

## **BILL ANALYSIS**

Senate Research Center

S.B. 1048  
By: Ellis, Rodney  
Government Organization  
4/6/2003  
As Filed

### **DIGEST AND PURPOSE**

Twelve of thirteen programs at the Texas Railroad Commission are duplicated by seven other state agencies, costing the state \$18.6 million each year. As proposed, S.B. 1048 implements Comptroller of Public Accounts recommendations relating to the abolition of the Public Utility Commission of Texas and the Railroad Commission of Texas, the creation of the Texas Energy and Communications Commission, and the transfer of the powers and duties of the public utility commission and the railroad commission to the energy and communications commission and other state agencies.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Energy and Communications Commission in SECTION 1.01 (Sections 301.102, 301.152, and 301.201, Utilities Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1. TEXAS ENERGY AND COMMUNICATIONS COMMISSION

SECTION 1.01. CREATION OF TEXAS ENERGY AND COMMUNICATIONS COMMISSION. Amends the Utilities Code by adding Title 6, as follows:

#### Title 6. REGULATION OF CERTAIN ACTIVITIES FORMERLY REGULATED BY PUBLIC UTILITY COMMISSION OF TEXAS AND RAILROAD COMMISSION OF TEXAS

#### CHAPTER 301. TEXAS ENERGY AND COMMUNICATIONS COMMISSION

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 301.001. DEFINITIONS. Defines "commission," "commissioner, and "executive director."

Sec. 301.002. AGENCY. Provides that the commission is an agency of the state.

Sec. 301.003. SUNSET PROVISION. Makes the Texas Energy and Communications Commission (commission) is subject to Chapter 325, Government Code (Texas Sunset Act). Provides that unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2017.

[Reserves Sections 301.004-301.050 for expansion.]

#### SUBCHAPTER B. COMMISSION

Sec. 301.051. ELECTION OF MEMBERS; TERMS. Provides that the commission is composed of three commissioners, elected for staggered four-year terms, with one or two members being elected at each general election for state and county officers, and elected at large using the place system.

Sec. 301.052. QUALIFICATIONS. Sets forth qualifications for a person to be elected a commissioner.

Sec. 301.053. CONFLICTS OF INTEREST. (a) Defines "Texas trade association" for this section.

(b) Prohibits a person from being a commissioner and from being a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if the person or the person's spouse holds a certain position.

(c) Prohibits a person from being a commissioner or acting as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a professional related to the operation of the commission.

Sec. 301.054. TRAINING PROGRAM FOR COMMISSIONERS. (a) Prohibits a person who is elected to and qualifies for office as a commissioner from voting, deliberating, or being counted as a commissioner in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) Sets forth information required to be provided by the training program.

(c) Entitles a person elected to the commission to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Sec. 301.055. REIMBURSEMENT FOR EXPENSES. Entitles a commissioner to reimbursement for actual and necessary expenses incurred in discharging the member's duties as a commissioner, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

Sec. 301.056. PRESIDING OFFICER; MEETINGS. (a) Requires the governor to designate a commissioner as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

(b) Requires the commission to meet quarterly and at other times at the call of the presiding officer when necessary to transact commission business. Requires the commission to hold meetings in different areas of the state.

Sec. 301.057. ADVISORY COMMITTEES. Authorizes the commission to appoint advisory committees to assist it in administering this chapter.

[Reserves Sections 301.058-301.100 for expansion.]

#### SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER COMMISSION PERSONNEL

Sec. 301.101 EXECUTIVE DIRECTOR. (a) Requires the commission to appoint an executive director, who is to be selected according to education, training, experience, and demonstrated ability.

(b) Provides that the executive director serves at the pleasure of the commission.

(c) Requires the executive director to act as the commission's secretary and the commission's chief administrative officer.

Sec. 301.102. PERSONNEL. (a) Authorizes the commission to employ, compensate, and prescribe the duties of personnel, other than members of advisory committees, necessary and suitable to administer this chapter.

(b) Requires the executive director to prepare and the commission by rule to adopt personnel standards.

(c) Authorizes a personnel position to be filled only by an individual selected and appointed on a nonpartisan merit basis.

(d) Requires the commission to develop and implement policies that clearly define the respective responsibilities of the commission and the staff of the commission.

Sec. 301.103. POLICY-MAKING AND MANAGEMENT RESPONSIBILITIES. Requires the commission to develop and implement policies that clearly separate the policy-making responsibilities of the executive director and the staff of the commission.

Sec. 301.104. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT. Requires the executive director or the executive director's designee to provide to commissioners and to commission employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 301.105. MERIT PAY. Requires the executive director or the executive director's designee to develop a system of annual performance evaluations. Requires all merit pay for commission employees to be given under the system established under this section.

Sec. 301.106. CAREER LADDER. Requires the executive director or the executive director's designee to develop an intra-agency career ladder program. Requires the program to require intra-agency postings of all nonentry-level positions concurrently with any public posting.

Sec. 301.107. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) Requires the executive director or the executive director's designee to prepare and maintain a written policy statement that implements a program of equal opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) Sets forth information that the policy statement must include.

(c) Sets forth requirements regarding the policy statement.

Sec. 301.108. STATE EMPLOYEE INCENTIVE PROGRAM. Requires the executive director and the executive director's designee to provide commission employees information and training on the benefits and methods of participation in the state employee incentive program.

[Reserves Sections 301.109-301.150 for expansion.]

#### SUBCHAPTER D. POWERS AND DUTIES

Sec. 301.151. GENERAL POWERS AND DUTIES OF COMMISSION. Sets forth the general powers and duties of the commission.

Sec. 301.152. RULES. Authorizes the commission to adopt rules reasonably necessary to administer this chapter.

Sec. 301.153. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) Requires the commission to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules, and appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) Requires the commission's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires the commission to designate a trained person to perform certain tasks.

Sec. 301.154. USE OF TECHNOLOGY. Requires the commission to develop and implement a policy requiring the commission and commission employees to research and propose appropriate technological solutions to improve the commission's ability to perform its functions. Sets forth requirements for the technological solutions.

Sec. 301.155. ANNUAL REPORT. (a) Requires the commission to file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year.

(b) Requires the annual report to be in the form and be reported in the time provided by the General Appropriations Act.

Sec. 301.156. OFFICES. Requires the commission to maintain in central office in Austin. Authorizes the commission to maintain offices in other areas of the state as necessary.

[Reserves Sections 301.157-301.200 for expansion.]

#### SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 301.201. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) Requires the commission to prepare information of public interest describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission. Requires the commission to make the information available to the public and appropriate state governmental entities.

(b) Requires the commission by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for directing complaints to the commission.

Sec. 310.202. PUBLIC ACCESS AND TESTIMONY. Requires the commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Sec. 301.203. INFORMATION REGARDING COMPLAINTS. (a) Requires the commission to maintain a file on each written complaint filed with the commission. Sets forth the information the file is required to include.

(b) Requires the commission to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) Requires the commission, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

#### SECTION 1.02. INITIAL ELECTION OF TEXAS ENERGY AND COMMUNICATIONS COMMISSION COMMISSIONERS.

- (a) Provides that on September 1, 2003, the Texas Energy and Communications Commission is created.
- (b) Provides that the offices of the commissioners of the Texas Energy and Communications Commission exist for purposes of the primary and general elections in 2004.
- (c) Requires the initial commissioners of the Texas Energy and Communications Commission to be elected at the general election for state and county officers in 2004. Requires the initial commissioners elected to draw lots so that one member serves a two-year term and two members serve four-year terms.
- (d) Requires the initial commissioners of the Texas Energy and Communications Commission to take office January 1, 2005.

#### ARTICLE 2. INTERAGENCY TRANSFERS OF PROPERTY, RECORDS, OBLIGATIONS, FUNDS, FUNCTIONS, PROGRAMS, AND ACTIVITIES

SECTION 2.01 TRANSFERS TO TEXAS ENERGY AND COMMUNICATIONS COMMISSION. (a) Sets forth the powers duties, functions, programs, and activities of the Public Utility Commission of Texas and the Railroad Commission of Texas that are transferred to the commission on January 1, 2005.

- (b) Provides that on the date specified by Subsection (a) of this section:
  - (1) all obligations and contracts of the Public Utility Commission of Texas or the Railroad Commission of Texas that are related to a power, duty, function, program, or activity transferred under Subsection (a) of this section are transferred to the Texas Energy and Communications Commission;
  - (2) all property and records in the custody of the Public Utility Commission of Texas or the Railroad Commission of Texas that are related to a power, duty, function, program, or activity transferred under Subsection (a) of this section and all funds appropriated by the legislature for the power, duty, function, program, or activity shall be transferred to the Texas Energy and Communications Commission; and
  - (3) all complaints, investigations, or contested cases that are pending before the Public Utility Commission of Texas or the Railroad Commission of Texas, or the governing body of the Public Utility Commission of Texas or the Railroad Commission of Texas, and that are related to power, duty, function, program, or activity transferred under Subsection (a) of this section are transferred without change in status to the Texas Energy and Communications Commission.
- (c) Provides that a rule or form adopted by the Public Utility Commission of Texas or the Railroad Commission of Texas that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section is a rule or form of the Texas Energy and Communications Commission and remains in effect until altered by that commission.

(d) Provides that a reference in law to the Public Utility Commission of Texas or the Railroad Commission of Texas, or to the governing body of the Public Utility Commission of Texas or the Railroad Commission of Texas, that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section means the Texas Energy and Communications Commission.

(e) Provides that a license, permit, or certification in effect that was issued by the Public Utility Commission of Texas or the Railroad Commission of Texas and that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section is continued in effect as a license, permit, or certification of the Texas Energy and Communications Commission.

**SECTION 2.02. TRANSFERS TO TEXAS COMMISSION ON ENVIRONMENTAL QUALITY.** (a) Sets forth the powers, duties, functions, programs, and activities of the Railroad Commission of Texas that are transferred to the Texas Commission on Environmental Quality on January 1, 2005.

(b) Provides that on the date specified by Subsection (a) of this section:

(1) all obligations and contracts of the Railroad Commission of Texas that are related to a power, duty, function, program, or activity transferred to the Texas Commission on Environmental Quality;

(2) all property and records in the custody of the Railroad Commission of Texas that are related to a power, duty, function, program, or activity transferred under Subsection (a) of this section and all funds appropriated by the legislature for the power, duty, function, program, or activity shall be transferred to the Texas Commission on Environmental Quality; and

(3) all complaints, investigations, or contested cases that are pending before the Railroad Commission of Texas, or the governing body of the Railroad Commission of Texas, and that are related to a power, duty, function, program, or activity transferred under Subsection (a) of this section are transferred without change in status to the Texas Commission on Environmental Quality.

(c) Provides that a rule or form adopted by the Railroad Commission of Texas that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section is a rule or form of the Texas Commission on Environmental Quality and remains in effect until altered by that commission.

(d) Provides that a reference in law to the Railroad Commission of Texas, or to the governing body of the Railroad Commission of Texas, that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section means the Texas Commission on Environmental Quality.

(e) Provides that a license, permit, or certification in effect that was issued by the Railroad Commission of Texas and that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section is continued in effect as a license, permit, or certification of the Texas Commission on Environmental Quality.

**SECTION 2.03. TRANSFERS TO GENERAL LAND OFFICE.** (a) Sets forth the powers, duties, functions, programs, and activities of the Railroad Commission of Texas that are transferred to the General Land Office on January 1, 2005.

(b) Provides that on the date specified by Subsection (a) of this section:

(1) all obligations and contracts of the Railroad Commission of Texas that are related to a power, duty, function, program, or activity transferred under Subsection (a) of this section are transferred to the General Land Office;

(2) all property and records in the custody of the Railroad Commission of Texas that are related to a power, duty, function, program, or activity transferred under Subsection (a) of this section and all funds appropriated by the legislature for the power, duty, function, program, or activity shall be transferred to the General Land Office; and

(3) all complaints, investigations, or contested cases that are pending before the Railroad Commission of Texas, or the governing body of the Railroad Commission of Texas, and that are related to a power, duty, function, program, or activity transferred under Subsection (a) of this section are transferred without change in status to the General Land Office.

(c) Provides that a rule or reform adopted by the Railroad Commission of Texas that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section is a rule or form of the General Land Office and remains in effect until altered by the office.

(d) Provides that a reference in law to the Railroad Commission of Texas, or to the governing body of the Railroad Commission of Texas, that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section means the General Land Office.

(e) Provides that a license, permit, or certification in effect that was issued by the Railroad Commission of Texas and that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section is continued in effect as a license, permit, or certification of the General Land Office.

**SECTION 2.04. TRANSFERS TO TEXAS DEPARTMENT OF TRANSPORTATION.** (a) Sets forth the powers, duties, functions, programs, and activities of the Railroad Commission of Texas that are transferred to the Texas Department of Transportation on January 1, 2005.

(b) Provides that on the date specified by Subsection (a) of this section:

(1) all obligations and contracts of the Railroad Commission of Texas that are related to a power, duty, function, program, or activity transferred under Subsection (a) of this section are transferred to the Texas Department of Transportation;

(2) all property and records in the custody of the Railroad Commission of Texas that are related to a power, duty, function, program, or activity transferred under Subsection (a) of this section and all funds appropriated by the legislature for the power, duty, function, program, or activity shall be transferred to the Texas Department of Transportation; and

(3) all complaints, investigations, or contested cases that are pending before the Railroad Commission of Texas, or the governing body of the Railroad Commission of Texas, and that are related to a power, duty, function, program, or activity transferred under Subsection (a) of this section are transferred without change in status to the Texas Department of Transportation.

(c) Provides that a rule or form adopted by the Railroad Commission of Texas that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section is a rule or form of the Texas Department of Transportation and remains in effect until altered by the department.

(d) Provides that a reference in law to the Railroad Commission of Texas, or to the governing body of the Railroad Commission of Texas, that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section means the

Texas Department of Transportation.

(e) Provides that a license, permit, or certification in effect that was issued by the Railroad Commission of Texas and that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section is continued in effect as a license, permit or certification of the Texas Department of Transportation.

**SECTION 2.05. FACILITATION OF TRANSFERS.** Requires each agency to which a power, duty, function, program, or activity is transferred under this article to, in order to facilitate the transfer of powers, duties, function, programs, and activities of the Public Utility Commission of Texas and the Railroad Commission of Texas to the Texas Energy and Communications Commission and other agencies as provided by this article with a minimal negative effect on the performance of those powers, duties, functions, programs, and activities, to:

(1) for each power, duty, function, program, or activity transferred under this article, determine certain information; and

(2) oversee and assist the Public Utility Commission of Texas or the Railroad Commission of Texas in transferring the powers, duties, functions, programs, activities, records, property, funds, obligations, and employees in accordance with this article.

**SECTION 2.06. APPLICABILITY OF FORMER LAW.** Provides that an action brought or proceeding commenced before the effective date of a transfer prescribed by this article, including a contested case or a remand of an action or proceeding by a reviewing court, is governed by the laws and rules applicable to the action or proceeding before the transfer.

### ARTICLE 3. MISCELLANEOUS PROVISIONS

**SECTION 3.01. ABOLITION OF STATE AGENCIES.** (a) Abolishes the Public Utility Commission of Texas and the Railroad Commission of Texas on January 1, 2005.

(b) Provides that the abolition of a state agency listed in Subsection (a) of this section and the transfer of its powers, duties, functions, programs, activities, obligations, rights, contracts, records, property, funds, and employees as provided by this Act do not affect or impair an act done, any obligation, right, order, permit, certificate, rule, criterion, standard, or requirement existing, or any penalty under former law, and that law remains in effect for any action concerning those matters.

**SECTION 3.02. EFFECTIVE DATE.** Effective date: September 1, 2003, except as otherwise provided by this Act.