

By: King of Parker

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. Section 11.002, Utilities Code, is amended to  
11 read as follows:

12 Sec. 11.002. PURPOSE [~~AND FINDINGS~~]. [~~(a)~~] This title is  
13 enacted to protect the public interest inherent in the delivery of  
14 [~~rates and~~] services and deployment of networks by electric and  
15 telecommunications providers [~~public utilities~~]. The purpose of  
16 this title is to establish an appropriate [~~a comprehensive and~~  
17 ~~adequate~~] regulatory system for electric providers [~~public~~  
18 ~~utilities to assure rates, operations,~~] and communications service  
19 [~~services that are just~~] and network providers for [~~reasonable to~~  
20 the benefit of consumers [~~and to the utilities~~].

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

1 ~~and services as a substitute for competition.~~

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

13 SECTION 3. Sections 11.003(1), (2), (3), (8), (10), (13),  
14 (16), (19), (20), and (21), Utilities Code, are amended to read as  
15 follows:

16 (1) "Affected person" means:

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

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

21 (C) a person who:

22 (i) is a competitor of a public utility or  
23 provider with respect to a service delivered [~~performed~~] by the  
24 utility or provider; or

25 (ii) wants to enter into competition with a  
26 public utility or provider.

27 (2) "Affiliate" means:

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

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

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

10 (D) a corporation that has at least five percent  
11 of its voting securities owned or controlled, directly or  
12 indirectly, by:

13 (i) a person who directly or indirectly  
14 owns or controls at least five percent of the voting securities of a  
15 public utility or provider; or

16 (ii) a person in a chain of successive  
17 ownership of at least five percent of the voting securities of a  
18 public utility or provider;

19 (E) a person who is an officer or director of a  
20 public utility or provider or of a corporation in a chain of  
21 successive ownership of at least five percent of the voting  
22 securities of a public utility or provider; or

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

25 (3) "Allocation" means the division among  
26 municipalities or among municipalities and unincorporated areas of  
27 the plant, revenues, expenses, taxes, and reserves of an electric

1 [a] utility used to provide electric [~~public utility~~] service in a  
2 municipality or for a municipality and unincorporated areas.

3 (8) "Counselor [~~Counsellor~~]" means the public utility  
4 counsel.

5 (10) "Facilities" means all of the plant and equipment  
6 of a public utility or provider, and includes the tangible and  
7 intangible property, without limitation, owned, operated, leased,  
8 licensed, used, controlled, or supplied for, by, or in connection  
9 with the business of the public utility or provider.

10 (13) "Order" means all or a part of a final disposition  
11 by a regulatory authority in a matter other than rulemaking,  
12 without regard to whether the disposition is affirmative or  
13 negative or injunctive or declaratory. The term includes:

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

16 (B) the setting of a rate.

17 (16) "Rate" includes:

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

23 (B) a rule, practice, or contract affecting the  
24 compensation, tariff, charge, fare, toll, rental, or  
25 classification.

26 (19) "Service" includes:

27 (A) advanced service as defined by Section

1 51.002;

2 (B) basic local telecommunications service as  
3 defined by Section 51.002;

4 (C) interexchange telecommunications service as  
5 defined by Section 51.002;

6 (D) local exchange telephone service as defined  
7 by Section 51.002;

8 (E) transmission service as defined by Section  
9 31.002; and

10 (F) a service described in the definition of  
11 utility or electric utility in Section 31.002 or 51.002 ~~[has its~~  
12 ~~broadest and most inclusive meaning. The term includes any act~~  
13 ~~performed, anything supplied, and any facilities used or supplied~~  
14 ~~by a public utility in the performance of the utility's duties under~~  
15 ~~this title to its patrons, employees, other public utilities, an~~  
16 ~~electric cooperative, and the public. The term also includes the~~  
17 ~~interchange of facilities between two or more public utilities.~~  
18 ~~The term does not include the printing, distribution, or sale of~~  
19 ~~advertising in a telephone directory].~~

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

24 (21) "Trade association" means a nonprofit,  
25 cooperative, and voluntarily joined association of business or  
26 professional persons who are employed by public utilities, ~~[or]~~  
27 utility competitors, or providers to assist ~~[the public utility~~

1 ~~industry, a utility competitor, or the industry's or competitor's~~  
2 ~~employees]~~ in dealing with mutual business or professional problems  
3 and in promoting their common interest.

4 SECTION 4. Chapter 11, Utilities Code, is amended by adding  
5 Section 11.0045 to read as follows:

6 Sec. 11.0045. DEFINITION OF PROVIDER. In Subtitle A  
7 "provider" means:

- 8 (1) a service provider;  
9 (2) a network provider;  
10 (3) a power generation company; and  
11 (4) a retail electric provider.

12 SECTION 5. Section 11.006, Utilities Code, is amended to  
13 read as follows:

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

18 (1) actually exercises substantial influence or  
19 control over the policies and actions of a public utility or  
20 provider;

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

23 (3) is under common control with a public utility or  
24 provider; or

25 (4) together with one or more persons with whom the  
26 person is related by ownership or blood relationship, or by action  
27 in concert, actually exercises substantial influence over the

1 policies and actions of a public utility or provider even though  
2 neither person may qualify as an affiliate individually.

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

9 SECTION 6. Section 12.004, Utilities Code, is amended to  
10 read as follows:

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

15 SECTION 7. Section 12.005, Utilities Code, is amended to  
16 read as follows:

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

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

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

27 SECTION 9. Section 12.053(b), Utilities Code, is amended to

1 read as follows:

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

4 (1) at any time during the two years preceding  
5 appointment[+]

6 [~~(A)~~] personally served as an officer, director,  
7 owner, employee, partner, or legal representative of a [~~public~~]  
8 utility, provider, affiliate, or direct competitor of a [~~public~~]  
9 utility or provider; [~~or~~]

10 (2) owns [~~(B) owned~~] or controls [~~controlled~~],  
11 directly or indirectly, stocks or bonds of any class with a value of  
12 \$10,000 or more in a [~~public~~] utility, provider, affiliate, or  
13 direct competitor of a [~~public~~] utility or provider; or

14 (3) [~~(2)~~] is not qualified to serve under Section  
15 12.151, 12.152, or 12.153.

16 SECTION 10. Section 12.054(a), Utilities Code, is amended  
17 to read as follows:

18 (a) It is a ground for removal from the commission if a  
19 commissioner:

20 (1) does not have at the time of appointment or  
21 maintain during service on the commission the qualifications  
22 required by Section 12.053;

23 (2) violates a prohibition provided by Section 12.053  
24 or by Subchapter D;

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



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

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

8           SECTION 11. Section 12.059, Utilities Code, is amended by  
9 adding Subsection (c) to read as follows:

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

15           SECTION 12. Section 12.102, Utilities Code, is amended to  
16 read as follows:

17           Sec. 12.102. DUTIES OF EMPLOYEES. The commission shall  
18 develop and implement policies that clearly separate [~~define~~] the  
19 policymaking [~~respective~~] responsibilities of the commission and  
20 the management responsibilities of the commission employees.

21           SECTION 13. Section 12.152(a), Utilities Code, is amended  
22 to read as follows:

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

25           (1) the person serves on the board of directors of a  
26 company that supplies fuel, utility-related services, or  
27 utility-related products to a utility or provider [~~regulated or~~

1 ~~unregulated electric or telecommunications utilities]; or~~

2 (2) 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

11 (ii) a utility, provider, affiliate, or  
12 direct competitor of a ~~[~~ utility ~~supplier,~~ or provider ~~[other~~  
13 ~~entity affected by a commission decision in a manner other than by~~  
14 ~~the setting of rates for that class of customer];~~

15 (C) uses or receives a substantial amount of  
16 tangible goods, services, or funds from the commission, other than  
17 compensation or reimbursement authorized by law for commission  
18 membership, attendance, or expenses; or

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

26 SECTION 14. Section 12.153, Utilities Code, is amended to  
27 read as follows:

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

11           (1) an officer, employee, or paid consultant of a  
12 trade association; or

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

15           SECTION 15. Sections 12.154(a), (b), (c), (d), (f), and  
16 (h), Utilities Code, are amended to read as follows:

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

19           (1) have a pecuniary interest, including an interest  
20 as an officer, director, partner, owner, employee, attorney, or  
21 consultant, in:

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

24           (B) a person a significant portion of whose  
25 business consists of furnishing goods or services to a utility,  
26 provider, affiliate, or direct competitor of a utility or provider  
27 ~~[public utilities or affiliates];~~

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

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

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

7           (B) a person a significant portion of whose  
8 business consists of furnishing goods or services to ~~[public]~~  
9 utilities, providers, affiliates, or direct competitors of  
10 ~~[public]~~ utilities or providers; or

11           (C) an agent, representative, attorney,  
12 employee, officer, owner, director, or partner of a person  
13 described by Paragraph (A) or (B).

14           (b) A commissioner or a commission employee may not directly  
15 or indirectly solicit, request from, or suggest or recommend to a  
16 ~~[public]~~ utility, provider, affiliate, or direct competitor of a  
17 utility or provider or an agent, representative, attorney,  
18 employee, officer, owner, director, or partner of a ~~[public]~~  
19 utility, provider, affiliate, or direct competitor of a utility or  
20 provider the appointment to a position or the employment of a person  
21 by the ~~[public]~~ utility, provider, ~~or~~ affiliate, or direct  
22 competitor of a utility or provider.

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

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

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

4           (3) an agent, representative, attorney, employee,  
5 officer, owner, director, or partner of a person described by  
6 Subdivision (1) or (2).

7           (d) A ~~[public]~~ utility, provider, affiliate, or direct  
8 competitor of a ~~[public]~~ utility or provider or a person furnishing  
9 goods or services to a ~~[public]~~ utility, provider, affiliate, or  
10 direct competitor of a ~~[public]~~ utility or provider may not aid,  
11 abet, or participate with a commissioner, commission employee, or  
12 former commission employee in conduct that violates Subsection  
13 (a)(3) or (c).

14           (f) It is not a violation of this section if a commissioner  
15 or commission employee, on becoming the owner of stocks, bonds, or  
16 another pecuniary interest in a ~~[public]~~ utility, provider,  
17 affiliate, or direct competitor of a ~~[public]~~ utility or provider  
18 otherwise than voluntarily, informs the commission and the attorney  
19 general of the ownership and divests the ownership or interest  
20 within a reasonable time.

21           (h) This section does not apply to a contract for a ~~[public~~  
22 ~~utility]~~ product or service from ~~[or equipment for use of]~~ a  
23 ~~[public]~~ utility, provider, affiliate, or direct competitor of a  
24 utility or provider ~~[product]~~ when a commissioner or commission  
25 employee is acting as a consumer.

26           SECTION 16. Sections 12.155(a) and (c), Utilities Code, are  
27 amended to read as follows:

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

4 (1) be employed by a [~~public~~] utility or provider that  
5 was in the scope of the commissioner's or employee's official  
6 responsibility while the commissioner or employee was associated  
7 with the commission or the State Office of Administrative Hearings;  
8 or

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

11 (A) in which the commissioner or employee was  
12 personally involved while associated with the commission or State  
13 Office of Administrative Hearings; or

14 (B) that was within the commissioner's or  
15 employee's official responsibility while the commissioner or  
16 employee was associated with the commission or State Office of  
17 Administrative Hearings.

18 (c) The prohibition of Subsection (a)(2) applies while a  
19 commissioner, commission employee, or employee of the State Office  
20 of Administrative Hearings involved in hearing utility or provider  
21 cases is associated with the commission or State Office of  
22 Administrative Hearings and at any time after.

23 SECTION 17. Section 12.252, Utilities Code, is amended to  
24 read as follows:

25 Sec. 12.252. COMMISSION AUTHORITY. The commission, after  
26 notice and hearing, may require each utility or provider subject to  
27 regulation under this title to make an effort to overcome the

1 underuse of historically underutilized businesses.

2 SECTION 18. Section 12.253, Utilities Code, is amended to  
3 read as follows:

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

8 SECTION 19. Section 13.002, Utilities Code, is amended to  
9 read as follows:

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

15 SECTION 20. Sections 13.003(a) and (c), Utilities Code, are  
16 amended to read as follows:

17 (a) The office:

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

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

24 (3) may initiate an action, appear, or intervene, as a  
25 party or otherwise, as a matter of right on behalf of:

26 (A) residential consumers, as a class or  
27 individually, in any proceeding in which the counselor determines

1 that residential consumers are in need of representation [~~before~~  
2 ~~the commission~~], including an alternative dispute resolution  
3 proceeding; and

4 (B) small commercial consumers, as a class or  
5 individually, in any proceeding in which the counselor [~~counsellor~~]  
6 determines that small commercial consumers are in need of  
7 representation, including an alternative dispute resolution  
8 proceeding;

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

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

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

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

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

24 (7) may represent [~~an individual~~] residential or small  
25 commercial consumers, individually or as a class [~~consumer~~] with  
26 respect to any [~~the consumer's disputed~~] complaint concerning  
27 electric or telecommunications [~~utility~~] services [~~that is~~



1 ~~unresolved before the commission]; [and]~~

2 (8) may represent residential and small commercial  
3 consumers, individually, as a group, or as a class, in any federal  
4 bankruptcy case in which the counselor determines that electric or  
5 telecommunications consumers in this state are in need of  
6 representation; and

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

10 (c) The appearance of the counselor [~~counsellor~~] in a  
11 proceeding does not preclude the appearance of other parties on  
12 behalf of residential or small commercial consumers. The counselor  
13 [~~counsellor~~] may not be grouped with any other party.

14 SECTION 21. Subchapter A, Chapter 13, Utilities Code, is  
15 amended by adding Sections 13.004, 13.005, 13.006, and 13.007 to  
16 read as follows:

17 Sec. 13.004. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

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

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

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

27 (1) coordinate the implementation of the policy

1 adopted under Subsection (a);

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

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

6 Sec. 13.005. COMPLAINTS. (a) The office shall maintain a  
7 system to promptly and efficiently act on complaints filed with the  
8 office that the office has the authority to resolve. The office  
9 shall maintain information about parties to the complaint, the  
10 subject matter of the complaint, a summary of the results of the  
11 review or investigation of the complaint, and its disposition.

12 (b) The office shall make information available describing  
13 its procedures for complaint investigation and resolution.

14 (c) The office shall periodically notify the complaint  
15 parties of the status of the complaint until final disposition.

16 Sec. 13.006. 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. 13.007. 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 22. 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 23. 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 24. 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 25. 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 26. 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 27. 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 28. 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 29. 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 30. 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 31. 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 32. 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 33. 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 34. 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 35. 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 36. 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 37. Subchapter B, Chapter 15, Utilities Code, is  
9 amended by adding Section 15.0205 to read as follows:

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

14 SECTION 38. Section 15.023, Utilities Code, is amended by  
15 amending Subsections (b) and (c) and adding Subsections (d) and (e)  
16 to read as follows:

17 (b) Except as otherwise provided by this title, the [The]  
18 penalty for a violation may be in an amount not to exceed \$25,000  
19 [\$5,000]. Each day a violation continues or occurs is not a  
20 separate violation for purposes of imposing a penalty, except as  
21 otherwise provided by this title.

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

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

27 (A) the nature, circumstances, extent, and

1 gravity of a prohibited act; and

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

4 (2) the economic harm to property or the environment  
5 caused by the violation;

6 (3) the history of previous violations;

7 (4) the amount necessary to deter future violations  
8 based on the circumstances of the person committing the violation;

9 (5) efforts to correct the violation; and

10 (6) any other matter that justice may require,  
11 including the amount of a penalty imposed on a similarly situated  
12 person.

13 (d) The classification system established under Subsection  
14 (c) shall provide that a penalty in an amount that exceeds \$5,000  
15 may be assessed only if the violation is included in the highest  
16 class of violations in the classification system.

17 (e) Notwithstanding the classification system established  
18 under Subsection (c), a person regulated under this title who  
19 wilfully and knowingly violates this title or a rule or order  
20 adopted under this title may be assessed a penalty included in the  
21 range of penalties that may be assessed for the highest class of  
22 violations in the classification system.

23 SECTION 39. Section 15.024, Utilities Code, as amended by  
24 Chapters 1212 and 1579, Acts of the 76th Legislature, Regular  
25 Session, 1999, is reenacted and amended to read as follows:

26 Sec. 15.024. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.

27 (a) If the executive director contends [~~determines~~] that a

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

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

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

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

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

24 (c) [~~A penalty may not be assessed under this section if the~~  
25 ~~person against whom the penalty may be assessed remedies the~~  
26 ~~violation before the 31st day after the date the person receives the~~  
27 ~~notice under Subsection (b). A person who claims to have remedied~~

1 ~~an alleged violation has the burden of proving to the commission~~  
2 ~~that the alleged violation was remedied and was accidental or~~  
3 ~~inadvertent. This subsection does not apply to a violation of~~  
4 ~~Chapter 17, 55, or 64.~~

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

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

17 (e) ~~[(f)]~~ If the person requests a hearing ~~[or fails to~~  
18 ~~timely respond to the notice]~~, the executive director shall set a  
19 hearing and give notice of the hearing to the person. The hearing  
20 shall be held in accordance with Subchapter B, Chapter 14. If a  
21 hearing is conducted by ~~[an administrative law judge of]~~ the State  
22 Office of Administrative Hearings, the ~~[-The]~~ administrative law  
23 judge shall make findings of fact and conclusions of law and  
24 promptly issue to the commission a proposal for a decision about the  
25 occurrence of the violation and the amount of a proposed penalty.  
26 Based on the findings of fact, conclusions of law, and proposal for  
27 a decision, the commission by order may find that a violation has

1 occurred and impose a penalty or may find that no violation  
2 occurred.

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

7 SECTION 40. Section 15.027(c), Utilities Code, is amended  
8 to read as follows:

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

13 SECTION 41. Section 15.032(b), Utilities Code, is amended  
14 to read as follows:

15 (b) A suit for the recovery of a penalty does not:  
16 (1) bar or affect the recovery of any other penalty; or  
17 (2) bar a criminal prosecution or an action for civil  
18 damages against any person.

19 SECTION 42. Section 15.033, Utilities Code, is amended to  
20 read as follows:

21 Sec. 15.033. DISPOSITION OF FINES AND PENALTIES. A fine or  
22 penalty collected under this title, other than a [~~fine or penalty~~  
23 ~~collected in a criminal proceeding or a~~] penalty collected under  
24 Section 15.027(a), shall be paid to the commission.

25 SECTION 43. Sections 15.051(a) and (b), Utilities Code, are  
26 amended to read as follows:

27 (a) An affected person may complain to the regulatory



1 authority in writing setting forth an act or omission by a [~~public~~]  
2 utility or provider in violation or claimed violation of a law that  
3 the regulatory authority has jurisdiction to administer or of an  
4 order, ordinance, or rule of the regulatory authority.

5 (b) The commission shall keep for a reasonable period  
6 information about each complaint filed with the commission that the  
7 commission has authority to resolve. The information shall  
8 include:

- 9 (1) the date the complaint is received;
- 10 (2) the name of the complainant;
- 11 (3) the subject matter of the complaint;
- 12 (4) a record of each person contacted in relation to  
13 the complaint;
- 14 (5) a summary of the results of the review or  
15 investigation of the complaint; and
- 16 (6) if the commission took no action on the complaint,  
17 an explanation of the reason the complaint was closed without  
18 action.

19 SECTION 44. The heading to Subchapter A, Chapter 16,  
20 Utilities Code, is amended to read as follows:

21 SUBCHAPTER A. ASSESSMENT ON [~~PUBLIC~~] UTILITIES AND PROVIDERS

22 SECTION 45. Section 16.001, Utilities Code, is amended to  
23 read as follows:

24 Sec. 16.001. ASSESSMENT ON [~~PUBLIC~~] UTILITIES AND  
25 PROVIDERS. (a) To defray the expenses incurred in the  
26 administration of this title, an assessment is imposed on each  
27 [~~public~~] utility, [~~retail electric~~] provider, and electric

1 cooperative within the jurisdiction of the commission that serves  
2 the ultimate consumer[, ~~including each interexchange~~  
3 ~~telecommunications carrier~~].

4 (b) An assessment under this section may not exceed [~~is~~  
5 ~~equal to~~] one-sixth of one percent of the [~~public utility's, retail~~  
6 ~~electric provider's, or electric cooperative's~~] gross receipts from  
7 rates charged to the ultimate consumer in this state.

8 (c) A utility and provider [~~An interexchange~~  
9 ~~telecommunications carrier that does not provide local exchange~~  
10 ~~telephone service~~] may collect the fee imposed under this section  
11 as an additional item separately stated on the customer bill as  
12 "public utility commission gross receipts assessment."

13 SECTION 46. Section 16.002(b), Utilities Code, is amended  
14 to read as follows:

15 (b) A [~~public~~] utility or provider may instead make  
16 quarterly payments due August 15, November 15, February 15, and May  
17 15.

18 SECTION 47. Section 33.123(d), Utilities Code, is amended  
19 to read as follows:

20 (d) Not later than the 120th day after the date the  
21 commission enters its final order, the municipality shall assess a  
22 onetime surcharge on a per capita basis among residential  
23 ratepayers who reside outside the municipality to pay the  
24 reasonable consultant and legal costs approved by the counselor  
25 [~~counselor~~]. The municipality shall reimburse the appellants for  
26 incurred costs not later than the 90th day after the date the  
27 commission enters its final order.

1           SECTION 48. The following provisions of the Utilities Code  
2 are repealed:

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

9           SECTION 49. Promptly after this Act takes effect, the  
10 governor shall appoint two additional members to the Public Utility  
11 Commission of Texas. Of those members, the governor shall  
12 designate one to serve a term expiring September 1, 2009, and one to  
13 serve a term expiring January 1, 2011. Until all appointees have  
14 taken office, a quorum of the commission is a majority of the number  
15 of members who are qualified.

16           SECTION 50. The repeal by this Act of Section 15.003(c),  
17 Utilities Code, does not apply to a suit commenced before the  
18 effective date of the repeal. A suit commenced before the effective  
19 date of the repeal is governed by the law as it existed immediately  
20 before the effective date of the repeal, and that law is continued  
21 in effect for that purpose.

22           SECTION 51. The repeal by this Act of Sections 15.028 and  
23 15.030, Utilities Code, does not apply to a violation of those  
24 sections that occurs before the effective date of the repeal. A  
25 violation that occurs before the effective date of the repeal is  
26 governed by the law as it existed immediately before the effective  
27 date of the repeal, and that law is continued in effect for that

1 purpose.

2 SECTION 52. The change in law made by this Act relating to  
3 qualifications and eligibility to serve as chief executive of or to  
4 be employed with the office of public utility counsel applies only  
5 to a person appointed or employed after the effective date of this  
6 Act. The chief executive or an employee of the office of public  
7 utility counsel who is serving or employed on the effective date of  
8 this Act is governed by the law as it existed immediately before the  
9 effective date of this Act, and the former law is continued in  
10 effect for that purpose.

11 SECTION 53. The change in law made by this Act relating to  
12 qualifications and eligibility to serve as a commissioner or to be  
13 employed with the Public Utility Commission of Texas applies only  
14 to a commissioner or employee appointed or employed after the  
15 effective date of this Act. A commissioner or employee of the  
16 Public Utility Commission of Texas who is serving or employed on the  
17 effective date of this Act is governed by the law as it existed  
18 immediately before the effective date of this Act, and the former  
19 law is continued in effect for that purpose.

20 SECTION 54. The changes in law made by this Act to Sections  
21 15.023 and 15.024, Utilities Code, apply only to a violation  
22 committed on or after the effective date of this Act. A violation  
23 committed before the effective date of this Act is governed by the  
24 law in effect when the violation was committed, and the former law  
25 is continued in effect for that purpose.

26 SECTION 55. This Act takes effect September 1, 2005.