

## **BILL ANALYSIS**

C.S.S.B. 409  
By: Nelson  
Regulated Industries  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Office of Public Utility Counsel (OPUC) was created by the Legislature in 1983, in response to legislative and consumer group concerns that the residential and small business ratepayers were not being adequately represented in the electric and telecommunications proceedings that ultimately affected them. The Legislature created OPUC to represent residential and small business consumers in proceedings affecting electric and telecommunications rates and services. OPUC represents these consumers at the Public Utility Commission (PUC), the Federal Energy Regulatory Commission (FERC), and the Federal Communications Commission (FCC), as well as in state and federal courts.

OPUC is subject to the Sunset Act and will be abolished September 1, 2005, unless continued by the Legislature. C.S.S.B 409 continues OPUC for six years, makes some changes to OPUC's enabling statute, corrects the spelling of counselor, directs the State Auditor's Office to audit OPUC's performance measures, requires OPUC to annually report its performance to the Legislature, and requires OPUC to obtain consumer input through an annual stakeholder meeting.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **ANALYSIS**

C.S.S.B. 409 amends Section 13.002, Utilities Code, to change the expiration date, under the Texas Sunset Act, of the Office of Public Utility Counsel (OPUC) from September 1, 2005, to September 1, 2011.

The bill also amends Section 13.003(a) and (c), Utilities Code, by deleting the word "utility" to recognize that the industry has transitioned to a more competitive environment and that the nomenclature of service providers has changed, altering the spelling of "counselor", specifying that the agency can appear or intervene in proceedings in which the counselor determines that residential consumers are in need of representation rather than limiting that representation to matters only before the PUC, deleting the word "electric" to ensure that OPUC may represent both electric and telecommunications consumers when it initiates or intervenes in judicial proceedings, clarifying that OPUC may represent residential or small commercial consumers individually or as a class with respect to any complaint concerning electric or telecommunications services, and clarifying that OPUC may represent both electric and telecommunications consumers as a group or as a class in electric or telecommunication bankruptcy proceedings in which consumers are in need of representation.

The bill amends Subchapter A, Chapter 13, Utilities Code, by adding Sections 13.004, 13.005, and 13.006, as follows:

Section 13.004 ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) Requires the public utility counsel (counselor) to develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies), Government Code, to assist in the resolution of internal disputes under OPUC's jurisdiction.

(b) Requires OPUC'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 counselor to designate a trained person to administer certain aspects of an alternative dispute resolution system.

Section 13.005 TECHNOLOGY POLICY. Requires the counselor to implement a policy requiring OPUC to use appropriate technological solutions to improve OPUC's ability to perform its functions. Requires that the policy ensure that the public is able to interact with the office on the Internet.

Section 13.006 MANAGEMENT AUDIT. (a) Requires the state auditor, in coordination with the Legislative Budget Board, to conduct a management audit of OPUC to evaluate the OPUC's performance measures to determine the accuracy of calculations and whether the measures accurately depict the impact of the office. Sets forth requirements for the contents of the audit, including a consumer savings element.

(b) Requires the state auditor to complete the audit required by this section and deliver a report on the audit to certain government official not later than August 1, 2006.

(c) Provides that Section 13.006 expires September 1, 2006.

The bill amends Sec. 13.021, Utilities Code, by correcting the spelling of "counselor".

The bill amends Sec. 13.022, Utilities Code, by correcting the spelling of "counselor" and repealing subsection (c), which prohibits a lobbyist from serving as counselor.

The bill amends Sec. 13.023 (a), (b) and (c), Utilities Code, as follows:

(a) Corrects the spelling of "counselor," and provides the following as grounds for removal of the counselor from office:

1. the counselor does not have at the time of taking office (rather than appointment), or maintain during service as counselor, the qualifications required by Section 13.022 (Qualifications);
2. the counselor is ineligible for service as counselor under (rather than violates a prohibition provided by) Section 13.022 (Qualifications), 13.042 (Relationship with Trade Association), or 13.043 (Prohibition on Employment or Representation); or
3. the counselor cannot discharge the counselor's duties for a substantial part of the term for which the counselor is appointed because of illness or disability.

(b) Corrects the spelling of "counselor."

(c) Sets forth requirements for providing notice by an employee having knowledge of a potential ground for removal of the counselor.

The bill amends Sec. 13.024, Utilities Code, by correcting the spelling of "counselor."

The bill amends 13.041(a), Utilities Code, by correcting the spelling of "counselor."

C.S.S.B. 409 amends 13.042, Utilities Code, as follows:

Sec. 13.042. Provides a new Section heading: CONFLICT OF INTEREST. (a) Defines "Texas trade association."

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(b) Prohibits a person from serving as counselor or employee of OPUC employed in a “bona fide executive, administrative, or professional capacity,” as that phrase is used for the 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.) if the person falls under certain categories connected with a Texas trade association in the field of utilities. Deletes existing text relating to the prohibition of a person who is exempt from the state’s position classification plan. Corrects the spelling of “counselor.”

(c) Prohibits a person from serving as counselor or acting as the general counsel to OPUC if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person’s activities for compensation on behalf of a profession related to the operation of OPUC.

This bill amends section 13.044, Utilities Code, by correcting the spelling of “counselor.”

This bill amends section 13.045(a), Utilities Code, by correcting the spelling of “counselor.”

This bill amends section 13.063, Utilities Code, as follows:

Sec. 13.063. Provides a new Section heading: ANNUAL REPORTS. (a) Creates this subsection from existing text.

(b) Requires the office to annually prepare a report on OPUC's activities during the preceding year and submit the report to certain governmental entities. Requires the report to include certain information.

This bill amends Subchapter D, Chapter 13, Utilities Code, by adding Section 13.064, as follows:

Section 13.064. PUBLIC HEARING. (a) Requires the office to annually conduct a public hearing to assist the office in developing a plan of priorities and to give the public an opportunity to comment on the office’s functions and effectiveness.

(b) Exempts hearing held pursuant to Section 13.064 from the Texas Open Meetings Act, provided in Government Code Chapter 551.

(c) Requires OPUC to file public hearing notices of hearings held pursuant to Section 13.064 with the secretary of state.

This bill amends Section 33.123(d), Utilities Code, by correcting the spelling of “counselor.”

C.S.S.B. 409 makes prospective the application of the changes to the Act regarding the qualifications and eligibility service provision of the OPUC chief executive or OPUC counsel.

#### **EFFECTIVE DATE**

This Act takes effect September 1, 2005.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The original bill was confined to changes recommended by the Texas Sunset Advisory Commission (SAC). The substitute makes those same SAC-recommended changes (except for the provision relating to complaints was deleted), and updates and clarifies the enabling statute of the Office of Public Utility Counsel (OPUC) with respect to OPUC’s powers and duties, applies those powers and duties equally to both the electric and telecommunications industries, and ensures that the counselor may determine which proceedings require representation by the counselor on behalf of residential and small commercial consumers, reflecting the agency’s mission to represent those customers in a variety of forums including the FCC and the FERC.