

BILL ANALYSIS

C.S.H.B. 3838
By: Hilderbran
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Office of Public Interest Counsel (OPIC) was created to ensure that the Texas Commission on Environmental Quality (TCEQ) promotes the public interest and is responsive to citizens' environmental concerns. Currently, OPIC represents the public interest, is a party to all proceedings before TCEQ, and may suggest legislative and regulatory changes.

C.S.H.B. 3838 transfers to the Office of Public Utility Counsel OPIC's powers and duties to represent residential and small commercial consumers in certain water or sewer utility service matters before TCEQ.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority previously granted to the Office of Public Interest Counsel is transferred to the Office of Public Utility Counsel in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 3838 transfers from the Office of Public Interest Counsel (OPIC) to the Office of Public Utility Counsel (OPUC), not later than January 1, 2010: the powers, duties, functions, programs, and activities related to regulated water and sewer services; all related obligations and contracts, all related property and records in the custody of OPIC and all funds appropriated by the legislature for those items; and out of amounts appropriated to the Texas Commission on Environmental Quality (TCEQ) by the 81st Legislature, Regular Session, 2009, that may be used in relation to a transferred power, duty, function, program, or activity \$80,847 for the state fiscal year ending August 31, 2010, and \$80,847 for the state fiscal year ending August 31, 2011. The bill specifies that a rule or form adopted by OPIC that relates to a transferred power, duty, function, program, or activity is a rule or form of OPUC and remains in effect until altered by OPUC. The bill specifies that a reference in law to the Office of Public Interest Counsel that relates to a transferred power, duty, function, program, or activity means the Office of Public Utility Counsel.

C.S.H.B. 3838 amends the Water Code to exempt an informal proceeding under state law on water rates and services from the provision that requires the OPIC to represent the public interest and be a party to all proceedings before TCEQ.

C.S.H.B. 3838 amends provisions relating to water rates and services to require OPUC to represent the interests of residential and small commercial consumers. The bill requires OPUC to assess the effect of water and sewer utility rate changes and other regulatory actions on residential consumers in Texas, and to advocate in OPUC's own name a position determined by the counsellor to be most advantageous to a substantial number of residential consumers. The bill authorizes OPUC to appear or intervene, as a party or otherwise, as a matter of right on behalf of residential and small commercial consumers in any proceeding before TCEQ, and to initiate or intervene as a matter of right or otherwise appear in a judicial proceeding that involves an action taken by an administrative agency in a proceeding or in which the counsellor

determines that residential consumers or small commercial consumers are in need of representation.

C.S.H.B. 3838 specifies that OPUC is entitled to the same access as a party, other than TCEQ staff, to records gathered by TCEQ, and is entitled to discovery of any nonprivileged matter that is relevant to the subject matter of a proceeding or petition before TCEQ. The bill authorizes OPUC to represent an individual residential or small commercial consumer with respect to the consumer's disputed complaint concerning retail services that is unresolved before TCEQ. The bill authorizes OPUC to recommend legislation to the legislature that it determines would positively affect the interests of residential and small commercial consumers. The bill specifies that provisions relating to OPUC's powers and duties do not limit the authority of TCEQ to represent residential or small commercial consumers. The bill specifies that the appearance of the counsellor in a proceeding does not preclude the appearance of other parties on behalf of residential or small commercial consumers. The bill prohibits the counsellor from being grouped with any other party.

C.S.H.B. 3838 defines "counsellor" and "office" by reference to the Utilities Code.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3838 differs from the original by transferring from the Office of Public Interest Counsel (OPIC) to the Office of Public Utility Counsel (OPUC) the powers, duties, functions, programs, and activities related to regulated water and sewer services, rather than abolishing OPIC and transferring all of its powers, duties, functions, programs, and activities to OPUC as in the original. The substitute differs from the original by making conforming changes in provisions transferring obligations, contracts, property, records, and funds relating to the change from abolishment of OPIC in the original to a transfer of the OPIC powers, duties, functions, programs, and activities specified in the substitute.