

## **BILL ANALYSIS**

C.S.H.B. 3754  
By: Hilderbran  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Office of Public Interest Counsel was created to ensure that the Texas Commission on Environmental Quality (TCEQ) promotes the public interest and is responsive to citizens' environmental concerns. Currently, the office represents the public interest, is a party to all proceedings before TCEQ, and is authorized to suggest legislation and regulatory changes. Some observers express concern that this system is not meeting expectations. C.S.H.B. 3754 transfers the powers and duties of the Office of Public Interest Counsel to the Office of Public Utility Counsel 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. 3754 amends the Water Code to establish the Office of Public Utility Counsel and require the office to represent the interests of residential and small commercial consumers with respect to water rates and services. The bill sets out the following provisions:

- requires the office to assess the effect of utility rate changes and other regulatory actions on residential consumers in Texas;
- requires the office to advocate in the office's own name a position determined by the counsellor to be most advantageous to a substantial number of residential consumers;
- authorizes the office to appear or intervene, as a party or otherwise, as a matter of right on behalf of residential consumers, as a class, in any proceeding before the Texas Commission on Environmental Quality (TCEQ), including an alternative dispute resolution proceeding, and on behalf of small commercial consumers, as a class, in any proceeding in which the counsellor determines that small commercial consumers are in need of representation, including an alternative dispute resolution proceeding;
- authorizes the office 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, including an alternative dispute resolution proceeding, in which the counsellor is authorized to appear or in which the counsellor determines that residential consumers or small commercial consumers are in need of representation;
- entitles the office to the same access as a party, other than TCEQ staff, to records gathered by TCEQ;
- entitles the office to discovery of any nonprivileged matter that is relevant to the subject matter of a proceeding or petition before TCEQ;
- authorizes the office 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; and

- authorizes the office to recommend legislation to the legislature that the office determines would positively affect the interests of residential and small commercial consumers.

C.S.H.B. 3754 establishes that its provisions do not limit the authority of TCEQ to represent residential or small commercial consumers and 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. 3754 provides for the meanings of "counsellor" and "office" by reference to the Utilities Code.

C.S.H.B. 3754 establishes, in a provision requiring the Office of Public Interest Counsel to represent the public interest and be a party to all proceedings before TCEQ, that the proceedings are proceedings other than a proceeding under state law relating to water rates and services.

C.S.H.B. 3754 transfers, not later than January 1, 2012, the following from the Office of Public Interest Counsel to the Office of Public Utility Counsel:

- the powers, duties, functions, programs, and activities of the Office of Public Interest Counsel relating to water and sewer services regulated under state law relating to water rates and services;
- all obligations and contracts of the Office of Public Interest Counsel that are related to a power, duty, function, program, or activity transferred under the bill's provisions;
- all property and records in the custody of the Office of Public Interest Counsel that are related to a power, duty, function, program, or activity transferred under the bill's provisions and all funds appropriated by the legislature for that power, duty, function, program, or activity; and
- out of amounts appropriated to TCEQ by the 82nd Legislature, Regular Session, 2011, that may be used in relation to a power, duty, function, program, or activity transferred under the bill's provisions, an amount unspecified for the state fiscal year ending August 31, 2012, and an amount unspecified for the state fiscal year ending August 31, 2013.

C.S.H.B. 3754 establishes that a rule or form adopted by the Office of Public Interest Counsel that relates to a power, duty, function, program, or activity transferred under the bill's provisions is a rule or form of the Office of Public Utility Counsel and remains in effect until altered by the Office of Public Utility Counsel. The bill establishes that a reference in law to the Office of Public Interest Counsel that relates to a power, duty, function, program, or activity transferred under the bill's provisions means the Office of Public Utility Counsel.

#### **EFFECTIVE DATE**

September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3754, in a provision of law requiring the counsel, which refers to the Office of Public Utility Counsel as provided in the substitute, to represent the public interest and be a party to all proceedings before the Texas Commission on Environmental Quality (TCEQ), contains a provision not included in the original establishing that this provision is inapplicable to proceedings under state law relating to water rates and services.

C.S.H.B. 3754 omits a provision included in the original repealing sections of the Water Code

relating to staffing and heading of the office of public interest counsel.

C.S.H.B. 3754 differs from the original by transferring, not later than January 1, 2012, the powers, duties, functions, programs, and activities relating to water and sewer services regulated under the Water Code, and all related obligations and contracts from the Office of Public Interest Counsel to the Office of Public Utility Counsel, whereas the original abolishes, on January 1, 2012, the Office of Public Interest Counsel and transfers the powers, duties, functions, programs, and activities of that office and all related obligations and contracts of that office or TCEQ to the Office of Public Utility Counsel.

C.S.H.B. 3754 differs from the original by transferring all property and records in the custody of the Office of Public Interest Counsel that are related to a power, duty, function, program, or activity transferred under the substitute's provisions and all funds appropriated by the legislature for that power, duty, function, program, or activity, whereas the original transfers all property and records in the custody of the Office of Public Interest Counsel or TCEQ that are related to a power, duty, function, program, or activity transferred under the original's provisions.

C.S.H.B. 3754 differs from the original by establishing that a rule or form adopted by the Office of Public Interest Counsel that relates to a power, duty, function, program, or activity transferred under the substitute's provisions is a rule or form of the Office of Public Utility Counsel and remains in effect until altered by the Office of Public Utility Counsel, whereas the original applies to a rule or form adopted by the Office of Public Interest Counsel or TCEQ.

C.S.H.B. 3754 differs from the original by establishing that a reference in law to the Office of Public Interest Counsel that relates to a power, duty, function, program, or activity transferred under the substitute's provisions means the Office of Public Utility Counsel, whereas the original establishes that a reference in law to the Office of Public Interest Counsel means the Office of Public Utility Counsel.

C.S.H.B. 3754 differs from the original in nonsubstantive ways.