

BILL ANALYSIS

H.B. 1600
By: Cook
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Public Utility Commission (PUC) oversees electric and telecommunications companies in Texas. The Legislature created PUC in 1975 to regulate rates and services of monopoly utilities as a substitute for competition. Since then, legislative changes have restructured and deregulated major portions of electric and telecommunications markets, and PUC's focus has evolved to oversee aspects of these changes.

The 82nd Legislature reviewed PUC under the Sunset Act in 2011, but the Sunset bill failed to pass. The Legislature continued PUC for two years and directed the Sunset Commission to consider the continuing appropriateness of Sunset Commission recommendations from the last biennium. The Sunset Commission concluded that most of these recommendations continue to be appropriate, with limited changes. This bill contains those recommendations.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 1.03, SECTION 1.04, SECTION 1.07, SECTION 1.09, SECTION 2.13, SECTION 2.28, SECTION 2.63, and SECTION 2.66 of this bill.

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is modified in SECTION 2.13, SECTION 2.28, SECTION 2.63, and SECTION 2.66 of this bill.

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is transferred to the Public Utility Commission of Texas in SECTION 2.17, SECTION 2.19, SECTION 2.22, SECTION 2.26, SECTION 2.27, SECTION 2.31, SECTION 2.34, SECTION 2.35, SECTION 2.37, SECTION 2.39, SECTION 2.40, SECTION 2.41, SECTION 2.53, SECTION 2.54, SECTION 2.60, SECTION 2.77, SECTION 2.79, and SECTION 2.80 of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality and the Public Utility Commission in SECTION 2.92 of this bill.

Rulemaking authority is expressly granted to the Office of Public Interest Counsel of the Texas Commission on Environmental Quality and the Office of Public Utility Counsel in SECTION 2.94 of this bill.

ANALYSIS

Sunset Provision.

HB 1600 continues the Public Utility Commission for 10 years.

Prohibits PUC commissioners from going to work for the Electric Reliability Council of Texas (ERCOT) for a specific period of time.

HB 1600 prohibits PUC commissioners from being employed by ERCOT for two years after leaving PUC.

Authorizes PUC to issue emergency cease-and-desist orders to electric industry participants.

HB 1600 authorizes PUC to issue emergency cease-and-desist orders to electric industry participants and defines notice and hearing requirements for such orders. The bill requires notice of the proposed order not later than the 10th day before a hearing if the Commission requires notice and hearing before issuing an order. The bill requires that, if the Commission issues such an order without a hearing, the person affected by the order may request a hearing not later than 30 days after receiving the order, and the Commission must then set the hearing not later than 10 days after receiving the request or a date agreed to by the person and the Commission. The bill allows the Commission to delegate its authority to issue orders to the executive director. The bill allows PUC to use this authority if an electric industry participant's actions would pose a threat to continuous and adequate electric service; is hazardous; creates an immediate danger to public safety; or can reasonably be expected to cause immediate harm to consumers that cannot be rectified by monetary compensation.

Increases PUC's oversight of ERCOT's budget and use of debt financing.

HB 1600 requires ERCOT to submit to PUC its entire proposed annual budget. PUC shall review the proposed budgets either annually or biennially, and may approve, disapprove, or modify any item. The bill requires PUC to adopt rules establishing the type of information ERCOT must provide and timelines for submission. The bill requires PUC to establish a procedure to allow public participation in the budget review process. Except as otherwise agreed to by PUC and ERCOT, the bill requires ERCOT to submit for PUC review and approval proposals for obtaining debt financing or for refinancing existing debt. The bill requires ERCOT to develop proposed performance measures to track its operations and submit the proposed measures to PUC for review and approval. The bill requires PUC to review ERCOT's performance as part of the budget review process. The bill requires PUC to prepare a report at the time it approves ERCOT's budget detailing ERCOT's performance and to submit the report to the Lt. Governor, Speaker, and House and Senate jurisdictional committees. The bill also specifies that the review and approval of ERCOT's proposed budget is not considered a contested case.

Provides for adjustment of ERCOT's System Administration Fee.

HB 1600 establishes that, after approving ERCOT's budget, the Commission shall authorize ERCOT to charge a reasonable and competitively neutral System Administration Fee within a Commission-determined range to fund ERCOT's approved budget to cover ERCOT's costs. The bill establishes that the Commission must require ERCOT to closely match actual revenues generated by the fee and other sources of revenue with revenue necessary to fund the budget, taking into account the effect of a fee change on market participants and consumers, to avoid ending a budget year with surplus or insufficient funds. The bill refers to the Commission's authority to charge a fee instead of a rate. The bill requires PUC to require ERCOT to submit reports to PUC, on a schedule determined by PUC, comparing actual expenditures with budgeted expenditures. The bill also specifies that the process for setting the fee range is not considered a contested case.

Eliminates two PUC reporting provisions.

HB 1600 deletes the provision that requires PUC to report to the Electric Utility Restructuring Legislative Oversight Committee if the System Benefit Fund fee is insufficient to fund the purposes set forth in statute to the extent that statute specifies. The bill also repeals a section of code related to PUC promoting public awareness of changes in the telecommunications market

and requiring PUC to compile a report on customer service at least once each year showing the comparative customer information on the telecommunications market.

Requires PUC to establish a renewal process for certain telecommunication providers.

HB 1600 requires PUC by rule to provide for the renewal of certificates for holders of a Certificate of Operating Authority and holders of a Service Provider Certificate of Operating Authority on a one-time or regular basis. The bill requires PUC by rule to require these holders to file with PUC their name, address, and annual report to renew their certificate. The bill specifies that the rules must require PUC to allow an extension of the filing deadline by the number of days prescribed by the rule; and state that a certificate will no longer be valid after the extension period if a certificate holder fails to meet the renewal requirements. The bill allows a certificate holder whose certificate is invalidated to obtain a new certificate only by complying with the requirements for an original certificate. The bill requires PUC to adopt rules to implement the renewal process as soon as practicable, and requires companies to file information for renewal not later than January 1, 2014. The bill provides that the rules must specify the timing of subsequent filings if PUC requires regular filings.

Moves water utility regulation from the Texas Commission on Environmental Quality (TCEQ) to PUC.

HB 1600 transfers responsibility for rate and other economic regulation of water and wastewater utilities from TCEQ to PUC. The bill deletes language that provides TCEQ general jurisdiction over administration of the state's water rate program under Chapter 13 of the Water Code. The bill also deletes language for TCEQ to delegate authority to the State Office of Administrative Hearings to issue interlocutory orders for interim rates under Chapter 13 of the Water Code.

The bill adds references to PUC in certain definitions in the Water Code relating to water utility regulation. The bill provides PUC the authority to employ staff to carry out its water utility duties and provides for PUC's executive director and staff to gather information related to water utility matters within PUC's jurisdiction and conforms language to reflect the respective duties of PUC and TCEQ. The bill delineates the respective powers of PUC and TCEQ in regulating water and sewer utilities under each agency's jurisdiction, including ratemaking and other economic regulation for PUC and safe drinking water and environmental protection for TCEQ. The bill provides for PUC to consult with TCEQ as necessary to carry out its duties of regulating water and sewer utilities. The bill specifies that PUC may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to issue interlocutory orders related to interim rates under Chapter 13 of the Water Code.

The bill adds references to PUC for overseeing aspects of water and sewer utilities, including jurisdiction over certain water supply or sewer service corporations; original and appellate rate jurisdiction; provisions dealing with jurisdiction of municipalities and assistance to municipalities and counties; recordkeeping, reporting, and filing requirements; the responsibility to provide electronic copies of rate information; matters involving certain utility billing and collection provisions; provisions for setting rates and ensuring compliance with rate regulation; matters involving certificates of convenience and necessity and processes for revocation and decertification; oversight of financial, managerial, and technical practices and the sale of property or mergers of water or sewer utilities; matters relating to jurisdiction over affiliated interest; supervision of certain utilities; submetering and nonsubmetering for apartments, manufactured housing, and other multiple use facilities; and matters related to privatization contracts by eligible cities.

The bill provides for PUC to authorize an emergency rate increase in certain circumstances. The bill also provides authority to PUC regarding complaints and hearings involving the denial of water to a person entitled to use water from various sources and provides for TCEQ to participate in the hearing to present evidence on the availability of water requested by the petitioner. The bill provides for PUC to fix reasonable rates for furnishing of raw or treated water for any purpose mentioned in Chapters 11 or 12 of the Water Code dealing with water rights. The bill

also provides for PUC to grant single certification to certain municipalities. The bill provides for the appeal of rates established for drainage charges within an established service area but outside municipal boundaries under the appellate provisions of Chapter 13 of the Water Code. The bill also adds references to PUC to reflect its certification authority and appellate rate jurisdiction for certain special districts.

The bill provides for shared responsibility between PUC and TCEQ for matters including nonfunctioning systems; certain standards of service; emergency operations; notice of wholesale water supply contract; filing of a bankruptcy petition; foreclosure report; receivership; service improvements and interconnecting service; and certain enforcement provisions. The bill also provides for judicial review of a proceeding of PUC or TCEQ.

HB 1600 provides that, on September 1, 2014, the following are transferred from TCEQ to PUC: the powers, duties, functions, programs, and activities of TCEQ relating to the economic regulation of water and sewer utilities; any obligations and contracts of TCEQ that are directly related to the transfer; and all property and records of TCEQ that are related to the transfer and all funds appropriated for transferred responsibilities.

The bill requires the two agencies to enter into a memorandum of understanding by August 1, 2014 to identify the applicable powers and duties to be transferred; establish a plan for the identification and transfer of records, personnel, property, and unspent appropriations; and establish a plan for the transfer of pending applications, hearings, rulemakings, and orders. The bill provides that the memorandum of understanding is not required to be adopted by rule. HB 1600 provides that the executive directors of TCEQ and PUC may agree in the memorandum of understanding to transfer to PUC any personnel of TCEQ whose functions predominantly involve powers, duties, obligations, functions, and activities related to the economic regulation of water and sewer utilities.

The bill requires the two agencies to appoint a transition team to establish guidelines on how the agencies will cooperate on certain areas of responsibility in the regulation of water and wastewater utilities. The bill provides that a rule, form, policy, procedure, or decision of TCEQ related to a matter transferred to PUC remains in effect until amended or replaced by that agency. The bill requires the two agencies to adopt rules to implement the changes in law by February 1, 2015.

HB 1600 requires PUC to make a comparative analysis of its existing statutory ratemaking authority and its ratemaking authority after the transition to determine opportunities for procedural standardization. The bill requires PUC to report to the Legislature any recommendations to standardize ratemaking requirements for consideration by the 84th Legislature.

HB 1600 requires PUC to prepare a report detailing any staffing changes, including reductions, that the agency recommends related to the consolidation of water and wastewater utility regulation with PUC's existing ratemaking functions. The bill requires PUC to submit a report to the Legislative Budget Board and the Governor with its Legislative Appropriations Request for the 2016-2017 biennium.

Authorizes the Office of Public Utility Counsel (OPUC) to represent consumers in water utility cases.

HB 1600 deletes a reference to the TCEQ public interest advocate in working together with the TCEQ executive director and staff for the protection and representation of the public interest in water utility matters. The bill expands the role of OPUC to represent the interests of residential and small commercial consumers in water and wastewater utility matters. The bill provides for OPUC to assess the effect of utility rate changes and other regulatory actions on residential consumers; advocate on behalf of residential consumers; appear or intervene in proceedings on behalf of residential and small commercial consumers; initiate or intervene in judicial proceedings; have the same access as a party other than PUC, to records gathered by PUC; be

entitled to discovery of a nonprivileged matter relevant to a proceeding or petition before PUC; represent individual residential or small commercial consumers in disputed complaints before PUC; and recommend legislation that would positively affect the interests of residential and small commercial consumers.

The bill specifies that provisions relating to OPUC do not limit PUC's authority to represent residential or small commercial consumers and that the counsel's appearance in a proceeding does not preclude the appearance of other parties representing residential and small commercial consumers. The bill specifies that the counsel may not be grouped with any other party. The bill also includes OPUC in requirements to be notified regarding public hearings on the sale or merger of a water or sewer utility and regarding certain emergency rate increases.

HB 1600 provides that, on September 1, 2014, the following are transferred from TCEQ's Office of Public Interest Counsel to OPUC: the powers, duties, functions, programs, and activities of the Office of Public Interest Counsel relating to the representation of the public interest in matters related to the regulation of water and sewer utilities; any obligations and contracts of the Office of Public Interest Counsel that are directly related to the transfer; and all property and records of the Office of Public Interest Counsel that are related to the transfer and all funds appropriated for transferred responsibilities.

The bill requires the two agencies to enter into a memorandum of understanding (MOU) by August 1, 2014 to identify the applicable powers and duties to be transferred; and establish a plan for the identification and transfer of records, personnel, property, and unspent appropriations. The bill provides that the MOU is not required to be adopted by rule. HB 1600 provides that the Office of Public Interest Counsel of TCEQ and OPUC may agree in the MOU to transfer to OPUC any personnel of the Office of Public Interest Counsel whose functions predominantly involve powers, duties, obligations, functions, and activities related to the representation of the public interest in matters related to the economic regulation of water and sewer utilities.

The bill requires TCEQ and OPUC to appoint a transition team to accomplish the purposes of the transfer. The bill provides that a rule, form, policy, procedure, or decision of the office of public interest counsel of TCEQ related to a matter transferred to OPUC remains in effect until amended or replaced by that agency. The bill requires the two agencies to adopt rules to implement the changes in law by February 1, 2015.

Repeals the following statutory provision.

Section 64.003, Utilities Code is repealed.

EFFECTIVE DATE

September 1, 2013.