

AN ACT

relating to the continuation and functions of the Office of Public Utility Counsel.

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

SECTION 1. Section 13.002, Utilities Code, is amended to read as follows:

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

SECTION 2. Subchapter A, Chapter 13, Utilities Code, is amended by adding Sections 13.004 through 13.007 to read as follows:

Sec. 13.004. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

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

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

(c) The counsellor shall designate a trained person to:

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

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

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

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

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

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

17           Sec. 13.006. TECHNOLOGY POLICY. The counsellor shall  
18 implement a policy requiring the office to use appropriate  
19 technological solutions to improve the office's ability to perform  
20 its functions. The policy must ensure that the public is able to  
21 interact with the office on the Internet.

22           Sec. 13.007. MANAGEMENT AUDIT. (a) The state auditor, in  
23 coordination with the Legislative Budget Board, shall conduct a  
24 management audit of the office to evaluate the office's performance  
25 measures to determine the accuracy of calculations and whether the  
26 measures accurately depict the impact of the office. The audit must  
27 include an estimation of savings to residential and small

1 commercial consumers directly attributable to office participation  
2 in proceedings.

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

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

8 SECTION 3. Section 13.023, Utilities Code, is amended by  
9 amending Subsection (a) and by adding Subsection (c) to read as  
10 follows:

11 (a) It is a ground for removal from office if the  
12 counsellor:

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

16 (2) is ineligible for service as counsellor under  
17 [~~violates a prohibition provided by~~] Section 13.022, 13.042, or  
18 13.043; or

19 (3) cannot discharge the counsellor's duties for a  
20 substantial part of the term for which the counsellor is appointed  
21 because of illness or disability.

22 (c) If an employee has knowledge that a potential ground for  
23 removal of the counsellor exists, the employee shall notify the  
24 next highest ranking employee of the office, other than the  
25 counsellor, who shall then notify the governor and the attorney  
26 general that a potential ground for removal exists.

27 SECTION 4. Section 13.042, Utilities Code, is amended to

1 read as follows:

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

9           (b) A person may not serve as counsellor or be an employee of  
10 the office employed in a "bona fide executive, administrative, or  
11 professional capacity," as that phrase is used for purposes of  
12 establishing an exemption to the overtime provisions of the federal  
13 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.)  
14 ~~[who is exempt from the state's position classification plan or is~~  
15 ~~compensated at or above the amount prescribed by the General~~  
16 ~~Appropriations Act for step 1, salary group 17, of the position~~  
17 ~~classification salary schedule]~~ if the 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 counsellor or act as the  
23 general counsel to the office if the person is required to register  
24 as a 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 5. Section 13.063, Utilities Code, is amended to

1 read as follows:

2 Sec. 13.063. ANNUAL REPORTS [~~REPORT~~]. (a) The office  
3 shall prepare annually a complete and detailed written report  
4 accounting for all funds received and disbursed by the office  
5 during the preceding fiscal year. The annual report must meet the  
6 reporting requirements applicable to financial reporting in the  
7 General Appropriations Act.

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

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

16 (2) the number of hours billed by the office for  
17 representing residential or small commercial consumers in  
18 proceedings;

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

21 (4) the office's rate of success in representing  
22 residential or small commercial consumers in appealing commission  
23 decisions.

24 SECTION 6. Subchapter D, Chapter 13, Utilities Code, is  
25 amended by adding Section 13.064 to read as follows:

26 Sec. 13.064. PUBLIC HEARING. (a) The office annually  
27 shall conduct a public hearing to assist the office in developing a

1 plan of priorities and to give the public, including residential  
2 and small commercial consumers, an opportunity to comment on the  
3 office's functions and effectiveness.

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

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

9 SECTION 7. Subsection (c), Section 13.022, Utilities Code,  
10 is repealed.

11 SECTION 8. The change in law made by this Act relating to  
12 qualifications and eligibility to serve as public utility counsel  
13 or to be employed with the Office of Public Utility Counsel applies  
14 only to a counsellor or employee appointed or employed after the  
15 effective date of this Act. A counsellor or employee of the Office  
16 of Public Utility Counsel 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 9. This Act takes effect September 1, 2005.

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President of the Senate

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Speaker of the House

I hereby certify that S.B. No. 409 passed the Senate on May 3, 2005, by the following vote: Yeas 31, Nays 0; May 25, 2005, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 27, 2005, House granted request of the Senate; May 29, 2005, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

I hereby certify that S.B. No. 409 passed the House, with amendments, on May 23, 2005, by a non-record vote; May 27, 2005, House granted request of the Senate for appointment of Conference Committee; May 29, 2005, House adopted Conference Committee Report by a non-record vote.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor