BILL ANALYSIS

C.S.S.B. 408
By: Nelson
Regulated Industries
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The 64th Legislature enacted the Public Utility Regulatory Act (PURA) and created the Public Utility Commission of Texas (PUC or commission) as a means of regulating the rates and services of public utilities. 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 electric and telecommunications utilities. Modernizing many of the rules and statutes pertaining to the organization, powers, regulation and management of the PUC will ensure that the commission is a strong force for industry oversight and consumer advocacy for years to come.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 27 of this bill.

ANALYSIS

In addition to continuing the Public Utility Commission of Texas (PUC or commission) until September 1, 2011, C.S.S.B. 408 adds as purposes for which the PUC exists, to incorporate a free market oriented telecommunications sector, a deregulated electric utility sector, and to oversee cable and video service providers. Those changes include updating, adding and conforming changes to definitions, which appear throughout the Utilities 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 a 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 of commissioners and agency staff (including qualifications, prohibited actions and relationships, reimbursement for travel, and other responsibilities and requirements).

The bill continues the general power of the PUC to regulate and supervise the entities within its jurisdiction and requires the PUC to develop and implement a policy to encourage negotiated rulemakings and alternative dispute resolution. The PUC will also be required to implement a technology policy that insures that the public is able to interact with the commission on the Internet.

The bill limits the authority of the PUC to review mergers and acquisitions with regard to certain entities and transactions.

C.S.S.B. 408 preserves the power of the PUC to assess administrative penalties, and it increases the maximum fine to $10,000 from $5,000. The commission will also implement a classification system of violations that includes a range of penalties. A two year statute of limitations is added to limit 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 executive 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.

The assessment to defray the expense incurred in administration of the PURA will be collected from services over which the commission has jurisdiction, at an amount not to exceed one-sixth of one percent of gross receipts.

The bill enables and encourages electric utilities and transmission and distribution utilities to use securitization financing under certain circumstances.

The bill grants the PUC power to issue a statewide franchise to any person seeking to provide cable or video services in this state and outlines obligations of entities franchised by PUC. The bill creates definitions used in the PUC's new powers. Such a franchise grants authority to provide cable or video services and occupy the public rights-of-way, subject to the continued lawful operation of the cable or video service. A state franchise is fully transferable to any successor in interest. An applicant for a commission-issued state franchise must affirm that it will comply with applicable federal and state law and provide specific information to the PUC in its application, and the PUC is empowered to review such information. A cable service provider may terminate any existing municipal franchise beginning September 1, 2005, provided that it provides notice to the commission as well as the municipality and remits any outstanding franchise fees owed to the affected municipality.

The bill requires providers of cable service or video service (providers) operating under a state franchise to pay each municipality in which they provide service a fee equal to five percent of their gross revenues, and it defines how gross revenues are calculated. Fees are paid to municipalities on a quarterly basis. Providers may recover these fees from their customers.

The bill directs the PUC to oversee the requirements related to public, educational, and governmental access (PEG) channels. Such channels shall continue to be provided as required under any existing franchise agreement in the relevant municipality on September 1, 2005. Otherwise, a provider shall offer up to three PEG channels for noncommercial programming, where technically capable, upon request of a municipality with a population of 50,000 or more, and two PEG channels to a municipality with a population of fewer than 50,000. A provider may place PEG channels on any service tier, provided that a municipality may designate up to three PEG channels (two for a municipality with a population of fewer than 50,000) which shall remain on the lowest service tier. The bill provides procedures and timelines for municipalities to request additional PEG channels if they did not already receive the two or three required by the bill. Municipalities are responsible for ensuring the programming of PEG channels is in a form capable of being transmitted by the provider. The bill establishes additional responsibilities of providers and municipalities, including utilization thresholds, with respect to PEG channels. If enforcement is sought by a municipality, the PUC shall address the matter in a proceeding.

Providers operating under existing municipal franchises shall continue to provide certain services specified by those franchises until the earlier of the expiration date of their franchise or 2015, even if their existing franchises are terminated. These services include institutional network capacity and cable services to community public buildings and schools, at the same service tier and same cable drop connections.

The bill grants enforcement authority to the PUC related to customer service requirements and the denial of service. On request by affected person, the PUC is empowered to enforce prohibition against denial of access to service to any group of potential residential subscribers because of the income of the residents of the local area in which such group resides. PUC authority to enforce compliance includes orders to cure and other penalties as the PUC shall reasonably impose up to and including revocation of any such state franchise granted. Neither the commission, the state nor a political subdivision may require a provider to construct facilities except as specifically required by federal law.

The bill directs the PUC to adopt a policy whereby it receives and posts on its Internet site service quality customer complaints.

The bill allows the commission to permit a municipality to require providers to register with the municipality, maintain a point of contact, and submit consumer complaint information (if the provider is subject to customer service standards). A municipality may establish guidelines for the use of PEG channels. The bill prohibits municipalities from requiring monetary compensation, facilities, free service, or any other form of in-kind support in exchange for the right to occupy a right-of-way.

The bill prohibits the commission from preferring, providing advantages or discriminating against any cable or video service provider.

The bill does not prohibit municipalities or providers from seeking clarification of their rights under federal law.

Under the provisions of the bill, the commission is required to conduct a study and file a report with the Legislature regarding compensation paid to cities from communications providers. It shall also conduct a comprehensive review of the reporting requirements related to telecommunications providers that are prescribed by statute or commission rules to determine the necessity for the required reports.

The bill repeals sections and chapters of existing law, and makes additional conforming, perfecting, technical and transitional changes to allow the law to be properly enforced, including the ability of the Governor to appoint two additional commissioners.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute expands the number of commissioners to five. The substitute addresses additional requirements for commissioner to serve in office. The substitute adds language clarifying the PUC's authority to review certain transactions. The substitute adds a requirement that the PUC conduct a study on municipal compensation from communications providers. The substitute modifies the requirement from the engrossed bill that the PUC review reporting requirements relating to telecommunications providers.

The substitute adds a new chapter to the Utilities Code to establish a cable and video franchise, and all provisions in the bill related to cable and video franchise (including, but not limited to, definitions, PUC authority, application for and grant of certificate of franchise authority, PEG channels, fees, termination of municipal franchises, enforcement, customer complaints, and municipal responsibilities) are added by the substitute.

The substitute modifies the maximum administrative penalty the PUC can assess, decreasing it to $10,000 from $25,000 in the engrossed bill (current law is $5,000) and adds additional provisions related to the administrative penalty assessment process. The substitute adds a provision clarifying the entities which must pay an assessment to fund a portion of the PUC's administrative costs.

The substitute adds several definitions to the Utilities Code. The substitute adds a provision requiring an individual representing an entity in a contested proceeding to be an attorney. The substitute adds provisions that limit civil damages if the PUC takes administrative action to disgorge or refund amounts collected for certain violations. The substitute adds provisions clarifying the securitization of certain amounts by electric utilities and transmission and distribution utilities.

The substitute adds repealers for various sections of the Utilities Code. The substitute adds savings clauses and a requirement that the governor appoint two additional commissioners. The substitute adds conforming, perfecting, and technical changes to various sections of the Utilities Code.

The substitute deletes provisions from the engrossed bill relating to the commission's authority over an independent organization (ERCOT), the composition of the governing body of the independent organization, disclosure requirements for members of the independent organization's board, requirements of meetings of the independent organization, and selection and responsibilities of the wholesale electric market monitor. The substitute deletes provisions in the engrossed bill relating to a one-time bill payment assistance program.