

UTILITIES CODE

TITLE 2. PUBLIC UTILITY REGULATORY ACT

SUBTITLE A. PROVISIONS APPLICABLE TO ALL UTILITIES

CHAPTER 12. ORGANIZATION OF COMMISSION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 12.001. PUBLIC UTILITY COMMISSION OF TEXAS. The Public Utility Commission of Texas exercises the jurisdiction and powers conferred by this title.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.002. OFFICE. (a) The principal office of the commission is in Austin.

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

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.003. SEAL. (a) The commission has a seal bearing the inscription: "Public Utility Commission of Texas."

(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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.004. REPRESENTATION BY THE 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by

that chapter or by Chapter 39, the commission is abolished and this title expires September 1, 2023.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1212, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 797 (S.B. 408), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 1.08(a), eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.01, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 3.07, eff. June 10, 2019.

Acts 2021, 87th Leg., R.S., Ch. 850 (S.B. 713), Sec. 1.06, eff. June 16, 2021.

SUBCHAPTER B. COMMISSION APPOINTMENT AND FUNCTIONS

Sec. 12.051. 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) Commissioners serve staggered, six-year terms.
Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 1052 (S.B. 2154), Sec. 1, eff. June 18, 2021.

Sec. 12.052. 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.0521. PRESIDING OFFICER QUALIFICATIONS. The commissioner designated as the presiding officer must be a resident of this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 425 (S.B. 2), Sec. 1, eff. June 8, 2021.

Sec. 12.053. 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;
- (4) be a competent and experienced administrator; and
- (5) have at least five years of experience:

(A) in the administration of business or government; or

(B) as a practicing attorney, certified public accountant, or professional engineer.

(a-1) At least two commissioners must be well informed and qualified in the field of public utilities and utility regulation.

(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 public utility regulated by the commission or of an affiliate or direct competitor of a public utility regulated by the commission;

(B) owned or controlled, directly or indirectly, more than a 10 percent interest in a public utility regulated by the commission or in an affiliate or direct competitor of a 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 12.151, 12.152, or 12.153.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.02, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 1052 (S.B. 2154), Sec. 2, eff. June 18, 2021.

Sec. 12.054. 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 12.053;

(2) violates a prohibition provided by Section 12.053 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.055. 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.056. EFFECT OF VACANCY. A vacancy or disqualification does not prevent the remaining commissioner or commissioners from exercising the powers of the commission.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.057. COMPENSATION. The annual salary of the commissioners is determined by the legislature.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.058. 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.059. 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 797 (S.B. 408), Sec. 2, eff. September 1, 2005.

Sec. 12.060. 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.

Added by Acts 2021, 87th Leg., R.S., Ch. 1052 (S.B. 2154), Sec. 3, eff. June 18, 2021.

SUBCHAPTER C. COMMISSION PERSONNEL

Sec. 12.101. COMMISSION EMPLOYEES. The commission shall employ:

(1) an executive director; and

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

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 3, eff. Sept. 1, 1999.

Sec. 12.102. 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 797 (S.B. 408), Sec. 3, eff. September 1, 2005.

Sec. 12.103. DUTIES OF EXECUTIVE DIRECTOR. The executive director is responsible for the daily operations of the commission and shall coordinate the activities of commission employees.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.105. 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.106. 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 Commission on Human Rights 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER D. PROHIBITED RELATIONSHIPS AND ACTIVITIES

Sec. 12.151. 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 4, eff. Sept. 1, 1999.

Sec. 12.152. CONFLICT OF INTEREST. (a) A person is not eligible for appointment as a commissioner or executive director of the commission if:

(1) the person serves on the board of directors of a company that supplies fuel, utility-related services, or utility-related products to regulated or unregulated electric or telecommunications 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 utility competitor, 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, 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 utility, utility competitor, or 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 4, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.03,

eff. September 1, 2013.

Sec. 12.153. 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 797 (S.B. 408), Sec. 4, eff. September 1, 2005.

Sec. 12.154. 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 public utility or affiliate; or

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

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

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

(B) a person a significant portion of whose business consists of furnishing goods or services to public utilities, affiliates, or direct competitors of 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 public utility or an agent, representative, attorney, employee, officer, owner, director, or partner of a public utility the appointment to a position or the employment of a person by the 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 public utility, affiliate, or direct competitor of a public utility;

(2) a person who furnishes goods or services to a public utility, affiliate, or direct competitor of a 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 public utility, affiliate, or direct competitor of a public utility or a person furnishing goods or services to a public utility, affiliate, or direct competitor of a public utility may not aid, abet, or participate with a commissioner, commission employee, or former commission employee in conduct that violates Subsection (a)(3) 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 public utility, affiliate, or direct competitor of a 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 public utility product or service or equipment for use of a 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.04, eff. September 1, 2013.

Sec. 12.155. PROHIBITION ON EMPLOYMENT OR REPRESENTATION.

(a) A commissioner, a commission employee, or an employee of the State Office of Administrative Hearings involved in hearing utility cases may not:

(1) be employed by a 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.

(d) A commissioner may not be employed by an independent organization certified under Section 39.151. The prohibition under this subsection applies until the second anniversary of the date the commissioner ceases to serve as a commissioner.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 1.05, eff. September 1, 2013.

Sec. 12.156. 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 title; and

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

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND REPORTS

Sec. 12.201. 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.202. 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.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.203. 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 utility regulation in general that the commission considers appropriate for protecting and furthering the interest of the public.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 94, eff. September 1, 2013.

Sec. 12.204. 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 Internet website found at <http://www.puc.state.tx.us>. The commission may recover the costs of administering this section by imposing an assessment against a:

(1) public utility;

(2) corporation described by Section 32.053;

(3) retail electric provider that serves more than 250,000 customers; or

(4) power generation company that owns more than 5,000 megawatts of installed capacity in this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 400 (H.B. 1783), Sec. 1, eff. September 1, 2009.

SUBCHAPTER F. HISTORICALLY UNDERUTILIZED BUSINESSES

Sec. 12.251. DEFINITION. In this subchapter, "historically underutilized business" has the meaning assigned by Section 481.101, Government Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.252. COMMISSION AUTHORITY. The commission, after notice and hearing, may require each utility subject to regulation under this title to make an effort to overcome the underuse of historically underutilized businesses.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.253. REPORT REQUIRED. The commission shall require each utility subject to regulation under this title to prepare and submit to the commission a comprehensive annual report detailing its use of historically underutilized businesses.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.254. DISCRIMINATION PROHIBITED. The rules adopted under this subchapter may not be used to discriminate against a citizen on the basis of sex, race, color, creed, or national origin.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 12.255. CAUSE OF ACTION NOT CREATED. This subchapter does not create a public or private cause of action.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.