

By: Turner of Harris

H.B. No. 1963

A BILL TO BE ENTITLED

AN ACT

relating to the election of a commissioner of the Public Utility Commission of Texas.

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

SECTION 1. Section 12.051, Utilities Code, is amended to read as follows:

Sec. 12.051. ELECTION [~~APPOINTMENT~~]; TERM. [~~(a)~~] The commission is composed of one commissioner elected by the qualified voters for statewide offices and propositions at the general election for state and county officers. The commissioner serves a two-year term [~~three commissioners appointed by the governor with the advice and consent of the senate~~].

[~~(b) An appointment to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.~~]

[~~(c) Commissioners serve staggered, six-year terms.~~]

SECTION 2. Section 12.052, Utilities Code, is amended to read as follows:

Sec. 12.052. DEPUTY COMMISSIONER [~~PRESIDING OFFICER~~]. (a) The commissioner shall appoint a deputy commissioner. In order to serve as deputy commissioner, a person must be eligible under Section 12.053. The deputy commissioner shall take the oath of office required of the commissioner [~~governor shall designate a commissioner as the presiding officer~~].

1 (b) The deputy commissioner [~~presiding officer~~] serves in
2 that capacity at the will [~~pleasure~~] of the commissioner
3 [~~governor~~].

4 (c) The deputy commissioner shall perform duties as
5 assigned by the commissioner. In addition, the deputy commissioner
6 shall perform the duties assigned by law to the commissioner during
7 a necessary and unavoidable absence of the commissioner or during
8 the commissioner's inability to act.

9 (d) When the deputy commissioner is required by law to
10 perform the duties assigned by law to the commissioner, the deputy
11 commissioner has all rights, privileges, and responsibilities of
12 the commissioner.

13 (e) The state shall pay the expenses incurred by the deputy
14 commissioner while traveling on the business of the office under
15 the direction of the commissioner.

16 SECTION 3. Section 12.053, Utilities Code, is amended to
17 read as follows:

18 Sec. 12.053. [~~MEMBERSHIP~~] QUALIFICATIONS OF OFFICE. (a)
19 To be eligible for election to the office of commissioner or
20 appointment to the office of deputy[~~, a~~] commissioner, a person
21 must be:

- 22 (1) a qualified voter; and
23 (2) a citizen of the United States[~~, and~~
24 [~~(3) a representative of the general public~~].

25 (b) A person is not eligible for election to the office of
26 commissioner or appointment to the office of deputy [~~as a~~]
27 commissioner if the person:

1 (1) at any time during the two years preceding the date
2 of the person's election or the date of the person's appointment:

3 (A) personally served as an officer, director,
4 owner, employee, partner, or legal representative of a public
5 utility, affiliate, or direct competitor of a public utility; or

6 (B) owned or controlled, directly or indirectly,
7 stocks or bonds of any class with a value of \$10,000 or more in a
8 public utility, affiliate, or direct competitor of a public
9 utility; or

10 (2) is not qualified to serve under Section 12.151,
11 12.152, or 12.153.

12 SECTION 4. Section 12.054, Utilities Code, is amended to
13 read as follows:

14 Sec. 12.054. REMOVAL OF COMMISSIONER OR DEPUTY
15 COMMISSIONER. (a) It is a ground for removal from the office of
16 commissioner or deputy commissioner [~~the commission~~] if a person
17 [~~commissioner~~]:

18 (1) does not have at the time of election or
19 appointment or does not maintain during service in the office [~~on~~
20 ~~the commission~~] the qualifications required by Section 12.053;

21 (2) violates a prohibition provided by Section 12.053
22 or by Subchapter D; or

23 (3) cannot discharge the [~~commissioner's~~] duties of of
24 office for a substantial part of the term for which the person
25 [~~commissioner~~] is elected or appointed because of illness or
26 disability[~~, or~~

27 [~~(4) is absent from more than half of the regularly~~

1 ~~scheduled commission meetings that the commissioner is eligible to~~
2 ~~attend during a calendar year unless the absence is excused by~~
3 ~~majority vote of the commission].~~

4 (b) The validity of an action of the commissioner or deputy
5 commissioner [~~commission~~] is not affected by the fact that the
6 action is taken when a ground for removal of the commissioner or
7 deputy [~~a~~] commissioner exists.

8 (c) If the executive director has knowledge that a potential
9 ground for removal of the deputy commissioner exists, the executive
10 director shall notify the commissioner [~~presiding officer of the~~
11 ~~commission~~] of the potential ground. [~~The presiding officer shall~~
12 ~~then notify the governor and the attorney general that a potential~~
13 ~~ground for removal exists.~~] If the executive director has
14 knowledge that a potential ground for removal of the commissioner
15 exists [~~involves the presiding officer~~], the executive director
16 shall notify the deputy commissioner [~~next highest officer of the~~
17 ~~commission~~], who shall notify the governor and the attorney general
18 that a potential ground for removal exists.

19 SECTION 5. Section 12.055, Utilities Code, is amended to
20 read as follows:

21 Sec. 12.055. PROHIBITION ON SEEKING ANOTHER OFFICE. A
22 person may not seek nomination or election to another civil office
23 of this state or of the United States while serving as [~~a~~]
24 commissioner. If the [~~a~~] commissioner files for nomination or
25 election to another civil office of this state or of the United
26 States, the [~~person's~~] office of [~~as~~] commissioner immediately
27 becomes vacant [~~, and the governor shall appoint a successor~~].

1 SECTION 6. Section 12.056, Utilities Code, is amended to
2 read as follows:

3 Sec. 12.056. EFFECT OF VACANCY. If the office of
4 commissioner becomes vacant, the deputy commissioner shall:

5 (1) perform the duties assigned by law to the
6 commissioner for the remainder of the commissioner's term; and

7 (2) appoint a person who is eligible under Section
8 12.053 to the office of deputy commissioner. [~~A vacancy or~~
9 ~~disqualification does not prevent the remaining commissioner or~~
10 ~~commissioners from exercising the powers of the commission.~~]

11 SECTION 7. Section 12.057, Utilities Code, is amended to
12 read as follows:

13 Sec. 12.057. COMPENSATION. The annual salary of the
14 commissioner and the deputy commissioner [~~the commissioners~~] is
15 determined by the legislature.

16 SECTION 8. Section 12.059, Utilities Code, is amended to
17 read as follows:

18 Sec. 12.059. TRAINING PROGRAM [~~FOR COMMISSIONERS~~]. (a)
19 Before the [~~a~~] commissioner or deputy commissioner may assume the
20 [~~commissioner's~~] duties of office [~~and before the commissioner may~~
21 ~~be confirmed by the senate~~], the commissioner or deputy
22 commissioner must complete at least one course of the training
23 program established under this section.

24 (b) A training program established under this section must
25 [~~shall~~] provide information to the commissioner or deputy
26 commissioner regarding:

27 (1) the enabling legislation that created the

1 commission and the offices of commissioner and deputy commissioner
2 [~~its policymaking body to which the commissioner is appointed to~~
3 ~~serve~~];

4 (2) the programs operated by the commission;

5 (3) the role and functions of the commission;

6 (4) the rules of the commission with an emphasis on the
7 rules that relate to disciplinary and investigatory authority;

8 (5) the current budget for the commission;

9 (6) the results of the most recent formal audit of the
10 commission;

11 (7) the requirements of Chapters 551, 552, and 2001,
12 Government Code;

13 (8) the requirements of the conflict of interest laws
14 and other laws relating to public officials; and

15 (9) any applicable ethics policies adopted by the
16 commission or the Texas Ethics Commission.

17 (c) A person who is elected to the office of commissioner or
18 appointed to the office of deputy commissioner [~~commission~~] is
19 entitled to reimbursement, as provided by the General
20 Appropriations Act, for the travel expenses incurred in attending
21 the training program regardless of whether the attendance at the
22 program occurs before or after the person qualifies for the office.

23 SECTION 9. Section 12.101, Utilities Code, is amended to
24 read as follows:

25 Sec. 12.101. COMMISSION EMPLOYEES. The commission shall
26 employ:

27 (1) an executive director; and

1 (2) officers and other employees the commissioner
2 [~~commission~~] considers necessary to administer this title.

3 SECTION 10. Section 12.102, Utilities Code, is amended to
4 read as follows:

5 Sec. 12.102. DUTIES OF EMPLOYEES. The commissioner
6 [~~commission~~] shall develop and implement policies that clearly
7 separate the policymaking responsibilities of the commissioner
8 [~~commission~~] and the management responsibilities of the commission
9 employees.

10 SECTION 11. Section 12.151, Utilities Code, is amended to
11 read as follows:

12 Sec. 12.151. REGISTERED LOBBYIST. A person required to
13 register as a lobbyist under Chapter 305, Government Code, because
14 of the person's activities for compensation on behalf of a
15 profession related to the operation of the commission may not serve
16 as the commissioner or deputy [~~a~~] commissioner.

17 SECTION 12. Section 12.152, Utilities Code, is amended to
18 read as follows:

19 Sec. 12.152. CONFLICT OF INTEREST. (a) A person is not
20 eligible for election to the office of commissioner, for
21 appointment to the office of deputy [~~as a~~] commissioner, or for
22 employment in the position of executive director of the commission
23 if:

24 (1) the person serves on the board of directors of a
25 company that supplies fuel, utility-related services, or
26 utility-related products to regulated or unregulated electric or
27 telecommunications utilities; or

1 (2) the person or the person's spouse:

2 (A) is employed by or participates in the
3 management of a business entity or other organization that is
4 regulated by or receives funds from the commission;

5 (B) directly or indirectly owns or controls more
6 than a 10 percent interest or a pecuniary interest with a value
7 exceeding \$10,000 in:

8 (i) a business entity or other organization
9 that is regulated by or receives funds from the commission; or

10 (ii) a utility competitor, utility
11 supplier, or other entity affected by a commission decision in a
12 manner other than by the setting of rates for that class of
13 customer;

14 (C) uses or receives a substantial amount of
15 tangible goods, services, or funds from the commission, other than
16 compensation or reimbursement authorized by law for commission
17 membership, attendance, or expenses; or

18 (D) notwithstanding Paragraph (B), has an
19 interest in a mutual fund or retirement fund in which more than 10
20 percent of the fund's holdings at the time of the person's election,
21 appointment, or employment is in a single utility, utility
22 competitor, or utility supplier in this state and the person does
23 not disclose this information to the governor, senate, commission,
24 or other entity, as appropriate.

25 (b) A person otherwise ineligible because of Subsection
26 (a)(2)(B) may be elected to the office of commissioner, appointed
27 to the office of deputy [~~commission and serve as a~~] commissioner, or

1 ~~[may be]~~ employed as executive director, and may serve in that
2 office or position, if the person:

3 (1) notifies the attorney general ~~[and commission]~~
4 that the person is ineligible because of Subsection (a)(2)(B); and

5 (2) divests the person or the person's spouse of the
6 ownership or control:

7 (A) before beginning service or employment; or

8 (B) if the person is already serving or employed,
9 within a reasonable time.

10 SECTION 13. Section 12.154(f), Utilities Code, is amended
11 to read as follows:

12 (f) It is not a violation of this section if the ~~[a]~~
13 commissioner or deputy commissioner ~~[commission employee]~~, on
14 becoming the owner of stocks, bonds, or another pecuniary interest
15 in a public utility, affiliate, or direct competitor of a public
16 utility otherwise than voluntarily, informs the ~~[commission and~~
17 ~~the]~~ attorney general of the ownership and divests the ownership or
18 interest within a reasonable time. It is not a violation of this
19 section if a commission employee, on becoming the owner of stocks,
20 bonds, or another pecuniary interest in a public utility,
21 affiliate, or direct competitor of a public utility otherwise than
22 voluntarily, informs the commission and the attorney general of the
23 ownership and divests the ownership or interest within a reasonable
24 time.

25 SECTION 14. Section 12.155(b), Utilities Code, is amended
26 to read as follows:

27 (b) The prohibition of Subsection (a)(1) applies until the:

1 (1) second anniversary of the date the commissioner
2 ceases to serve as ~~[a]~~ commissioner; and

3 (2) first anniversary of the date the employee's
4 employment with the commission or State Office of Administrative
5 Hearings ceases.

6 SECTION 15. Section 12.156, Utilities Code, is amended to
7 read as follows:

8 Sec. 12.156. QUALIFICATIONS AND STANDARDS OF CONDUCT
9 INFORMATION. The executive director or the executive director's
10 designee shall provide to the commissioner ~~[commissioners]~~ and
11 commission employees as often as necessary information regarding
12 their:

13 (1) qualifications for office or employment under this
14 title; and

15 (2) responsibilities under applicable laws relating
16 to standards of conduct for state officers and employees.

17 SECTION 16. Section 14.053, Utilities Code, is amended to
18 read as follows:

19 Sec. 14.053. POWERS AND DUTIES OF STATE OFFICE OF
20 ADMINISTRATIVE HEARINGS. (a) The utility division of the State
21 Office of Administrative Hearings shall conduct each hearing in a
22 contested case that is not conducted by the commissioner ~~[one or
23 more commissioners]~~.

24 (b) The commissioner ~~[commission]~~ may delegate to the
25 utility division of the State Office of Administrative Hearings the
26 authority to make a final decision and to issue findings of fact,
27 conclusions of law, and other necessary orders in a proceeding in

1 which there is not a contested issue of fact or law.

2 (c) The commissioner [~~commission~~] by rule shall define the
3 procedures by which the commissioner [~~it~~] delegates final
4 decision-making authority under Subsection (b).

5 (d) For review purposes an administrative law judge's final
6 decision under Subsection (b) has the same effect as a final
7 decision of the commissioner [~~commission~~] unless the [~~a~~]
8 commissioner requests formal review of the decision.

9 SECTION 17. Section 52.092(c), Election Code, is amended to
10 read as follows:

11 (c) Statewide offices of the state government shall be
12 listed in the following order:

- 13 (1) governor;
- 14 (2) lieutenant governor;
- 15 (3) attorney general;
- 16 (4) comptroller of public accounts;
- 17 (5) commissioner of the General Land Office;
- 18 (6) commissioner of agriculture;
- 19 (7) railroad commissioner;
- 20 (8) public utility commissioner;
- 21 (9) chief justice, supreme court;
- 22 (10) [~~(9)~~] justice, supreme court;
- 23 (11) [~~(10)~~] presiding judge, court of criminal
24 appeals;
- 25 (12) [~~(11)~~] judge, court of criminal appeals.

26 SECTION 18. Section 504.401(d), Transportation Code, is
27 amended to read as follows:

1 (d) In this section, "state official" means:

2 (1) a member of the legislature;

3 (2) the governor;

4 (3) the lieutenant governor;

5 (4) a justice of the supreme court;

6 (5) a judge of the court of criminal appeals;

7 (6) the attorney general;

8 (7) the commissioner of the General Land Office;

9 (8) the comptroller;

10 (9) a member of the Railroad Commission of Texas;

11 (10) the commissioner of agriculture;

12 (11) the commissioner of the Public Utility Commission

13 of Texas;

14 (12) the secretary of state; or

15 (13) [~~(12)~~] a member of the State Board of Education.

16 SECTION 19. (a) The election for commissioner of the Public
17 Utility Commission of Texas, for a two-year term beginning on
18 January 1, 2015, shall be held on the date of the general election
19 for state and county officers for the year 2014.

20 (b) The change in law made by this Act applies only to a
21 commissioner who is elected after the effective date of this Act.
22 The commissioners serving on the effective date of this Act shall
23 continue to serve until a commissioner is elected under this Act.
24 The law in effect immediately before the effective date of this Act
25 is continued in effect for that purpose.

26 SECTION 20. This Act takes effect September 1, 2013.