

## **BILL ANALYSIS**

Senate Research Center  
82R13176 JJT-D

H.B. 3754  
By: Hilderbran (Duncan)  
Natural Resources  
5/17/2011  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 3754 implements a recommendation from the Sunset Advisory Committee to transfer the powers and duties of the Office of Public Interest Counsel (OPIC) within the Texas Commission on Environmental Quality (TCEQ) with regard to the representation of residential and small commercial consumers in water or sewer utility service matters to the Office of Public Utility Counsel (OPUC). OPUC is an independent agency that represents residential and small commercial consumers in matters before the Public Utility Commission.

H.B. 3754 amends current law relating to powers and duties of the Office of Public Utility Counsel to represent residential and small commercial consumers in certain water or sewer utility service matters before the Texas Commission on Environmental Quality.

### **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 5.273(a), Water Code, to require a counsel to represent the public interest and be a party to all proceedings before the Texas Commission on Environmental Quality (TCEQ), other than a proceeding under Chapter 13 (Water Rates and Services).

SECTION 2. Amends Subchapter B, Chapter 13, Water Code, by adding Section 13.017, as follows:

Sec. 13.017. OFFICE OF PUBLIC UTILITY COUNSEL. (a) Defines, in this section, "counselor" and "office."

(b) Requires the Office of Public Utility Counsel (OPUC) to represent the interests of residential and small commercial consumers under this chapter.

(c) Provides that OPUC:

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

(2) shall advocate in OPUC'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 residential consumers, as a class, in any proceeding before TCEQ, including an alternative dispute resolution proceeding, and 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 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 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 TCEQ staff, to records gathered by TCEQ under Section 13.133 (Inspections; Examination Under Oath; Compelling Production of Records; Inquiry into Management Affairs);

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

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

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

(d) Provides that this section does not limit the authority of TCEQ to represent residential or small commercial consumers.

(e) Provides that the appearance of the counsellor in a proceeding does not preclude the appearance of other parties on behalf of residential or small commercial consumers. Prohibits the counsellor from being grouped with any other party.

SECTION 3. (a) Provides that, not later than January 1, 2012, the following are transferred from the Office of Public Interest Counsel (OPIC) to OPUC:

(1) the powers, duties, functions, programs, and activities of OPIC relating to water and sewer services regulated under Chapter 13, Water Code;

(2) all obligations and contracts of OPIC that are related to a power, duty, function, program, or activity transferred under this subsection;

(3) all property and records in the custody of OPIC that are related to a power, duty, function, program, or activity transferred under this subsection and all funds appropriated by the legislature for that power, duty, function, program, or activity; and

(4) out of amounts appropriated to TCEQ by the 82nd Legislature, Regular Session, 2011, that may be used in relation to a power, duty, function, program, or activity transferred under this subsection, certain amounts.

(b) Provides that a rule or form adopted by OPIC that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section is a rule or form of OPUC and remains in effect until altered by OPIC.

(c) Provides that a reference in law to OPIC that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section means OPUC.

SECTION 4. Effective date: September 1, 2011.