

By: Homer

H.B. No. 2596

A BILL TO BE ENTITLED

AN ACT

relating to the abolishment of the Public Utility Commission of Texas and to the transfer of its powers and duties to the Railroad Commission of Texas.

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

SECTION 1. Section 11.002(c), Utilities Code, is amended to read as follows:

(c) Significant changes have occurred in the telecommunications and electric power industries since the Public Utility Regulatory Act was originally adopted. Changes in technology and market structure have increased the need for minimum standards of service quality, customer service, and fair business practices to ensure high-quality service to customers and a healthy marketplace where competition is permitted by law. It is the purpose of this title to grant the commission [~~Public Utility Commission of Texas~~] authority to make and enforce rules necessary to protect customers of telecommunications and electric services consistent with the public interest.

SECTION 2. Sections 11.003(4) and (5), Utilities Code, are amended to read as follows:

(4) "Commission" means the Railroad [~~Public Utility~~] Commission of Texas.

(5) "Commissioner" means a member of the Railroad [~~Public Utility~~] Commission of Texas.

SECTION 3. Section 12.001, Utilities Code, is amended to read as follows:

Sec. 12.001. RAILROAD [~~PUBLIC UTILITY~~] COMMISSION OF TEXAS. The Railroad [~~Public Utility~~] Commission of Texas exercises the jurisdiction and powers conferred by this title.

SECTION 4. Sections 15.024(a), (b), (d), (e), and (f), Utilities Code, are amended to read as follows:

(a) If the commission [~~executive director~~] determines that a violation has occurred, the commission [~~executive director~~] may issue [~~to the commission~~] a report that states the facts on which the determination is based and the commission's proposed [~~executive director's recommendation on the imposition of an~~] administrative penalty, including [~~a recommendation on~~] the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the commission [~~executive director~~] shall give written notice of the report to the person against whom the penalty may be assessed. The notice may be given by certified mail. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the proposed [~~recommended~~] penalty; and
- (3) inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(d) Not later than the 20th day after the date the person receives the notice, the person may accept the determination and

1 proposed [~~recommended~~] penalty of the commission [~~executive~~  
2 ~~director~~] in writing or may make a written request for a hearing on  
3 the occurrence of the violation, the amount of the penalty, or both  
4 the occurrence of the violation and the amount of the penalty.

5 (e) If the person accepts the commission's [~~executive~~  
6 ~~director's~~] determination and proposed [~~recommended~~] penalty, the  
7 commission by order shall approve the determination and impose the  
8 proposed [~~recommended~~] penalty.

9 (f) If the person requests a hearing or fails to timely  
10 respond to the notice, the commission [~~executive director~~] shall  
11 set a hearing and give notice of the hearing to the person. The  
12 hearing shall be held by an administrative law judge of the State  
13 Office of Administrative Hearings. The administrative law judge  
14 shall make findings of fact and conclusions of law and promptly  
15 issue to the commission a proposal for a decision about the  
16 occurrence of the violation and the amount of a proposed penalty.  
17 Based on the findings of fact, conclusions of law, and proposal for  
18 a decision, the commission by order may find that a violation has  
19 occurred and impose a penalty or may find that no violation  
20 occurred.

21 SECTION 5. Sections 15.025(b), (c), and (d), Utilities  
22 Code, are amended to read as follows:

23 (b) Not later than the 30th day after the date the  
24 commission's order is final as provided by Section 2001.144,  
25 Government Code, a person who acts under Subsection (a)(3) may:

26 (1) stay enforcement of the penalty by:

27 (A) paying the amount of the penalty to the court

1 for placement in an escrow account; or

2 (B) giving to the court a supersedeas bond that  
3 is approved by the court for the amount of the penalty and that is  
4 effective until all judicial review of the commission's order is  
5 final; or

6 (2) request the court to stay enforcement of the  
7 penalty by:

8 (A) filing with the court a sworn affidavit of  
9 the person stating that the person is financially unable to pay the  
10 amount of the penalty and is financially unable to give the  
11 supersedeas bond; and

12 (B) giving a copy of the affidavit to the  
13 commission [~~executive director~~] by certified mail.

14 (c) The commission [~~executive director~~], on receipt of a  
15 copy of an affidavit under Subsection (b)(2), may file with the  
16 court, not later than the fifth day after the date the copy is  
17 received, a contest to the affidavit. The court shall hold a  
18 hearing on the facts alleged in the affidavit as soon as practicable  
19 and shall stay the enforcement of the penalty on finding that the  
20 alleged facts are true. The person who files an affidavit has the  
21 burden of proving that the person is financially unable to pay the  
22 amount of the penalty and to give a supersedeas bond.

23 (d) If the person does not pay the amount of the penalty and  
24 the enforcement of the penalty is not stayed, the commission  
25 [~~executive director~~] may refer the matter to the attorney general  
26 for collection of the amount of the penalty.

27 SECTION 6. Section 15.027(c), Utilities Code, is amended

1 to read as follows:

2 (c) The commission [~~executive director~~] may delegate any  
3 power or duty relating to an administrative penalty given the  
4 commission [~~executive director~~] by this subchapter to a person  
5 designated by the commission [~~executive director~~].

6 SECTION 7. Section 39.157(d), Utilities Code, is amended  
7 to read as follows:

8 (d) The [~~Not later than January 10, 2000, the~~] commission  
9 shall adopt rules and enforcement procedures to govern transactions  
10 or activities between a transmission and distribution utility and  
11 its competitive affiliates to avoid potential market power abuses  
12 and cross-subsidizations between regulated and competitive  
13 activities both during the transition to and after the introduction  
14 of competition. Nothing in this subsection is intended to affect or  
15 modify the obligations or duties relating to any rules or standards  
16 of conduct that may apply to a utility or the utility's affiliates  
17 under orders or regulations of the Federal Energy Regulatory  
18 Commission or the Securities and Exchange Commission. A utility  
19 that is subject to statutes or regulations in other states that  
20 conflict with a provision of this section may petition the  
21 commission for a waiver of the conflicting provision on a showing of  
22 good cause. The rules adopted under this section shall ensure that:

23 (1) a utility makes any products and services, other  
24 than corporate support services, that it provides to a competitive  
25 affiliate available, contemporaneously and in the same manner, to  
26 the competitive affiliate's competitors and applies its tariffs,  
27 prices, terms, conditions, and discounts for those products and

1 services in the same manner to all similarly situated entities;

2 (2) a utility does not:

3 (A) give a competitive affiliate or a competitive  
4 affiliate's customers any preferential advantage, access, or  
5 treatment regarding services other than corporate support  
6 services; or

7 (B) act in a manner that is discriminatory or  
8 anticompetitive with respect to a nonaffiliated competitor of a  
9 competitive affiliate;

10 (3) a utility providing electric transmission or  
11 distribution services:

12 (A) provides those services on nondiscriminatory  
13 terms and conditions;

14 (B) does not establish as a condition for the  
15 provision of those services the purchase of other goods or services  
16 from the utility or the competitive affiliate; and

17 (C) does not provide competitive affiliates  
18 preferential access to the utility's transmission and distribution  
19 systems or to information about those systems;

20 (4) a utility does not release any proprietary  
21 customer information to a competitive affiliate or any other  
22 entity, other than an independent organization as defined by  
23 Section 39.151 or a provider of corporate support services for the  
24 purposes of providing the services, without obtaining prior  
25 verifiable authorization, as determined from the commission, from  
26 the customer;

27 (5) a utility does not:

1 (A) communicate with a current or potential  
2 customer about products or services offered by a competitive  
3 affiliate in a manner that favors a competitive affiliate; or

4 (B) allow a competitive affiliate, before  
5 September 1, 2005, to use the utility's corporate name, trademark,  
6 brand, or logo unless the competitive affiliate includes on  
7 employee business cards and in its advertisements of specific  
8 services to existing or potential residential or small commercial  
9 customers locating within the utility's certificated service area a  
10 disclaimer that states, "(Name of competitive affiliate) is not the  
11 same company as (name of utility) and is not regulated by the  
12 Railroad [Public Utility] Commission of Texas, and you do not have  
13 to buy (name of competitive affiliate)'s products to continue to  
14 receive quality regulated services from (name of utility).";

15 (6) a utility does not conduct joint advertising or  
16 promotional activities with a competitive affiliate in a manner  
17 that favors the competitive affiliate;

18 (7) a utility is a separate, independent entity from  
19 any competitive affiliates and, except as provided by Subdivisions  
20 (8) and (9), does not share employees, facilities, information, or  
21 other resources, other than permissible corporate support  
22 services, with those competitive affiliates unless the utility can  
23 prove to the commission that the sharing will not compromise the  
24 public interest;

25 (8) a utility's office space is physically separated  
26 from the office space of the utility's competitive affiliates by  
27 being located in separate buildings or, if within the same

1 building, by a method such as having the offices on separate floors  
2 or with separate access, unless otherwise approved by the  
3 commission;

4 (9) a utility and a competitive affiliate:

5 (A) may, to the extent the utility implements  
6 adequate safeguards precluding employees of a competitive  
7 affiliate from gaining access to information in a manner  
8 inconsistent with Subsection (g) or (i), share common officers and  
9 directors, property, equipment, offices to the extent consistent  
10 with Subdivision (8), credit, investment, or financing  
11 arrangements to the extent consistent with Subdivision (17),  
12 computer systems, information systems, and corporate support  
13 services; and

14 (B) are not required to enter into prior written  
15 contracts or competitive solicitations for non-tariffed  
16 transactions between the utility and the competitive affiliate,  
17 except that the commission by rule may require the utility and the  
18 competitive affiliate to enter into prior written contracts or  
19 competitive solicitations for certain classes of transactions,  
20 other than corporate support services, that have a per unit value of  
21 more than \$75,000 or that total more than \$1 million;

22 (10) a utility does not temporarily assign, for less  
23 than one year, employees engaged in transmission or distribution  
24 system operations to a competitive affiliate unless the employee  
25 does not have knowledge of information that is intended to be  
26 protected under this section;

27 (11) a utility does not subsidize the business



1 activities of an affiliate with revenues from a regulated service;

2 (12) a utility and its affiliates fully allocate costs  
3 for any shared services, corporate support services, and other  
4 items described by Subdivisions (8) and (9);

5 (13) a utility and its affiliates keep separate books  
6 of accounts and records and the commission may review records  
7 relating to a transaction between a utility and an affiliate;

8 (14) assets transferred or services provided between a  
9 utility and an affiliate, other than transfers that facilitate  
10 unbundling under Section 39.051 or asset valuation under Section  
11 39.262, are priced at a level that is fair and reasonable to the  
12 customers of the utility and reflects the market value of the assets  
13 or services or the utility's fully allocated cost to provide those  
14 assets or services;

15 (15) regulated services that a utility provides on a  
16 routine or recurring basis are included in a tariff that is subject  
17 to commission approval;

18 (16) each transaction between a utility and a  
19 competitive affiliate is conducted at arm's length; and

20 (17) a utility does not allow an affiliate to obtain  
21 credit under an arrangement that would include a specific pledge of  
22 assets in the rate base of the utility or a pledge of cash  
23 reasonably necessary for utility operations.

24 SECTION 8. Section 163.123, Utilities Code, is amended to  
25 read as follows:

26 Sec. 163.123. AUTHORITY OF RAILROAD [~~PUBLIC UTILITY~~]  
27 COMMISSION. A joint powers agency created under this subchapter is:

(1) subject to all applicable provisions of Title 2;  
and

(2) under the jurisdiction of the Railroad [~~Public Utility~~] Commission of Texas as provided by Title 2.

SECTION 9. Section 183.001(1), Utilities Code, is amended to read as follows:

(1) "Commission" means the Railroad [~~Public Utility~~] Commission of Texas.

SECTION 10. Section 184.001, Utilities Code, is amended to read as follows:

Sec. 184.001. DEFINITION. In this chapter, "commission" means the Railroad [~~Public Utility~~] Commission of Texas.

SECTION 11. Section 185.001(1), Utilities Code, is amended to read as follows:

(1) "Commission" means the Railroad [~~Public Utility~~] Commission of Texas.

SECTION 12. Section 104.003(a), Agriculture Code, is amended to read as follows:

(a) This chapter does not apply to:

(1) an order or rule issued by the Railroad [~~Public Utility~~] Commission of Texas; or

(2) an order or rule concerning the operation of common carriers issued by the Interstate Commerce Commission.

SECTION 13. Section 38.053, Business & Commerce Code, is amended to read as follows:

Sec. 38.053. PERSONS OR ITEMS REGULATED BY OTHER LAW. This chapter does not apply to:

1           (1) a person offering or selling a security that has  
2 been qualified for sale under Section 7, The Securities Act  
3 (Article 581-7, Vernon's Texas Civil Statutes), or that is subject  
4 to an exemption under Section 5 or 6 of that Act;

5           (2) a publicly traded corporation registered with the  
6 Securities and Exchange Commission or the State Securities Board,  
7 or a subsidiary or agent of the corporation;

8           (3) a person licensed under the Insurance Code if the  
9 solicited transaction is governed by the Insurance Code;

10          (4) a supervised financial institution or parent,  
11 subsidiary, or affiliate of a supervised financial institution;

12          (5) a person or affiliate of a person whose business is  
13 regulated by the Railroad [~~Public Utility~~] Commission of Texas  
14 under Title 2, Utilities Code, except that this chapter applies to a  
15 person or affiliate of a person who is regulated by the Railroad  
16 [~~Public Utility~~] Commission of Texas under Title 2, Utilities Code,  
17 only with respect to one or more automated dial announcing devices;

18          (6) a person subject to the control or licensing  
19 regulations of the Federal Communications Commission;

20          (7) a person selling a contractual plan regulated by  
21 the Federal Trade Commission trade regulation on use of negative  
22 option plans by sellers in commerce under 16 C.F.R. Part 425;

23          (8) a person subject to the filing requirements of  
24 Chapter 1803, Occupations Code; or

25          (9) a person soliciting a transaction regulated by the  
26 Commodity Futures Trading Commission if the person is registered or  
27 temporarily licensed for that activity with the Commodity Futures

1 Trading Commission under the Commodity Exchange Act (7 U.S.C.  
2 Section 1 et seq.) and the registration or license has not expired  
3 or been suspended or revoked.

4 SECTION 14. Section 43.002(2), Business & Commerce Code,  
5 as added by Chapter 1429, Acts of the 77th Legislature, Regular  
6 Session, 2001, is amended to read as follows:

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

9 SECTION 15. Section 1(7), Article 18.21, Code of Criminal  
10 Procedure, is amended to read as follows:

11 (7) "Trap and trace device" means a device that  
12 records an incoming electronic or other impulse that identifies the  
13 originating number of an instrument or device from which a wire or  
14 electronic communication was transmitted. The term does not  
15 include a device or telecommunications network used in providing:

16 (A) a caller identification service authorized  
17 by the Railroad [~~Public Utility~~] Commission of Texas under  
18 Subchapter E, Chapter 55, Utilities Code;

19 (B) the services referenced in Section  
20 55.102(b), Utilities Code; or

21 (C) a caller identification service provided by a  
22 commercial mobile radio service provider licensed by the Federal  
23 Communications Commission.

24 SECTION 16. Section 88.215(b), Education Code, is amended  
25 to read as follows:

26 (b) The advisory committee consists of 12 members appointed  
27 as follows:

1           (1) one representative of Texas A&M University  
2 appointed by the director of the Texas Agricultural Experiment  
3 Station;

4           (2) one representative of Texas Tech University  
5 appointed by the dean of the College of Agriculture of Texas Tech  
6 University;

7           (3) one representative of The University of Texas  
8 appointed by the vice president for research of The University of  
9 Texas System;

10           (4) one representative of the Department of  
11 Agriculture appointed by the commissioner of agriculture;

12           (5) one representative of the Parks and Wildlife  
13 Department appointed by the director of the department;

14           (6) one representative of the Railroad [~~Public~~  
15 ~~Utility~~] Commission of Texas appointed by the [~~executive director~~  
16 ~~of the~~] commission;

17           (7) one representative of municipal governments  
18 appointed by the governor;

19           (8) one representative of the general public appointed  
20 by the governor;

21           (9) one representative of the agribusiness industry  
22 appointed by the governor;

23           (10) one representative of the Texas Structural Pest  
24 Control Board appointed by the executive director of the board;

25           (11) one representative of the chemical industry  
26 appointed by the Texas Chemical Council; and

27           (12) one representative of the oil and gas industry

1 appointed by the Texas Mid-Continent Oil and Gas Association.

2 SECTION 17. Section 232.002, Family Code, is amended to  
3 read as follows:

4 Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO  
5 CHAPTER. The following are licensing authorities subject to this  
6 chapter:

- 7 (1) Department of Agriculture;
- 8 (2) Texas Commission on Alcohol and Drug Abuse;
- 9 (3) Texas Alcoholic Beverage Commission;
- 10 (4) Texas Appraiser Licensing and Certification  
11 Board;
- 12 (5) Texas Board of Architectural Examiners;
- 13 (6) State Board of Barber Examiners;
- 14 (7) Texas Board of Chiropractic Examiners;
- 15 (8) Comptroller of Public Accounts;
- 16 (9) Texas Cosmetology Commission;
- 17 (10) Court Reporters Certification Board;
- 18 (11) State Board of Dental Examiners;
- 19 (12) Texas State Board of Examiners of Dietitians;
- 20 (13) Texas Funeral Service Commission;
- 21 (14) Texas Department of Health;
- 22 (15) Texas Department of Human Services;
- 23 (16) Texas Board of Professional Land Surveying;
- 24 (17) Texas Department of Licensing and Regulation;
- 25 (18) Texas State Board of Examiners of Marriage and  
26 Family Therapists;
- 27 (19) Texas State Board of Medical Examiners;

- 1           (20)   Midwifery Board;
- 2           (21)   Texas [~~Natural Resource Conservation~~] Commission
- 3 on Environmental Quality;
- 4           (22)   Board of Nurse Examiners;
- 5           (23)   Texas Board of Occupational Therapy Examiners;
- 6           (24)   Texas Optometry Board;
- 7           (25)   Parks and Wildlife Department;
- 8           (26)   Texas State Board of Examiners of Perfusionists;
- 9           (27)   Texas State Board of Pharmacy;
- 10          (28)   Texas Board of Physical Therapy Examiners;
- 11          (29)   Texas State Board of Plumbing Examiners;
- 12          (30)   Texas State Board of Podiatric Medical Examiners;
- 13          (31)   Polygraph Examiners Board;
- 14          (32)   Texas Commission on Private Security;
- 15          (33)   Texas State Board of Examiners of Professional
- 16 Counselors;
- 17          (34)   Texas Board of Professional Engineers;
- 18          (35)   Department    of   Protective    and   Regulatory
- 19 Services;
- 20          (36)   Texas State Board of Examiners of Psychologists;
- 21          (37)   Texas State Board of Public Accountancy;
- 22          (38)   Department of Public Safety of the State of
- 23 Texas;
- 24          (39)   [~~Public Utility Commission of Texas~~;
- 25          [~~(40)~~]   Railroad Commission of Texas;
- 26          (40) [ ~~(41)~~ ]   Texas Real Estate Commission;
- 27          (41) [ ~~(42)~~ ]   State Bar of Texas;

(42) [~~(43)~~] Texas State Board of Social Worker  
Examiners;

(43) [~~(44)~~] State Board of Examiners for  
Speech-Language Pathology and Audiology;

(44) [~~(45)~~] Texas Structural Pest Control Board;

(45) [~~(46)~~] Board of Tax Professional Examiners;

(46) [~~(47)~~] Secretary of State;

(47) [~~(48)~~] Supreme Court of Texas;

(48) [~~(49)~~] Texas Transportation Commission;

(49) [~~(50)~~] State Board of Veterinary Medical  
Examiners;

(50) [~~(51)~~] Board of Vocational Nurse Examiners;

(51) [~~(52)~~] Texas Ethics Commission;

(52) [~~(53)~~] Advisory Board of Athletic Trainers;

(53) [~~(54)~~] State Committee of Examiners in the  
Fitting and Dispensing of Hearing Instruments;

(54) [~~(55)~~] Texas Board of Licensure for Professional  
Medical Physicists;

(55) [~~(56)~~] Texas Department of Insurance;

(56) [~~(57)~~] Texas Board of Orthotics and Prosthetics;

(57) [~~(58)~~] savings and loan commissioner;

(58) [~~(59)~~] Texas Juvenile Probation Commission; and

(59) [~~(60)~~] Texas Lottery Commission under Chapter  
466, Government Code.

SECTION 18. Section 487.054(a), Government Code, is amended  
to read as follows:

(a) At least once each year, the following agency heads



shall meet to discuss rural issues:

- (1) the commissioner of agriculture;
- (2) the chairman [~~executive director~~] of the Railroad [~~Public Utility~~] Commission of Texas;
- (3) the director of the Texas Agricultural Extension Service;
- (4) the presiding officer of the Telecommunications Infrastructure Fund Board;
- (5) the executive director of the Texas Department of Housing and Community Affairs;
- (6) the commissioner of public health;
- (7) the executive administrator of the Texas Water Development Board;
- (8) the executive director of the Parks and Wildlife Department;
- (9) the commissioner of human services;
- (10) the commissioner of higher education;
- (11) the comptroller; and
- (12) the executive director of the Texas Department of Transportation.

SECTION 19. Section 551.086(b)(3), Government Code, is amended to read as follows:

(3) "Competitive matter" means a utility-related matter that the public power utility governing body in good faith determines by a vote under this section is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors

1 or prospective competitors but may not be deemed to include the  
2 following categories of information:

3 (A) information relating to the provision of  
4 distribution access service, including the terms and conditions of  
5 the service and the rates charged for the service but not including  
6 information concerning utility-related services or products that  
7 are competitive;

8 (B) information relating to the provision of  
9 transmission service that is required to be filed with the Railroad  
10 [~~Public—Utility~~] Commission of Texas, subject to any  
11 confidentiality provided for under the rules of the commission;

12 (C) information for the distribution system  
13 pertaining to reliability and continuity of service, to the extent  
14 not security-sensitive, that relates to emergency management,  
15 identification of critical loads such as hospitals and police,  
16 records of interruption, and distribution feeder standards;

17 (D) any substantive rule of general  
18 applicability regarding service offerings, service regulation,  
19 customer protections, or customer service adopted by the public  
20 power utility as authorized by law;

21 (E) aggregate information reflecting receipts or  
22 expenditures of funds of the public power utility, of the type that  
23 would be included in audited financial statements;

24 (F) information relating to equal employment  
25 opportunities for minority groups, as filed with local, state, or  
26 federal agencies;

27 (G) information relating to the public power

1 utility's performance in contracting with minority business  
2 entities;

3 (H) information relating to nuclear  
4 decommissioning trust agreements, of the type required to be  
5 included in audited financial statements;

6 (I) information relating to the amount and timing  
7 of any transfer to an owning city's general fund;

8 (J) information relating to environmental  
9 compliance as required to be filed with any local, state, or  
10 national environmental authority, subject to any confidentiality  
11 provided under the rules of those authorities;

12 (K) names of public officers of the public power  
13 utility and the voting records of those officers for all matters  
14 other than those within the scope of a competitive resolution  
15 provided for by this section;

16 (L) a description of the public power utility's  
17 central and field organization, including the established places at  
18 which the public may obtain information, submit information and  
19 requests, or obtain decisions and the identification of employees  
20 from whom the public may obtain information, submit information or  
21 requests, or obtain decisions; or

22 (M) information identifying the general course  
23 and method by which the public power utility's functions are  
24 channeled and determined, including the nature and requirements of  
25 all formal and informal policies and procedures.

26 SECTION 20. Section 552.133(a)(3), Government Code, is  
27 amended to read as follows:

1           (3) "Competitive matter" means a utility-related  
2 matter that the public power utility governing body in good faith  
3 determines by a vote under this section is related to the public  
4 power utility's competitive activity, including commercial  
5 information, and would, if disclosed, give advantage to competitors  
6 or prospective competitors but may not be deemed to include the  
7 following categories of information:

8           (A) information relating to the provision of  
9 distribution access service, including the terms and conditions of  
10 the service and the rates charged for the service but not including  
11 information concerning utility-related services or products that  
12 are competitive;

13           (B) information relating to the provision of  
14 transmission service that is required to be filed with the Railroad  
15 ~~[Public—Utility]~~ Commission of Texas, subject to any  
16 confidentiality provided for under the rules of the commission;

17           (C) information for the distribution system  
18 pertaining to reliability and continuity of service, to the extent  
19 not security-sensitive, that relates to emergency management,  
20 identification of critical loads such as hospitals and police,  
21 records of interruption, and distribution feeder standards;

22           (D) any substantive rule of general  
23 applicability regarding service offerings, service regulation,  
24 customer protections, or customer service adopted by the public  
25 power utility as authorized by law;

26           (E) aggregate information reflecting receipts or  
27 expenditures of funds of the public power utility, of the type that

1 would be included in audited financial statements;

2 (F) information relating to equal employment  
3 opportunities for minority groups, as filed with local, state, or  
4 federal agencies;

5 (G) information relating to the public power  
6 utility's performance in contracting with minority business  
7 entities;

8 (H) information relating to nuclear  
9 decommissioning trust agreements, of the type required to be  
10 included in audited financial statements;

11 (I) information relating to the amount and timing  
12 of any transfer to an owning city's general fund;

13 (J) information relating to environmental  
14 compliance as required to be filed with any local, state, or  
15 national environmental authority, subject to any confidentiality  
16 provided under the rules of those authorities;

17 (K) names of public officers of the public power  
18 utility and the voting records of those officers for all matters  
19 other than those within the scope of a competitive resolution  
20 provided for by this section;

21 (L) a description of the public power utility's  
22 central and field organization, including the established places at  
23 which the public may obtain information, submit information and  
24 requests, or obtain decisions and the identification of employees  
25 from whom the public may obtain information, submit information or  
26 requests, or obtain decisions; or

27 (M) information identifying the general course

1 and method by which the public power utility's functions are  
2 channeled and determined, including the nature and requirements of  
3 all formal and informal policies and procedures.

4 SECTION 21. Section 572.003(c), Government Code, is  
5 amended to read as follows:

6 (c) The term means a member of:

7 (1) the ~~[Public Utility Commission of Texas,~~  
8 ~~[(2) the]~~ Texas Department of Economic Development  
9 ~~[Commerce]~~;

10 (2) [(3)] the Texas ~~[Natural Resource Conservation]~~  
11 Commission on Environmental Quality;

12 (3) [(4)] the Texas Alcoholic Beverage Commission;

13 (4) the [(5) The] Finance Commission of Texas;

14 (5) [(6)] the Texas Building and Procurement ~~[General~~  
15 ~~Services]~~ Commission;

16 (6) [(7)] the Texas Board of Criminal Justice;

17 (7) [(8)] the board of trustees of the Employees  
18 Retirement System of Texas;

19 (8) [(9)] the Texas Transportation Commission;

20 (9) [(10)] the Texas Workers' Compensation  
21 Commission;

22 (10) [(11)] the Texas Department ~~[State Board]~~ of  
23 Insurance;

24 (11) [(12)] the Parks and Wildlife Commission;

25 (12) [(13)] the Public Safety Commission;

26 (13) [(14)] the Texas Ethics Commission;

27 (14) [(15)] the State Securities Board;

- 1           (15) [~~(16)~~] the Texas Water Development Board;
- 2           (16) [~~(17)~~] the governing board of a public senior
- 3 college or university as defined by Section 61.003, Education Code,
- 4 or of The University of Texas Southwestern Medical Center at
- 5 Dallas, The University of Texas Medical Branch at Galveston, The
- 6 University of Texas Health Science Center at Houston, The
- 7 University of Texas Health Science Center at San Antonio, The
- 8 University of Texas System Cancer Center, The University of Texas
- 9 Health Science Center at Tyler, University of North Texas Health
- 10 Science Center at Fort Worth, Texas Tech University Health Sciences
- 11 Center, Texas State Technical College--Harlingen, Texas State
- 12 Technical College--Marshall, Texas State Technical
- 13 College--Sweetwater, or Texas State Technical College--Waco;
- 14           (17) [~~(18)~~] the Texas Higher Education Coordinating
- 15 Board;
- 16           (18) [~~(19)~~] the Texas Workforce [~~Employment~~]
- 17 Commission;
- 18           (19) [~~(20)~~] ~~the State Banking Board,~~
- 19           [~~(21)~~] the board of trustees of the Teacher Retirement
- 20 System of Texas;
- 21           (20) [~~(22)~~] the Credit Union Commission;
- 22           (21) [~~(23)~~] the School Land Board;
- 23           (22) [~~(24)~~] the board of the Texas Department of
- 24 Housing and Community Affairs;
- 25           (23) [~~(25)~~] the Texas Racing Commission;
- 26           (24) [~~(26)~~] the State Board of Dental Examiners;
- 27           (25) [~~(27)~~] the Texas Board of [~~Licensure for~~] Nursing

Facility ~~[Home]~~ Administrators;

(26) ~~[(28)]~~ the Texas State Board of Medical  
Examiners;

(27) ~~[(29)]~~ the Board of Pardons and Paroles;

(28) ~~[(30)]~~ the Texas State Board of Pharmacy;

(29) ~~[(31)]~~ the Department of Information Resources  
governing board;

(30) ~~[(32)]~~ the Motor Vehicle Board;

(31) ~~[(33)]~~ the Texas Real Estate Commission;

(32) ~~[(34)]~~ the board of directors of the State Bar of  
Texas;

(33) ~~[(35)]~~ the bond review board;

(34) ~~[(36)]~~ the Texas Board of Health;

(35) ~~[(37)]~~ the Texas Board of Mental Health and  
Mental Retardation;

(36) ~~[(38)]~~ the Texas Board on Aging;

(37) ~~[(39)]~~ the Texas Board of Human Services;

(38) ~~[(40)]~~ the Texas Funeral Service Commission;

(39) ~~[(41)]~~ the board of directors of a river  
authority created under the Texas Constitution or a statute of this  
state; or

(40) ~~[(42)]~~ the Texas Lottery Commission.

SECTION 22. Section 660.203(a), Government Code, is  
amended to read as follows:

(a) An individual is entitled to reimbursement for the  
actual expense of meals and lodging incurred while performing the  
duties of the individual's office or employment if the individual



1 is:

2 (1) a judicial officer;

3 (2) a chief administrative officer of a state agency,  
4 subject to Subsection (c);

5 (3) the executive director of the Texas Legislative  
6 Council;

7 (4) the secretary of the senate;

8 (5) a member of the Texas ~~[Natural Resource~~  
9 ~~Conservation]~~ Commission on Environmental Quality, the Texas  
10 Workforce Commission, ~~[the Public Utility Commission of Texas,~~ the  
11 Board of Pardons and Paroles, or the Sabine River Compact  
12 Administration; or

13 (6) a full-time member of a board and receives a salary  
14 from the state for service on that board.

15 SECTION 23. Sections 1232.1071(d) and (e), Government  
16 Code, are amended to read as follows:

17 (d) The Railroad ~~[Public Utility]~~ Commission of Texas shall  
18 provide necessary assistance to the authority to ensure the  
19 collection and enforcement of the nonbypassable charges, whether  
20 directly or by using the assistance and powers of the requesting  
21 member city.

22 (e) The authority and the Railroad ~~[Public Utility]~~  
23 Commission of Texas have all powers necessary to perform the duties  
24 and responsibilities described by this section. This section shall  
25 be interpreted broadly in a manner consistent with the most  
26 cost-effective financing of stranded costs. To the extent  
27 possible, obligations or evidences of indebtedness issued by the

1 authority under this section must be structured so that any  
2 interest on the obligations or evidences of indebtedness is  
3 excluded from gross income for federal income tax purposes. Any  
4 interest on the obligations or evidences of indebtedness is not  
5 subject to taxation by and may not be included as part of the  
6 measurement of a tax by this state or a political subdivision of  
7 this state.

8 SECTION 24. Section 2003.0421(c), Government Code, is  
9 amended to read as follows:

10 (c) This section applies to any contested case hearing  
11 conducted by the office, except hearings conducted on behalf of the  
12 Texas ~~[Natural Resource Conservation]~~ Commission on Environmental  
13 Quality or the Railroad ~~[Public Utility]~~ Commission of Texas which  
14 are governed by Sections 2003.047 and 2003.049.

15 SECTION 25. Section 2003.049(a), Government Code, is  
16 amended to read as follows:

17 (a) The office shall establish a utility division to perform  
18 the contested case hearings for the Railroad ~~[Public Utility]~~  
19 Commission of Texas as prescribed by Title 2, Utilities Code,  
20 Section 102.006, Utilities Code, ~~[the Public Utility Regulatory Act~~  
21 ~~of 1995]~~ and other applicable law.

22 SECTION 26. Section 2007.003(b), Government Code, is  
23 amended to read as follows:

24 (b) This chapter does not apply to the following  
25 governmental actions:

26 (1) an action by a municipality except as provided by  
27 Subsection (a)(3);

1           (2) a lawful forfeiture or seizure of contraband as  
2 defined by Article 59.01, Code of Criminal Procedure;

3           (3) a lawful seizure of property as evidence of a crime  
4 or violation of law;

5           (4) an action, including an action of a political  
6 subdivision, that is reasonably taken to fulfill an obligation  
7 mandated by federal law or an action of a political subdivision that  
8 is reasonably taken to fulfill an obligation mandated by state law;

9           (5) the discontinuance or modification of a program or  
10 regulation that provides a unilateral expectation that does not  
11 rise to the level of a recognized interest in private real property;

12           (6) an action taken to prohibit or restrict a  
13 condition or use of private real property if the governmental  
14 entity proves that the condition or use constitutes a public or  
15 private nuisance as defined by background principles of nuisance  
16 and property law of this state;

17           (7) an action taken out of a reasonable good faith  
18 belief that the action is necessary to prevent a grave and immediate  
19 threat to life or property;

20           (8) a formal exercise of the power of eminent domain;

21           (9) an action taken under a state mandate to prevent  
22 waste of oil and gas, protect correlative rights of owners of  
23 interests in oil or gas, or prevent pollution related to oil and gas  
24 activities;

25           (10) a rule or proclamation adopted for the purpose of  
26 regulating water safety, hunting, fishing, or control of  
27 nonindigenous or exotic aquatic resources;

(11) an action taken by a political subdivision:

(A) to regulate construction in an area designated under law as a floodplain;

(B) to regulate on-site sewage facilities;

(C) under the political subdivisions's statutory authority to prevent waste or protect rights of owners of interest in groundwater; or

(D) to prevent subsidence;

(12) the appraisal of property for purposes of ad valorem taxation;

(13) an action that:

(A) is taken in response to a real and substantial threat to public health and safety;

(B) is designed to significantly advance the health and safety purpose; and

(C) does not impose a greater burden than is necessary to achieve the health and safety purpose; or

(14) an action or rulemaking undertaken by the Railroad [~~Public Utility~~] Commission of Texas to order or require the location or placement of telecommunications equipment owned by another party on the premises of a certificated local exchange company.

SECTION 27. Section 2302.001(2), Government Code, is amended to read as follows:

(2) "Commission" means the Railroad [~~Public Utility~~] Commission of Texas.

SECTION 28. Sections 361.040(b) and (d), Health and Safety

Code, are amended to read as follows:

(b) The commission and the Railroad [~~Public Utility~~] Commission of Texas shall jointly promote the economic development and use of landfill gas by, at a minimum:

(1) publicizing agency information on identified landfills with the potential for economic landfill gas development, including an estimate of that potential;

(2) assisting gas developers, landfill owners and operators, electric utilities, and gas utilities in exploring partnership opportunities with regard to landfill gas; and

(3) establishing a clearinghouse of information on landfill gas development and use.

(d) The commission and the Railroad [~~Public Utility~~] Commission of Texas shall jointly report to the legislature by November 1 of 2002, 2004, and 2006 on the status of the development of landfill gas in this state. Each report shall:

(1) summarize the activities of the agencies in fulfilling the requirements of this section;

(2) identify landfills with gas recovery projects;

(3) state the amount of gas produced from landfill gas recovery projects;

(4) state the amount of electricity generated from landfill gas recovery projects;

(5) identify the environmental benefits of the recovery and use of landfill gas; and

(6) identify any legal, administrative, economic, or other obstacles to the further development and use of landfill gas.

SECTION 29. Section 386.001(11), Health and Safety Code, is amended to read as follows:

(11) "Utility commission" means the Railroad [~~Public Utility~~] Commission of Texas.

SECTION 30. Sections 771.001(5) and (11), Health and Safety Code, are amended to read as follows:

(5) "Local exchange service provider" means a telecommunications carrier providing telecommunications service in a local exchange service area under a certificate of public convenience and necessity issued by the Railroad [~~Public Utility~~] Commission of Texas.

(11) "Business service" means a telecommunications service classified as a business service under rules adopted by the Railroad [~~Public Utility~~] Commission of Texas or under the applicable tariffs of the principal service supplier.

SECTION 31. Section 771.031(b), Health and Safety Code, is amended to read as follows:

(b) The following individuals serve as nonvoting ex officio members:

(1) the chairman [~~executive director~~] of the Railroad [~~Public Utility~~] Commission of Texas, or an individual designated by the chairman [~~executive director~~];

(2) the executive director of the Department of Information Resources [~~General Services Commission~~], or an individual designated by the executive director; and

(3) the commissioner of public health, or an individual who has responsibility for the poison control network

1 designated by the commissioner.

2 SECTION 32. Section 771.0725, Health and Safety Code, is  
3 amended to read as follows:

4 Sec. 771.0725. ESTABLISHMENT OF RATES FOR  
5 FEES. (a) Subject to the applicable limitations prescribed by  
6 Sections 771.071(b) and 771.072(b), (d), and (e), the Railroad  
7 [~~Public Utility~~] Commission of Texas shall monitor the  
8 establishment of:

9 (1) emergency service fees imposed under Section  
10 771.071; and

11 (2) the equalization surcharge imposed under Section  
12 771.072, including the allocation of revenue under Sections  
13 771.072(d) and (e).

14 (b) Each year the commission shall provide documentation to  
15 the Railroad [~~Public Utility~~] Commission of Texas regarding the  
16 rate at which each fee should be imposed and the allocation of  
17 revenue under Sections 771.072(d) and (e). The commission may  
18 provide such documentation more often under this subsection if the  
19 commission determines that action is necessary.

20 (c) The Railroad [~~Public Utility~~] Commission of Texas shall  
21 review the documentation provided by the commission as well as  
22 allocations derived therefrom and also identified by the  
23 commission. If the Railroad [~~Public Utility~~] Commission of Texas  
24 determines that a recommended rate or allocation is not  
25 appropriate, the Railroad [~~Public Utility~~] Commission of Texas  
26 shall provide comments to the commission, the governor, and the  
27 Legislative Budget Board regarding appropriate rates and the basis

1 for that determination.

2 (d) The Railroad [~~Public Utility~~] Commission of Texas may  
3 review and make comments regarding a rate or allocation under this  
4 section in an informal proceeding. A proceeding in which a rate or  
5 allocation is reviewed is not a contested case for purposes of  
6 Chapter 2001, Government Code. A review of a rate or allocation is  
7 not a rate change for purposes of Chapter 36 or 53, Utilities Code.

8 SECTION 33. Section 771.076(c), Health and Safety Code, is  
9 amended to read as follows:

10 (c) At the request of the Railroad [~~Public Utility~~]  
11 Commission of Texas, the state auditor may audit a regional  
12 planning commission or other public agency designated by the  
13 regional planning commission that receives money under this  
14 subchapter.

15 SECTION 34. Section 772.001(21), Health and Safety Code,  
16 is amended to read as follows:

17 (21) "Business service" means a telecommunications  
18 service classified as a business service under rules adopted by the  
19 Railroad [~~Public Utility~~] Commission of Texas or under the  
20 applicable tariffs of the principal service supplier.

21 SECTION 35. Section 246.001(1), Local Government Code, is  
22 amended to read as follows:

23 (1) "Commission" means the Railroad [~~Public Utility~~]  
24 Commission of Texas.

25 SECTION 36. Section 283.002(3), Local Government Code, is  
26 amended to read as follows:

27 (3) "Commission" means the Railroad [~~Public Utility~~]



Commission of Texas.

SECTION 37. Section 304.001(f), Local Government Code, is amended to read as follows:

(f) A political subdivision corporation may appear on behalf of its incorporating political subdivisions before the ~~[Public Utility Commission of Texas, the]~~ Railroad Commission of Texas, the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality, any other governmental agency or regulatory authority, the Texas Legislature, and the courts.

SECTION 38. Section 33.2053(c), Natural Resources Code, is amended to read as follows:

(c) The Railroad Commission of Texas shall comply with Sections 33.205(a) and (b) when issuing:

- (1) a wastewater discharge permit;
- (2) a waste disposal or storage pit permit; ~~[or]~~
- (3) a certification of a federal permit for the discharge of dredge or fill material; or
- (4) a certificate of convenience and necessity.

SECTION 39. Section 28.03(d), Penal Code, is amended to read as follows:

(d) The terms "public communication, public transportation, public gas or power supply, or other public service" and "public water supply" shall mean, refer to, and include any such services subject to regulation by ~~[the Public Utility Commission of Texas,]~~ the Railroad Commission of Texas~~[,]~~ or the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality or any such services enfranchised by the State of Texas or any political

1 subdivision thereof.

2 SECTION 40. Section 92.008(c), Property Code, is amended  
3 to read as follows:

4 (c) A landlord may interrupt or cause the interruption of  
5 electrical service furnished to a tenant by the landlord as an  
6 incident of the tenancy or by other agreement if:

7 (1) the electrical service furnished to the tenant is  
8 individually metered or submetered for the dwelling unit;

9 (2) the electrical service connection with the utility  
10 company is in the name of the landlord or the landlord's agent; and

11 (3) the landlord complies with the rules adopted by  
12 the Railroad [~~Public—Utility~~] Commission of Texas for  
13 discontinuance of submetered electrical service.

14 SECTION 41. Section 22.23(b), Tax Code, is amended to read  
15 as follows:

16 (b) For good cause shown in writing by the property owner,  
17 the chief appraiser may extend a deadline for filing a rendition  
18 statement or property report by written order to a date not later  
19 than April 30. However, if the property that is the subject of the  
20 rendition is regulated by the [~~Public Utility Commission of Texas~~  
21 ~~or the~~] Railroad Commission of Texas, the chief appraiser, upon  
22 written request by the property owner, shall extend the filing  
23 deadline until April 30, and may further extend the deadline an  
24 additional 15 days upon good cause shown in writing by the property  
25 owner.

26 SECTION 42. Section 301.004(c), Tax Code, is amended to  
27 read as follows:

1 (c) In this section, "telephone company" means a person who  
2 owns or operates a telephone line or a telephone network in this  
3 state, charges for its use, and is regulated by the Railroad [~~Public~~  
4 ~~Utility~~] Commission of Texas as a certificated provider of local  
5 exchange telephone service.

6 SECTION 43. Section 452.065(b), Transportation Code, is  
7 amended to read as follows:

8 (b) The parties to a contract made under Subsection (a)(3)  
9 may fulfill the terms of the contract notwithstanding any order or  
10 rule of the Railroad [~~Public Utility~~] Commission of Texas with  
11 respect to certification, except that any supply of power or energy  
12 by one utility into the service area of another utility must be  
13 provided over transmission or distribution lines owned by the  
14 authority.

15 SECTION 44. Section 12.013(h), Water Code, is amended to  
16 read as follows:

17 (h) Nothing herein contained shall affect the jurisdiction  
18 of the Railroad [~~Public Utility~~] Commission of Texas.

19 SECTION 45. Section 152.255, Water Code, is amended to read  
20 as follows:

21 Sec. 152.255. RECOVERABILITY OF COSTS FROM  
22 RATEPAYERS. This subchapter does not limit the authority of the  
23 Railroad [~~Public Utility~~] Commission of Texas to determine the  
24 recoverability of costs from ratepayers.

25 SECTION 46. Section 152.301, Water Code, is amended to read  
26 as follows:

27 Sec. 152.301. ELECTRIC TRANSMISSION SERVICES AND

1 FACILITIES. Notwithstanding any other law, a river authority may:

2 (1) provide transmission services, as defined by the  
3 Utilities Code or the Railroad [~~Public Utility~~] Commission of  
4 Texas, on a regional basis to any eligible transmission customer at  
5 any location within or outside the boundaries of the river  
6 authority; and

7 (2) acquire, including by lease-purchase, lease from  
8 or to any person, finance, construct, rebuild, operate, or sell  
9 electric transmission facilities at any location within or outside  
10 the boundaries of the river authority.

11 SECTION 47. The following are repealed:

12 (1) Sections 12.002 through 12.203, Utilities Code;

13 (2) Section 15.029, Utilities Code;

14 (3) Section 2003.0491, Government Code; and

15 (4) Section 33.2053(b), Natural Resources Code.

16 SECTION 48. (a) It is the intent of the legislature that  
17 the powers, duties, obligations, rights, contracts, records,  
18 employees, property, funds, and appropriations of the Public  
19 Utility Commission of Texas be transferred to the Railroad  
20 Commission of Texas on September 1, 2004.

21 (b) The Railroad Commission of Texas shall administer the  
22 transfer described by Subsection (a) of this section.

23 (c) The Railroad Commission of Texas or its designee shall  
24 ensure that the transfer described by Subsection (a) of this  
25 section does not adversely affect a proceeding pending before the  
26 Public Utility Commission of Texas or the rights of the parties to  
27 the proceeding.

1           (d) After the transfer has been completed, the Railroad  
2 Commission of Texas or its designee shall prepare a written report  
3 detailing the specifics of the transfer described by Subsection (a)  
4 of this section and shall submit the report to the governor and the  
5 legislature.

6           (e) This section takes effect immediately.

7           SECTION 49. On September 1, 2004:

8                 (1) all powers, duties, functions, programs, and  
9 activities of the Public Utility Commission of Texas are  
10 transferred to the Railroad Commission of Texas;

11                (2) all obligations, rights, contracts, records, and  
12 property in the custody of the Public Utility Commission of Texas  
13 and all funds appropriated by the legislature to the Public Utility  
14 Commission of Texas are transferred to the Railroad Commission of  
15 Texas;

16                (3) all employees of the Public Utility Commission of  
17 Texas become employees of the Railroad Commission of Texas, to be  
18 assigned duties by the Railroad Commission of Texas;

19                (4) the Public Utility Commission of Texas is  
20 abolished; and

21                (5) a reference in law to the Public Utility  
22 Commission of Texas means the Railroad Commission of Texas.

23           SECTION 50. (a) On September 1, 2004, a rule, policy,  
24 procedure, decision, or form adopted by the Public Utility  
25 Commission of Texas that relates to the regulation of the electric  
26 or telecommunications industries is a rule, policy, procedure,  
27 decision, or form of the Railroad Commission of Texas and remains in

1 effect until altered by the Railroad Commission of Texas. The  
2 secretary of state may adopt rules as necessary to expedite the  
3 implementation of this subsection.

4 (b) On September 1, 2004, a rule, policy, procedure,  
5 decision, or form of the Public Utility Commission of Texas that  
6 relates to the management and daily operation of the Public Utility  
7 Commission of Texas is superseded by the rules, policies,  
8 procedures, decisions, and forms of the Railroad Commission of  
9 Texas relating to the management and daily operation of the  
10 Railroad Commission of Texas.

11 SECTION 51. (a) The abolition of the Public Utility  
12 Commission of Texas and the transfer of its powers, duties,  
13 functions, programs, activities, obligations, rights, contracts,  
14 records, property, funds, and employees to the Railroad Commission  
15 of Texas does not affect or impair an act done, any obligation,  
16 right, order, permit, certificate, rule, criterion, standard, or  
17 requirement existing, any investigation begun, or any penalty  
18 accrued under former law, and that law remains in effect for any  
19 action concerning those matters.

20 (b) An action brought or proceeding commenced before the  
21 effective date of a transfer prescribed by this Act, including a  
22 contested case or a remand of an action or proceeding by a reviewing  
23 court, is governed by the laws and rules applicable to the action or  
24 proceeding before the transfer.

25 SECTION 52. Except as otherwise provided by this Act, this  
26 Act takes effect September 1, 2004.