

By: Nelson

S.B. No. 408

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Public Utility Commission of Texas; providing a penalty.

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

SECTION 1. Section 12.005, Utilities Code, is amended to read as follows:

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

SECTION 2. Section 12.059, Utilities Code, is amended by adding Subsection (c) to read as follows:

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

SECTION 3. Section 12.102, Utilities Code, is amended to read as follows:

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

SECTION 4. Section 12.153, Utilities Code, is amended to read as follows:

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

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

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

SECTION 5. Subchapter A, Chapter 14, Utilities Code, is amended by adding Section 14.0025 to read as follows:

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

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

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

1        (b) The commission's procedures relating to alternative  
2 dispute resolution must conform, to the extent possible, to any  
3 model guidelines issued by the State Office of Administrative  
4 Hearings for the use of alternative dispute resolution by state  
5 agencies.

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

7                (1) coordinate the implementation of the policy  
8 adopted under Subsection (a);

9                (2) serve as a resource for any training needed to  
10 implement the procedures for negotiated rulemaking or alternative  
11 dispute resolution; and

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

14        SECTION 6. Subchapter B, Chapter 14, Utilities Code, is  
15 amended by adding Section 14.059 to read as follows:

16        Sec. 14.059. TECHNOLOGY POLICY. The commission shall  
17 implement a policy requiring the commission to use appropriate  
18 technological solutions to improve the commission's ability to  
19 perform its functions. The policy must ensure that the public is  
20 able to interact with the commission on the Internet.

21        SECTION 7. Section 15.023, Utilities Code, is amended by  
22 amending Subsections (b) and (c) and adding Subsection (d) to read  
23 as follows:

24        (b) The penalty for a violation may be in an amount not to  
25 exceed \$25,000 [~~\$5,000~~]. Each day a violation continues or occurs  
26 is a separate violation for purposes of imposing a penalty.

27        (c) The commission by rule shall establish a classification

1 system for violations that includes a range ~~[The amount]~~ of ~~[an]~~  
2 administrative penalties that may be assessed for each class of  
3 violation ~~[penalty shall be]~~ based on:

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

5 (A) the nature, circumstances, extent, and  
6 gravity of a prohibited act; and

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

9 (2) the economic harm to property or the environment  
10 caused by the violation;

11 (3) the history of previous violations;

12 (4) the amount necessary to deter future violations;

13 (5) efforts to correct the violation; and

14 (6) any other matter that justice may require.

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

19 SECTION 8. Subsection (b), Section 15.051, Utilities Code,  
20 is amended to read as follows:

21 (b) The commission shall keep for a reasonable period  
22 information about each complaint filed with the commission that the  
23 commission has authority to resolve. The information shall  
24 include:

25 (1) the date the complaint is received;

26 (2) the name of the complainant;

27 (3) the subject matter of the complaint;

1           (4) a record of each person contacted in relation to  
2 the complaint;

3           (5) a summary of the results of the review or  
4 investigation of the complaint; and

5           (6) if the commission took no action on the complaint,  
6 an explanation of the reason the complaint was closed without  
7 action.

8           SECTION 9. Section 39.151, Utilities Code, is amended by  
9 amending Subsections (b) through (e), (g), and (h) and adding  
10 Subsections (d-1) and (g-1) to read as follows:

11           (b) "Independent organization" means an independent system  
12 operator or other person that is sufficiently independent of any  
13 producer or seller of electricity that its decisions will not be  
14 unduly influenced by any producer or seller. ~~[An entity will be  
15 deemed to be independent if it is governed by a board that has three  
16 representatives from each segment of the electric market, with the  
17 consumer segment being represented by one residential customer, one  
18 commercial customer, and one industrial retail customer.]~~

19           (c) The commission shall certify an independent  
20 organization or organizations to perform the functions prescribed  
21 by this section. The commission shall apply the provisions of this  
22 section and Sections 39.1511, 39.1512, and 39.1515 so as to avoid  
23 conflict with a ruling of a federal regulatory body.

24           (d) The commission shall adopt and enforce rules ~~[An  
25 independent organization certified by the commission for a power  
26 region shall establish and enforce procedures, consistent with this  
27 title and the commission's rules,]~~ relating to the reliability of

1 the regional electrical network and accounting for the production  
2 and delivery of electricity among generators and all other market  
3 participants, or may delegate to an independent organization  
4 responsibilities for establishing or enforcing such rules. Any  
5 such rules adopted by an independent organization and any  
6 enforcement actions taken by the organization are [~~—The procedures~~  
7 ~~shall be~~] subject to commission oversight and review. An  
8 independent organization certified by the commission is directly  
9 responsible and accountable to the commission. The commission has  
10 complete authority to oversee and investigate the organization's  
11 finances, budget, and operations as necessary to ensure the  
12 organization's accountability and to ensure that the organization  
13 adequately performs the organization's functions and duties. The  
14 organization shall fully cooperate with the commission in the  
15 commission's oversight and investigatory functions. The  
16 commission may take appropriate action against an organization that  
17 does not adequately perform the organization's functions or duties  
18 or does not comply with this section, including decertifying the  
19 organization or assessing an administrative penalty against the  
20 organization. The commission by rule shall adopt procedures  
21 governing decertification of an independent organization,  
22 selecting and certifying a successor organization, and  
23 transferring assets to the successor organization to ensure  
24 continuity of operations in the region. The commission may not  
25 implement, by order or by rule, a requirement that is contrary to an  
26 applicable federal law or rule.

27 (d-1) The commission may:

1           (1) require an independent organization to provide  
2 reports and information relating to the independent organization's  
3 performance of the functions prescribed by this section and  
4 relating to the organization's revenues, expenses, and other  
5 financial matters;

6           (2) prescribe a system of accounts for an independent  
7 organization;

8           (3) conduct audits of an independent organization's  
9 performance of the functions prescribed by this section or relating  
10 to its revenues, expenses, and other financial matters and may  
11 require an independent organization to conduct such an audit;

12           (4) inspect an independent organization's facilities,  
13 records, and accounts during reasonable hours and after reasonable  
14 notice to the independent organization;

15           (5) assess administrative penalties against an  
16 independent organization that violates this title or a rule or  
17 order adopted by the commission and, at the request of the  
18 commission, the attorney general may apply for a court order to  
19 require an independent organization to comply with commission rules  
20 and orders in the manner provided by Chapter 15; and

21           (6) resolve disputes between an affected person and an  
22 independent organization and adopt procedures for the efficient  
23 resolution of such disputes.

24           (e) The commission may authorize an independent  
25 organization that is certified under this section to charge a  
26 reasonable and competitively neutral rate to wholesale buyers and  
27 sellers to cover the independent organization's costs. The

1 commission shall investigate the organization's cost efficiencies,  
2 salaries and benefits, and use of debt financing and may require the  
3 organization to provide any information needed to effectively  
4 evaluate the organization's budget and the reasonableness and  
5 neutrality of a rate or proposed rate or to evaluate the  
6 effectiveness or efficiency of the organization. The commission  
7 shall work with the organization to establish the detail of  
8 information, both current and historical, and the time frames the  
9 commission needs to effectively evaluate a rate or a rate request.

10 (g) To maintain certification as an independent  
11 organization under this section, an organization's [~~If it amends~~  
12 ~~its governance rules to provide that its governing body is composed~~  
13 ~~as prescribed by this subsection, the existing independent system~~  
14 ~~operator in ERCOT will meet the criteria provided by Subsection (a)~~  
15 ~~with respect to ensuring access to the transmission systems for all~~  
16 ~~buyers and sellers of electricity in the ERCOT region and ensuring~~  
17 ~~the reliability of the regional electrical network. To comply with~~  
18 ~~this subsection, the] governing body must be composed of persons  
19 specified by this section and selected in accordance with formal  
20 bylaws or protocols of the organization. The bylaws or protocols  
21 must be approved by the commission and must reflect the input of the  
22 commission. The bylaws must specify the process by which  
23 appropriate stakeholders elect members and, for unaffiliated  
24 members, prescribe professional qualifications for selection as a  
25 member. The bylaws must require the use of a professional search  
26 firm to identify candidates for membership of unaffiliated members.  
27 The process must allow for commission input in identifying~~



1 candidates. The governing body must be composed of:

2 (1) the chairman of the commission as an ex officio  
3 nonvoting member;

4 (2) the counsellor as an ex officio voting member  
5 representing residential and small commercial consumer interests;

6 (3) the chief executive officer [~~director~~] of the  
7 independent organization [~~system operator~~] as an ex officio voting  
8 member;

9 (4) six market participants elected by their  
10 respective market segments to serve one-year terms, with:

11 (A) one representing independent generators;

12 (B) one representing investor-owned utilities;

13 (C) one representing power marketers;

14 (D) one representing retail electric providers;

15 (E) one representing municipally owned  
16 utilities; and

17 (F) one representing electric cooperatives [~~four~~  
18 ~~representatives of the power generation sector as voting members~~];

19 (5) one member representing industrial consumer  
20 interests and elected by the industrial consumer market segment to  
21 serve a one-year term [~~four representatives of the transmission and~~  
22 ~~distribution sector as voting members~~];

23 (6) one member representing large commercial consumer  
24 interests selected in accordance with the bylaws to serve a  
25 one-year term [~~four representatives of the power sales sector as~~  
26 ~~voting members~~]; and

27 (7) five members unaffiliated with any market segment

1 and selected by the other members of the governing body to serve  
 2 three-year terms ~~[the following people as voting members, appointed~~  
 3 ~~by the commission.~~

4 ~~[(A) one representative of residential~~  
 5 ~~customers,~~

6 ~~[(B) one representative of commercial customers,~~  
 7 ~~and~~

8 ~~[(C) one representative of industrial~~  
 9 ~~customers].~~

10 ~~[The four representatives specified in each of Subdivisions~~  
 11 ~~(4), (5), and (6) shall be selected in a manner that ensures~~  
 12 ~~equitable representation for the various sectors of industry~~  
 13 ~~participants.]~~

14 (g-1) The presiding officer of the governing body must be  
 15 one of the members described by Subsection (g)(7).

16 (h) The ERCOT independent system operator may meet the  
 17 criteria relating to the other functions of an independent  
 18 organization provided by Subsection (a) by adopting procedures and  
 19 acquiring resources needed to carry out those functions, consistent  
 20 with any rules or orders of the commission.

21 SECTION 10. Subchapter D, Chapter 39, Utilities Code, is  
 22 amended by adding Sections 39.1511, 39.1512, and 39.1515 to read as  
 23 follows:

24 Sec. 39.1511. PUBLIC MEETINGS OF THE GOVERNING BODY OF AN  
 25 INDEPENDENT ORGANIZATION. (a) Meetings of the governing body of  
 26 an independent organization certified under Section 39.151 and  
 27 meetings of a subcommittee that includes a member of the governing

1 body must be open to the public. The bylaws of the independent  
2 organization and the rules of the commission may provide for the  
3 governing body or subcommittee to enter into executive session  
4 closed to the public to address sensitive matters such as  
5 confidential personnel information, contracts, lawsuits,  
6 competitively sensitive information, or other information related  
7 to the security of the regional electrical network.

8 (b) The bylaws of the independent organization and rules of  
9 the commission must ensure that a person interested in the  
10 activities of the independent organization has an opportunity to  
11 obtain at least seven days' advance notice of meetings and the  
12 planned agendas of the meetings and an opportunity to comment on  
13 matters under discussion at the meetings. The bylaws and  
14 commission rules governing meetings of the governing body may  
15 provide for a shorter period of advance notice and for meetings by  
16 teleconference technology for governing body meetings to take  
17 action on urgent matters. The bylaws and rules must require actions  
18 taken on short notice or at teleconference meetings to be ratified  
19 at the governing body's next regular meeting. The notice  
20 requirements may be met by a timely electronic posting on the  
21 Internet.

22 Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE  
23 INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN  
24 DECISION. (a) If a matter comes before the governing body of an  
25 independent organization certified under Section 39.151 and a  
26 member has a direct interest in that matter or is employed by or has  
27 a substantial financial interest in a person who has a direct

interest in that matter, that member shall publicly disclose the fact of that interest to the governing body at a public meeting of the body. The member shall recuse himself or herself from the governing body's deliberations and actions on the matter and may not vote on the matter or otherwise participate in a governing body decision on the matter.

(b) A disclosure made under Subsection (a) shall be entered in the minutes of the meeting at which the disclosure is made.

(c) The fact that a member is recused from a vote or decision by application of this section does not affect the existence of a quorum.

Sec. 39.1515. WHOLESALE ELECTRIC MARKET MONITOR. (a) An independent organization certified under Section 39.151 shall contract with an entity selected by the commission to act as the commission's wholesale electric market monitor to detect and prevent market manipulation strategies and recommend measures to enhance the efficiency of the wholesale market.

(b) The independent organization shall provide to the personnel of the market monitor:

(1) full access to the organization's main operations center and the organization's records that concern operations, settlement, and reliability; and

(2) other support and cooperation the commission determines is necessary for the market monitor to perform the market monitor's functions.

(c) The independent organization shall use money from the rate authorized by Section 39.151(e) to pay for the market

monitor's activities.

(d) The commission is responsible for ensuring that the market monitor has the resources, expertise, and authority necessary to monitor the wholesale electric market effectively and shall adopt rules and perform oversight of the market monitor as necessary. The market monitor shall operate under the supervision and oversight of the commission. The commission shall retain all enforcement authority conferred under this title, and this section may not be construed to confer enforcement authority on the market monitor or to authorize the commission to delegate the commission's enforcement authority to the market monitor. The commission by rule shall define:

(1) the market monitor's monitoring responsibilities, including reporting obligations and limitations;

(2) the standards for funding the market monitor, including staffing requirements;

(3) qualifications for personnel of the market monitor; and

(4) ethical standards for the market monitor and the personnel of the market monitor.

(e) In adopting rules governing the standards for funding the market monitor, the commission shall consult with a subcommittee of the independent organization's governing body to receive information on how money is or should be spent for monitoring functions. Rules governing ethical standards must include provisions designed to ensure that the personnel of the market monitor are professionally and financially independent from

1 market participants. The commission shall develop and implement  
 2 policies that clearly separate the policymaking responsibilities  
 3 of the commission and the monitoring, analysis, and reporting  
 4 responsibilities of the market monitor.

5 (f) The market monitor immediately shall report directly to  
 6 the commission any potential market manipulations and any  
 7 discovered or potential violations of commission rules or rules of  
 8 the independent organization.

9 (g) The personnel of the market monitor may communicate with  
 10 commission staff on any matter without restriction.

11 (h) The market monitor annually shall submit to the  
 12 commission and the independent organization a report that  
 13 identifies market design flaws and recommends methods to correct  
 14 the flaws. The commission and the independent organization shall  
 15 review the report and evaluate whether changes to rules of the  
 16 commission or the independent organization should be made.

17 SECTION 11. Subsection (e), Section 39.903, Utilities Code,  
 18 as amended by Chapters 1394, 1451, and 1466, Acts of the 77th  
 19 Legislature, Regular Session, 2001, is reenacted and amended to  
 20 read as follows:

21 (e) Money in the system benefit fund may be appropriated to  
 22 provide funding solely for the following regulatory purposes, and ~~and~~  
 23 in the following order of priority:

24 (1) programs to:

25 (A) assist low-income electric customers by  
 26 providing the 10 percent reduced rate prescribed by Subsection (h);  
 27 and

1                   (B) provide one-time bill payment assistance to  
2 electric customers who are or who have in their households one or  
3 more seriously ill or disabled low-income persons and who have been  
4 threatened with disconnection for nonpayment;

5                   (2) customer education programs, administrative  
6 expenses incurred by the commission in implementing and  
7 administering this chapter, and expenses incurred by the office  
8 under this chapter;

9                   (3) programs to assist low-income electric customers  
10 by providing the targeted energy efficiency programs described by  
11 Subsection (f)(2);

12                   (4) the school funding loss mechanism provided by  
13 Section 39.901;

14                   (5) programs to assist low-income electric customers  
15 by providing the 20 percent reduced rate prescribed by Subsection  
16 (h); and

17                   (6) reimbursement to the commission and the Health and  
18 Human Services Commission [~~Texas Department of Human Services~~] for  
19 expenses incurred in the implementation and administration of an  
20 integrated eligibility process created under Section 17.007 for  
21 customer service discounts relating to retail electric service,  
22 including outreach expenses the commission determines are  
23 reasonable and necessary.

24           SECTION 12. Section 39.903, Utilities Code, is amended by  
25 adding Subsection (j-1) to read as follows:

26                   (j-1) The commission shall adopt rules governing the bill  
27 payment assistance program provided under Subsection (e)(1)(B).

1 The rules must provide that a customer is eligible to receive the  
2 assistance only if the assistance is necessary to prevent the  
3 disconnection of service for nonpayment of bills and the electric  
4 customer is or has in the customer's household one or more seriously  
5 ill or disabled low-income persons whose health or safety may be  
6 injured by the disconnection. The commission may prescribe the  
7 documentation necessary to demonstrate eligibility for the  
8 assistance and may establish additional eligibility criteria. The  
9 Health and Human Services Commission, on request of the commission,  
10 shall assist in the adoption and implementation of these rules.

11         SECTION 13. (a) The Public Utility Commission of Texas  
12 shall conduct a comprehensive review of the reporting requirements  
13 relating to telecommunications providers that are prescribed by  
14 statute or commission rules.

15         (b) In conducting the review, the Public Utility Commission  
16 of Texas shall:

17                 (1) solicit input and assistance from appropriate  
18 affected persons, as that term is defined by Section 11.003,  
19 Utilities Code; and

20                 (2) consider:

21                         (A) the manner in which information included in a  
22 report is used;

23                         (B) whether information included in a report is  
24 duplicative of information included in a different report; and

25                         (C) whether the requirements relating to a report  
26 the commission determines is necessary can be changed to make the  
27 reporting process more efficient.



1           (c) The Public Utility Commission of Texas shall conclude  
2 the review required by this section not later than September 30,  
3 2006, and shall report to the legislature on the results of the  
4 review. The report must include:

5               (1) specific recommendations on which reports the  
6 commission determines are necessary and which are not necessary;

7               (2) for a report the commission determines is  
8 necessary, whether the requirements relating to the report can be  
9 changed to make the reporting process more efficient; and

10              (3) the actions the commission has taken or will take  
11 to amend commission rules to reflect the results of the review.

12           (d) If the Public Utility Commission of Texas determines  
13 that legislation is necessary or appropriate to eliminate or change  
14 reporting requirements prescribed by statute, the commission shall  
15 include those recommendations in the biennial report to the  
16 legislature required by Section 52.006, Utilities Code.

17           SECTION 14. Section 52.254, Utilities Code, is repealed.

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

27           SECTION 16. The change in law made by this Act to Section

1 15.023, Utilities Code, applies only to a violation committed on or  
2 after the effective date of this Act. A violation committed before  
3 the effective date of this Act is governed by the law in effect when  
4 the violation was committed, and the former law is continued in  
5 effect for that purpose.

6 SECTION 17. An independent organization certified by the  
7 Public Utility Commission of Texas before September 1, 2005, shall  
8 modify the organization's governing body to comply with Subsection  
9 (g), Section 39.151, Utilities Code, as amended by this Act, not  
10 later than September 1, 2006. On or after September 1, 2006, the  
11 Public Utility Commission of Texas may decertify an independent  
12 organization whose governing body does not comply with Subsection  
13 (g), Section 39.151, Utilities Code, as amended by this Act.

14 SECTION 18. This Act takes effect September 1, 2005.