

1-1 By: Nelson S.B. No. 409
1-2 (In the Senate - Filed February 14, 2005; February 15, 2005,
1-3 read first time and referred to Committee on Government
1-4 Organization; April 25, 2005, reported favorably by the following
1-5 vote: Yeas 7, Nays 0; April 25, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the continuation and functions of the Office of Public
1-9 Utility Counsel.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 13.002, Utilities Code, is amended to
1-12 read as follows:

1-13 Sec. 13.002. APPLICATION OF SUNSET ACT. The Office of
1-14 Public Utility Counsel is subject to Chapter 325, Government Code
1-15 (Texas Sunset Act). Unless continued in existence as provided by
1-16 that chapter, the office is abolished and this chapter expires
1-17 September 1, 2011 [~~2005~~].

1-18 SECTION 2. Subchapter A, Chapter 13, Utilities Code, is
1-19 amended by adding Sections 13.004 through 13.007 to read as
1-20 follows:

1-21 Sec. 13.004. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

1-22 (a) The counsellor shall develop and implement a policy to
1-23 encourage the use of appropriate alternative dispute resolution
1-24 procedures under Chapter 2009, Government Code, to assist in the
1-25 resolution of internal disputes under the office's jurisdiction.

1-26 (b) The office's procedures relating to alternative dispute
1-27 resolution must conform, to the extent possible, to any model
1-28 guidelines issued by the State Office of Administrative Hearings
1-29 for the use of alternative dispute resolution by state agencies.

1-30 (c) The counsellor shall designate a trained person to:

1-31 (1) coordinate the implementation of the policy
1-32 adopted under Subsection (a);

1-33 (2) serve as a resource for any training needed to
1-34 implement the procedures for alternative dispute resolution; and

1-35 (3) collect data concerning the effectiveness of those
1-36 procedures, as implemented by the office.

1-37 Sec. 13.005. COMPLAINTS. (a) The office shall maintain a
1-38 system to promptly and efficiently act on complaints filed with the
1-39 office that the office has the authority to resolve. The office
1-40 shall maintain information about parties to the complaint, the
1-41 subject matter of the complaint, a summary of the results of the
1-42 review or investigation of the complaint, and its disposition.

1-43 (b) The office shall make information available describing
1-44 its procedures for complaint investigation and resolution.

1-45 (c) The office shall periodically notify the complaint
1-46 parties of the status of the complaint until final disposition.

1-47 Sec. 13.006. TECHNOLOGY POLICY. The counsellor shall
1-48 implement a policy requiring the office to use appropriate
1-49 technological solutions to improve the office's ability to perform
1-50 its functions. The policy must ensure that the public is able to
1-51 interact with the office on the Internet.

1-52 Sec. 13.007. MANAGEMENT AUDIT. (a) The state auditor, in
1-53 coordination with the Legislative Budget Board, shall conduct a
1-54 management audit of the office to evaluate the office's performance
1-55 measures to determine the accuracy of calculations and whether the
1-56 measures accurately depict the impact of the office. The audit must
1-57 include an estimation of savings to residential and small
1-58 commercial consumers directly attributable to office participation
1-59 in proceedings.

1-60 (b) The state auditor must complete the audit required by
1-61 this section and deliver a report on the audit to the governor,
1-62 lieutenant governor, and speaker of the house of representatives
1-63 not later than August 1, 2006.

1-64 (c) This section expires September 1, 2006.

2-1 SECTION 3. Section 13.023, Utilities Code, is amended by
 2-2 amending Subsection (a) and by adding Subsection (c) to read as
 2-3 follows:

2-4 (a) It is a ground for removal from office if the
 2-5 counsellor:

2-6 (1) does not have at the time of taking office
 2-7 [~~appointment~~] or maintain during service as counsellor the
 2-8 qualifications required by Section 13.022;

2-9 (2) is ineligible for service as counsellor under
 2-10 [~~violates a prohibition provided by~~] Section 13.022, 13.042, or
 2-11 13.043; or

2-12 (3) cannot discharge the counsellor's duties for a
 2-13 substantial part of the term for which the counsellor is appointed
 2-14 because of illness or disability.

2-15 (c) If an employee has knowledge that a potential ground for
 2-16 removal of the counsellor exists, the employee shall notify the
 2-17 next highest ranking employee of the office, other than the
 2-18 counsellor, who shall then notify the governor and the attorney
 2-19 general that a potential ground for removal exists.

2-20 SECTION 4. Section 13.042, Utilities Code, is amended to
 2-21 read as follows:

2-22 Sec. 13.042. CONFLICT OF INTEREST [~~RELATIONSHIP WITH TRADE~~
 2-23 ~~ASSOCIATION~~]. (a) In this section, "Texas trade association"
 2-24 means a cooperative and voluntarily joined statewide association of
 2-25 business or professional competitors in this state designed to
 2-26 assist its members and its industry or profession in dealing with
 2-27 mutual business or professional problems and in promoting their
 2-28 common interest.

2-29 (b) A person may not serve as counsellor or be an employee of
 2-30 the office employed in a "bona fide executive, administrative, or
 2-31 professional capacity," as that phrase is used for purposes of
 2-32 establishing an exemption to the overtime provisions of the federal
 2-33 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.)
 2-34 [~~who is exempt from the state's position classification plan or is~~
 2-35 ~~compensated at or above the amount prescribed by the General~~
 2-36 ~~Appropriations Act for step 1, salary group 17, of the position~~
 2-37 ~~classification salary schedule] if the person is:~~

2-38 (1) an officer, employee, or paid consultant of a
 2-39 Texas trade association in the field of utilities; or

2-40 (2) the spouse of an officer, manager, or paid
 2-41 consultant of a Texas trade association in the field of utilities.

2-42 (c) A person may not serve as counsellor or act as the
 2-43 general counsel to the office if the person is required to register
 2-44 as a lobbyist under Chapter 305, Government Code, because of the
 2-45 person's activities for compensation on behalf of a profession
 2-46 related to the operation of the office.

2-47 SECTION 5. Section 13.063, Utilities Code, is amended to
 2-48 read as follows:

2-49 Sec. 13.063. ANNUAL REPORTS [~~REPORT~~]. (a) The office
 2-50 shall prepare annually a complete and detailed written report
 2-51 accounting for all funds received and disbursed by the office
 2-52 during the preceding fiscal year. The annual report must meet the
 2-53 reporting requirements applicable to financial reporting in the
 2-54 General Appropriations Act.

2-55 (b) The office shall prepare annually a report on the
 2-56 office's activities during the preceding year and submit the report
 2-57 to the standing legislative committees that have jurisdiction over
 2-58 the office, the house appropriations committee, the senate finance
 2-59 committee, and the Sunset Advisory Commission. At a minimum, the
 2-60 report must include:

2-61 (1) a list of the types of activities conducted by the
 2-62 office and the time spent by the office on each activity;

2-63 (2) the number of hours billed by the office for
 2-64 representing residential or small commercial consumers in
 2-65 proceedings;

2-66 (3) the number of staff positions and the type of work
 2-67 performed by each position; and

2-68 (4) the office's rate of success in representing
 2-69 residential or small commercial consumers in appealing commission

3-1 decisions.

3-2 SECTION 6. Subchapter D, Chapter 13, Utilities Code, is
3-3 amended by adding Section 13.064 to read as follows:

3-4 Sec. 13.064. PUBLIC HEARING. (a) The office annually
3-5 shall conduct a public hearing to assist the office in developing a
3-6 plan of priorities and to give the public, including residential
3-7 and small commercial consumers, an opportunity to comment on the
3-8 office's functions and effectiveness.

3-9 (b) A public hearing held under this section is not subject
3-10 to Chapter 551, Government Code.

3-11 (c) The office shall file notice of a public hearing held
3-12 under this section with the secretary of state for publication in
3-13 the Texas Register.

3-14 SECTION 7. Subsection (c), Section 13.022, Utilities Code,
3-15 is repealed.

3-16 SECTION 8. The change in law made by this Act relating to
3-17 qualifications and eligibility to serve as public utility counsel
3-18 or to be employed with the Office of Public Utility Counsel applies
3-19 only to a counsellor or employee appointed or employed after the
3-20 effective date of this Act. A counsellor or employee of the Office
3-21 of Public Utility Counsel who is serving or employed on the
3-22 effective date of this Act is governed by the law as it existed
3-23 immediately before the effective date of this Act, and the former
3-24 law is continued in effect for that purpose.

3-25 SECTION 9. This Act takes effect September 1, 2005.

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