

BILL ANALYSIS

Senate Research Center
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S.B. 409
By: Nelson
Government Organization
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As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Office of Public Utility Counsel (OPUC) is subject to the Sunset Act and will be abolished September 1, 2005 unless continued by the legislature.

As proposed, S.B. 409 continues OPUC for six years, directs the State Auditor's Office to audit OPUC's performance measures, requires OPUC to annually report its performance to the legislature, and requires OPUC to obtain consumer input through an annual stakeholder meeting.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 13.002, Utilities Code, to change the expiration date, under the Texas Sunset Act, of the Office of Public Utility Counsel from September 1, 2005, to September 1, 2011.

SECTION 2. Amends Subchapter A, Chapter 13, Utilities Code, by adding Sections 13.004, 13.005, 13.006, and 13.007, as follows:

Sec. 13.004. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) Requires the public utility counsel (counsellor) to develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies), Government Code, to assist in the resolution of internal disputes under the office's jurisdiction.

(b) Requires the Office of Public Utility Counsel's (office) procedures relating to alternative dispute resolution to 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) Requires the counsellor to designate a trained person to administer certain aspects of an alternative dispute resolution system.

Sec. 13.005. COMPLAINTS. (a) Requires the office to maintain a system to promptly and efficiently act on complaints filed with the office that the office has the authority to resolve. Requires the office to maintain certain information regarding each complaint.

(b) Requires the office to make information available describing its procedures for complaint investigation and resolution.

(c) Requires the office to periodically notify the complaint parties of the status of the complaint until final disposition.

Sec. 13.006. TECHNOLOGY POLICY. Requires the counsellor to implement a policy requiring the office to use appropriate technological solutions to improve the office's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the office on the Internet.

Sec. 13.007. MANAGEMENT AUDIT. (a) Requires the state auditor, in coordination with the Legislative Budget Board, to conduct a management audit of the office to evaluate the office's performance measures to determine the accuracy of calculations and whether the measures accurately depict the impact of the office. Sets forth requirements for the contents of the audit.

(b) Requires the state auditor to complete the audit required by this section and deliver a report on the audit to certain government officials not later than August 1, 2006.

(c) Provides that this section expires September 1, 2006.

SECTION 3. Amends Section 13.023, Utilities Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Provides that it is a ground for removal from office if the counsellor does not have at the time of taking office, rather than appointment, or maintain during service as counselor the qualifications required by Section 13.022 (Qualifications); is ineligible for service as counsellor under, rather than violates a prohibition provided by, Section 13.022 (Qualifications), 13.042 (Relationship with Trade Association), or 13.043 (Prohibition on Employment or Representation); or cannot discharge the counsellor's duties for a substantial part of the term for which the counsellor is appointed because of illness or disability.

(c) Sets forth requirements for potential ground for removal of the counsellor.

SECTION 4. Amends Section 13.042, Utilities Code, as follows:

Sec. 13.042. New heading: CONFLICT OF INTEREST. (a) Defines "Texas trade association."

(b) Prohibits a person from serving as counsellor or being an employee of the office employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for the 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 falls under certain categories. Deletes existing text relating to the prohibition of a person who is exempt from the state's position classification plan.

(c) Prohibits a person from serving as counsellor or acting as the general counsel to the office if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the office.

SECTION 5. Amends Section 13.063, Utilities Code, as follows:

Sec. 13.063. New heading: ANNUAL REPORTS. (a) Creates this subsection from existing text.

(b) Requires the office to prepare annually a report on the office's activities during the preceding year and submit the report to certain governmental entities. Requires the report to include certain information.

SECTION 6. Amends Subchapter D, Chapter 13, Utilities Code, by adding Section 13.064, as follows:

Sec. 13.064. PUBLIC HEARING. (a) Requires the office to annually conduct a public hearing to assist the office in developing a plan of priorities and to give the public an opportunity to comment on the office's functions and effectiveness.

(b) Provides that a hearing under this section is not subject to Chapter 551 (Open Meetings), Government Code.

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

SECTION 7. Repealer: Section 13.022(c) (Prohibits a lobbyist from serving as counsellor), Utilities Code.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2005.