

By: Nelson

S.B. No. 409

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the continuation and functions of the office of public
3 utility counsel.

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

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

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

12 SECTION 2. Subchapter A, Chapter 13, Utilities Code, is
13 amended by adding Sections 13.004, 13.005, 13.006, and 13.007 to
14 read as follows:

15 Sec. 13.004. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

16 (a) The counsellor shall develop and implement a policy to
17 encourage the use of appropriate alternative dispute resolution
18 procedures under Chapter 2009, Government Code, to assist in the
19 resolution of 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 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" means
4 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 shall
3 prepare annually a complete and detailed written report accounting
4 for all funds received and disbursed by the office during the
5 preceding fiscal year. The annual report must meet the reporting
6 requirements applicable to financial reporting in the General
7 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 shall
27 conduct a public hearing to assist the office in developing a plan

1 of priorities and to give the public, including residential and
2 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. Section 13.022(c), Utilities Code, is repealed.

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

19 SECTION 9. This Act takes effect September 1, 2005.