

BILL ANALYSIS

C.S.H.B. 1779
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Regulated Industries
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The 64th Legislature enacted the Public Utility Regulatory Act (PURA) and created the Public Utility Commission (PUC) of Texas as a means of regulating the rates and services of telephone utilities statewide, electric utilities in unincorporated areas, radio-telephone statewide, and water and sewer utilities in unincorporated areas. While the jurisdiction and authority of the PUC has changed somewhat over the years, many important aspects still remain. The Commission remains a key player in the oversight of certain markets such as electrical and telecommunications utilities. Modernizing many of the rules and statutes pertaining to the PUC will ensure that the Commission is a strong force for industry oversight and consumer advocacy for years to come.

The Office of Public Utility Counsel (OPUC) was created by the 75th Legislature to represent residential and small business consumer interests involving any utility regulated by the PUC, the Federal Energy Regulatory Commission (FERC), the Federal Communications Commission (FCC), and in state and federal courts to ensure that utility services are available to these ratepayers at just and reasonable rates in an increasingly competitive environment. OPUC's mission is critical in a competitive market and therefore, needs to be continued as an agency of the state.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 40 of this bill.

ANALYSIS

In addition to continuing the Public Utility Commission (PUC) until September 1, 2011, C.S.H.B. 1779 updates the purpose for which the Public Utility Commission exists to incorporate a free market oriented telecommunications sector and a deregulated electric utility sector. Those changes include updating definitions which appear throughout the Utilities Code. Additional definitions for what is included as a "service", an "affiliate," and a "provider" are added to the code.

The bill would require an individual who represents an entity before the PUC in a contested proceeding to be an attorney except when the PUC waives the requirement based on their determination of circumstances. Furthermore, the bill increases the number of commissioners from three to five and defines who may serve as a commissioner while updating the duties and management responsibilities of the PUC.

The bill also continues the Office of Public Utility Counsel (OPUC) until September 1, 2011, and grants broad authority to the counselor to determine what proceedings a residential or small commercial consumer needs representation in, not just proceedings before the PUC. OPUC is also given clear authority to represent their clientele in bankruptcy proceedings.

The statutes governing OPUC are updated with new sections regarding alternative dispute resolution and inter office complaints. Moreover, conflicts of interest with regard to who serves in the Office of Public Utility Counsel are detailed and an annual reporting requirement and audit have been added as well.

The bill continues the general power of the PUC to regulate and supervise the business within its jurisdiction and requires them to develop and implement a policy to encourage negotiated

rulemakings and alternative dispute resolution. The PUC will also be required to develop a technology policy that insures that the public is able to interact with the commission on the Internet.

The authority of the PUC to implement administrative penalties is retained and the maximum fine is increased from \$5,000 to \$10,000. The commission will also implement a classification system of violations that includes a range of penalties while a two year statute of limitations has been added dictating when the PUC may initiate an administrative proceeding.

The administrative penalty assessment procedure of the PUC has been updated to allow the commission to make the determination as to whether a violation has occurred based on the executive director's contention. The director's contention must now include a statement as to whether a violation has had an effect on the end-user consumer and state reasons why penalties are recommended under the new classification system. Additionally, civil damages will be limited if the PUC takes administrative action to disgorge or refund amounts collected for certain violations.

Finally, the assessment to defray the expense incurred in administration of the Public Utilities Regulatory Act will be collected from all services over which the commission has jurisdiction at the same one-sixth of one percent of gross receipts that is collected at currently.

EFFECTIVE DATE

This Act takes effect on September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

In the original bill the policy statements concerning electric utilities were struck and they are reinstated in the committee substitute. Additionally, the definition of provider was altered in the substitute to only include network providers and service providers so that unregulated companies such as power generations and retail electric providers would not come under regulation that they currently do not have. Additionally, the provision regarding the necessity to be an attorney to represent in a contested proceeding was added to the substitute.

As originally proposed, H.B. 1779 would have allowed OPUC to initiate an action and maintain a system for complaints but those provisions have been removed. Additionally the proposed bill had an administrative penalty imposed by the PUC capped at \$25,000 but that was lowered to \$10,000.