

- SUBJECT:** Transferring water rate advocacy from TCEQ to OPUC
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 12 ayes — Solomons, Menendez, Cook, Craddick, Farabee, Harless, Hilderbran, Jones, Lucio, Maldonado, Oliveira, S. Turner
- 0 nays
- 3 absent — Gallego, Geren, Swinford
- WITNESSES:** For — Tom “Smitty” Smith, Public Citizen; (*Registered, but did not testify*, Jim Boyle)
- Against — None
- On — (*Registered, but did not testify*, Don Ballard, Public Utility Counsel)
- BACKGROUND:** Currently, the Office of Public Interest Counsel at the Texas Commission on Environmental Quality (TCEQ) is responsible for representing the public interest in proceedings before the commission, including advocating for residential and small commercial customers in disputes about water rates.
- DIGEST:** CSHB 3838 would transfer the duty of representing the interests of residential and small commercial consumers from TCEQ’s Office of Public Interest Counsel to the Office of Public Utility Counsel (OPUC). OPUC would be required to assess the impact of rate changes on residential consumers and advocate for the interests of residential consumers.
- OPUC also could:
- intervene in TCEQ hearings and alternative dispute resolution proceedings;
 - initiate or intervene in judicial proceedings in which residential or small commercial consumers needed representation;

- access inspections, records, inquiries, or non-privileged discoveries related to a TCEQ proceeding or petition;
- represent a residential or small commercial consumer in an unresolved complaint, and
- make legislative recommendations in the interest of residential and small consumers.

The OPUC counselor would appear at hearings in a capacity separate from other parties involved. The bill would not limit TCEQ's ability to represent residential or small commercial consumers.

The following would be transferred from the Office of Public Interest Counsel to OPUC by January 1, 2010:

- powers, duties, functions, programs, and activities related to water and sewer services;
- all obligations and contracts related to water and sewer services;
- legislative appropriations related to water and sewer services, totaling \$161,694 for fiscal 2010-11;
- rules and forms related to water and sewer services; and
- statutory references to the Office of Public Interest Counsel.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

HB 3838 would address the increasing wave of complaints against the TCEQ's Public Interest Counsel. Residential consumers all over the state have expressed that TCEQ's Public Interest Counsel is not meeting their needs with regard to water rate complaints. The OPUC is an independent agency, unlike the Public Interest Counsel, which is a part of TCEQ. As an autonomous body with separate powers from TCEQ, OPUC would provide a more powerful voice for consumers in TCEQ hearings and proceedings.

CSHB 3838 would give a voice to consumers and small businesses who otherwise would not have the resources to contest water rates. In some parts of the state, water rates are controlled by large multinational corporations that are more interested in their bottom line than in consumer rights. In many cases, these large companies buy out smaller water retailers, which can cause spikes in prices. CSHB 3838 would provide the stronger voice that consumers need to contest unreasonable water rates.

Transferring consumer advocacy to the OPUC would be a logical extension of the existing functions of the office. When OPUC was first created, it dealt with water rate matters, but these functions later were transferred to TCEQ. OPUC already serves as a consumer advocate on electricity and telecommunications rates. Adding water rate concerns would not change the core operations of the office. The bill would provide OPUC with the funding previously appropriated to TCEQ for consumer advocacy in water rate matters. CSHB 3838 would not significantly alter the structure and operations of OPUC.

**OPPONENTS
SAY:**

TCEQ's Public Interest Counsel has been effective in representing the interests of residential and small commercial customers in rate dispute hearings. Any time rates go up, consumers are going to complain. Transferring the public interest responsibility from TCEQ to OPUC is not going to prevent consumer complaints in the event of rate increases.