

By: Nelson

S.B. No. 409

Substitute the following for S.B. No. 409:

By: King of Parker

C.S.S.B. No. 409

A BILL TO BE ENTITLED

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

(a) The office:

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

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

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

(A) residential consumers, as a class, in any proceeding in which the counselor determines that residential

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

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

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

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

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

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

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

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

27 (8) may represent residential and small commercial

1 consumers, as a group or as a class, in any federal bankruptcy case
2 in which the counselor determines that electric or
3 telecommunications consumers in this state are in need of
4 representation; and

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

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

12 SECTION 3. Subchapter A, Chapter 13, Utilities Code, is
13 amended by adding Sections 13.004, 13.005, and 13.006 to read as
14 follows:

15 Sec. 13.004. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

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

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

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

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

27 (2) serve as a resource for any training needed to

1 implement the procedures for alternative dispute resolution; and
2 (3) collect data concerning the effectiveness of those
3 procedures, as implemented by the office.

4 Sec. 13.005. TECHNOLOGY POLICY. The counselor shall
5 implement a policy requiring the office to use appropriate
6 technological solutions to improve the office's ability to perform
7 its functions. The policy must ensure that the public is able to
8 interact with the office on the Internet.

9 Sec. 13.006. MANAGEMENT AUDIT. (a) The state auditor, in
10 coordination with the Legislative Budget Board, shall conduct a
11 management audit of the office to evaluate the office's performance
12 measures to determine the accuracy of calculations and whether the
13 measures accurately depict the impact of the office. The audit must
14 include an estimation of savings to residential and small
15 commercial consumers directly attributable to office participation
16 in proceedings.

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

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

22 SECTION 4. Section 13.021, Utilities Code, is amended to
23 read as follows:

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

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

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

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

6 SECTION 5. Section 13.022, Utilities Code, is amended to
7 read as follows:

8 Sec. 13.022. QUALIFICATIONS. (a) The counselor
9 [~~counsellor~~] must:

- 10 (1) be licensed to practice law in this state;
11 (2) have demonstrated a strong commitment to and
12 involvement in efforts to safeguard the rights of the public; and
13 (3) possess the knowledge and experience necessary to
14 practice effectively in utility proceedings.

15 (b) A person is not eligible for appointment as counselor
16 [~~counsellor~~] if:

- 17 (1) the person or the person's spouse:
18 (A) is employed by or participates in the
19 management of a business entity or other organization that is
20 regulated by or receives funds from the commission;

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

24 (i) a business entity or other organization
25 that is regulated by or receives funds from the commission or the
26 office; or

27 (ii) a utility competitor, utility

1 supplier, or other entity affected by a commission decision in a
2 manner other than by the setting of rates for that class of
3 customer;

4 (C) uses or receives a substantial amount of
5 tangible goods, services, or funds from the commission or the
6 office, other than compensation or reimbursement authorized by law
7 for service as counselor [~~counsellor~~] or for commission membership,
8 attendance, or expenses; or

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

15 (2) the person is not qualified to serve under Section
16 13.042.

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

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

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

26 (2) divests the person or the person's spouse of the
27 ownership or control:

1 (A) before beginning service; or

2 (B) if the person is already serving, within a
3 reasonable time.

4 SECTION 6. Section 13.023, Utilities Code, is amended to
5 read as follows:

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

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

11 (2) is ineligible for service as counselor under
12 [~~violates a prohibition provided by~~] Section 13.022, 13.042, or
13 13.043; or

14 (3) cannot discharge the counselor's [~~counsellor's~~]
15 duties for a substantial part of the term for which the counselor
16 [~~counsellor~~] is appointed because of illness or disability.

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

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

25 SECTION 7. Section 13.024, Utilities Code, is amended to
26 read as follows:

27 Sec. 13.024. PROHIBITED ACTS. (a) The counselor

1 ~~[counsellor]~~ may not have a direct or indirect interest in a utility
2 company regulated under this title, its parent, or its subsidiary
3 companies, corporations, or cooperatives or a utility competitor,
4 utility supplier, or other entity affected in a manner other than by
5 the setting of rates for that class of customer.

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

8 SECTION 8. Section 13.041(a), Utilities Code, is amended to
9 read as follows:

10 (a) The counselor ~~[counsellor]~~ may employ lawyers,
11 economists, engineers, consultants, statisticians, accountants,
12 clerical staff, and other employees as the counselor ~~[counsellor]~~
13 considers necessary to carry out this chapter.

14 SECTION 9. Section 13.042, Utilities Code, is amended to
15 read as follows:

16 Sec. 13.042. CONFLICT OF INTEREST ~~[RELATIONSHIP WITH TRADE~~
17 ~~ASSOCIATION]~~. (a) In this section, "Texas trade association"
18 means a cooperative and voluntarily joined statewide association of
19 business or professional competitors in this state designed to
20 assist its members and its industry or profession in dealing with
21 mutual business or professional problems and in promoting their
22 common interest.

23 (b) A person may not serve as counselor ~~[counsellor]~~ or be
24 an employee of the office employed in a "bona fide executive,
25 administrative, or professional capacity," as that phrase is used
26 for purposes of establishing an exemption to the overtime
27 provisions of the federal Fair Labor Standards Act of 1938 (29

1 U.S.C. Section 201 et seq.) [~~who is exempt from the state's position~~
2 ~~classification plan or is compensated at or above the amount~~
3 ~~prescribed by the General Appropriations Act for step 1, salary~~
4 ~~group 17, of the position classification salary schedule]~~ if the
5 person is:

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

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

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

15 SECTION 10. Section 13.044, Utilities Code, is amended to
16 read as follows:

17 Sec. 13.044. CAREER LADDER PROGRAM; PERFORMANCE
18 EVALUATIONS; MERIT PAY. (a) The counselor [~~counsellor~~] or the
19 counselor's [~~counsellor's~~] designee shall develop an intra-agency
20 career ladder program that addresses opportunities for mobility and
21 advancement for office employees. The program shall require
22 intra-agency postings of each position concurrently with any public
23 posting.

24 (b) The counselor [~~counsellor~~] or the counselor's
25 [~~counsellor's~~] designee shall develop a system of annual
26 performance evaluations that are based on documented employee
27 performance. Merit pay for office employees must be based on the

1 system established under this subsection.

2 SECTION 11. Section 13.045(a), Utilities Code, is amended
3 to read as follows:

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

10 SECTION 12. Section 13.063, Utilities Code, is amended to
11 read as follows:

12 Sec. 13.063. ANNUAL REPORTS [~~REPORT~~]. (a) The office shall
13 prepare annually a complete and detailed written report accounting
14 for all funds received and disbursed by the office during the
15 preceding fiscal year. The annual report must meet the reporting
16 requirements applicable to financial reporting in the General
17 Appropriations Act.

18 (b) The office shall prepare annually a report on the
19 office's activities during the preceding year and submit the report
20 to the standing legislative committees that have jurisdiction over
21 the office, the house appropriations committee, the senate finance
22 committee, and the Sunset Advisory Commission. At a minimum, the
23 report must include:

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

26 (2) the number of hours billed by the office for
27 representing residential or small commercial consumers in

1 proceedings;

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

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

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

9 Sec. 13.064. PUBLIC HEARING. (a) The office annually shall
10 conduct a public hearing to assist the office in developing a plan
11 of priorities and to give the public, including residential and
12 small commercial consumers, an opportunity to comment on the
13 office's functions and effectiveness.

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

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

19 SECTION 14. Section 33.123(d), Utilities Code, is amended
20 to read as follows:

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

1 commission enters its final order.

2 SECTION 15. 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 16. This Act takes effect September 1, 2005.