If the
11 potential ground for removal involves the presiding officer, the
12 executive director shall notify the next highest officer of the
13 commission, who shall notify the governor and the attorney general
14 that a potential ground for removal exists.

15 Sec. 14.056. PROHIBITION ON SEEKING ANOTHER OFFICE. A
16 person may not seek nomination or election to another civil office
17 of this state or of the United States while serving as a
18 commissioner. If a commissioner files for nomination or election
19 to another civil office of this state or of the United States, the
20 person's office as commissioner immediately becomes vacant, and the
21 governor shall appoint a successor.

22 Sec. 14.057. EFFECT OF VACANCY. A vacancy or
23 disqualification does not prevent the remaining commissioner or
24 commissioners from exercising the powers of the commission.

25 Sec. 14.058. COMPENSATION. The annual salary of the
26 commissioners is determined by the legislature.

27 Sec. 14.059. MEETINGS. The commission shall hold meetings

1 at its office and at other convenient places in this state as
2 expedient and necessary for the proper performance of the
3 commission's duties.

4 Sec. 14.060. TRAINING PROGRAM FOR COMMISSIONERS. (a)
5 Before a commissioner may assume the commissioner's duties and
6 before the commissioner may be confirmed by the senate, the
7 commissioner must complete at least one course of the training
8 program established under this section.

9 (b) A training program established under this section shall
10 provide information to the commissioner regarding:

11 (1) the enabling legislation that created the
12 commission and its policymaking body to which the commissioner is
13 appointed to serve;

14 (2) the programs operated by the commission;

15 (3) the role and functions of the commission;

16 (4) the rules of the commission with an emphasis on the
17 rules that relate to disciplinary and investigatory authority;

18 (5) the current budget for the commission;

19 (6) the results of the most recent formal audit of the
20 commission;

21 (7) the requirements of Chapters [551](#), [552](#), and [2001](#),
22 Government Code;

23 (8) the requirements of the conflict of interest laws
24 and other laws relating to public officials; and

25 (9) any applicable ethics policies adopted by the
26 commission or the Texas Ethics Commission.

27 (c) A person who is appointed to the commission is entitled

1 to reimbursement, as provided by the General Appropriations Act,
2 for the travel expenses incurred in attending the training program
3 regardless of whether the attendance at the program occurs before
4 or after the person qualifies for office.

5 Sec. 14.061. FORMER COMMISSIONER: LOBBYING RESTRICTED. A
6 former member of the commission may not, before the first
7 anniversary of the date the member ceases to be a member of the
8 commission, engage in an activity before the commission that
9 requires registration under Chapter 305, Government Code.

10 SUBCHAPTER C. COMMISSION PERSONNEL

11 Sec. 14.101. COMMISSION EMPLOYEES. The commission shall
12 employ:

- 13 (1) an executive director; and
14 (2) officers and other employees the commission
15 considers necessary to administer this subtitle.

16 Sec. 14.102. DUTIES OF EMPLOYEES. The commission shall
17 develop and implement policies that clearly separate the
18 policymaking responsibilities of the commission and the management
19 responsibilities of the commission employees.

20 Sec. 14.103. DUTIES OF EXECUTIVE DIRECTOR. The executive
21 director is responsible for the daily operations of the commission
22 and shall coordinate the activities of commission employees.

23 Sec. 14.104. CAREER LADDER PROGRAM; PERFORMANCE
24 EVALUATIONS; MERIT PAY. (a) The executive director or the
25 executive director's designee shall develop an intra-agency career
26 ladder program that addresses opportunities for mobility and
27 advancement for commission employees. The program shall require

1 intra-agency posting of each position concurrently with any public
2 posting.

3 (b) The executive director or the executive director's
4 designee shall develop a system of annual performance evaluations
5 that are based on documented employee performance. Merit pay for
6 commission employees must be based on the system established under
7 this subsection.

8 Sec. 14.105. EQUAL EMPLOYMENT OPPORTUNITY POLICY
9 STATEMENT. (a) The executive director or the executive director's
10 designee shall prepare and maintain a written policy statement to
11 ensure implementation of a program of equal employment opportunity
12 under which all personnel transactions are made without regard to
13 race, color, disability, sex, religion, age, or national origin.

14 (b) The policy statement under Subsection (a) must include:

15 (1) personnel policies, including policies related to
16 recruitment, evaluation, selection, appointment, training, and
17 promotion of personnel, that are in compliance with the
18 requirements of Chapter 21, Labor Code;

19 (2) a comprehensive analysis of the commission
20 workforce that meets federal and state guidelines;

21 (3) procedures by which a determination can be made
22 about the extent of underuse in the commission workforce of all
23 persons for whom federal or state guidelines encourage a more
24 equitable balance; and

25 (4) reasonable methods to appropriately address the
26 underuse.

27 (c) A policy statement prepared under Subsection (b) must:

- 1 (1) cover an annual period;
- 2 (2) be updated at least annually;
- 3 (3) be reviewed by the Civil Rights Division of the
4 Texas Workforce Commission for compliance with Subsection (b)(1);
5 and
6 (4) be filed with the governor's office.

7 (d) The governor's office shall deliver a biennial report to
8 the legislature based on the information received under Subsection
9 (c). The report may be made separately or as a part of other
10 biennial reports to the legislature.

11 SUBCHAPTER D. PROHIBITED RELATIONSHIPS AND ACTIVITIES

12 Sec. 14.151. REGISTERED LOBBYIST. A person required to
13 register as a lobbyist under Chapter 305, Government Code, because
14 of the person's activities for compensation on behalf of a
15 profession related to the operation of the commission may not serve
16 as a commissioner.

17 Sec. 14.152. CONFLICT OF INTEREST. (a) A person is not
18 eligible for appointment as a commissioner or employment as
19 executive director of the commission if:

20 (1) the person serves on the board of directors of a
21 company that supplies utility-related services or utility-related
22 products to regulated or unregulated retail public utilities; or

23 (2) the person or the person's spouse:

24 (A) is employed by or participates in the
25 management of a business entity or other organization that is
26 regulated by or receives funds from the commission;

27 (B) directly or indirectly owns or controls more

1 than a 10 percent interest in:

2 (i) a business entity or other organization
3 that is regulated by or receives funds from the commission; or

4 (ii) a retail public utility competitor or
5 supplier or another entity affected by a commission decision in a
6 manner other than by the setting of rates for that class of
7 customer;

8 (C) uses or receives a substantial amount of
9 tangible goods, services, or funds from the commission, other than
10 compensation or reimbursement authorized by law for commission
11 membership, attendance, or expenses; or

12 (D) notwithstanding Paragraph (B), has an
13 interest in a mutual fund or retirement fund in which more than 10
14 percent of the fund's holdings at the time of appointment is in a
15 single retail public utility, retail public utility competitor, or
16 retail public utility supplier in this state and the person does not
17 disclose this information to the governor, senate, commission, or
18 other entity, as appropriate.

19 (b) A person otherwise ineligible because of Subsection
20 (a)(2)(B) may be appointed to the commission and serve as a
21 commissioner or may be employed as executive director if the
22 person:

23 (1) notifies the attorney general and commission that
24 the person is ineligible because of Subsection (a)(2)(B); and

25 (2) divests the person or the person's spouse of the
26 ownership or control:

27 (A) before beginning service or employment; or

1 (B) if the person is already serving or employed,
2 within a reasonable time.

3 Sec. 14.153. RELATIONSHIP WITH TRADE ASSOCIATION. A person
4 may not serve as a commissioner or be a commission employee who is
5 employed in a "bona fide executive, administrative, or professional
6 capacity," as that phrase is used for purposes of establishing an
7 exemption to the overtime provisions of the federal Fair Labor
8 Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if the person
9 is:

10 (1) an officer, employee, or paid consultant of a
11 trade association; or

12 (2) the spouse of an officer, manager, or paid
13 consultant of a trade association.

14 Sec. 14.154. PROHIBITED ACTIVITIES. (a) During the period
15 of service with the commission, a commissioner or commission
16 employee may not:

17 (1) have a pecuniary interest, including an interest
18 as an officer, director, partner, owner, employee, attorney, or
19 consultant, in:

20 (A) a retail public utility or affiliate; or

21 (B) a person a significant portion of whose
22 business consists of furnishing goods or services to retail public
23 utilities or affiliates; or

24 (2) accept a gift, gratuity, or entertainment from:

25 (A) a retail public utility, affiliate, or direct
26 competitor of a retail public utility;

27 (B) a person a significant portion of whose

1 business consists of furnishing goods or services to retail public
2 utilities, affiliates, or direct competitors of retail public
3 utilities; or

4 (C) an agent, representative, attorney,
5 employee, officer, owner, director, or partner of a person
6 described by Paragraph (A) or (B).

7 (b) A commissioner or a commission employee may not directly
8 or indirectly solicit, request from, or suggest or recommend to a
9 retail public utility or an agent, representative, attorney,
10 employee, officer, owner, director, or partner of a retail public
11 utility the appointment to a position or the employment of a person
12 by the retail public utility or affiliate.

13 (c) A person may not give or offer to give a gift, gratuity,
14 employment, or entertainment to a commissioner or commission
15 employee if that person is:

16 (1) a retail public utility, affiliate, or direct
17 competitor of a retail public utility;

18 (2) a person who furnishes goods or services to a
19 retail public utility, affiliate, or direct competitor of a retail
20 public utility; or

21 (3) an agent, representative, attorney, employee,
22 officer, owner, director, or partner of a person described by
23 Subdivision (1) or (2).

24 (d) A retail public utility, affiliate, or direct
25 competitor of a retail public utility or a person furnishing goods
26 or services to a retail public utility, affiliate, or direct
27 competitor of a retail public utility may not aid, abet, or

1 participate with a commissioner, commission employee, or former
2 commission employee in conduct that violates Subsection (a)(2) or
3 (c).

4 (e) Subsection (a)(1) does not apply to an interest in a
5 nonprofit group or association, other than a trade association,
6 that is solely supported by gratuitous contributions of money,
7 property, or services.

8 (f) It is not a violation of this section if a commissioner
9 or commission employee, on becoming the owner of stocks, bonds, or
10 another pecuniary interest in a retail public utility, affiliate,
11 or direct competitor of a retail public utility otherwise than
12 voluntarily, informs the commission and the attorney general of the
13 ownership and divests the ownership or interest within a reasonable
14 time.

15 (g) It is not a violation of this section if a pecuniary
16 interest is held indirectly by ownership of an interest in a
17 retirement system, institution, or fund that in the normal course
18 of business invests in diverse securities independently of the
19 control of the commissioner or commission employee.

20 (h) This section does not apply to a contract for a retail
21 public utility product or service or equipment for use of a retail
22 public utility product when a commissioner or commission employee
23 is acting as a consumer.

24 (i) In this section, a "pecuniary interest" includes
25 income, compensation, and payment of any kind, in addition to an
26 ownership interest.

27 Sec. 14.155. PROHIBITION ON EMPLOYMENT OR REPRESENTATION.

1 (a) A commissioner, a commission employee, or an employee of the
2 State Office of Administrative Hearings involved in hearing cases
3 for the commission may not:

4 (1) be employed by a retail public utility that was in
5 the scope of the commissioner's or employee's official
6 responsibility while the commissioner or employee was associated
7 with the commission or the State Office of Administrative Hearings;
8 or

9 (2) represent a person before the commission or State
10 Office of Administrative Hearings or a court in a matter:

11 (A) in which the commissioner or employee was
12 personally involved while associated with the commission or State
13 Office of Administrative Hearings; or

14 (B) that was within the commissioner's or
15 employee's official responsibility while the commissioner or
16 employee was associated with the commission or State Office of
17 Administrative Hearings.

18 (b) The prohibition of Subsection (a)(1) applies until the:

19 (1) second anniversary of the date the commissioner
20 ceases to serve as a commissioner; and

21 (2) first anniversary of the date the employee's
22 employment with the commission or State Office of Administrative
23 Hearings ceases.

24 (c) The prohibition of Subsection (a)(2) applies while a
25 commissioner, commission employee, or employee of the State Office
26 of Administrative Hearings involved in hearing utility cases is
27 associated with the commission or State Office of Administrative

1 Hearings and at any time after.

2 Sec. 14.156. QUALIFICATIONS AND STANDARDS OF CONDUCT
3 INFORMATION. The executive director or the executive director's
4 designee shall provide to commissioners and commission employees as
5 often as necessary information regarding their:

6 (1) qualifications for office or employment under this
7 chapter; and

8 (2) responsibilities under applicable laws relating
9 to standards of conduct for state officers and employees.

10 SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND REPORTS

11 Sec. 14.201. PUBLIC INTEREST INFORMATION. (a) The
12 commission shall prepare information of public interest describing
13 the functions of the commission and the commission's procedures by
14 which a complaint is filed with and resolved by the commission. The
15 commission shall make the information available to the public and
16 appropriate state agencies.

17 (b) The commission by rule shall establish methods by which
18 consumers and service recipients are notified of the name, mailing
19 address, and telephone number of the commission for the purpose of
20 directing complaints to the commission.

21 Sec. 14.202. PUBLIC PARTICIPATION. (a) The commission
22 shall develop and implement policies that provide the public with a
23 reasonable opportunity to appear before the commission and to speak
24 on any issue under the jurisdiction of the commission.

25 (b) The commission shall comply with federal and state laws
26 related to program and facility accessibility.

27 (c) The commission shall prepare and maintain a written plan

1 that describes how a person who does not speak English may be
2 provided reasonable access to the commission's programs and
3 services.

4 Sec. 14.203. BIENNIAL REPORT. Not later than January 15 of
5 each odd-numbered year, the commission shall prepare a written
6 report that includes suggestions regarding modification and
7 improvement of the commission's statutory authority and for the
8 improvement of retail public utility regulation in general that the
9 commission considers appropriate for protecting and furthering the
10 interest of the public.

11 Sec. 14.204. INTERNET FOR HEARINGS AND MEETINGS. The
12 commission shall make publicly accessible without charge live
13 Internet video of all public hearings and meetings the commission
14 holds for viewing from the commission's Internet website. The
15 commission may recover the costs of administering this section by
16 imposing an assessment against a retail public utility.

17 CHAPTER 14A. OFFICE OF WATER PUBLIC UTILITY COUNSEL

18 SUBCHAPTER A. GENERAL PROVISIONS; POWERS AND DUTIES

19 Sec. 14A.001. OFFICE OF WATER PUBLIC UTILITY COUNSEL. The
20 independent office of water public utility counsel represents the
21 interests of residential and small commercial consumers.

22 Sec. 14A.002. DEFINITIONS. In this chapter:

23 (1) "Commission" has the meaning assigned by Section
24 14.002.

25 (2) "Counsellor" means the water public utility
26 counsel.

27 (3) "Office" means the Office of Water Public Utility

1 Counsel.

2 (4) "Proceeding" has the meaning assigned by Section
3 13.002.

4 Sec. 14A.003. APPLICATION OF SUNSET ACT. The Office of
5 Water Public Utility Counsel is subject to Chapter 325, Government
6 Code (Texas Sunset Act). Unless continued in existence as provided
7 by that chapter, the office is abolished September 1, 2035.

8 Sec. 14A.004. OFFICE POWERS AND DUTIES. The office has the
9 powers and duties assigned by Section 13.017.

10 Sec. 14A.005. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

11 (a) The counsellor shall develop and implement a policy to
12 encourage the use of appropriate alternative dispute resolution
13 procedures under Chapter 2009, Government Code, to assist in the
14 resolution of internal disputes under the office's jurisdiction.

15 (b) The office's procedures relating to alternative dispute
16 resolution must conform, to the extent possible, to any model
17 guidelines issued by the State Office of Administrative Hearings
18 for the use of alternative dispute resolution by state agencies.

19 (c) The counsellor shall designate a trained person to:

20 (1) coordinate the implementation of the policy
21 adopted under Subsection (a);

22 (2) serve as a resource for any training needed to
23 implement the procedures for alternative dispute resolution; and

24 (3) collect data concerning the effectiveness of those
25 procedures, as implemented by the office.

26 Sec. 14A.006. COMPLAINTS. (a) The office shall maintain a
27 system to promptly and efficiently act on complaints filed with the

1 office that the office has the authority to resolve. The office
2 shall maintain information about parties to the complaint, the
3 subject matter of the complaint, a summary of the results of the
4 review or investigation of the complaint, and its disposition.

5 (b) The office shall make information available describing
6 its procedures for complaint investigation and resolution.

7 (c) The office shall periodically notify the complaint
8 parties of the status of the complaint until final disposition.

9 Sec. 14A.007. TECHNOLOGY POLICY. The counsellor shall
10 implement a policy requiring the office to use appropriate
11 technological solutions to improve the office's ability to perform
12 its functions. The policy must ensure that the public is able to
13 interact with the office on the Internet.

14 SUBCHAPTER B. WATER PUBLIC UTILITY COUNSEL

15 Sec. 14A.021. APPOINTMENT; TERM. (a) The chief executive
16 of the office is the counsellor.

17 (b) The counsellor is appointed by the governor with the
18 advice and consent of the senate.

19 (c) The appointment of the counsellor shall be made without
20 regard to the race, color, disability, sex, religion, age, or
21 national origin of the appointee.

22 (d) The counsellor serves a two-year term that expires on
23 February 1 of the final year of the term.

24 Sec. 14A.022. QUALIFICATIONS. (a) The counsellor must:

25 (1) be licensed to practice law in this state and a
26 resident of this state;

27 (2) have demonstrated a strong commitment to and

1 involvement in efforts to safeguard the rights of the public; and

2 (3) possess the knowledge and experience necessary to
3 practice effectively in utility proceedings.

4 (b) A person is not eligible for appointment as counsellor
5 if:

6 (1) the person or the person's spouse:

7 (A) is employed by or participates in the
8 management of a business entity or other organization that is
9 regulated by or receives funds from the commission;

10 (B) directly or indirectly owns or controls more
11 than a 10 percent interest or a pecuniary interest with a value
12 exceeding \$10,000 in:

13 (i) a business entity or other organization
14 that is regulated by or receives funds from the commission or the
15 office; or

16 (ii) a retail public utility competitor,
17 retail public utility supplier, or other entity affected by a
18 commission decision in a manner other than by the setting of rates
19 for that class of customer;

20 (C) uses or receives a substantial amount of
21 tangible goods, services, or funds from the commission or the
22 office, other than compensation or reimbursement authorized by law
23 for service as counsellor or for commission membership, attendance,
24 or expenses; or

25 (D) notwithstanding Paragraph (B), has an
26 interest in a mutual fund or retirement fund in which more than 10
27 percent of the fund's holdings is in a single retail public utility,

1 retail public utility competitor, or retail public utility supplier
2 in this state and the person does not disclose this information to
3 the governor, senate, or other entity, as appropriate; or

4 (2) the person is not qualified to serve under Section
5 14A.042.

6 (c) A person otherwise ineligible because of Subsection
7 (b)(1)(B) may be appointed and serve as counsellor if the person:

8 (1) notifies the attorney general and commission that
9 the person is ineligible because of Subsection (b)(1)(B); and

10 (2) divests the person or the person's spouse of the
11 ownership or control:

12 (A) before beginning service; or

13 (B) if the person is already serving, within a
14 reasonable time.

15 Sec. 14A.023. GROUNDS FOR REMOVAL. (a) It is a ground for
16 removal from office if the counsellor:

17 (1) does not have at the time of taking office or
18 maintain during service as counsellor the qualifications required
19 by Section 14A.022;

20 (2) is ineligible for service as counsellor under
21 Section 14A.022, 14A.042, or 14A.043; or

22 (3) cannot discharge the counsellor's duties for a
23 substantial part of the term for which the counsellor is appointed
24 because of illness or disability.

25 (b) The validity of an action of the office is not affected
26 by the fact that the action is taken when a ground for removal of the
27 counsellor exists.

1 (c) If an employee has knowledge that a potential ground for
2 removal of the counsellor exists, the employee shall notify the
3 next highest ranking employee of the office, other than the
4 counsellor, who shall then notify the governor and the attorney
5 general that a potential ground for removal exists.

6 Sec. 14A.024. PROHIBITED ACTS. (a) The counsellor may not
7 have a direct or indirect interest in a retail public utility
8 company regulated under this subtitle, its parent, or its
9 subsidiary companies, corporations, or cooperatives or a retail
10 public utility competitor, retail public utility supplier, or other
11 entity affected in a manner other than by the setting of rates for
12 that class of customer.

13 (b) The prohibition under Subsection (a) applies during the
14 period of the counsellor's service.

15 SUBCHAPTER C. OFFICE PERSONNEL

16 Sec. 14A.041. PERSONNEL. The counsellor may employ
17 lawyers, economists, engineers, consultants, statisticians,
18 accountants, clerical staff, and other employees as the counsellor
19 considers necessary to carry out this chapter.

20 Sec. 14A.042. CONFLICT OF INTEREST. (a) In this section,
21 "Texas trade association" means a cooperative and voluntarily
22 joined statewide association of business or professional
23 competitors in this state designed to assist its members and its
24 industry or profession in dealing with mutual business or
25 professional problems and in promoting their common interest.

26 (b) A person may not serve as counsellor or be an employee of
27 the office employed in a "bona fide executive, administrative, or

1 professional capacity," as that phrase is used for purposes of
2 establishing an exemption to the overtime provisions of the federal
3 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if
4 the person is:

5 (1) an officer, employee, or paid consultant of a
6 Texas trade association in the field of retail public utilities; or

7 (2) the spouse of an officer, manager, or paid
8 consultant of a Texas trade association in the field of retail
9 public utilities.

10 (c) A person may not serve as counsellor or act as the
11 general counsel to the office if the person is required to register
12 as a lobbyist under Chapter 305, Government Code, because of the
13 person's activities for compensation on behalf of a profession
14 related to the operation of the office.

15 Sec. 14A.043. PROHIBITION ON EMPLOYMENT OR REPRESENTATION.

16 (a) A former counsel may not make any communication to or
17 appearance before the commission or an officer or employee of the
18 commission before the second anniversary of the date the person
19 ceases to serve as counsel if the communication or appearance is
20 made:

21 (1) on behalf of another person in connection with any
22 matter on which the person seeks official action; or

23 (2) with the intent to influence a commission decision
24 or action, unless acting on the person's own behalf and without
25 remuneration.

26 (b) A former counsel may not represent any person or receive
27 compensation for services rendered on behalf of any person

1 regarding a matter before the commission before the second
2 anniversary of the date the person ceases to serve as counsel.

3 (c) A person commits an offense if the person violates this
4 section. An offense under this subsection is a Class A misdemeanor.

5 (d) An employee of the office may not:

6 (1) be employed by a retail public utility that was in
7 the scope of the employee's official responsibility while the
8 employee was associated with the office; or

9 (2) represent a person before the commission or a
10 court in a matter:

11 (A) in which the employee was personally involved
12 while associated with the office; or

13 (B) that was within the employee's official
14 responsibility while the employee was associated with the office.

15 (e) The prohibition of Subsection (d)(1) applies until the
16 first anniversary of the date the employee's employment with the
17 office ceases.

18 (f) The prohibition of Subsection (d)(2) applies while an
19 employee of the office is associated with the office and at any time
20 after.

21 (g) For purposes of this section, "person" includes a water
22 cooperative.

23 Sec. 14A.044. CAREER LADDER PROGRAM; PERFORMANCE
24 EVALUATIONS; MERIT PAY. (a) The counsellor or the counsellor's
25 designee shall develop an intra-agency career ladder program that
26 addresses opportunities for mobility and advancement for office
27 employees. The program shall require intra-agency postings of each

1 position concurrently with any public posting.

2 (b) The counsellor or the counsellor's designee shall
3 develop a system of annual performance evaluations that are based
4 on documented employee performance. Merit pay for office employees
5 must be based on the system established under this subsection.

6 Sec. 14A.045. EQUAL EMPLOYMENT OPPORTUNITY POLICY
7 STATEMENT. (a) The counsellor or the counsellor's designee shall
8 prepare and maintain a written policy statement to ensure
9 implementation of a program of equal employment opportunity under
10 which all personnel transactions are made without regard to race,
11 color, disability, sex, religion, age, or national origin.

12 (b) The policy statement under Subsection (a) must include:

13 (1) personnel policies, including policies related to
14 recruitment, evaluation, selection, appointment, training, and
15 promotion of personnel, that are in compliance with the
16 requirements of Chapter 21, Labor Code;

17 (2) a comprehensive analysis of the office workforce
18 that meets federal and state guidelines;

19 (3) procedures by which a determination can be made
20 about the extent of underuse in the office workforce of all persons
21 for whom federal or state guidelines encourage a more equitable
22 balance; and

23 (4) reasonable methods to appropriately address the
24 underuse.

25 (c) A policy statement prepared under Subsection (b) must:

26 (1) cover an annual period;

27 (2) be updated at least annually;

1 (3) be reviewed by the Civil Rights Division of the
2 Texas Workforce Commission for compliance with Subsection (b)(1);
3 and

4 (4) be filed with the governor's office.

5 (d) The governor's office shall deliver a biennial report to
6 the legislature based on the information received under Subsection
7 (c). The report may be made separately or as a part of other
8 biennial reports to the legislature.

9 Sec. 14A.046. QUALIFICATIONS AND STANDARDS OF CONDUCT
10 INFORMATION. The office shall provide to office employees as often
11 as necessary information regarding their:

12 (1) qualifications for employment under this chapter;

13 and

14 (2) responsibilities under applicable laws relating
15 to standards of conduct for employees.

16 SUBCHAPTER D. PUBLIC INTEREST INFORMATION AND REPORTS

17 Sec. 14A.061. PUBLIC INTEREST INFORMATION. The office
18 shall prepare information of public interest describing the
19 functions of the office. The office shall make the information
20 available to the public and appropriate state agencies.

21 Sec. 14A.062. PUBLIC PARTICIPATION. (a) The office shall
22 comply with federal and state laws related to program and facility
23 accessibility.

24 (b) The office shall prepare and maintain a written plan
25 that describes how a person who does not speak English may be
26 provided reasonable access to the office's programs and services.

27 Sec. 14A.063. ANNUAL REPORT. The office shall prepare

1 annually a report on the office's activities during the preceding
2 year and submit the report to the standing legislative committees
3 that have jurisdiction over the office, the house appropriations
4 committee, and the senate finance committee. At a minimum, the
5 report must include:

6 (1) a list of the types of activities conducted by the
7 office and the time spent by the office on each activity;

8 (2) the number of hours billed by the office for
9 representing residential or small commercial consumers in
10 proceedings;

11 (3) the number of staff positions and the type of work
12 performed by each position; and

13 (4) the office's rate of success in representing
14 residential or small commercial consumers in appealing commission
15 decisions.

16 Sec. 14A.064. PUBLIC HEARING. (a) The office annually
17 shall conduct a public hearing to assist the office in developing a
18 plan of priorities and to give the public, including residential
19 and small commercial consumers, an opportunity to comment on the
20 office's functions and effectiveness.

21 (b) A public hearing held under this section is not subject
22 to Chapter 551, Government Code.

23 (c) The office shall file notice of a public hearing held
24 under this section with the secretary of state for publication in
25 the Texas Register.

26 SECTION 6. Section 49.352(c), Water Code, is amended to
27 read as follows:

1 (c) For purposes of this section, a municipality may obtain
2 single certification in the manner provided by Section 13.255,
3 except that the municipality may file an application with the Water
4 Public Utility Commission [~~of Texas~~] to grant single certification
5 immediately after the municipality provides notice of intent to
6 provide service as required by Section 13.255(b).

7 SECTION 7. Section 2003.049, Government Code, is amended by
8 amending Subsection (a) and adding Subsection (a-1) to read as
9 follows:

10 (a) The office shall perform contested case hearings for:
11 (1) the Public Utility Commission of Texas as
12 prescribed by the Public Utility Regulatory Act of 1995 and other
13 applicable law; and
14 (2) the Water Public Utility Commission as prescribed
15 by Subtitle B, Title 2, Water Code.

16 (a-1) In this section, "commission" means the Public
17 Utility Commission of Texas or the Water Public Utility Commission.

18 SECTION 8. Section 7201.004(b), Special District Local Laws
19 Code, is amended to read as follows:

20 (b) This section does not apply to:
21 (1) rules or regulations concerning potable water
22 quality standards; or
23 (2) conflicts relating to service areas or
24 certificates issued to the corporation or district by the Water
25 Public Utility Commission or a predecessor agency [~~of Texas or the~~
26 ~~Texas Commission on Environmental Quality~~].

27 SECTION 9. Section 7201.005(c), Special District Local Laws

1 Code, is amended to read as follows:

2 (c) District boundaries may be modified in accordance with
3 Chapters 13 and 49, Water Code, except that the boundaries must
4 include all territory in any area included under a certificate of
5 convenience and necessity issued by the Water Public Utility
6 Commission or a predecessor agency [~~of Texas or the Texas~~
7 ~~Commission on Environmental Quality to the district~~].

8 SECTION 10. Section 7201.102, Special District Local Laws
9 Code, is amended to read as follows:

10 Sec. 7201.102. PROVISION OF SERVICE. The district shall at
11 all times operate and construct necessary improvements within the
12 certificated areas established by the Water Public Utility
13 Commission or a predecessor agency [~~of Texas or the Texas~~
14 ~~Commission on Environmental Quality~~] to provide uninterrupted,
15 continuous, and adequate service to existing and future customers
16 for water, sewer, and contract services.

17 SECTION 11. Section 7886.0101(4), Special District Local
18 Laws Code, is amended to read as follows:

19 (4) "Utility commission" means the Water Public
20 Utility Commission [~~of Texas~~].

21 SECTION 12. Section 7958.0101(6), Special District Local
22 Laws Code, is amended to read as follows:

23 (6) "Utility commission" means the Water Public
24 Utility Commission [~~of Texas~~].

25 SECTION 13. Section 8281.103, Special District Local Laws
26 Code, is amended to read as follows:

27 Sec. 8281.103. LIMITATION ON PROVIDING WATER TO CERTAIN

1 USERS. Notwithstanding any other provision of this chapter, the
2 district may not compete with the City of Mabank in providing water
3 to household users unless the district receives permission from the
4 Water Public Utility Commission [~~of Texas~~], with the consent of
5 that city.

6 SECTION 14. Section 8363.106(b), Special District Local
7 Laws Code, is amended to read as follows:

8 (b) In relation to a retail public utility that provides
9 water or sewer service to all or part of the area of the district
10 under a certificate of public convenience and necessity, the
11 district may exercise the powers given to a municipality provided
12 by Section 13.255, Water Code, as if the district were a
13 municipality that had annexed the area of the district. The Water
14 Public Utility Commission [~~of Texas~~] shall grant single
15 certification as to the city as provided by Section 13.255(c),
16 Water Code, in the event that the district applies for the
17 certification on the city's behalf in the manner provided by
18 Section 13.255(b), Water Code.

19 SECTION 15. Section 8363.251(a), Special District Local
20 Laws Code, is amended to read as follows:

21 (a) The city may dissolve the district by ordinance after
22 provision is made for all debts incurred by the district if one or
23 more of the following does not occur:

24 (1) on or before the 90th day after the effective date
25 of the Act enacting this chapter, the city receives one or more
26 petitions requesting annexation of all territory in the district
27 remaining in the extraterritorial jurisdiction of the city;

1 (2) on or before the last day of the ninth month after
2 the effective date of the Act enacting this chapter, the city adopts
3 one or more ordinances annexing all territory in the district
4 remaining in the city's extraterritorial jurisdiction;

5 (3) on or before the last day of the third year after
6 the effective date of the Act enacting this chapter, the Water
7 Public Utility Commission [~~of Texas~~] issues an order approving the
8 sale and transfer of a certificate of public convenience and
9 necessity authorizing the city to provide retail water service to
10 territory in the district; or

11 (4) by the end of the fifth year after the effective
12 date of the Act enacting this chapter, the district has completed
13 construction of internal streets and water and sanitary sewer
14 facilities sufficient to serve at least 100 residential lots in the
15 district.

16 SECTION 16. Section 8801.201, Special District Local Laws
17 Code, is amended to read as follows:

18 Sec. 8801.201. APPEAL OF SURFACE WATER RATES. (a) A person
19 who is required to convert to surface water under this chapter and
20 who purchases that water supply wholesale from a political
21 subdivision as defined by Section 12.013(b), Water Code, may appeal
22 to the Water Public Utility Commission [~~of Texas~~] the rates the
23 political subdivision charges to the person. Chapter 12, Water
24 Code, and rules adopted under that chapter apply to an appeal under
25 this section.

26 (b) The Water Public Utility Commission [~~of Texas~~] shall
27 hear the appeal not later than the 180th day after the date the

1 appeal is filed.

2 (c) The Water Public Utility Commission [~~of Texas~~] shall
3 issue a final decision on the appeal not later than the 60th day
4 after the date the hearing ends.

5 SECTION 17. Section 8803.151(1), Special District Local
6 Laws Code, is amended to read as follows:

7 (1) "Commission" means the Water Public Utility
8 Commission [~~of Texas~~].

9 SECTION 18. Section 8808.151(1), Special District Local
10 Laws Code, is amended to read as follows:

11 (1) "Commission" means the Water Public Utility
12 Commission [~~of Texas~~].

13 SECTION 19. Section 11002.151, Special District Local Laws
14 Code, is amended to read as follows:

15 Sec. 11002.151. DEFINITION. In this subchapter, "receiving
16 entity" means the entity that holds a certificate of convenience
17 and necessity issued by the Water Public Utility Commission [~~of~~
18 ~~Texas~~] for the territory included in the district.

19 SECTION 20. Section 11.002(21), Water Code, is repealed.

20 SECTION 21. (a) On September 1, 2024, the following are
21 transferred from the Public Utility Commission of Texas to the
22 Water Public Utility Commission:

23 (1) the powers, duties, functions, programs, and
24 activities of the Public Utility Commission of Texas relating to
25 the economic regulation of water and sewer service, including the
26 issuance and transfer of certificates of convenience and necessity,
27 the determination of rates, and the administration of hearings and

1 proceedings involving those matters, as provided by this Act;

2 (2) any obligations and contracts of the Public
3 Utility Commission of Texas that are directly related to
4 implementing a power, duty, function, program, or activity
5 transferred under this Act; and

6 (3) all property and records in the custody of the
7 Public Utility Commission of Texas that are related to a power,
8 duty, function, program, or activity transferred under this Act and
9 all funds appropriated by the legislature for that power, duty,
10 function, program, or activity.

11 (b) The Public Utility Commission of Texas shall continue to
12 carry out that commission's duties related to the economic
13 regulation of water and sewer service under the law as it existed
14 immediately before the effective date of this Act until September
15 1, 2024, and the former law is continued in effect for that purpose.

16 (c) The Public Utility Commission of Texas and the Water
17 Public Utility Commission shall enter into a memorandum of
18 understanding that:

19 (1) identifies in detail the applicable powers and
20 duties that are transferred by this Act;

21 (2) establishes a plan for the identification and
22 transfer of the records, personnel, property, and unspent
23 appropriations of the Public Utility Commission of Texas that are
24 used for purposes of that commission's powers and duties directly
25 related to the economic regulation of water and sewer service; and

26 (3) establishes a plan for the transfer of all pending
27 applications, hearings, rulemaking proceedings, and orders

1 relating to the economic regulation of water and sewer service from
2 the Public Utility Commission of Texas to the Water Public Utility
3 Commission.

4 (d) The memorandum of understanding under this section:

5 (1) is not required to be adopted by rule; and

6 (2) must be completed by August 1, 2024.

7 (e) The executive directors of the Public Utility
8 Commission of Texas and the Water Public Utility Commission may
9 agree in the memorandum of understanding under this section to
10 transfer to the Water Public Utility Commission any personnel of
11 the Public Utility Commission of Texas whose functions
12 predominantly involve powers, duties, obligations, functions, and
13 activities related to the economic regulation of water and sewer
14 service.

15 (f) On or after September 1, 2023, the Office of Water
16 Public Utility Counsel may initiate or intervene in a contested
17 case before the Public Utility Commission of Texas that the office
18 would be entitled to initiate or intervene in if the case were
19 before the Water Public Utility Commission, as authorized by
20 Chapter 14A, Water Code, as added by this Act.

21 (g) The Public Utility Commission of Texas and the Water
22 Public Utility Commission shall appoint a transition team to
23 accomplish the purposes of this section. The transition team may
24 consult with the Office of Public Utility Counsel and the Office of
25 Water Public Utility Counsel to accomplish the purposes of this
26 section.

27 (h) A rule, form, policy, procedure, or decision of the

1 Public Utility Commission of Texas related to a power, duty,
2 function, program, or activity transferred under this Act continues
3 in effect as a rule, form, policy, procedure, or decision of the
4 Water Public Utility Commission and remains in effect until amended
5 or replaced by that agency. Notwithstanding any other law,
6 beginning September 1, 2023, the Water Public Utility Commission
7 may propose rules, forms, policies, and procedures related to a
8 function to be transferred to the Water Public Utility Commission
9 under this Act.

10 (i) The Public Utility Commission of Texas and the Water
11 Public Utility Commission shall adopt rules to implement the
12 changes in law made by this Act not later than September 1, 2025.

13 SECTION 22. This Act takes effect September 1, 2023.