

By: King of Parker

H.B. No. 1779

Substitute the following for H.B. No. 1779:

By: King of Parker

C.S.H.B. No. 1779

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the continuation, administration, and operations of the
3 Public Utility Commission of Texas and the Office of Public Utility
4 Counsel.

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

6 SECTION 1. The heading to Subtitle A, Title 2, Utilities
7 Code, is amended to read as follows:

8 SUBTITLE A. GENERALLY [~~PROVISIONS~~] APPLICABLE PROVISIONS [~~TO ALL~~
9 ~~UTILITIES~~]

10 SECTION 2. Sections 11.002(a) and (b), Utilities Code, are
11 amended to read as follows:

12 (a) This title is enacted to protect the public interest
13 inherent in the delivery of [~~rates and~~] services and deployment of
14 networks by telecommunications providers [~~public utilities~~]. The
15 purpose of this title is to establish an appropriate [~~a~~
16 ~~comprehensive and adequate~~] regulatory system for communications
17 service [~~public utilities to assure rates, operations, and services~~
18 ~~that are just~~] and network providers for [~~reasonable to~~] the
19 benefit of consumers [~~and to the utilities~~].

20 (b) Electric [~~Public~~] utilities traditionally are by
21 definition monopolies in the areas they serve. As a result, the
22 normal forces of competition that regulate prices in a free
23 enterprise society do not operate. Public agencies regulate utility
24 rates, operations, and services as a substitute for competition.

1 SECTION 3. Sections 11.003(1), (2), (3), (8), (10), (13),
2 (16), (19), (20), and (21), Utilities Code, are amended to read as
3 follows:

4 (1) "Affected person" means:

5 (A) a public utility, provider, or electric
6 cooperative affected by an action of a regulatory authority;

7 (B) a person whose [~~utility~~] service or rates are
8 affected by a proceeding before a regulatory authority; or

9 (C) a person who:

10 (i) is a competitor of a public utility or
11 provider with respect to a service delivered [~~performed~~] by the
12 utility or provider; or

13 (ii) wants to enter into competition with a
14 public utility or provider.

15 (2) "Affiliate" means:

16 (A) a person who directly or indirectly owns or
17 holds at least five percent of the voting securities of a public
18 utility or provider;

19 (B) a person in a chain of successive ownership
20 of at least five percent of the voting securities of a public
21 utility or provider;

22 (C) a corporation that has at least five percent
23 of its voting securities owned or controlled, directly or
24 indirectly, by a public utility or provider;

25 (D) a corporation that has at least five percent
26 of its voting securities owned or controlled, directly or
27 indirectly, by:

1 (i) a person who directly or indirectly
2 owns or controls at least five percent of the voting securities of a
3 public utility or provider; or

4 (ii) a person in a chain of successive
5 ownership of at least five percent of the voting securities of a
6 public utility or provider;

7 (E) a person who is an officer or director of a
8 public utility or provider or of a corporation in a chain of
9 successive ownership of at least five percent of the voting
10 securities of a public utility or provider; or

11 (F) a person determined to be an affiliate under
12 federal law or Section 11.006.

13 (3) "Allocation" means the division among
14 municipalities or among municipalities and unincorporated areas of
15 the plant, revenues, expenses, taxes, and reserves of an electric
16 ~~[a]~~ utility used to provide electric ~~[public utility]~~ service in a
17 municipality or for a municipality and unincorporated areas.

18 (8) "Counselor ~~[Counsellor]~~" means the public utility
19 counsel.

20 (10) "Facilities" means all of the plant and equipment
21 of a public utility or provider, and includes the tangible and
22 intangible property, without limitation, owned, operated, leased,
23 licensed, used, controlled, or supplied for, by, or in connection
24 with the business of the public utility or provider.

25 (13) "Order" means all or a part of a final disposition
26 by a regulatory authority in a matter other than rulemaking,
27 without regard to whether the disposition is affirmative or

1 negative or injunctive or declaratory. The term includes:

2 (A) the issuance of a certificate or registration
3 ~~[of convenience and necessity]~~; and

4 (B) the setting of a rate.

5 (16) "Rate" includes:

6 (A) any compensation, tariff, charge, fare,
7 toll, rental, or classification that is directly or indirectly
8 demanded, observed, charged, or collected by a public utility or
9 provider for a service, product, or commodity described in the
10 definition of utility in Section 31.002 or 51.002; and

11 (B) a rule, practice, or contract affecting the
12 compensation, tariff, charge, fare, toll, rental, or
13 classification.

14 (19) "Service" includes:

15 (A) basic local telecommunications service as
16 defined by Section 51.002;

17 (B) interexchange telecommunications service as
18 defined by Section 51.002;

19 (C) local exchange telephone service as defined
20 by Section 51.002;

21 (D) transmission service as defined by Section
22 31.002; and

23 (E) a service provided by a utility or electric
24 utility that is described in the definition of utility or electric
25 utility in Section 31.002 or 51.002 ~~[has its broadest and most~~
26 ~~inclusive meaning. The term includes any act performed, anything~~
27 ~~supplied, and any facilities used or supplied by a public utility in~~

1 ~~the performance of the utility's duties under this title to its~~
2 ~~patrons, employees, other public utilities, an electric~~
3 ~~cooperative, and the public. The term also includes the~~
4 ~~interchange of facilities between two or more public utilities.~~
5 ~~The term does not include the printing, distribution, or sale of~~
6 ~~advertising in a telephone directory].~~

7 (20) "Test year" means the most recent 12 months,
8 beginning on the first day of a calendar or fiscal year quarter, for
9 which operating data for a public utility or provider are
10 available.

11 (21) "Trade association" means a nonprofit,
12 cooperative, and voluntarily joined association of business or
13 professional persons who are employed by public utilities, ~~[or]~~
14 utility competitors, or providers to assist ~~[the public utility~~
15 ~~industry, a utility competitor, or the industry's or competitor's~~
16 ~~employees]~~ in dealing with mutual business or professional problems
17 and in promoting their common interest.

18 SECTION 4. Chapter 11, Utilities Code, is amended by adding
19 Sections 11.0042 and 11.0045 to read as follows:

20 Sec. 11.0042. DEFINITION OF AFFILIATE. (a) The term
21 "person" or "corporation" as used in the definition of "affiliate"
22 provided by Section 11.003(2) does not include:

23 (1) a broker or dealer registered under the Securities
24 Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as amended;

25 (2) a bank or insurance company as defined under the
26 Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as
27 amended;

1 (3) an investment adviser registered under state law
2 or the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-20 et
3 seq.);

4 (4) an investment company registered under the
5 Investment Company Act of 1940 (15 U.S.C. Section 80a-51 et seq.);
6 or

7 (5) an employee benefit plan, pension fund, endowment
8 fund, or other similar entity that may, directly or indirectly,
9 own, hold, or control five percent or more but not more than 15
10 percent of the voting securities of a public utility or the parent
11 corporation of a public utility if the entity did not acquire the
12 voting securities:

13 (A) for the purpose of or with the effect of
14 changing or influencing the control of the issuer of the
15 securities; or

16 (B) in connection with or as a participant in any
17 transaction that changes or influences the control of the issuer of
18 the securities.

19 (b) For the purpose of determining whether a person is an
20 affiliate under Section 11.006(a)(3), the term "person" does not
21 include an entity that may, directly or indirectly, own, hold, or
22 control five percent or more but not more than 15 percent of the
23 voting securities of a public utility or the parent corporation of a
24 public utility if the entity did not acquire the voting securities:

25 (1) for the purpose of or with the effect of changing
26 or influencing the control of the issuer of the securities; or

27 (2) in connection with or as a participant in any

1 transaction that changes or influences the control of the issuer of
2 the securities.

3 (c) A report filed by an entity described by Subsection
4 (a)(5) or (b) with the Securities and Exchange Commission is
5 conclusive evidence of the entity's intent if the report confirms
6 that the voting securities were not acquired:

7 (1) for the purpose of or with the effect of changing
8 or influencing the control of the issuer of the securities; or

9 (2) in connection with or as a participant in any
10 transaction that changes or influences the control of the issuer of
11 the securities.

12 Sec. 11.0045. DEFINITION OF PROVIDER. In Subtitle A
13 "provider" means:

14 (1) a service provider; and

15 (2) a network provider.

16 SECTION 5. Section 11.006, Utilities Code, is amended to
17 read as follows:

18 Sec. 11.006. PERSON DETERMINED TO BE AFFILIATE. (a) The
19 commission may determine that a person is an affiliate for purposes
20 of this title if the commission after notice and hearing finds that
21 the person:

22 (1) actually exercises substantial influence or
23 control over the policies and actions of a public utility or
24 provider;

25 (2) is a person over which a public utility or provider
26 exercises the control described by Subdivision (1);

27 (3) is under common control with a public utility or

1 provider; or

2 (4) together with one or more persons with whom the
3 person is related by ownership or blood relationship, or by action
4 in concert, actually exercises substantial influence over the
5 policies and actions of a public utility or provider even though
6 neither person may qualify as an affiliate individually.

7 (b) For purposes of Subsection (a)(3), "common control with
8 a public utility or provider" means the direct or indirect
9 possession of the power to direct or cause the direction of the
10 management and policies of another, without regard to whether that
11 power is established through ownership or voting of securities or
12 by any other direct or indirect means.

13 SECTION 6. Chapter 11, Utilities Code, is amended by adding
14 Section 11.010 to read as follows:

15 Sec. 11.010. REPRESENTATION. (a) Except as provided by
16 Subsection (b), an individual who represents an entity in a
17 contested proceeding before the commission must be an attorney
18 licensed to practice law in this state or in another state.

19 (b) The commission may make an exception to Subsection (a)
20 based on the circumstances of a particular proceeding.

21 SECTION 7. Section 12.004, Utilities Code, is amended to
22 read as follows:

23 Sec. 12.004. REPRESENTATION BY [~~THE~~] ATTORNEY GENERAL. The
24 attorney general shall represent the commission in a matter before
25 a state court, a court of the United States, or a federal public
26 utility or service regulatory commission.

27 SECTION 8. Section 12.005, Utilities Code, is amended to

1 read as follows:

2 Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility
3 Commission of Texas is subject to Chapter 325, Government Code
4 (Texas Sunset Act). Unless continued in existence as provided by
5 that chapter or by Chapter 39, the commission is abolished and this
6 title expires September 1, 2011 [~~2005~~].

7 SECTION 9. Section 12.051(a), Utilities Code, is amended to
8 read as follows:

9 (a) The commission is composed of five [~~three~~]
10 commissioners appointed by the governor with the advice and consent
11 of the senate.

12 SECTION 10. Section 12.053(b), Utilities Code, is amended
13 to read as follows:

14 (b) A person is not eligible for appointment as a
15 commissioner if the person:

16 (1) at any time during the two years preceding
17 appointment[+]

18 [~~(A)~~] personally served as an officer, director,
19 owner, employee, partner, or legal representative of a [~~public~~]
20 utility, provider, affiliate, or direct competitor of a [~~public~~]
21 utility or provider; [~~or~~]

22 (2) owns [~~(B) owned~~] or controls [~~controlled~~],
23 directly or indirectly, stocks or bonds of any class with a value of
24 \$10,000 or more in a [~~public~~] utility, provider, affiliate, or
25 direct competitor of a [~~public~~] utility or provider; or

26 (3) [~~(2)~~] is not qualified to serve under Section
27 12.151, 12.152, or 12.153.

1 SECTION 11. Section 12.054(a), Utilities Code, is amended
2 to read as follows:

3 (a) It is a ground for removal from the commission if a
4 commissioner:

5 (1) does not have at the time of appointment or
6 maintain during service on the commission the qualifications
7 required by Section 12.053;

8 (2) violates a prohibition provided by Section 12.053
9 or by Subchapter D;

10 (3) cannot discharge the commissioner's duties for a
11 substantial part of the term for which the commissioner is
12 appointed because of illness or disability; [~~or~~]

13 (4) is absent from more than half of the regularly
14 scheduled commission meetings that the commissioner is eligible to
15 attend during a calendar year unless the absence is excused by
16 majority vote of the commission; or

17 (5) personally serves as an officer, director, owner,
18 employee, partner, or legal representative of a utility, provider,
19 affiliate, or direct competitor of a utility or provider.

20 SECTION 12. Section 12.059, Utilities Code, is amended by
21 adding Subsection (c) to read as follows:

22 (c) A person who is appointed to the commission is entitled
23 to reimbursement, as provided by the General Appropriations Act,
24 for the travel expenses incurred in attending the training program
25 regardless of whether the attendance at the program occurs before
26 or after the person qualifies for office.

27 SECTION 13. Section 12.102, Utilities Code, is amended to

1 read as follows:

2 Sec. 12.102. DUTIES OF EMPLOYEES. The commission shall
3 develop and implement policies that clearly separate [~~define~~] the
4 policymaking [~~respective~~] responsibilities of the commission and
5 the management responsibilities of the commission employees.

6 SECTION 14. Section 12.152(a), Utilities Code, is amended
7 to read as follows:

8 (a) A person is not eligible for appointment as a
9 commissioner or executive director of the commission if:

10 (1) the person serves on the board of directors of a
11 company that supplies fuel, utility-related services, or
12 utility-related products to a utility or provider [~~regulated or~~
13 ~~unregulated electric or telecommunications utilities~~]; or

14 (2) the person or the person's spouse:

15 (A) is employed by or participates in the
16 management of a business entity or other organization that is
17 regulated by or receives funds from the commission;

18 (B) directly or indirectly owns or controls more
19 than a 10 percent interest or a pecuniary interest with a value
20 exceeding \$10,000 in:

21 (i) a business entity or other organization
22 that is regulated by or receives funds from the commission; or

23 (ii) a utility, provider, affiliate, or
24 direct competitor of a[7] utility [~~supplier~~7] or provider [~~other~~
25 ~~entity affected by a commission decision in a manner other than by~~
26 ~~the setting of rates for that class of customer~~];

27 (C) uses or receives a substantial amount of

1 tangible goods, services, or funds from the commission, other than
2 compensation or reimbursement authorized by law for commission
3 membership, attendance, or expenses; or

4 (D) notwithstanding Paragraph (B), has an
5 interest in a mutual fund or retirement fund in which more than 10
6 percent of the fund's holdings at the time of appointment is in a
7 single utility, provider, affiliate, or direct [utility]
8 competitor of a [~~or~~] utility or provider [~~supplier~~] in this state
9 and the person does not disclose this information to the governor,
10 senate, commission, or other entity, as appropriate.

11 SECTION 15. Section 12.153, Utilities Code, is amended to
12 read as follows:

13 Sec. 12.153. RELATIONSHIP WITH TRADE ASSOCIATION. A person
14 may not serve as a commissioner or be a commission employee who is
15 employed in a "bona fide executive, administrative, or professional
16 capacity," as that phrase is used for purposes of establishing an
17 exemption to the overtime provisions of the federal Fair Labor
18 Standards Act of 1938 (29 U.S.C. Section 201 et seq.), [~~exempt from~~
19 ~~the state's position classification plan or is compensated at or~~
20 ~~above the amount prescribed by the General Appropriations Act for~~
21 ~~step 1, salary group 17, of the position classification salary~~
22 ~~schedule]~~ if the person is:

23 (1) an officer, employee, or paid consultant of a
24 trade association; or

25 (2) the spouse of an officer, manager, or paid
26 consultant of a trade association.

27 SECTION 16. Sections 12.154(a), (b), (c), (d), (f), and

1 (h), Utilities Code, are amended to read as follows:

2 (a) During the period of service with the commission, a
3 commissioner or commission employee may not:

4 (1) have a pecuniary interest, including an interest
5 as an officer, director, partner, owner, employee, attorney, or
6 consultant, in:

7 (A) a ~~[public]~~ utility, provider, ~~[or]~~
8 affiliate, or direct competitor of a utility or provider; or

9 (B) a person a significant portion of whose
10 business consists of furnishing goods or services to a utility,
11 provider, affiliate, or direct competitor of a utility or provider
12 ~~[public utilities or affiliates]~~;

13 (2) directly or indirectly own or control securities
14 in a ~~[public]~~ utility, provider, affiliate, or direct competitor of
15 a ~~[public]~~ utility or provider; or

16 (3) accept a gift, gratuity, or entertainment from:

17 (A) a ~~[public]~~ utility, provider, affiliate, or
18 direct competitor of a ~~[public]~~ utility or provider;

19 (B) a person a significant portion of whose
20 business consists of furnishing goods or services to ~~[public]~~
21 utilities, providers, affiliates, or direct competitors of
22 ~~[public]~~ utilities or providers; or

23 (C) an agent, representative, attorney,
24 employee, officer, owner, director, or partner of a person
25 described by Paragraph (A) or (B).

26 (b) A commissioner or a commission employee may not directly
27 or indirectly solicit, request from, or suggest or recommend to a

1 ~~[public]~~ utility, provider, affiliate, or direct competitor of a
2 utility or provider or an agent, representative, attorney,
3 employee, officer, owner, director, or partner of a ~~[public]~~
4 utility, provider, affiliate, or direct competitor of a utility or
5 provider the appointment to a position or the employment of a person
6 by the ~~[public]~~ utility, provider, ~~or~~ affiliate, or direct
7 competitor of a utility or provider.

8 (c) A person may not give or offer to give a gift, gratuity,
9 employment, or entertainment to a commissioner or commission
10 employee if that person is:

11 (1) a ~~[public]~~ utility, provider, affiliate, or direct
12 competitor of a ~~[public]~~ utility or provider;

13 (2) a person who furnishes goods or services to a
14 ~~[public]~~ utility, provider, affiliate, or direct competitor of a
15 ~~[public]~~ utility or provider; or

16 (3) an agent, representative, attorney, employee,
17 officer, owner, director, or partner of a person described by
18 Subdivision (1) or (2).

19 (d) A ~~[public]~~ utility, provider, affiliate, or direct
20 competitor of a ~~[public]~~ utility or provider or a person furnishing
21 goods or services to a ~~[public]~~ utility, provider, affiliate, or
22 direct competitor of a ~~[public]~~ utility or provider may not aid,
23 abet, or participate with a commissioner, commission employee, or
24 former commission employee in conduct that violates Subsection
25 (a)(3) or (c).

26 (f) It is not a violation of this section if a commissioner
27 or commission employee, on becoming the owner of stocks, bonds, or

1 another pecuniary interest in a [~~public~~] utility, provider,
2 affiliate, or direct competitor of a [~~public~~] utility or provider
3 otherwise than voluntarily, informs the commission and the attorney
4 general of the ownership and divests the ownership or interest
5 within a reasonable time.

6 (h) This section does not apply to a contract for a [~~public~~
7 ~~utility~~] product or service from [~~or equipment for use of~~] a
8 [~~public~~] utility, provider, affiliate, or direct competitor of a
9 utility or provider [~~product~~] when a commissioner or commission
10 employee is acting as a consumer.

11 SECTION 17. Sections 12.155(a) and (c), Utilities Code, are
12 amended to read as follows:

13 (a) A commissioner, a commission employee, or an employee of
14 the State Office of Administrative Hearings involved in hearing
15 utility or provider cases may not:

16 (1) be employed by a [~~public~~] utility or provider that
17 was in the scope of the commissioner's or employee's official
18 responsibility while the commissioner or employee was associated
19 with the commission or the State Office of Administrative Hearings;
20 or

21 (2) represent a person before the commission or State
22 Office of Administrative Hearings or a court in a matter:

23 (A) in which the commissioner or employee was
24 personally involved while associated with the commission or State
25 Office of Administrative Hearings; or

26 (B) that was within the commissioner's or
27 employee's official responsibility while the commissioner or

1 employee was associated with the commission or State Office of
2 Administrative Hearings.

3 (c) The prohibition of Subsection (a)(2) applies while a
4 commissioner, commission employee, or employee of the State Office
5 of Administrative Hearings involved in hearing utility or provider
6 cases is associated with the commission or State Office of
7 Administrative Hearings and at any time after.

8 SECTION 18. Section 12.252, Utilities Code, is amended to
9 read as follows:

10 Sec. 12.252. COMMISSION AUTHORITY. The commission, after
11 notice and hearing, may require each utility or provider subject to
12 regulation under this title to make an effort to overcome the
13 underuse of historically underutilized businesses.

14 SECTION 19. Section 12.253, Utilities Code, is amended to
15 read as follows:

16 Sec. 12.253. REPORT REQUIRED. The commission shall require
17 each utility or provider subject to regulation under this title to
18 prepare and submit to the commission a comprehensive annual report
19 detailing its use of historically underutilized businesses.

20 SECTION 20. Section 13.002, Utilities Code, is amended to
21 read as follows:

22 Sec. 13.002. APPLICATION OF SUNSET ACT. The Office of
23 Public Utility Counsel is subject to Chapter 325, Government Code
24 (Texas Sunset Act). Unless continued in existence as provided by
25 that chapter, the office is abolished and this chapter expires
26 September 1, 2011 [~~2005~~].

27 SECTION 21. Sections 13.003(a) and (c), Utilities Code, are

1 amended to read as follows:

2 (a) The office:

3 (1) shall assess the effect of [~~utility~~] rate changes
4 and other regulatory actions on residential consumers in this
5 state;

6 (2) shall advocate in the office's own name a position
7 determined by the counselor [~~counsellor~~] to be most advantageous to
8 a substantial number of residential consumers;

9 (3) may appear or intervene, as a party or otherwise,
10 as a matter of right on behalf of:

11 (A) residential consumers, as a class, in any
12 proceeding in which the counselor determines that residential
13 consumers are in need of representation [~~before the commission~~],
14 including an alternative dispute resolution proceeding; and

15 (B) small commercial consumers, as a class, in
16 any proceeding in which the counselor [~~counsellor~~] determines that
17 small commercial consumers are in need of representation, including
18 an alternative dispute resolution proceeding;

19 (4) may initiate or intervene as a matter of right or
20 otherwise appear in a judicial proceeding:

21 (A) that involves an action taken by an
22 administrative agency in a proceeding, including an alternative
23 dispute resolution proceeding, in which the counselor [~~counsellor~~]
24 is authorized to appear; or

25 (B) in which the counselor [~~counsellor~~]
26 determines that residential [~~electricity~~] consumers or small
27 commercial [~~electricity~~] consumers are in need of representation;

1 (5) is entitled to the same access as a party, other
2 than commission staff, to records gathered by the commission under
3 Section 14.204;

4 (6) is entitled to discovery of any nonprivileged
5 matter that is relevant to the subject matter of a proceeding or
6 petition before the commission;

7 (7) may represent [~~an individual~~] residential or small
8 commercial consumers, individually or as a class, [~~consumer~~] with
9 respect to any [~~the consumer's disputed~~] complaint concerning
10 electric or telecommunications [~~utility~~] services that is
11 unresolved before the commission; [~~and~~]

12 (8) may represent residential and small commercial
13 consumers, as a group or as a class, in any federal bankruptcy case
14 in which the counselor determines that electric or
15 telecommunications consumers in this state are in need of
16 representation; and

17 (9) may recommend legislation to the legislature that
18 the office determines would positively affect the interests of
19 residential and small commercial consumers.

20 (c) The appearance of the counselor [~~counselor~~] in a
21 proceeding does not preclude the appearance of other parties on
22 behalf of residential or small commercial consumers. The counselor
23 [~~counselor~~] may not be grouped with any other party.

24 SECTION 22. Subchapter A, Chapter 13, Utilities Code, is
25 amended by adding Sections 13.004, 13.005, and 13.006 to read as
26 follows:

27 Sec. 13.004. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

1 (a) The counselor shall develop and implement a policy to encourage
2 the use of appropriate alternative dispute resolution procedures
3 under Chapter 2009, Government Code, to assist in the resolution of
4 internal disputes under the office's jurisdiction.

5 (b) The office's procedures relating to alternative dispute
6 resolution must conform, to the extent possible, to any model
7 guidelines issued by the State Office of Administrative Hearings
8 for the use of alternative dispute resolution by state agencies.

9 (c) The counselor shall designate a trained person to:

10 (1) coordinate the implementation of the policy
11 adopted under Subsection (a);

12 (2) serve as a resource for any training needed to
13 implement the procedures for alternative dispute resolution; and

14 (3) collect data concerning the effectiveness of those
15 procedures, as implemented by the office.

16 Sec. 13.005. TECHNOLOGY POLICY. The counselor shall
17 implement a policy requiring the office to use appropriate
18 technological solutions to improve the office's ability to perform
19 its functions. The policy must ensure that the public is able to
20 interact with the office on the Internet.

21 Sec. 13.006. MANAGEMENT AUDIT. (a) The state auditor, in
22 coordination with the Legislative Budget Board, shall conduct a
23 management audit of the office to evaluate the office's performance
24 measures to determine the accuracy of calculations and whether the
25 measures accurately depict the impact of the office. The audit must
26 include an estimation of savings to residential and small
27 commercial consumers directly attributable to office participation

1 in proceedings.

2 (b) The state auditor must complete the audit required by
3 this section and deliver a report on the audit to the governor,
4 lieutenant governor, and speaker of the house of representatives
5 not later than August 1, 2006.

6 (c) This section expires September 1, 2006.

7 SECTION 23. Section 13.021, Utilities Code, is amended to
8 read as follows:

9 Sec. 13.021. APPOINTMENT; TERM. (a) The chief executive of
10 the office is the counselor [~~counsellor~~].

11 (b) The counselor [~~counsellor~~] is appointed by the governor
12 with the advice and consent of the senate.

13 (c) The appointment of the counselor [~~counsellor~~] shall be
14 made without regard to the race, color, disability, sex, religion,
15 age, or national origin of the appointee.

16 (d) The counselor [~~counsellor~~] serves a two-year term that
17 expires on February 1 of the final year of the term.

18 SECTION 24. Section 13.022, Utilities Code, is amended to
19 read as follows:

20 Sec. 13.022. QUALIFICATIONS. (a) The counselor
21 [~~counsellor~~] must:

22 (1) be licensed to practice law in this state;

23 (2) have demonstrated a strong commitment to and
24 involvement in efforts to safeguard the rights of the public; and

25 (3) possess the knowledge and experience necessary to
26 practice effectively in utility proceedings.

27 (b) A person is not eligible for appointment as counselor

1 ~~[counsellor]~~ if:

2 (1) the person or the person's spouse:

3 (A) is employed by or participates in the
4 management of a business entity or other organization that is
5 regulated by or receives funds from the commission;

6 (B) directly or indirectly owns or controls more
7 than a 10 percent interest or a pecuniary interest with a value
8 exceeding \$10,000 in:

9 (i) a business entity or other organization
10 that is regulated by or receives funds from the commission or the
11 office; or

12 (ii) a utility competitor, utility
13 supplier, or other entity affected by a commission decision in a
14 manner other than by the setting of rates for that class of
15 customer;

16 (C) uses or receives a substantial amount of
17 tangible goods, services, or funds from the commission or the
18 office, other than compensation or reimbursement authorized by law
19 for service as counselor ~~[counsellor]~~ or for commission membership,
20 attendance, or expenses; or

21 (D) notwithstanding Paragraph (B), has an
22 interest in a mutual fund or retirement fund in which more than 10
23 percent of the fund's holdings is in a single utility, utility
24 competitor, or utility supplier in this state and the person does
25 not disclose this information to the governor, senate, or other
26 entity, as appropriate; or

27 (2) the person is not qualified to serve under Section

1 13.042.

2 (c) ~~[A person required to register as a lobbyist under~~
3 ~~Chapter 305, Government Code, because of the person's activities~~
4 ~~for compensation on behalf of a profession related to the operation~~
5 ~~of the commission or the office may not serve as counsellor.]~~

6 ~~[(d)]~~ A person otherwise ineligible because of Subsection
7 (b)(1)(B) may be appointed and serve as counselor ~~[counsellor]~~ if
8 the person:

9 (1) notifies the attorney general and commission that
10 the person is ineligible because of Subsection (b)(1)(B); and

11 (2) divests the person or the person's spouse of the
12 ownership or control:

13 (A) before beginning service; or

14 (B) if the person is already serving, within a
15 reasonable time.

16 SECTION 25. Section 13.023, Utilities Code, is amended to
17 read as follows:

18 Sec. 13.023. GROUNDS FOR REMOVAL. (a) It is a ground for
19 removal from office if the counselor ~~[counsellor]~~:

20 (1) does not have at the time of taking office
21 ~~[appointment]~~ or maintain during service as counselor ~~[counsellor]~~
22 the qualifications required by Section 13.022;

23 (2) is ineligible for service as counselor under
24 ~~[violates a prohibition provided by]~~ Section 13.022, 13.042, or
25 13.043; or

26 (3) cannot discharge the counselor's ~~[counsellor's]~~
27 duties for a substantial part of the term for which the counselor

1 ~~[counselor]~~ is appointed because of illness or disability.

2 (b) The validity of an action of the office is not affected
3 by the fact that the action is taken when a ground for removal of the
4 counselor ~~[counselor]~~ exists.

5 (c) If an employee has knowledge that a potential ground for
6 removal of the counselor exists, the employee shall notify the next
7 highest ranking employee of the office, other than the counselor,
8 who shall then notify the governor and the attorney general that a
9 potential ground for removal exists.

10 SECTION 26. Section 13.024, Utilities Code, is amended to
11 read as follows:

12 Sec. 13.024. PROHIBITED ACTS. (a) The counselor
13 ~~[counselor]~~ may not have a direct or indirect interest in a utility
14 company regulated under this title, its parent, or its subsidiary
15 companies, corporations, or cooperatives or a utility competitor,
16 utility supplier, or other entity affected in a manner other than by
17 the setting of rates for that class of customer.

18 (b) The prohibition under Subsection (a) applies during the
19 period of the counselor's ~~[counselor's]~~ service.

20 SECTION 27. Section 13.041(a), Utilities Code, is amended
21 to read as follows:

22 (a) The counselor ~~[counselor]~~ may employ lawyers,
23 economists, engineers, consultants, statisticians, accountants,
24 clerical staff, and other employees as the counselor ~~[counselor]~~
25 considers necessary to carry out this chapter.

26 SECTION 28. Section 13.042, Utilities Code, is amended to
27 read as follows:

1 Sec. 13.042. CONFLICT OF INTEREST [~~RELATIONSHIP WITH TRADE~~
2 ~~ASSOCIATION~~]. (a) In this section, "Texas trade association"
3 means a cooperative and voluntarily joined statewide association of
4 business or professional competitors in this state designed to
5 assist its members and its industry or profession in dealing with
6 mutual business or professional problems and in promoting their
7 common interest.

8 (b) A person may not serve as counselor [~~counsellor~~] or be
9 an employee of the office employed in a "bona fide executive,
10 administrative, or professional capacity," as that phrase is used
11 for purposes of establishing an exemption to the overtime
12 provisions of the federal Fair Labor Standards Act of 1938 (29
13 U.S.C. Section 201 et seq.) [~~who is exempt from the state's position~~
14 ~~classification plan or is compensated at or above the amount~~
15 ~~prescribed by the General Appropriations Act for step 1, salary~~
16 ~~group 17, of the position classification salary schedule] if the
17 person is:~~

18 (1) an officer, employee, or paid consultant of a
19 Texas trade association in the field of utilities; or

20 (2) the spouse of an officer, manager, or paid
21 consultant of a Texas trade association in the field of utilities.

22 (c) A person may not serve as counselor or act as the general
23 counsel to the office if the person is required to register as a
24 lobbyist under Chapter 305, Government Code, because of the
25 person's activities for compensation on behalf of a profession
26 related to the operation of the office.

27 SECTION 29. Section 13.044, Utilities Code, is amended to

1 read as follows:

2 Sec. 13.044. CAREER LADDER PROGRAM; PERFORMANCE
3 EVALUATIONS; MERIT PAY. (a) The counselor [~~counsellor~~] or the
4 counselor's [~~counsellor's~~] designee shall develop an intra-agency
5 career ladder program that addresses opportunities for mobility and
6 advancement for office employees. The program shall require
7 intra-agency postings of each position concurrently with any public
8 posting.

9 (b) The counselor [~~counsellor~~] or the counselor's
10 [~~counsellor's~~] designee shall develop a system of annual
11 performance evaluations that are based on documented employee
12 performance. Merit pay for office employees must be based on the
13 system established under this subsection.

14 SECTION 30. Section 13.045(a), Utilities Code, is amended
15 to read as follows:

16 (a) The counselor [~~counsellor~~] or the counselor's
17 [~~counsellor's~~] designee shall prepare and maintain a written policy
18 statement to ensure implementation of a program of equal employment
19 opportunity under which all personnel transactions are made without
20 regard to race, color, disability, sex, religion, age, or national
21 origin.

22 SECTION 31. Section 13.063, Utilities Code, is amended to
23 read as follows:

24 Sec. 13.063. ANNUAL REPORTS [~~REPORT~~]. (a) The office shall
25 prepare annually a complete and detailed written report accounting
26 for all funds received and disbursed by the office during the
27 preceding fiscal year. The annual report must meet the reporting

1 requirements applicable to financial reporting in the General
2 Appropriations Act.

3 (b) The office shall prepare annually a report on the
4 office's activities during the preceding year and submit the report
5 to the standing legislative committees that have jurisdiction over
6 the office, the house appropriations committee, the senate finance
7 committee, and the Sunset Advisory Commission. At a minimum, the
8 report must include:

9 (1) a list of the types of activities conducted by the
10 office and the time spent by the office on each activity;

11 (2) the number of hours billed by the office for
12 representing residential or small commercial consumers in
13 proceedings;

14 (3) the number of staff positions and the type of work
15 performed by each position; and

16 (4) the office's rate of success in representing
17 residential or small commercial consumers in appealing commission
18 decisions.

19 SECTION 32. Subchapter D, Chapter 13, Utilities Code, is
20 amended by adding Section 13.064 to read as follows:

21 Sec. 13.064. PUBLIC HEARING. (a) The office annually shall
22 conduct a public hearing to assist the office in developing a plan
23 of priorities and to give the public, including residential and
24 small commercial consumers, an opportunity to comment on the
25 office's functions and effectiveness.

26 (b) A public hearing held under this section is not subject
27 to Chapter 551, Government Code.

1 (c) The office shall file notice of a public hearing held
2 under this section with the secretary of state for publication in
3 the Texas Register.

4 SECTION 33. Section 14.001, Utilities Code, is amended to
5 read as follows:

6 Sec. 14.001. POWER TO REGULATE AND SUPERVISE. The
7 commission has the general power to regulate and supervise the
8 business of each [~~public~~] utility and provider within its
9 jurisdiction and to do anything specifically designated or implied
10 by this title that is necessary and convenient to the exercise of
11 that power and jurisdiction.

12 SECTION 34. Subchapter A, Chapter 14, Utilities Code, is
13 amended by adding Section 14.0025 to read as follows:

14 Sec. 14.0025. NEGOTIATED RULEMAKING AND ALTERNATIVE
15 DISPUTE RESOLUTION. (a) The commission shall develop and
16 implement a policy to encourage the use of:

17 (1) negotiated rulemaking procedures under Chapter
18 2008, Government Code, for the adoption of commission rules; and

19 (2) appropriate alternative dispute resolution
20 procedures under Chapter 2009, Government Code, to assist in the
21 resolution of internal and external disputes under the commission's
22 jurisdiction.

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

1 (c) The commission shall designate a trained person to:

2 (1) coordinate the implementation of the policy
3 adopted under Subsection (a);

4 (2) serve as a resource for any training needed to
5 implement the procedures for negotiated rulemaking or alternative
6 dispute resolution; and

7 (3) collect data concerning the effectiveness of those
8 procedures, as implemented by the commission.

9 SECTION 35. Section 14.008(a), Utilities Code, is amended
10 to read as follows:

11 (a) Except as otherwise provided by this title, this ~~[This]~~
12 title does not restrict the rights and powers of a municipality to
13 grant or refuse a franchise to use the streets and alleys in the
14 municipality or to make a statutory charge for that use.

15 SECTION 36. Section 14.058, Utilities Code, is amended to
16 read as follows:

17 Sec. 14.058. FEES FOR ELECTRONIC ACCESS TO INFORMATION.
18 The fees charged by the commission for electronic access to
19 information that is stored in the system established by the
20 commission using funds from the Texas Public Finance Authority and
21 approved by the Department of Information Resources shall be
22 established:

23 (1) by the commission in consultation with the Texas
24 Building and Procurement ~~[General Services]~~ Commission; and

25 (2) in an amount reasonable and necessary to retire
26 the debt to the Texas Public Finance Authority associated with
27 establishing the electronic access system.

1 SECTION 37. Subchapter B, Chapter 14, Utilities Code, is
2 amended by adding Section 14.059 to read as follows:

3 Sec. 14.059. TECHNOLOGY POLICY. The commission shall
4 implement a policy requiring the commission to use appropriate
5 technological solutions to improve the commission's ability to
6 perform its functions. The policy must ensure that the public is
7 able to interact with the commission on the Internet.

8 SECTION 38. Section 14.101(d), Utilities Code, is amended
9 to read as follows:

10 (d) This section does not apply to:

11 (1) the purchase of a unit of property for
12 replacement;

13 (2) an addition to the facilities of a public utility
14 by construction; ~~or~~

15 (3) transactions that facilitate unbundling, asset
16 valuation, minimization of ownership or control of generation
17 assets, or other purposes consistent with Chapter 39;

18 (4) transactions of or relating to:

19 (A) an electing company under Chapter 58 or 59;

20 or

21 (B) a company holding a certificate of operating
22 authority or a service provider certificate of operating authority
23 on August 31, 2005; or

24 (5) transactions that are reported to or reviewed by a
25 federal agency, another state, or another state agency.

26 SECTION 39. Subchapter B, Chapter 15, Utilities Code, is
27 amended by adding Section 15.0205 to read as follows:

1 Sec. 15.0205. DEFINITION. In this subchapter, "person"
2 includes a municipally owned utility and an electric cooperative
3 for the purposes of enforcing compliance with and providing
4 penalties for violations of Sections 39.151(j) and 39.157(a).

5 SECTION 40. Section 15.023, Utilities Code, is amended by
6 amending Subsections (b) and (c) and adding Subsections (d), (e),
7 and (f) to read as follows:

8 (b) Except as otherwise provided by this title, the [The]
9 penalty for a violation may be in an amount not to exceed \$10,000
10 [\$5,000]. Each day a violation continues or occurs is not a
11 separate violation for purposes of imposing a penalty, except as
12 otherwise provided by this title. Each settlement interval in the
13 wholesale electric market during which a violation continues or
14 occurs is not a separate violation for purposes of imposing a
15 penalty.

16 (c) The commission by rule shall establish a classification
17 system for violations that includes a range [The amount] of [an]
18 administrative penalties that may be assessed for each class of
19 violation [penalty shall be] based on:

20 (1) the seriousness of the violation, including:

21 (A) the nature, circumstances, extent, and
22 gravity of a prohibited act; and

23 (B) the hazard or potential hazard created to the
24 health, safety, or economic welfare of the public;

25 (2) the economic harm to property or the environment
26 caused by the violation;

27 (3) the history of previous violations;

1 (4) the amount necessary to deter future violations;
2 (5) efforts to correct the violation; and
3 (6) any other matter that justice may require,
4 including the amount of a penalty imposed on a similarly situated
5 person.

6 (d) The classification system established under Subsection
7 (c) shall provide that the penalty for a violation may exceed
8 \$10,000 only if the violation is included in the highest class of
9 violations in the classification system.

10 (e) Notwithstanding the classification system established
11 under Subsection (c), a person regulated under this title who
12 wilfully and knowingly violates this title or a rule or order
13 adopted under this title may be assessed a penalty included in the
14 range of penalties that may be assessed for the highest class of
15 violations in the classification system.

16 (f) The commission may not initiate the process for
17 assessing an administrative penalty after the second anniversary of
18 the later of:

19 (1) the date on which the violation occurred; or
20 (2) the date on which the commission knew that the
21 violation occurred.

22 SECTION 41. Section 15.024, Utilities Code, as amended by
23 Chapters 1212 and 1579, Acts of the 76th Legislature, Regular
24 Session, 1999, is reenacted and amended to read as follows:

25 Sec. 15.024. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.

26 (a) If the executive director contends [~~determines~~] that a
27 violation has occurred, the executive director shall [~~may~~] issue to

1 the commission a report that states the facts on which the
2 contention [~~determination~~] is based, including whether service to
3 an end-user consumer is the basis of the contention, and the
4 executive director's recommendation on the imposition of an
5 administrative penalty, including a recommendation on the amount of
6 the penalty.

7 (b) Not later than the 14th day after the date the report is
8 issued, the executive director shall give written notice of the
9 report to the person against whom the penalty may be assessed. The
10 notice shall be given by certified mail, return receipt requested.
11 The notice must:

12 (1) include a brief summary of the alleged violation;

13 (2) state whether service to an end-user consumer is
14 the basis of the alleged violation, including instruction or
15 information on how to contact the end-user consumer;

16 (3) state the amount of the recommended penalty,
17 including the reasons why that penalty is recommended, considering
18 the classification system created under Section 15.023; and

19 (4) [~~(3)~~] inform the person that the person has a
20 right to a hearing on the occurrence of the violation, the amount of
21 the penalty, or both the occurrence of the violation and the amount
22 of the penalty.

23 (c) A penalty may not be assessed under this section if the
24 person against whom the penalty may be assessed remedies the
25 violation before the 31st day after the date the person receives the
26 notice under Subsection (b). A person who claims to have remedied
27 an alleged violation has the burden of proving to the commission

1 that the alleged violation was remedied and was accidental or
2 inadvertent. This subsection does not apply to a violation of
3 Chapter ~~[177]~~ 55~~[7]~~ or 64.

4 (d) Not later than the 60th ~~[20th]~~ day after the date the
5 person receives the notice, the person may accept or agree not to
6 contest the contention ~~[determination]~~ and recommended penalty of
7 the executive director in writing or may make a written request for
8 a hearing on the occurrence of the violation, the amount of the
9 penalty, or both the occurrence of the violation and the amount of
10 the penalty.

11 (e) If the person accepts, agrees not to contest, or fails
12 to timely respond to the notice of the executive director's
13 contention ~~[determination]~~ and recommended penalty, the commission
14 by order shall approve the contention ~~[determination]~~ and impose
15 the recommended penalty.

16 (f) If the person requests a hearing ~~[or fails to timely~~
17 ~~respond to the notice]~~, the executive director shall set a hearing
18 and give notice of the hearing to the person. The hearing shall be
19 held in accordance with Subchapter B, Chapter 14. If a hearing is
20 conducted by ~~[an administrative law judge of]~~ the State Office of
21 Administrative Hearings, the ~~[. The]~~ administrative law judge
22 shall make findings of fact and conclusions of law and promptly
23 issue to the commission a proposal for a decision about the
24 occurrence of the violation and the amount of a proposed penalty.
25 Based on the findings of fact, conclusions of law, and proposal for
26 a decision, the commission by order may find that a violation has
27 occurred and impose a penalty or may find that no violation

1 occurred.

2 (g) The notice of the commission's order shall be given to
3 the person as provided by Chapter 2001, Government Code, and must
4 include a statement of the right of the person to judicial review of
5 the order.

6 SECTION 42. Section 15.027(c), Utilities Code, is amended
7 to read as follows:

8 (c) The executive director may delegate any power or duty
9 relating to an administrative penalty given the executive director
10 by this subchapter to the deputy [~~a person designated by the~~
11 executive director.

12 SECTION 43. Section 15.032, Utilities Code, is amended by
13 amending Subsection (b) and adding Subsection (c) to read as
14 follows:

15 (b) Except as provided by Subsection (c), a [A] suit for the
16 recovery of a penalty does not:

17 (1) bar or affect the recovery of any other penalty; or

18 (2) bar a criminal prosecution or an action for civil
19 damages against any person.

20 (c) An action for civil damages may not be brought against a
21 person if the commission has acted under Section 39.151(j) or
22 39.157(a) to address the conduct that is the subject of the proposed
23 action for civil damages.

24 SECTION 44. Section 15.033, Utilities Code, is amended to
25 read as follows:

26 Sec. 15.033. DISPOSITION OF CERTAIN AMOUNTS [~~FINES AND~~
27 ~~PENALTIES~~]. (a) A fine or penalty collected under this title,

1 other than a [~~fine or penalty collected in a criminal proceeding or~~
2 ~~a~~] penalty collected under Section 15.027(a), shall be paid to the
3 commission.

4 (b) Notwithstanding any other law, a disgorgement or refund
5 amount collected under Section 39.151(j) or 39.157(a) shall be paid
6 to the independent organization certified by the commission under
7 Section 39.151 for distribution according to commission order.

8 SECTION 45. Sections 15.051(a) and (b), Utilities Code, are
9 amended to read as follows:

10 (a) An affected person may complain to the regulatory
11 authority in writing setting forth an act or omission by a [~~public~~
12 utility or provider in violation or claimed violation of a law that
13 the regulatory authority has jurisdiction to administer or of an
14 order, ordinance, or rule of the regulatory authority.

15 (b) The commission shall keep for a reasonable period
16 information about each complaint filed with the commission that the
17 commission has authority to resolve. The information shall
18 include:

- 19 (1) the date the complaint is received;
- 20 (2) the name of the complainant;
- 21 (3) the subject matter of the complaint;
- 22 (4) a record of each person contacted in relation to
23 the complaint;
- 24 (5) a summary of the results of the review or
25 investigation of the complaint; and
- 26 (6) if the commission took no action on the complaint,
27 an explanation of the reason the complaint was closed without

1 action.

2 SECTION 46. The heading to Subchapter A, Chapter 16,
3 Utilities Code, is amended to read as follows:

4 SUBCHAPTER A. ASSESSMENT ON [~~PUBLIC~~] UTILITIES, RETAIL ELECTRIC
5 PROVIDERS, ELECTRIC COOPERATIVES, AND PROVIDERS

6 SECTION 47. Section 16.001, Utilities Code, is amended to
7 read as follows:

8 Sec. 16.001. ASSESSMENT ON [~~PUBLIC~~] UTILITIES, RETAIL
9 ELECTRIC PROVIDERS, ELECTRIC COOPERATIVES, AND PROVIDERS. (a) To
10 defray the expenses incurred in the administration of this title,
11 an assessment is imposed on each [~~public~~] utility, retail electric
12 provider, provider, and electric cooperative within the
13 jurisdiction of the commission that serves the ultimate consumer[
14 ~~including each interexchange telecommunications carrier~~].

15 (b) An assessment under this section may not exceed [~~is~~
16 ~~equal to~~] one-sixth of one percent of the [~~public utility's, retail~~
17 ~~electric provider's, or electric cooperative's~~] gross receipts from
18 services over which the commission has jurisdiction, including a
19 service for which a provider receives interconnection under Chapter
20 60 [rates charged to the ultimate consumer in this state].

21 (c) Each utility and provider [~~An interexchange~~
22 ~~telecommunications carrier that does not provide local exchange~~
23 ~~telephone service~~] may collect the fee imposed under this section
24 as an additional item separately stated on the customer bill as
25 "public utility commission gross receipts assessment."

26 SECTION 48. Section 16.002(b), Utilities Code, is amended
27 to read as follows:

1 (b) A [~~public~~] utility, retail electric provider, provider,
2 or electric cooperative may instead make quarterly payments due
3 August 15, November 15, February 15, and May 15.

4 SECTION 49. Section 33.123(d), Utilities Code, is amended
5 to read as follows:

6 (d) Not later than the 120th day after the date the
7 commission enters its final order, the municipality shall assess a
8 onetime surcharge on a per capita basis among residential
9 ratepayers who reside outside the municipality to pay the
10 reasonable consultant and legal costs approved by the counselor
11 [~~counsellor~~]. The municipality shall reimburse the appellants for
12 incurred costs not later than the 90th day after the date the
13 commission enters its final order.

14 SECTION 50. Section 39.262(c), Utilities Code, is amended
15 to read as follows:

16 (c) After January 10, 2004, at a schedule and under
17 procedures to be determined by the commission, each transmission
18 and distribution utility, its affiliated retail electric provider,
19 and its affiliated power generation company shall jointly file to
20 finalize stranded costs under Subsections (h) and (i) and reconcile
21 those costs with the estimated stranded costs used to develop the
22 competition transition charge in the proceeding held under Section
23 39.201. Any resulting difference shall be applied to the
24 nonbypassable delivery rates of the transmission and distribution
25 utility, except that at the utility's option, any or all of the
26 amounts recovered under this section [~~remaining stranded costs~~] may
27 be securitized under Subchapter G.

1 SECTION 51. Section 39.301, Utilities Code, is amended to
2 read as follows:

3 Sec. 39.301. PURPOSE. The purpose of this subchapter is to
4 enable utilities to use securitization financing to recover
5 regulatory assets, all other amounts determined under Section
6 39.262, and any amounts being recovered under a competition
7 transition charge determined as a result of a proceeding under
8 Section 39.201 or 39.262. It is the policy of this state to
9 encourage electric utilities and transmission and distribution
10 utilities to use securitization financing [~~stranded costs,~~]
11 because this type of debt will lower the carrying costs of the
12 assets relative to the costs that would be incurred using
13 conventional utility financing methods. The proceeds of the
14 transition bonds shall be used solely for the purposes of reducing
15 the amount of recoverable regulatory assets and other amounts
16 [~~stranded costs~~], as determined by the commission in accordance
17 with this chapter, through the refinancing or retirement of utility
18 debt or equity. The commission shall ensure that securitization
19 provides tangible and quantifiable benefits to ratepayers, greater
20 than would have been achieved absent the issuance of transition
21 bonds. The commission shall ensure that the structuring and
22 pricing of the transition bonds result in the lowest transition
23 bond charges consistent with market conditions and the terms of the
24 financing order. The amount securitized may not exceed the present
25 value of the revenue requirement over the life of the proposed
26 transition bond associated with the regulatory assets or stranded
27 costs sought to be securitized. The present value calculation

1 shall use a discount rate equal to the proposed interest rate on the
2 transition bonds.

3 SECTION 52. Section 39.302(4), Utilities Code, is amended
4 to read as follows:

5 (4) "Qualified costs" means 100 percent of an electric
6 utility's regulatory assets and 75 percent of its recoverable costs
7 determined by the commission under Section 39.201 and any remaining
8 amounts [~~stranded costs~~] determined under Section 39.262 together
9 with the costs of issuing, supporting, and servicing transition
10 bonds and any costs of retiring and refunding the electric
11 utility's existing debt and equity securities in connection with
12 the issuance of transition bonds. The term includes the costs to
13 the commission of acquiring professional services for the purpose
14 of evaluating proposed transactions under Section 39.201 and this
15 subchapter.

16 SECTION 53. Sections 39.303(a) and (b), Utilities Code, are
17 amended to read as follows:

18 (a) The commission shall adopt a financing order, on
19 application of a utility to recover the utility's regulatory assets
20 and other amounts determined [~~eligible stranded costs~~] under
21 Section 39.201 or 39.262, on making a finding that the total amount
22 of revenues to be collected under the financing order is less than
23 the revenue requirement that would be recovered over the remaining
24 life of the stranded costs using conventional financing methods and
25 that the financing order is consistent with the standards in
26 Section 39.301.

27 (b) The financing order shall detail the amount of

1 regulatory assets and other amounts [~~stranded costs~~] to be
2 recovered and the period over which the nonbypassable transition
3 charges shall be recovered, which period may not exceed 15 years.

4 SECTION 54. The following provisions of the Utilities Code
5 are repealed:

- 6 (1) Section 11.008;
- 7 (2) Section 15.003(c);
- 8 (3) Section 15.028;
- 9 (4) Section 15.030;
- 10 (5) Section 15.052; and
- 11 (6) Chapter 17.

12 SECTION 55. (a) Promptly after this Act takes effect, the
13 Public Utility Commission of Texas shall conduct a comprehensive
14 review of the reporting requirements relating to
15 telecommunications providers that are prescribed by statute or
16 commission rules to determine the necessity for the required
17 reports.

18 (b) In conducting the review, the Public Utility Commission
19 of Texas shall:

- 20 (1) solicit input and assistance from interested
21 parties;
- 22 (2) establish criteria for when and in what manner the
23 information included in a report will be used;
- 24 (3) ensure that information included in a report is
25 not duplicative of information included in a different report;
- 26 (4) eliminate a report required by rule that the
27 commission determines is unnecessary; and

1 (5) change the requirements relating to a report the
2 commission determines is necessary to make the reporting process
3 more efficient.

4 (c) The Public Utility Commission of Texas shall conclude
5 the review required by this section not later than September 1,
6 2006, and shall report to the legislature in the biennial report
7 required by Section 52.006, Utilities Code, on the results of the
8 review. The report must include:

9 (1) the results of the review and the actions the
10 commission has taken to amend commission rules to reflect the
11 results of the review; and

12 (2) recommendations on any legislation the commission
13 determines is necessary or appropriate to eliminate or change
14 reporting requirements prescribed by statute.

15 SECTION 56. Promptly after this Act takes effect, the
16 governor shall appoint two additional members to the Public Utility
17 Commission of Texas. Of those members, the governor shall
18 designate one to serve a term expiring September 1, 2009, and one to
19 serve a term expiring January 1, 2011. Until all appointees have
20 taken office, a quorum of the commission is a majority of the number
21 of members who are qualified.

22 SECTION 57. The repeal by this Act of Section 15.003(c),
23 Utilities Code, does not apply to a suit commenced before the
24 effective date of the repeal. A suit commenced before the effective
25 date of the repeal is governed by the law as it existed immediately
26 before the effective date of the repeal, and that law is continued
27 in effect for that purpose.

1 SECTION 58. The repeal by this Act of Sections 15.028 and
2 15.030, Utilities Code, does not apply to a violation of those
3 sections that occurs before the effective date of the repeal. A
4 violation that occurs before the effective date of the repeal is
5 governed by the law as it existed immediately before the effective
6 date of the repeal, and that law is continued in effect for that
7 purpose.

8 SECTION 59. The change in law made by this Act relating to
9 qualifications and eligibility to serve as chief executive of or to
10 be employed with the office of public utility counsel applies only
11 to a person appointed or employed after the effective date of this
12 Act. The chief executive or an employee of the office of public
13 utility counsel who is serving or employed on the effective date of
14 this Act is governed by the law as it existed immediately before the
15 effective date of this Act, and the former law is continued in
16 effect for that purpose.

17 SECTION 60. The change in law made by this Act relating to
18 qualifications and eligibility to serve as a commissioner or to be
19 employed with the Public Utility Commission of Texas applies only
20 to a commissioner or employee appointed or employed after the
21 effective date of this Act. A commissioner or employee of the
22 Public Utility Commission of Texas who is serving or employed on the
23 effective date of this Act is governed by the law as it existed
24 immediately before the effective date of this Act, and the former
25 law is continued in effect for that purpose.

26 SECTION 61. The changes in law made by this Act to Sections
27 15.023 and 15.024, Utilities Code, apply only to a violation

1 committed on or after the effective date of this Act. A violation
2 committed before the effective date of this Act is governed by the
3 law in effect when the violation was committed, and the former law
4 is continued in effect for that purpose.

5 SECTION 62. This Act takes effect September 1, 2005.