

BILL ANALYSIS

Senate Research Center

H.B. 1500
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Public Utility Commission of Texas (PUC) oversees the state's electric, water and wastewater, and telecommunications utilities, and has complete authority to oversee the Electric Reliability Council of Texas (ERCOT). Following Winter Storm Uri in 2021, the legislature made numerous changes to the electric industry and moved up the sunset dates for PUC, ERCOT, and the Office of Public Utility Counsel (OPUC) to keep a close watch on changes. Overall, the Sunset Advisory Commission found PUC was ill-prepared to become a more active overseer of ERCOT and market participants following Winter Storm Uri, and is under-resourced given its critical responsibilities and the work that still lies ahead. Beyond additional resources, the Sunset Commission found PUC needs more formalized structures and processes when giving ERCOT direction and recommends changes to enhance the transparency of the agency's decision making. Other recommendations seek to improve PUC's water and wastewater regulation, public communications, and data management. H.B. 1500 seeks to continue the PUC and OPUC until 2029, which, in turn, sets the next sunset review of ERCOT for the 2028-2029 review cycle. H.B. 1500 also seeks to revise the provisions governing these entities to implement certain of the sunset commission's recommendations.

H.B. 1500 amends current law relating to the continuation and functions of the Public Utility Commission of Texas and the Office of Public Utility Counsel, and the functions of the independent organization certified for the ERCOT power region.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Public Utility Commission of Texas is modified in SECTIONS 7 (Section 39.151, Utilities Code) and 8 (Section 39.1511, Utilities Code) of this bill.

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 9 (Section 39.1514, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 12.005, Utilities Code, as follows:

Sec. 12.005. APPLICATION OF SUNSET ACT. Provides that the Public Utility Commission of Texas (PUC), unless continued in existence as provided by certain chapters, is abolished September 1, 2029, rather than is abolished and Title 2 (Public Utilities Regulatory Act) expires September 1, 2023.

SECTION 2. Amends Section 12.059, Utilities Code, as follows:

Sec. 12.059. TRAINING PROGRAM FOR COMMISSIONERS. (a) Prohibits a person who is appointed to and qualifies for office as a member of the PUC from voting, deliberating, or being counted as a member in attendance at a meeting of the PUC until the person completes a training program that complies with this section. Deletes existing text requiring a member of the PUC (commissioner), before the commissioner is authorized to assume the commissioner's duties and before the commissioner is

authorized to be confirmed by the senate, to complete at least one course of the training program established under this section.

(b) Requires that the training program, rather than a training program established under this section, provide the person with information, rather than provide information to the commissioner, regarding:

(1) the law governing PUC operations, rather than the enabling legislation that created the PUC and its policymaking body to which the commissioner is appointed to serve;

(2) the programs, functions, rules, and budget of the PUC, rather than the programs operated by the PUC;

(3) the scope of and limitations on the rulemaking authority of the PUC, rather than the role and functions of the PUC;

(4) the results of the most recent formal audit of the PUC, rather than the rules of the PUC with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to members of a state policy-making body in performing their duties; and

(6) redesignates existing Subdivision (9) as Subdivision (6).

Deletes existing text requiring that the training program provide the person with the current budget for the PUC, the results of the most recent formal audit of the PUC, the requirements of certain chapters, and the requirements of the conflict of interest laws and other laws relating to public officials.

(c) Makes a nonsubstantive change to this subsection.

(d) Requires the executive director of the PUC (executive director) to create a training manual that includes the information required by Subsection (b). Requires the executive director to distribute a copy of the training manual annually to each member of the PUC. Requires each member of the PUC to sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

SECTION 3. Amends Section 12.202, Utilities Code, by adding Subsections (a-1) and (a-2), as follows:

(a-1) Requires that the policies adopted under Section 12.202 (Public Participation) require the agenda for each regular PUC meeting to include public testimony as a meeting agenda item and allow members of the public to comment on each meeting agenda item unrelated to a contested case and on other matters under the PUC's jurisdiction.

(a-2) Authorizes the PUC to prohibit public comment at a regular PUC meeting on a meeting agenda item related to a contested case.

SECTION 4. Amends Section 12.203, Utilities Code, as follows:

Sec. 12.203. BIENNIAL REPORT. (a) Requires the PUC, not later than January 15 of each odd-numbered year, to prepare a written report that includes:

(1) suggestions regarding modification and improvement of the PUC's statutory authority and for the improvement of utility regulation in general, including the regulation of water and sewer service under Chapter 13 (Water Rates and Services), Water Code, that the PUC considers appropriate for protecting and furthering the interest of the public;

(2) a report on the scope of competition in the electric and telecommunications markets that includes:

(A) an assessment of:

(i) the effect of competition and industry restructuring on customers in both competitive and noncompetitive electric markets; and

(ii) the effect of competition on the rates and availability of electric services for residential and small commercial customers;

(B) an assessment of the effect of competition on:

(i) customers in both competitive and noncompetitive telecommunications markets, with a specific focus on rural markets; and

(ii) the rates and availability of telecommunications services for residential and business customers, including any effects on universal service; and

(C) a summary of PUC action over the preceding two years that reflects changes in the scope of competition in regulated electric and telecommunications markets; and

(3) recommendations for legislation that the PUC determines appropriate to promote the public interest in the context of partially competitive electric and telecommunications markets.

(b) Requires a telecommunications utility, as defined by Section 51.002 (Definitions), to cooperate with the PUC as necessary for the PUC to satisfy the requirements of this section.

SECTION 5. Amends Subchapter E, Chapter 12, Utilities Code, by adding Section 12.205, as follows:

Sec. 12.205. STRATEGIC COMMUNICATIONS PLAN. Requires the PUC to:

(1) develop an agency-wide plan for:

(A) improving the effectiveness of PUC communications with the public, market participants, and other relevant audiences; and

(B) responding to changing communications needs;

(2) include in the plan required by Subdivision (1) goals, objectives, and metrics to assess PUC efforts; and

(3) update the plan required by Subdivision (1) at least once every two years.

SECTION 6. Amends Section 13.002, Utilities Code, as follows:

Sec. 13.002. APPLICATION OF SUNSET ACT. Provides that the Office of Public Utility Counsel, unless continued in existence as provided by Chapter 325 (Sunset Law), Government Code, is abolished September 1, 2029, rather than is abolished and Chapter 13 (Office of Public Utility Counsel) expires September 1, 2023.

SECTION 7. Amends Section 39.151, Utilities Code, by amending Subsections (d), (g-1), and (g-6) and adding Subsection (g-7), as follows:

(d) Provides that the PUC is required to adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, or is authorized to delegate those responsibilities to an independent organization, rather than delegate to an independent organization responsibilities for adopting or enforcing such rules. Provides that the PUC has complete authority to oversee and investigate the independent organization's, rather than the organization's, finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that the organization adequately performs the organization's functions and duties. Deletes existing text providing that rules adopted by an independent organization and enforcement actions taken by the organization under delegated authority from the PUC are subject to PUC oversight and review and are prohibited from taking effect before receiving PUC approval. Makes conforming changes.

(g-1) Requires that the bylaws of an independent organization certified for the ERCOT power region, rather than the independent organization's bylaws or protocols, be approved by and reflect the input of the PUC. Requires that the governing body be composed of:

(1) two members of the PUC as ex officio nonvoting members, rather than the chairman of the PUC as an ex officio nonvoting member:

(A) one of whom is required to be the presiding officer of the PUC; and

(B) one of whom is required to be designated by the presiding officer of the PUC to serve a one-year term on the governing body;

(2)-(4) makes no changes to these subdivisions.

Makes nonsubstantive changes.

(g-6) Provides that a reference to a protocol, in this subsection, includes a rule. Provides that protocols adopted by an independent organization and enforcement actions taken by the organization under delegated authority from the PUC are subject to PUC oversight and review and are prohibited from taking effect before receiving PUC approval. Authorizes the PUC to approve, reject, or remand with suggested modifications to the independent organization's governing body protocols adopted by the organization.

(g-7) Requires the presiding officer of the PUC to designate commissioners to serve terms on the independent organization's governing body under Subsection (g-1)(1)(B) in the order in which the commissioners were first appointed to the PUC. Prohibits a commissioner from serving an additional term until each commissioner has served a term.

SECTION 8. Amends Section 39.1511, Utilities Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Authorizes the bylaws of the independent organization and the rules of the PUC to provide for the governing body or subcommittee to enter into executive session closed to

the public only to address a matter that the independent organization would be authorized to consider in a closed meeting if the independent organization were governed under Chapter 551 (Open Meetings), Government Code, rather to address than sensitive matters such as confidential personnel information, contracts, lawsuits, competitively sensitive information, or other information related to the security of the regional electric network.

(a-1) Authorizes an independent organization's governing body or a subcommittee to adopt a policy allowing the governing body or subcommittee to enter into an executive session closed to the public and commissioners, including the commissioners serving as ex officio nonvoting members, only to address a contested case, as defined by Section 2001.003 (Definitions), Government Code, or a personnel matter that is unrelated to members of the governing body.

SECTION 9. Amends Subchapter D, Chapter 39, Utilities Code, by adding Section 39.1514, as follows:

Sec. 39.1514. COMMISSION DIRECTIVES TO INDEPENDENT ORGANIZATION.

(a) Prohibits the PUC from using a verbal directive to direct an independent organization certified under Section 39.151 (Essential Organizations) to take an official action. Authorizes the PUC to direct the organization to take an official action only through a contested case, rulemaking, a memorandum, or a written order.

(b) Requires the PUC by rule to:

(1) specify the types of directives the PUC is authorized to issue through a contested case, rulemaking, memorandum, or written order;

(2) establish the conditions under which a PUC vote is required before issuing a directive;

(3) require that proposed PUC directives be included as an item on a PUC meeting agenda and require the PUC to allow members of the public an opportunity to comment on the agenda item; and

(4) establish a reasonable timeline for the release before a PUC meeting of discussion materials relevant to any proposed PUC directives included as agenda items for that meeting.

(c) Authorizes the PUC, notwithstanding another provision of this section, to use a verbal directive to direct an independent organization to take an official action in an urgent or emergency situation that poses an imminent threat to public health, public safety, or the reliability of the power grid. Requires the PUC, if the PUC uses a verbal directive, to provide written documentation of the directive to the independent organization not later than 72 hours after the urgent or emergency situation ends. Requires the PUC by rule to establish criteria for determining whether a situation is urgent or an emergency under this subsection and establish a process by which the PUC will issue directives to the independent organization under this subsection.

SECTION 10. Amends Section 39.155(d), Utilities Code, to make a conforming change.

SECTION 11. Amends Section 39.157(f), Utilities Code, to make a conforming change.

SECTION 12. (a) Provides that this section takes effect only if the Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes becomes law.

(b) Amends Subchapter D, Chapter 39, Utilities Code, by adding Sections 39.166 and 39.167, as follows:

Sec. 39.166. ELECTRIC INDUSTRY REPORT. (a) Requires the PUC, not later than January 15 of each odd-numbered year, in consultation with the independent organization certified under Section 39.151 for the ERCOT power region, to prepare and submit to the legislature an electric industry report.

(b) Requires that each electric industry report submitted under this section:

(1) identify existing and potential transmission and distribution constraints and system needs within the ERCOT power region, alternatives for meeting system needs, and recommendations for meeting system needs;

(2) summarize key findings from the grid reliability assessment conducted under Section 39.165 and the report required by Section 39.904(k);

(3) outline basic information regarding the electric grid and market in this state, including generation capacity, customer demand, and transmission capacity currently installed on the grid and projected in the future; and

(4) be presented in plain language that is readily understandable by a person with limited knowledge of the electric industry.

Sec. 39.167. CONFLICTS OF INTEREST REPORT. Requires the PUC and the independent organization certified under Section 39.151 for the ERCOT power region annually to review statutes, rules, protocols, and bylaws that apply to conflicts of interest for commissioners and for members of the governing body of the independent organization and submit to the legislature a report on the effects the statutes, rules, protocols, and bylaws have on the ability of the PUC and the independent organization to fulfill their duties.

SECTION 13. (a) Provides that this section takes effect only if the Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes does not become law.

(b) Amends Subchapter D, Chapter 39, Utilities Code, by adding Sections 39.166 and 39.167, as follows:

Sec. 39.166. ELECTRIC INDUSTRY REPORT. (a) Requires the PUC, not later than January 15 of each odd-numbered year, in consultation with the independent organization certified under Section 39.151 for the ERCOT power region, to prepare and submit to the legislature an electric industry report.

(b) Requires that each electric industry report submitted under this section:

(1) identify existing and potential transmission and distribution constraints and system needs within the ERCOT power region, alternatives for meeting system needs, and recommendations for meeting system needs;

(2) summarize key findings from the grid reliability assessment conducted under Section 39.159 (Grid Reliability Assessment), as added by Chapter 876 (S.B. 1281), Acts of the 87th Legislature, Regular Session, 2021, and the report required by Section 39.904(k);

(3) outline basic information regarding the electric grid and market in this state, including generation capacity, customer demand, and

transmission capacity currently installed on the grid and projected in the future; and

(4) be presented in plain language that is readily understandable by a person with limited knowledge of the electric industry.

Sec. 39.167. CONFLICTS OF INTEREST REPORT. Requires the PUC and the independent organization certified under Section 39.151 for the ERCOT power region annually to review statutes, rules, protocols, and bylaws that apply to conflicts of interest for commissioners and for members of the governing body of the independent organization and submit to the legislature a report on the effects the statutes, rules, protocols, and bylaws have on the ability of the PUC and the independent organization to fulfill their duties.

SECTION 14. Amends Section 39.203(i), Utilities Code, as follows:

(i) Requires the PUC, if the PUC determines that statutory changes are needed to ensure that adequate infrastructure is developed for seawater desalination projects, to include recommendations in the report required by Section 12.203, rather than by Section 31.003 (Report on Scope of Competition).

SECTION 15. Amends Section 39.206(q), Utilities Code, as follows:

(q) Deletes existing text requiring the PUC to file legislative recommendations regarding any changes in law that may be necessary to carry out the purposes of this subsection prior to January 15, 2009, which are authorized to be combined with the report required by Section 31.003.

SECTION 16. Amends Section 39.408(g), Utilities Code, to provide that Section 39.408 (Hiring Assistance for Federal Proceedings) expires September 1, 2029, rather than September 1, 2023.

SECTION 17. Amends Section 39.4525(g), Utilities Code, to provide that Section 39.4525 (Hiring Assistance for Federal Proceedings) expires September 1, 2029, rather than September 1, 2023.

SECTION 18. Amends Section 39.504(g), Utilities Code, to provide that Section 39.504 (Hiring Assistance for Federal Proceedings) expires September 1, 2029, rather than September 1, 2023.

SECTION 19. Amends Section 39.904(k), Utilities Code, as follows:

(k) Requires the PUC and the independent organization certified under Section 39.151 for the ERCOT power region, rather than certified for ERCOT, to study the need for increased transmission and generation capacity throughout this state and report to the legislature the results of the study and any recommendations for legislation. Deletes existing text authorizing the report to be filed as a part of the report required by Subsection (j) (relating to requiring the PUC, after consultation with certain entities, to file a report with the legislature).

SECTION 20. Amends Section 39.9055, Utilities Code, as follows:

Sec. 39.9055. EXAMINATION OF DEMAND RESPONSE POTENTIAL OF SEAWATER DESALINATION PROJECTS. Makes a conforming change to this section.

SECTION 21. Amends Section 39.908, Utilities Code, as follows:

Sec. 39.908. EFFECT OF SUNSET PROVISION. Requires that the authorities, duties, and functions of the PUC under Chapter 39 (Restructuring of Electric Utility Industry), if the PUC is abolished under Section 12.005 or other law, be performed and be carried out by a successor agency to be designated by the legislature before abolishment of the PUC

or, if the legislature does not designate the successor, by the secretary of state. Deletes existing text providing that Subchapter Z (Miscellaneous Provisions), if the PUC is abolished and the other provisions of this title expire as provided by Chapter 325, Government Code, including the provisions of this title referred to in this subchapter, continues in full force and effect and does not expire. Makes nonsubstantive changes.

SECTION 22. Amends Section 52.060, Utilities Code, as follows:

Sec. 52.060. ADMINISTRATIVE FEE OR ASSESSMENT. Authorizes the PUC to prescribe and collect a fee or assessment from local exchange companies necessary to recover the cost to the PUC and to the Office of Public Utility Counsel of activities carried out and services provided under Subchapter B (Incumbent Local Exchange Companies) and Section 12.203, rather than Section 52.006 (Commission to Report to Legislature).

SECTION 23. Amends Section 13.4132, Water Code, by adding Subsection (b-1), as follows:

(b-1) Prohibits the term of an emergency order issued under Section 13.4132 (Operation of Utility that Discontinues Operation or Is Referred for Appointment of Receiver) by the PUC or the Texas Commission on Environmental Quality, notwithstanding Section 5.505 (Term of Order), from exceeding 360 days. Authorizes the emergency order to be renewed:

(1) once for a period not to exceed 360 days; or

(2) if the utility is undergoing a sale, transfer, merger, consolidation, or acquisition required to be reported to the PUC under Section 13.301 (Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction), for a reasonable time until the sale, transfer, merger, consolidation, or acquisition is complete.

SECTION 24. (a) Repealer: Section 304.201 (Report by Commission), Business and Commerce Code.

Repealers: Sections 31.003 (Report on Scope of Competition) and 52.006 (Commission to Report to Legislature), Utilities Code;

Repealers: Sections 39.155(b) (relating to requiring the ERCOT independent system operator to submit an annual report to the PUC containing certain information) and 39.904(j) (relating to requiring the PUC, after consultation with certain entities, to file a report with the legislature), Utilities Code.

(b) Repealer: Section 34 (relating to requiring the PUC and a certified independent organization to annually review statutes, rules, protocols, and bylaws that apply to conflicts of interest for certain entities and to submit to the legislature a report), Chapter 426 (S.B. 3), Acts of the 87th Legislature, Regular Session, 2021.

SECTION 25. Requires the presiding officer of the PUC to designate a commissioner to serve a term on the governing body of the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region that begins January 1, 2024, to comply with Section 39.151(g-1), Utilities Code, as amended by this Act.

SECTION 26. (a) Provides that application of Section 12.059, Utilities Code, as amended by this Act, except as provided by Subsection (b) of this section, applies to a member of the PUC appointed before, on, or after the effective date of this Act.

(b) Provides that a member of the PUC who, before the effective date of this Act, completed the training program required by Section 12.059, Utilities Code, as that law existed before the effective date of this Act, is only required to complete additional training on the subjects added by this Act to the training program required by Section 12.059, Utilities Code. Prohibits a PUC member described by this subsection from voting

deliberating, or being counted as a member in attendance at a meeting of the PUC held on or after December 1, 2023, until the member completes the additional training.

SECTION 27. Effective date: September 1, 2023.