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By:  Perry S.B. No. 2441

A BILL TO BE ENTITLED

AN ACT

relating to the transfer of functions relating to the economic regulation of water and sewer service from the Public Utility Commission of Texas and the Office of Public Utility Counsel to the Water Public Utility Commission and the Office of Water Public Utility Counsel; creating a criminal offense.

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

SECTION 1.  Section 11.041(f), Water Code, is amended to read as follows:

(f)  The commission shall hold a hearing on the complaint at the time and place stated in the order. It may hear evidence orally or by affidavit in support of or against the complaint, and it may hear arguments. The Water Public Utility Commission [~~utility commission~~] may participate in the hearing if necessary to present evidence on the price or rental demanded for the available water. On completion of the hearing, the commission shall render a written decision.

SECTION 2.  Section 12.013(b), Water Code, is amended to read as follows:

(b)  In this section:

(1)  "Utility commission" means the Water Public Utility Commission.

(2)  "Political[~~, "political~~] subdivision" means incorporated cities, towns or villages, counties, river authorities, water districts, and other special purpose districts.

SECTION 3.  Section 13.002(22-a), Water Code, is amended to read as follows:

(22-a)  "Utility commission" means the Water Public Utility Commission [~~of Texas~~].

SECTION 4.  Section 13.017, Water Code, is amended to read as follows:

Sec. 13.017.  OFFICE OF WATER PUBLIC UTILITY COUNSEL; POWERS AND DUTIES. (a) In this section, "counsellor" and "office" have the meanings assigned by Section 14A.002 [~~11.003, Utilities Code~~].

(b)  The independent Office of Water Public Utility Counsel represents the interests of residential and small commercial consumers under this chapter. The office:

(1)  shall assess the effect of utility rate changes and other regulatory actions on residential consumers in this state;

(2)  shall advocate in the office's own name a position determined by the counsellor to be most advantageous to a substantial number of residential consumers;

(3)  may appear or intervene, as a party or otherwise, as a matter of right on behalf of:

(A)  residential consumers, as a class, in any proceeding before the utility commission, including an alternative dispute resolution proceeding; and

(B)  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;

(4)  may initiate or intervene as a matter of right or otherwise appear in a judicial proceeding:

(A)  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

(B)  in which the counsellor determines that residential consumers or small commercial consumers are in need of representation;

(5)  is entitled to the same access as a party, other than utility commission staff, to records gathered by the utility commission under Section 13.133;

(6)  is entitled to discovery of any nonprivileged matter that is relevant to the subject matter of a proceeding or petition before the utility commission;

(7)  may represent an individual residential or small commercial consumer with respect to the consumer's disputed complaint concerning retail utility services that is unresolved before the utility commission;

(8)  may recommend legislation to the legislature that the office determines would positively affect the interests of residential and small commercial consumers; and

(9)  may conduct consumer outreach and education programs for residential and small commercial consumers.

(c)  This section does not:

(1)  affect a duty the office is required to perform under other law; or

(2)  limit the authority of the utility commission to represent residential or small commercial consumers.

(d)  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 counsellor may not be grouped with any other party.

SECTION 5.  Subtitle B, Title 2, Water Code, is amended by adding Chapters 14 and 14A to read as follows:

CHAPTER 14. WATER PUBLIC UTILITY COMMISSION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 14.001.  WATER PUBLIC UTILITY COMMISSION. The Water Public Utility Commission exercises the jurisdiction and powers conferred by this subtitle.

Sec. 14.002.  DEFINITIONS. In this chapter:

(1)  "Affiliate" has the meaning assigned by Section 13.002.

(2)  "Commission" means the Water Public Utility Commission.

(3)  "Commissioner" means a member of the Water Public Utility Commission.

(4)  "Executive director" means the executive director of the commission.

(5)  "Retail public utility" has the meaning assigned by Section 13.002.

Sec. 14.003.  COMMISSION OFFICE. (a) The principal office of the commission is in Austin.

(b)  The commission's office shall be open daily during usual business hours. The commission's office is not required to be open on Saturday, Sunday, or a legal holiday.

Sec. 14.004.  SEAL. (a) The commission has a seal bearing the inscription: "Water Public Utility Commission."

(b)  The seal shall be affixed to each record and to an authentication of a copy of a record. The commission may require the seal to be affixed to other instruments.

(c)  A court of this state shall take judicial notice of the seal.

Sec. 14.005.  REPRESENTATION BY ATTORNEY GENERAL. The attorney general shall represent the commission in a matter before a state court, a court of the United States, or a federal public utility regulatory commission.

Sec. 14.006.  APPLICATION OF SUNSET ACT. The Water Public Utility Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2035.

SUBCHAPTER B. COMMISSION APPOINTMENT AND FUNCTIONS

Sec. 14.051.  APPOINTMENT; TERM. (a) The commission is composed of five 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)  In making appointments to the commission, the governor shall appoint:

(1)  one individual with expertise in rural retail public utilities;

(2)  one individual with expertise in urban retail public utilities;

(3)  one individual with expertise in financial matters of retail public utilities;

(4)  one individual with expertise in legal matters of retail public utilities; and

(5)  one individual with general expertise in retail public utilities.

(d)  Commissioners serve staggered six-year terms.

Sec. 14.052.  PRESIDING OFFICER. (a) The governor shall designate a commissioner as the presiding officer.

(b)  The presiding officer serves in that capacity at the pleasure of the governor.

Sec. 14.053.  PRESIDING OFFICER QUALIFICATIONS. The commissioner designated as the presiding officer must be a resident of this state.

Sec. 14.054.  MEMBERSHIP QUALIFICATIONS. (a) To be eligible for appointment, a commissioner must:

(1)  be a qualified voter;

(2)  be a citizen of the United States;

(3)  be a resident of this state; and

(4)  be a competent and experienced administrator.

(b)  A person is not eligible for appointment as a commissioner if the person:

(1)  at any time during the one year preceding appointment:

(A)  personally served as an officer, director, owner, employee, partner, or legal representative of a retail public utility regulated by the commission or of an affiliate or direct competitor of a retail public utility regulated by the commission;

(B)  owned or controlled, directly or indirectly, more than a 10 percent interest in a retail public utility regulated by the commission or in an affiliate or direct competitor of a retail public utility regulated by the commission; or

(C)  served as an executive officer listed under Section 1, Article IV, Texas Constitution, other than the secretary of state, or a member of the legislature; or

(2)  is not qualified to serve under Section 14.151, 14.152, or 14.153.

Sec. 14.055.  REMOVAL OF COMMISSIONER. (a) It is a ground for removal from the commission if a commissioner:

(1)  does not have at the time of appointment or maintain during service on the commission the qualifications required by Section 14.053;

(2)  violates a prohibition provided by Section 14.054 or by Subchapter D;

(3)  cannot discharge the commissioner's duties for a substantial part of the term for which the commissioner is appointed because of illness or disability; or

(4)  is absent from more than half of the regularly scheduled commission meetings that the commissioner is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(b)  The validity of an action of the commission is not affected by the fact that the action is taken when a ground for removal of a commissioner exists.

(c)  If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest officer of the commission, who shall notify the governor and the attorney general that a potential ground for removal exists.

Sec. 14.056.  PROHIBITION ON SEEKING ANOTHER OFFICE. A person may not seek nomination or election to another civil office of this state or of the United States while serving as a commissioner. If a commissioner files for nomination or election to another civil office of this state or of the United States, the person's office as commissioner immediately becomes vacant, and the governor shall appoint a successor.

Sec. 14.057.  EFFECT OF VACANCY. A vacancy or disqualification does not prevent the remaining commissioner or commissioners from exercising the powers of the commission.

Sec. 14.058.  COMPENSATION. The annual salary of the commissioners is determined by the legislature.

Sec. 14.059.  MEETINGS. The commission shall hold meetings at its office and at other convenient places in this state as expedient and necessary for the proper performance of the commission's duties.

Sec. 14.060.  TRAINING PROGRAM FOR COMMISSIONERS. (a) Before a commissioner may assume the commissioner's duties and before the commissioner may be confirmed by the senate, the commissioner must complete at least one course of the training program established under this section.

(b)  A training program established under this section shall provide information to the commissioner regarding:

(1)  the enabling legislation that created the commission and its policymaking body to which the commissioner is appointed to serve;

(2)  the programs operated by the commission;

(3)  the role and functions of the commission;

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

(5)  the current budget for the commission;

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

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

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

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

(c)  A person who is appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Sec. 14.061.  FORMER COMMISSIONER: LOBBYING RESTRICTED. A former member of the commission may not, before the first anniversary of the date the member ceases to be a member of the commission, engage in an activity before the commission that requires registration under Chapter 305, Government Code.

SUBCHAPTER C. COMMISSION PERSONNEL

Sec. 14.101.  COMMISSION EMPLOYEES. The commission shall employ:

(1)  an executive director; and

(2)  officers and other employees the commission considers necessary to administer this subtitle.

Sec. 14.102.  DUTIES OF EMPLOYEES. The commission shall develop and implement policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the commission employees.

Sec. 14.103.  DUTIES OF EXECUTIVE DIRECTOR. The executive director is responsible for the daily operations of the commission and shall coordinate the activities of commission employees.

Sec. 14.104.  CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS; MERIT PAY. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for commission employees. The program shall require intra-agency posting of each position concurrently with any public posting.

(b)  The executive director or the executive director's designee shall develop a system of annual performance evaluations that are based on documented employee performance. Merit pay for commission employees must be based on the system established under this subsection.

Sec. 14.105.  EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b)  The policy statement under Subsection (a) must include:

(1)  personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that are in compliance with the requirements of Chapter 21, Labor Code;

(2)  a comprehensive analysis of the commission workforce that meets federal and state guidelines;

(3)  procedures by which a determination can be made about the extent of underuse in the commission workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4)  reasonable methods to appropriately address the underuse.

(c)  A policy statement prepared under Subsection (b) must:

(1)  cover an annual period;

(2)  be updated at least annually;

(3)  be reviewed by the Civil Rights Division of the Texas Workforce Commission for compliance with Subsection (b)(1); and

(4)  be filed with the governor's office.

(d)  The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (c). The report may be made separately or as a part of other biennial reports to the legislature.

SUBCHAPTER D. PROHIBITED RELATIONSHIPS AND ACTIVITIES

Sec. 14.151.  REGISTERED LOBBYIST. A person required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission may not serve as a commissioner.

Sec. 14.152.  CONFLICT OF INTEREST. (a) A person is not eligible for appointment as a commissioner or employment as executive director of the commission if:

(1)  the person serves on the board of directors of a company that supplies utility-related services or utility-related products to regulated or unregulated retail public utilities; or

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

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

(B)  directly or indirectly owns or controls more than a 10 percent interest in:

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

(ii)  a retail public utility competitor or supplier or another entity affected by a commission decision in a manner other than by the setting of rates for that class of customer;

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

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

(b)  A person otherwise ineligible because of Subsection (a)(2)(B) may be appointed to the commission and serve as a commissioner or may be employed as executive director if the person:

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

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

(A)  before beginning service or employment; or

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

Sec. 14.153.  RELATIONSHIP WITH TRADE ASSOCIATION. A person may not serve as a commissioner or be a commission employee who is employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if the person is:

(1)  an officer, employee, or paid consultant of a trade association; or

(2)  the spouse of an officer, manager, or paid consultant of a trade association.

Sec. 14.154.  PROHIBITED ACTIVITIES. (a) During the period of service with the commission, a commissioner or commission employee may not:

(1)  have a pecuniary interest, including an interest as an officer, director, partner, owner, employee, attorney, or consultant, in:

(A)  a retail public utility or affiliate; or

(B)  a person a significant portion of whose business consists of furnishing goods or services to retail public utilities or affiliates; or

(2)  accept a gift, gratuity, or entertainment from:

(A)  a retail public utility, affiliate, or direct competitor of a retail public utility;

(B)  a person a significant portion of whose business consists of furnishing goods or services to retail public utilities, affiliates, or direct competitors of retail public utilities; or

(C)  an agent, representative, attorney, employee, officer, owner, director, or partner of a person described by Paragraph (A) or (B).

(b)  A commissioner or a commission employee may not directly or indirectly solicit, request from, or suggest or recommend to a retail public utility or an agent, representative, attorney, employee, officer, owner, director, or partner of a retail public utility the appointment to a position or the employment of a person by the retail public utility or affiliate.

(c)  A person may not give or offer to give a gift, gratuity, employment, or entertainment to a commissioner or commission employee if that person is:

(1)  a retail public utility, affiliate, or direct competitor of a retail public utility;

(2)  a person who furnishes goods or services to a retail public utility, affiliate, or direct competitor of a retail public utility; or

(3)  an agent, representative, attorney, employee, officer, owner, director, or partner of a person described by Subdivision (1) or (2).

(d)  A retail public utility, affiliate, or direct competitor of a retail public utility or a person furnishing goods or services to a retail public utility, affiliate, or direct competitor of a retail public utility may not aid, abet, or participate with a commissioner, commission employee, or former commission employee in conduct that violates Subsection (a)(2) or (c).

(e)  Subsection (a)(1) does not apply to an interest in a nonprofit group or association, other than a trade association, that is solely supported by gratuitous contributions of money, property, or services.

(f)  It is not a violation of this section if a commissioner or commission employee, on becoming the owner of stocks, bonds, or another pecuniary interest in a retail public utility, affiliate, or direct competitor of a retail public utility otherwise than voluntarily, informs the commission and the attorney general of the ownership and divests the ownership or interest within a reasonable time.

(g)  It is not a violation of this section if a pecuniary interest is held indirectly by ownership of an interest in a retirement system, institution, or fund that in the normal course of business invests in diverse securities independently of the control of the commissioner or commission employee.

(h)  This section does not apply to a contract for a retail public utility product or service or equipment for use of a retail public utility product when a commissioner or commission employee is acting as a consumer.

(i)  In this section, a "pecuniary interest" includes income, compensation, and payment of any kind, in addition to an ownership interest.

Sec. 14.155.  PROHIBITION ON EMPLOYMENT OR REPRESENTATION. (a) A commissioner, a commission employee, or an employee of the State Office of Administrative Hearings involved in hearing cases for the commission may not:

(1)  be employed by a retail public utility that was in the scope of the commissioner's or employee's official responsibility while the commissioner or employee was associated with the commission or the State Office of Administrative Hearings; or

(2)  represent a person before the commission or State Office of Administrative Hearings or a court in a matter:

(A)  in which the commissioner or employee was personally involved while associated with the commission or State Office of Administrative Hearings; or

(B)  that was within the commissioner's or employee's official responsibility while the commissioner or employee was associated with the commission or State Office of Administrative Hearings.

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

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

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

(c)  The prohibition of Subsection (a)(2) applies while a commissioner, commission employee, or employee of the State Office of Administrative Hearings involved in hearing utility cases is associated with the commission or State Office of Administrative Hearings and at any time after.

Sec. 14.156.  QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide to commissioners and commission employees as often as necessary information regarding their:

(1)  qualifications for office or employment under this chapter; and

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

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND REPORTS

Sec. 14.201.  PUBLIC INTEREST INFORMATION. (a) The commission shall prepare information of public interest describing the functions of the commission and the commission's procedures by which a complaint is filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(b)  The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission.

Sec. 14.202.  PUBLIC PARTICIPATION. (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

(b)  The commission shall comply with federal and state laws related to program and facility accessibility.

(c)  The commission shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the commission's programs and services.

Sec. 14.203.  BIENNIAL REPORT. Not later than January 15 of each odd-numbered year, the commission shall prepare a written report that includes suggestions regarding modification and improvement of the commission's statutory authority and for the improvement of retail public utility regulation in general that the commission considers appropriate for protecting and furthering the interest of the public.

Sec. 14.204.  INTERNET FOR HEARINGS AND MEETINGS. The commission shall make publicly accessible without charge live Internet video of all public hearings and meetings the commission holds for viewing from the commission's Internet website. The commission may recover the costs of administering this section by imposing an assessment against a retail public utility.

CHAPTER 14A. OFFICE OF WATER PUBLIC UTILITY COUNSEL

SUBCHAPTER A. GENERAL PROVISIONS; POWERS AND DUTIES

Sec. 14A.001.  OFFICE OF WATER PUBLIC UTILITY COUNSEL. The independent office of water public utility counsel represents the interests of residential and small commercial consumers.

Sec. 14A.002.  DEFINITIONS. In this chapter:

(1)  "Commission" has the meaning assigned by Section 14.002.

(2)  "Counsellor" means the water public utility counsel.

(3)  "Office" means the Office of Water Public Utility Counsel.

(4)  "Proceeding" has the meaning assigned by Section 13.002.

Sec. 14A.003.  APPLICATION OF SUNSET ACT. The Office of Water Public Utility Counsel is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2035.

Sec. 14A.004.  OFFICE POWERS AND DUTIES. The office has the powers and duties assigned by Section 13.017.

Sec. 14A.005.  ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The counsellor shall develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal disputes under the office's jurisdiction.

(b)  The office's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c)  The counsellor shall designate a trained person to:

(1)  coordinate the implementation of the policy adopted under Subsection (a);

(2)  serve as a resource for any training needed to implement the procedures for alternative dispute resolution; and

(3)  collect data concerning the effectiveness of those procedures, as implemented by the office.

Sec. 14A.006.  COMPLAINTS. (a) The office shall maintain a system to promptly and efficiently act on complaints filed with the office that the office has the authority to resolve. The office shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b)  The office shall make information available describing its procedures for complaint investigation and resolution.

(c)  The office shall periodically notify the complaint parties of the status of the complaint until final disposition.

Sec. 14A.007.  TECHNOLOGY POLICY. The counsellor shall implement a policy requiring the office to use appropriate technological solutions to improve the office's ability to perform its functions. The policy must ensure that the public is able to interact with the office on the Internet.

SUBCHAPTER B. WATER PUBLIC UTILITY COUNSEL

Sec. 14A.021.  APPOINTMENT; TERM. (a) The chief executive of the office is the counsellor.

(b)  The counsellor is appointed by the governor with the advice and consent of the senate.

(c)  The appointment of the counsellor shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(d)  The counsellor serves a two-year term that expires on February 1 of the final year of the term.

Sec. 14A.022.  QUALIFICATIONS. (a) The counsellor must:

(1)  be licensed to practice law in this state and a resident of this state;

(2)  have demonstrated a strong commitment to and involvement in efforts to safeguard the rights of the public; and

(3)  possess the knowledge and experience necessary to practice effectively in utility proceedings.

(b)  A person is not eligible for appointment as counsellor if:

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

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

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

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

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

(C)  uses or receives a substantial amount of tangible goods, services, or funds from the commission or the office, other than compensation or reimbursement authorized by law for service as counsellor or for commission membership, attendance, or expenses; or

(D)  notwithstanding Paragraph (B), has an interest in a mutual fund or retirement fund in which more than 10 percent of the fund's holdings is in a single retail public utility, retail public utility competitor, or retail public utility supplier in this state and the person does not disclose this information to the governor, senate, or other entity, as appropriate; or

(2)  the person is not qualified to serve under Section 14A.042.

(c)  A person otherwise ineligible because of Subsection (b)(1)(B) may be appointed and serve as counsellor if the person:

(1)  notifies the attorney general and commission that the person is ineligible because of Subsection (b)(1)(B); and

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

(A)  before beginning service; or

(B)  if the person is already serving, within a reasonable time.

Sec. 14A.023.  GROUNDS FOR REMOVAL. (a) It is a ground for removal from office if the counsellor:

(1)  does not have at the time of taking office or maintain during service as counsellor the qualifications required by Section 14A.022;

(2)  is ineligible for service as counsellor under Section 14A.022, 14A.042, or 14A.043; or

(3)  cannot discharge the counsellor's duties for a substantial part of the term for which the counsellor is appointed because of illness or disability.

(b)  The validity of an action of the office is not affected by the fact that the action is taken when a ground for removal of the counsellor exists.

(c)  If an employee has knowledge that a potential ground for removal of the counsellor exists, the employee shall notify the next highest ranking employee of the office, other than the counsellor, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Sec. 14A.024.  PROHIBITED ACTS. (a) The counsellor may not have a direct or indirect interest in a retail public utility company regulated under this subtitle, its parent, or its subsidiary companies, corporations, or cooperatives or a retail public utility competitor, retail public utility supplier, or other entity affected in a manner other than by the setting of rates for that class of customer.

(b)  The prohibition under Subsection (a) applies during the period of the counsellor's service.

SUBCHAPTER C. OFFICE PERSONNEL

Sec. 14A.041.  PERSONNEL. The counsellor may employ lawyers, economists, engineers, consultants, statisticians, accountants, clerical staff, and other employees as the counsellor considers necessary to carry out this chapter.

Sec. 14A.042.  CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b)  A person may not serve as counsellor or be an employee of the office employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if the person is:

(1)  an officer, employee, or paid consultant of a Texas trade association in the field of retail public utilities; or

(2)  the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of retail public utilities.

(c)  A person may not serve as counsellor or act as the general counsel to the office if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the office.

Sec. 14A.043.  PROHIBITION ON EMPLOYMENT OR REPRESENTATION. (a) A former counsel may not make any communication to or appearance before the commission or an officer or employee of the commission before the second anniversary of the date the person ceases to serve as counsel if the communication or appearance is made:

(1)  on behalf of another person in connection with any matter on which the person seeks official action; or

(2)  with the intent to influence a commission decision or action, unless acting on the person's own behalf and without remuneration.

(b)  A former counsel may not represent any person or receive compensation for services rendered on behalf of any person regarding a matter before the commission before the second anniversary of the date the person ceases to serve as counsel.

(c)  A person commits an offense if the person violates this section. An offense under this subsection is a Class A misdemeanor.

(d)  An employee of the office may not:

(1)  be employed by a retail public utility that was in the scope of the employee's official responsibility while the employee was associated with the office; or

(2)  represent a person before the commission or a court in a matter:

(A)  in which the employee was personally involved while associated with the office; or

(B)  that was within the employee's official responsibility while the employee was associated with the office.

(e)  The prohibition of Subsection (d)(1) applies until the first anniversary of the date the employee's employment with the office ceases.

(f)  The prohibition of Subsection (d)(2) applies while an employee of the office is associated with the office and at any time after.

(g)  For purposes of this section, "person" includes a water cooperative.

Sec. 14A.044.  CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS; MERIT PAY. (a) The counsellor or the counsellor's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for office employees. The program shall require intra-agency postings of each position concurrently with any public posting.

(b)  The counsellor or the counsellor's designee shall develop a system of annual performance evaluations that are based on documented employee performance. Merit pay for office employees must be based on the system established under this subsection.

Sec. 14A.045.  EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT. (a) The counsellor or the counsellor's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b)  The policy statement under Subsection (a) must include:

(1)  personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that are in compliance with the requirements of Chapter 21, Labor Code;

(2)  a comprehensive analysis of the office workforce that meets federal and state guidelines;

(3)  procedures by which a determination can be made about the extent of underuse in the office workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4)  reasonable methods to appropriately address the underuse.

(c)  A policy statement prepared under Subsection (b) must:

(1)  cover an annual period;

(2)  be updated at least annually;

(3)  be reviewed by the Civil Rights Division of the Texas Workforce Commission for compliance with Subsection (b)(1); and

(4)  be filed with the governor's office.

(d)  The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (c). The report may be made separately or as a part of other biennial reports to the legislature.

Sec. 14A.046.  QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The office shall provide to office employees as often as necessary information regarding their:

(1)  qualifications for employment under this chapter; and

(2)  responsibilities under applicable laws relating to standards of conduct for employees.

SUBCHAPTER D. PUBLIC INTEREST INFORMATION AND REPORTS

Sec. 14A.061.  PUBLIC INTEREST INFORMATION. The office shall prepare information of public interest describing the functions of the office. The office shall make the information available to the public and appropriate state agencies.

Sec. 14A.062.  PUBLIC PARTICIPATION. (a) The office shall comply with federal and state laws related to program and facility accessibility.

(b)  The office shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the office's programs and services.

Sec. 14A.063.  ANNUAL REPORT. The office shall prepare annually a report on the office's activities during the preceding year and submit the report to the standing legislative committees that have jurisdiction over the office, the house appropriations committee, and the senate finance committee. At a minimum, the report must include:

(1)  a list of the types of activities conducted by the office and the time spent by the office on each activity;

(2)  the number of hours billed by the office for representing residential or small commercial consumers in proceedings;

(3)  the number of staff positions and the type of work performed by each position; and

(4)  the office's rate of success in representing residential or small commercial consumers in appealing commission decisions.

Sec. 14A.064.  PUBLIC HEARING. (a) The office annually shall conduct a public hearing to assist the office in developing a plan of priorities and to give the public, including residential and small commercial consumers, an opportunity to comment on the office's functions and effectiveness.

(b)  A public hearing held under this section is not subject to Chapter 551, Government Code.

(c)  The office shall file notice of a public hearing held under this section with the secretary of state for publication in the Texas Register.

SECTION 6.  Section 49.352(c), Water Code, is amended to read as follows:

(c)  For purposes of this section, a municipality may obtain single certification in the manner provided by Section 13.255, except that the municipality may file an application with the Water Public Utility Commission [~~of Texas~~] to grant single certification immediately after the municipality provides notice of intent to provide service as required by Section 13.255(b).

SECTION 7.  Section 2003.049, Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a)  The office shall perform contested case hearings for:

(1)  the Public Utility Commission of Texas as prescribed by the Public Utility Regulatory Act of 1995 and other applicable law; and

(2)  the Water Public Utility Commission as prescribed by Subtitle B, Title 2, Water Code.

(a-1)  In this section, "commission" means the Public Utility Commission of Texas or the Water Public Utility Commission.

SECTION 8.  Section 7201.004(b), Special District Local Laws Code, is amended to read as follows:

(b)  This section does not apply to:

(1)  rules or regulations concerning potable water quality standards; or

(2)  conflicts relating to service areas or certificates issued to the corporation or district by the Water Public Utility Commission or a predecessor agency [~~of Texas or the Texas Commission on Environmental Quality~~].

SECTION 9.  Section 7201.005(c), Special District Local Laws Code, is amended to read as follows:

(c)  District boundaries may be modified in accordance with Chapters 13 and 49, Water Code, except that the boundaries must include all territory in any area included under a certificate of convenience and necessity issued by the Water Public Utility Commission or a predecessor agency [~~of Texas or the Texas Commission on Environmental Quality to the district~~].

SECTION 10.  Section 7201.102, Special District Local Laws Code, is amended to read as follows:

Sec. 7201.102.  PROVISION OF SERVICE. The district shall at all times operate and construct necessary improvements within the certificated areas established by the Water Public Utility Commission or a predecessor agency [~~of Texas or the Texas Commission on Environmental Quality~~] to provide uninterrupted, continuous, and adequate service to existing and future customers for water, sewer, and contract services.

SECTION 11.  Section 7886.0101(4), Special District Local Laws Code, is amended to read as follows:

(4)  "Utility commission" means the Water Public Utility Commission [~~of Texas~~].

SECTION 12.  Section 7958.0101(6), Special District Local Laws Code, is amended to read as follows:

(6)  "Utility commission" means the Water Public Utility Commission [~~of Texas~~].

SECTION 13.  Section 8281.103, Special District Local Laws Code, is amended to read as follows:

Sec. 8281.103.  LIMITATION ON PROVIDING WATER TO CERTAIN USERS. Notwithstanding any other provision of this chapter, the district may not compete with the City of Mabank in providing water to household users unless the district receives permission from the Water Public Utility Commission [~~of Texas~~], with the consent of that city.

SECTION 14.  Section 8363.106(b), Special District Local Laws Code, is amended to read as follows:

(b)  In relation to a retail public utility that provides water or sewer service to all or part of the area of the district under a certificate of public convenience and necessity, the district may exercise the powers given to a municipality provided by Section 13.255, Water Code, as if the district were a municipality that had annexed the area of the district. The Water Public Utility Commission [~~of Texas~~] shall grant single certification as to the city as provided by Section 13.255(c), Water Code, in the event that the district applies for the certification on the city's behalf in the manner provided by Section 13.255(b), Water Code.

SECTION 15.  Section 8363.251(a), Special District Local Laws Code, is amended to read as follows:

(a)  The city may dissolve the district by ordinance after provision is made for all debts incurred by the district if one or more of the following does not occur:

(1)  on or before the 90th day after the effective date of the Act enacting this chapter, the city receives one or more petitions requesting annexation of all territory in the district remaining in the extraterritorial jurisdiction of the city;

(2)  on or before the last day of the ninth month after the effective date of the Act enacting this chapter, the city adopts one or more ordinances annexing all territory in the district remaining in the city's extraterritorial jurisdiction;

(3)  on or before the last day of the third year after the effective date of the Act enacting this chapter, the Water Public Utility Commission [~~of Texas~~] issues an order approving the sale and transfer of a certificate of public convenience and necessity authorizing the city to provide retail water service to territory in the district; or

(4)  by the end of the fifth year after the effective date of the Act enacting this chapter, the district has completed construction of internal streets and water and sanitary sewer facilities sufficient to serve at least 100 residential lots in the district.

SECTION 16.  Section 8801.201, Special District Local Laws Code, is amended to read as follows:

Sec. 8801.201.  APPEAL OF SURFACE WATER RATES. (a) A person who is required to convert to surface water under this chapter and who purchases that water supply wholesale from a political subdivision as defined by Section 12.013(b), Water Code, may appeal to the Water Public Utility Commission [~~of Texas~~] the rates the political subdivision charges to the person. Chapter 12, Water Code, and rules adopted under that chapter apply to an appeal under this section.

(b)  The Water Public Utility Commission [~~of Texas~~] shall hear the appeal not later than the 180th day after the date the appeal is filed.

(c)  The Water Public Utility Commission [~~of Texas~~] shall issue a final decision on the appeal not later than the 60th day after the date the hearing ends.

SECTION 17.  Section 8803.151(1), Special District Local Laws Code, is amended to read as follows:

(1)  "Commission" means the Water Public Utility Commission [~~of Texas~~].

SECTION 18.  Section 8808.151(1), Special District Local Laws Code, is amended to read as follows:

(1)  "Commission" means the Water Public Utility Commission [~~of Texas~~].

SECTION 19.  Section 11002.151, Special District Local Laws Code, is amended to read as follows:

Sec. 11002.151.  DEFINITION. In this subchapter, "receiving entity" means the entity that holds a certificate of convenience and necessity issued by the Water Public Utility Commission [~~of Texas~~] for the territory included in the district.

SECTION 20.  Section 11.002(21), Water Code, is repealed.

SECTION 21.  (a)  On September 1, 2024, the following are transferred from the Public Utility Commission of Texas to the Water Public Utility Commission:

(1)  the powers, duties, functions, programs, and activities of the Public Utility Commission of Texas relating to the economic regulation of water and sewer service, including the issuance and transfer of certificates of convenience and necessity, the determination of rates, and the administration of hearings and proceedings involving those matters, as provided by this Act;

(2)  any obligations and contracts of the Public Utility Commission of Texas that are directly related to implementing a power, duty, function, program, or activity transferred under this Act; and

(3)  all property and records in the custody of the Public Utility Commission of Texas that are related to a power, duty, function, program, or activity transferred under this Act and all funds appropriated by the legislature for that power, duty, function, program, or activity.

(b)  The Public Utility Commission of Texas shall continue to carry out that commission's duties related to the economic regulation of water and sewer service under the law as it existed immediately before the effective date of this Act until September 1, 2024, and the former law is continued in effect for that purpose.

(c)  The Public Utility Commission of Texas and the Water Public Utility Commission shall enter into a memorandum of understanding that:

(1)  identifies in detail the applicable powers and duties that are transferred by this Act;

(2)  establishes a plan for the identification and transfer of the records, personnel, property, and unspent appropriations of the Public Utility Commission of Texas that are used for purposes of that commission's powers and duties directly related to the economic regulation of water and sewer service; and

(3)  establishes a plan for the transfer of all pending applications, hearings, rulemaking proceedings, and orders relating to the economic regulation of water and sewer service from the Public Utility Commission of Texas to the Water Public Utility Commission.

(d)  The memorandum of understanding under this section:

(1)  is not required to be adopted by rule; and

(2)  must be completed by August 1, 2024.

(e)  The executive directors of the Public Utility Commission of Texas and the Water Public Utility Commission may agree in the memorandum of understanding under this section to transfer to the Water Public Utility Commission any personnel of the Public Utility Commission of Texas whose functions predominantly involve powers, duties, obligations, functions, and activities related to the economic regulation of water and sewer service.

(f)  On or after September 1, 2023, the Office of Water Public Utility Counsel may initiate or intervene in a contested case before the Public Utility Commission of Texas that the office would be entitled to initiate or intervene in if the case were before the Water Public Utility Commission, as authorized by Chapter 14A, Water Code, as added by this Act.

(g)  The Public Utility Commission of Texas and the Water Public Utility Commission shall appoint a transition team to accomplish the purposes of this section. The transition team may consult with the Office of Public Utility Counsel and the Office of Water Public Utility Counsel to accomplish the purposes of this section.

(h)  A rule, form, policy, procedure, or decision of the Public Utility Commission of Texas related to a power, duty, function, program, or activity transferred under this Act continues in effect as a rule, form, policy, procedure, or decision of the Water Public Utility Commission and remains in effect until amended or replaced by that agency. Notwithstanding any other law, beginning September 1, 2023, the Water Public Utility Commission may propose rules, forms, policies, and procedures related to a function to be transferred to the Water Public Utility Commission under this Act.

(i)  The Public Utility Commission of Texas and the Water Public Utility Commission shall adopt rules to implement the changes in law made by this Act not later than September 1, 2025.

SECTION 22.  This Act takes effect September 1, 2023.