

AN ACT

relating to the continuation and functions of the Public Utility Commission of Texas and the Office of Public Utility Counsel, and the functions of the independent organization certified for the ERCOT power region; increasing an administrative penalty.

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

SECTION 1. Section 12.005, Utilities Code, is amended to read as follows:

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, 2029 ~~[2023]~~.

SECTION 2. Section 12.059, Utilities Code, is amended to read as follows:

Sec. 12.059. TRAINING PROGRAM FOR COMMISSIONERS. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes 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 that complies with ~~[established under]~~ this section.

(b) The ~~[A]~~ training program must ~~[established under this~~

1 ~~section shall]~~ provide the person with information [~~to the~~
2 ~~commissioner]~~ regarding:

3 (1) the law governing [~~enabling legislation that~~
4 ~~created the]~~ commission operations [~~and its policymaking body to~~
5 ~~which the commissioner is appointed to serve]~~;

6 (2) the programs, functions, rules, and budget of
7 [~~operated by]~~ the commission;

8 (3) the scope [~~role and functions]~~ of and limitations
9 on the rulemaking authority of the commission;

10 (4) the results [~~rules]~~ of the most recent formal
11 audit of the commission [~~with an emphasis on the rules that relate~~
12 ~~to disciplinary and investigatory authority]~~;

13 (5) the requirements of:

14 (A) laws relating to open meetings, public
15 information, administrative procedure, and disclosing conflicts of
16 interest; and

17 (B) other laws applicable to members of a state
18 policy-making body in performing their duties [~~current budget for~~
19 ~~the commission]~~; and

20 (6) [~~the results of the most recent formal audit of the~~
21 ~~commission,~~

22 [~~(7) the requirements of Chapters 551, 552, and 2001,~~
23 ~~Government Code,~~

24 [~~(8) the requirements of the conflict of interest laws~~
25 ~~and other laws relating to public officials, and~~

26 [~~(9)] any applicable ethics policies adopted by the~~

27 commission or the Texas Ethics Commission.

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

6 (d) The executive director of the commission shall create a
7 training manual that includes the information required by
8 Subsection (b). The executive director shall distribute a copy of
9 the training manual annually to each member of the commission. Each
10 member of the commission shall sign and submit to the executive
11 director a statement acknowledging that the member received and has
12 reviewed the training manual.

13 SECTION 3. Section 12.202, Utilities Code, is amended by
14 adding Subsections (a-1) and (a-2) to read as follows:

15 (a-1) The policies adopted under this section must require
16 the agenda for each regular commission meeting to include public
17 testimony as a meeting agenda item and allow members of the public
18 to comment on:

19 (1) each meeting agenda item unrelated to a contested
20 case; and

21 (2) other matters under the commission's jurisdiction.

22 (a-2) The commission may prohibit public comment at a
23 regular commission meeting on a meeting agenda item related to a
24 contested case.

25 SECTION 4. Section 12.203, Utilities Code, is amended to
26 read as follows:

27 Sec. 12.203. BIENNIAL REPORT. (a) Not later than January

1 15 of each odd-numbered year, the commission shall prepare a
2 written report that includes:

3 (1) suggestions regarding modification and
4 improvement of the commission's statutory authority and for the
5 improvement of utility regulation in general, including the
6 regulation of water and sewer service under Chapter 13, Water Code,
7 that the commission considers appropriate for protecting and
8 furthering the interest of the public;

9 (2) a report on the scope of competition in the
10 electric and telecommunications markets that includes:

11 (A) an assessment of:

12 (i) the effect of competition and industry
13 restructuring on customers in both competitive and noncompetitive
14 electric markets; and

15 (ii) the effect of competition on the rates
16 and availability of electric services for residential and small
17 commercial customers;

18 (B) an assessment of the effect of competition
19 on:

20 (i) customers in both competitive and
21 noncompetitive telecommunications markets, with a specific focus
22 on rural markets; and

23 (ii) the rates and availability of
24 telecommunications services for residential and business
25 customers, including any effects on universal service; and

26 (C) a summary of commission action over the
27 preceding two years that reflects changes in the scope of

1 competition in regulated electric and telecommunications markets;
2 and

3 (3) recommendations for legislation that the
4 commission determines appropriate to promote the public interest in
5 the context of partially competitive electric and
6 telecommunications markets.

7 (b) A telecommunications utility, as defined by Section
8 51.002, shall cooperate with the commission as necessary for the
9 commission to satisfy the requirements of this section.

10 SECTION 5. Subchapter E, Chapter 12, Utilities Code, is
11 amended by adding Section 12.205 to read as follows:

12 Sec. 12.205. STRATEGIC COMMUNICATIONS PLAN. The commission
13 shall:

14 (1) develop an agency-wide plan for:

15 (A) improving the effectiveness of commission
16 communications with the public, market participants, and other
17 relevant audiences; and

18 (B) responding to changing communications needs;

19 (2) include in the plan required by Subdivision (1)
20 goals, objectives, and metrics to assess commission efforts; and

21 (3) update the plan required by Subdivision (1) at
22 least once every two years.

23 SECTION 6. Section 13.002, Utilities Code, is amended to
24 read as follows:

25 Sec. 13.002. APPLICATION OF SUNSET ACT. The Office of
26 Public Utility Counsel is subject to Chapter 325, Government Code
27 (Texas Sunset Act). Unless continued in existence as provided by

1 that chapter, the office is abolished [~~and this chapter expires~~]
2 September 1, 2029 [~~2023~~].

3 SECTION 7. Sections 15.023(b-1) and (f), Utilities Code,
4 are amended to read as follows:

5 (b-1) Notwithstanding Subsection (b), the penalty for a
6 violation of a voluntary mitigation plan entered into under
7 Subsection (f) or of a provision of Section 35.0021 or 38.075 may be
8 in an amount not to exceed \$1,000,000 for a violation. Each day a
9 violation continues or occurs is a separate violation for purposes
10 of imposing a penalty.

11 (f) The commission and a person may develop and enter into a
12 voluntary mitigation plan relating to a violation of Section 39.157
13 or rules adopted by the commission under that section. The
14 commission may approve the plan only if the commission determines
15 that the plan is in the public interest. The voluntary mitigation
16 plan must be reviewed at least once every two years and not later
17 than the 90th day after the implementation date of a wholesale
18 market design change. As part of the review, the commission must
19 determine whether the voluntary mitigation plan remains in the
20 public interest. If the commission determines that the voluntary
21 mitigation plan is no longer in the public interest, the commission
22 and the person must agree to a modification of the plan or the
23 commission must terminate the plan. Adherence [~~If the commission~~
24 ~~and a person enter into a voluntary mitigation plan, adherence~~] to
25 the plan must be considered in determining whether a violation
26 occurred and, if so, the penalty to be assessed [~~constitutes an~~
27 ~~absolute defense against an alleged violation with respect to~~

1 ~~activities covered by the plan]~~.

2 SECTION 8. Subchapter A, Chapter 35, Utilities Code, is
3 amended by adding Section 35.0022 to read as follows:

4 Sec. 35.0022. SERVICE INTERRUPTION NOTIFICATIONS. (a)
5 This section applies only to a provider of electric generation
6 service described by Section 35.0021(a).

7 (b) The commission by rule shall require a provider of
8 electric generation service to provide to the independent
9 organization certified under Section 39.151 for the ERCOT power
10 region the reason for each unplanned service interruption. Not
11 later than the third business day after the service is restored, the
12 independent organization shall include the reason for each
13 unplanned service interruption in a publicly available report
14 published on the independent organization's Internet website.

15 SECTION 9. Section 35.004, Utilities Code, is amended by
16 amending Subsection (d) and adding Subsections (d-1), (d-2), and
17 (d-3) to read as follows:

18 (d) The commission shall price wholesale transmission
19 services within ERCOT based on the postage stamp method of pricing
20 under which a transmission-owning utility's rate is based on the
21 ERCOT utilities' combined annual costs of transmission, other than
22 costs described by Subsections (d-2) and (d-3), divided by the
23 total demand placed on the combined transmission systems of all
24 such transmission-owning utilities within a power region. An
25 electric utility subject to the freeze period imposed by Section
26 39.052 may treat transmission costs in excess of transmission
27 revenues during the freeze period as an expense for purposes of

1 determining annual costs in the annual report filed under Section
2 39.257. Notwithstanding Section 36.201, the commission may approve
3 wholesale rates that may be periodically adjusted to ensure timely
4 recovery of transmission investment. Notwithstanding Section
5 36.054(a), if the commission determines that conditions warrant the
6 action, the commission may authorize the inclusion of construction
7 work in progress in the rate base for transmission investment
8 required by the commission under Section 39.203(e).

9 (d-1) The commission by rule shall establish a reasonable
10 allowance for transmission-owning utility costs incurred to
11 interconnect generation resources directly with the ERCOT
12 transmission system at transmission voltage. The allowance must
13 take into account:

14 (1) the potential to reduce the costs to consumers of
15 generation interconnection;

16 (2) historical generation interconnection costs; and

17 (3) any other factor that the commission considers
18 reasonable to accomplish the goal of this subsection.

19 (d-2) Costs in excess of the transmission-owning utility
20 allowance provided by Subsection (d-1) incurred to interconnect
21 generation resources with the ERCOT transmission system must be
22 directly assigned to and collected from the generation resource
23 interconnecting through the facilities.

24 (d-3) Not later than September 1 of every fifth year, the
25 commission shall review and may adjust the allowance provided by
26 Subsection (d-1) to account for inflation or supply chain issues.

27 SECTION 10. Section 36.053(d), Utilities Code, is amended

1 to read as follows:

2 (d) If the commission issues a certificate of convenience
3 and necessity or if the commission, acting under the authority
4 formerly provided by Section 39.203(e), ordered [~~orders~~] an
5 electric utility or a transmission and distribution utility to
6 construct or enlarge transmission or transmission-related
7 facilities to facilitate meeting the goal for generating capacity
8 from renewable energy technologies under former Section 39.904(a),
9 the commission shall find that the facilities are used and useful to
10 the utility in providing service for purposes of this section and
11 are prudent and includable in the rate base, regardless of the
12 extent of the utility's actual use of the facilities.

13 SECTION 11. Section 37.0541, Utilities Code, is amended to
14 read as follows:

15 Sec. 37.0541. CONSOLIDATION OF CERTAIN PROCEEDINGS. The
16 commission shall consolidate the proceeding on an application to
17 obtain or amend a certificate of convenience and necessity for the
18 construction of a transmission line with the proceeding on another
19 application to obtain or amend a certificate of convenience and
20 necessity for the construction of a transmission line if it is
21 apparent from the applications or a motion to intervene in either
22 proceeding that the transmission lines that are the subject of the
23 separate proceedings share a common point of interconnection.
24 [~~This section does not apply to a proceeding on an application for a~~
25 ~~certificate of convenience and necessity for a transmission line to~~
26 ~~serve a competitive renewable energy zone as part of a plan~~
27 ~~developed by the commission under Section 39.904(g)(2).~~]

1 SECTION 12. Sections 37.056(c) and (d), Utilities Code, are
2 amended to read as follows:

3 (c) The commission shall grant each certificate on a
4 nondiscriminatory basis after considering:

5 (1) the adequacy of existing service;

6 (2) the need for additional service;

7 (3) the effect of granting the certificate on the
8 recipient of the certificate and any electric utility serving the
9 proximate area; and

10 (4) other factors, such as:

11 (A) community values;

12 (B) recreational and park areas;

13 (C) historical and aesthetic values;

14 (D) environmental integrity; and

15 (E) the probable improvement of service or
16 lowering of cost to consumers in the area if the certificate is
17 granted, including any potential economic or reliability benefits
18 associated with dual fuel and fuel storage capabilities in areas
19 outside the ERCOT power region[~~and~~

20 [~~(F) to the extent applicable, the effect of~~
21 ~~granting the certificate on the ability of this state to meet the~~
22 ~~goal established by Section 39.904(a) of this title].~~

23 (d) The commission by rule shall establish criteria, in
24 addition to the criteria described by Subsection (c), for granting
25 a certificate for a transmission project that serves the ERCOT
26 power region and[~~and~~] that is not necessary to meet state or federal
27 reliability standards[~~and that is not included in a plan~~

1 ~~developed under Section 39.904(g)]~~. The criteria must include a
2 comparison of the estimated cost of the transmission project for
3 consumers and the estimated congestion cost savings for consumers
4 that may result from the transmission project, considering both
5 current and future expected congestion levels and the transmission
6 project's ability to reduce those congestion levels. The
7 commission shall include with its decision on an application for a
8 certificate to which this subsection applies findings on the
9 criteria.

10 SECTION 13. Subchapter D, Chapter 38, Utilities Code, is
11 amended by adding Section 38.078 to read as follows:

12 Sec. 38.078. CIRCUIT SEGMENTATION STUDY AND COST RECOVERY.

13 (a) Not later than September 15, 2023, the commission shall direct
14 each transmission and distribution utility to perform a circuit
15 segmentation study.

16 (b) A circuit segmentation study must:

17 (1) use an engineering analysis to examine whether and
18 how the transmission and distribution utility's transmission and
19 distribution systems can be segmented and sectionalized to manage
20 and rotate outages more evenly across all customers and circuits,
21 while maintaining the protections offered to critical facilities;

22 (2) include an engineering analysis of the feasibility
23 of using sectionalization, automated reclosers, and other
24 technology to break up the circuits that host significant numbers
25 of critical facilities into smaller segments for outage management
26 purposes to enable more granular and flexible outage management;

27 (3) identify feeders with critical facilities that, if

1 equipped with facility-specific backup power systems and
2 segmentation, can enhance the utility's outage management
3 flexibility; and

4 (4) include an estimate of the time, capital cost, and
5 expected improvements to load-shed management associated with the
6 circuit segmentation study.

7 (c) Each transmission and distribution utility shall submit
8 a report of the conclusions of the utility's study to the commission
9 not later than September 1, 2024.

10 (d) The commission shall review each circuit segmentation
11 study not later than March 15, 2025.

12 SECTION 14. Section 39.002, Utilities Code, as amended by
13 Chapters 908 (H.B. 4492) and 950 (S.B. 1580), Acts of the 87th
14 Legislature, Regular Session, 2021, is reenacted and amended to
15 read as follows:

16 Sec. 39.002. APPLICABILITY. This chapter, other than
17 Sections 39.151, 39.1516, 39.155, 39.157(e), 39.159, 39.160,
18 39.203, [~~39.904,~~] 39.9051, 39.9052, and 39.914(e), and Subchapters
19 M and N, does not apply to a municipally owned utility or an
20 electric cooperative. Sections 39.157(e) and [~~7~~] 39.203 [~~7~~ and
21 ~~39.904, however,~~] apply only to a municipally owned utility or an
22 electric cooperative that is offering customer choice. If there is
23 a conflict between the specific provisions of this chapter and any
24 other provisions of this title, except for Chapters 40 and 41, the
25 provisions of this chapter control.

26 SECTION 15. Section 39.151, Utilities Code, is amended by
27 amending Subsections (d), (g-1), and (g-6) and adding Subsection

1 (g-7) to read as follows:

2 (d) The commission shall adopt and enforce rules relating to
3 the reliability of the regional electrical network and accounting
4 for the production and delivery of electricity among generators and
5 all other market participants, or may delegate those
6 responsibilities to an independent organization [~~responsibilities~~
7 ~~for adopting or enforcing such rules. Rules adopted by an~~
8 ~~independent organization and enforcement actions taken by the~~
9 ~~organization under delegated authority from the commission are~~
10 ~~subject to commission oversight and review and may not take effect~~
11 ~~before receiving commission approval~~]. An independent organization
12 certified by the commission is directly responsible and accountable
13 to the commission. The commission has complete authority to
14 oversee and investigate the independent organization's finances,
15 budget, and operations as necessary to ensure the organization's
16 accountability and to ensure that the organization adequately
17 performs the organization's functions and duties. The independent
18 organization shall fully cooperate with the commission in the
19 commission's oversight and investigatory functions. The
20 commission may take appropriate action against an independent
21 organization that does not adequately perform the organization's
22 functions or duties or does not comply with this section, including
23 decertifying the organization or assessing an administrative
24 penalty against the organization. The commission by rule shall
25 adopt procedures governing decertification of an independent
26 organization, selecting and certifying a successor organization,
27 and transferring assets to the successor organization to ensure

1 continuity of operations in the region. The commission may not
2 implement, by order or by rule, a requirement that is contrary to an
3 applicable federal law or rule.

4 (g-1) The [~~independent organization's~~] bylaws of an
5 independent organization certified for the ERCOT power region [~~or~~
6 ~~protocols~~] must be approved by [~~the commission~~] and [~~must~~] reflect
7 the input of the commission. The bylaws must require that every
8 member of the governing body be a resident of this state and must
9 prohibit a legislator from serving as a member. The governing body
10 must be composed of:

11 (1) two members [~~the chairman~~] of the commission as
12 [~~an~~] ex officio nonvoting members:

13 (A) one of whom must be the presiding officer of
14 the commission; and

15 (B) one of whom must be designated by the
16 presiding officer of the commission to serve a one-year term on the
17 governing body [~~member~~];

18 (2) the counsellor as an ex officio voting member
19 representing residential and small commercial consumer interests;

20 (3) the chief executive officer of the independent
21 organization as an ex officio nonvoting member; and

22 (4) eight members selected by the selection committee
23 under Section 39.1513 with executive-level experience in any of the
24 following professions:

25 (A) finance;

26 (B) business;

27 (C) engineering, including electrical

1 engineering;

2 (D) trading;

3 (E) risk management;

4 (F) law; or

5 (G) electric market design.

6 (g-6) In this subsection, a reference to a protocol includes
7 a rule. Protocols adopted by an independent organization and
8 enforcement actions taken by the organization under delegated
9 authority from the commission are subject to commission oversight
10 and review and may not take effect before receiving commission
11 approval. To maintain certification as an independent organization
12 under this section, the organization's governing body must
13 establish and implement a formal process for adopting new protocols
14 or revisions to existing protocols. The process must require that
15 new or revised protocols may not take effect until the commission
16 approves a market impact statement describing the new or revised
17 protocols. The commission may approve, reject, or remand with
18 suggested modifications to the independent organization's
19 governing body protocols adopted by the organization.

20 (g-7) The presiding officer of the commission shall
21 designate commissioners to serve terms on the independent
22 organization's governing body under Subsection (g-1)(1)(B) in the
23 order in which the commissioners were first appointed to the
24 commission. A commissioner may not serve an additional term until
25 each commissioner has served a term.

26 SECTION 16. Section 39.1511, Utilities Code, is amended by
27 amending Subsection (a) and adding Subsection (a-1) to read as

1 follows:

2 (a) Meetings of the governing body of an independent
3 organization certified under Section 39.151 and meetings of a
4 subcommittee that includes a member of the governing body must be
5 open to the public. The bylaws of the independent organization and
6 the rules of the commission may provide for the governing body or
7 subcommittee to enter into executive session closed to the public
8 only to address risk management or a matter that the independent
9 organization would be authorized to consider in a closed meeting if
10 the independent organization were governed under Chapter 551,
11 Government Code [~~sensitive matters such as confidential personnel~~
12 ~~information, contracts, lawsuits, competitively sensitive~~
13 ~~information, or other information related to the security of the~~
14 ~~regional electrical network~~].

15 (a-1) An independent organization's governing body or a
16 subcommittee may adopt a policy allowing the governing body or
17 subcommittee to enter into an executive session closed to the
18 public and commissioners, including the commissioners serving as ex
19 officio nonvoting members, only to address a contested case, as
20 defined by Section 2001.003, Government Code, or a personnel matter
21 that is unrelated to members of the governing body.

22 SECTION 17. Subchapter D, Chapter 39, Utilities Code, is
23 amended by adding Section 39.1514 to read as follows:

24 Sec. 39.1514. COMMISSION DIRECTIVES TO INDEPENDENT
25 ORGANIZATION. (a) The commission may not use a verbal directive
26 to direct an independent organization certified under Section
27 39.151 to take an official action. The commission may direct the

1 organization to take an official action only through:

2 (1) a contested case;

3 (2) rulemaking; or

4 (3) a memorandum or written order adopted by a
5 majority vote.

6 (a-1) The commission must use a contested case or rulemaking
7 process to direct an independent organization certified under
8 Section 39.151 to take an official action that will create a new
9 cost or fee, increase an existing cost or fee, or impose significant
10 operational obligations on an entity.

11 (b) The commission by rule shall:

12 (1) specify the types of directives the commission may
13 issue through a contested case, rulemaking, memorandum, or written
14 order, in accordance with Subsection (a-1);

15 (2) require that proposed commission directives be
16 included as an item on a commission meeting agenda and require the
17 commission to allow members of the public an opportunity to comment
18 on the agenda item; and

19 (3) establish a reasonable timeline for the release
20 before a commission meeting of discussion materials relevant to
21 any proposed commission directives included as agenda items for
22 that meeting.

23 (c) Notwithstanding another provision of this section, the
24 commission may use a verbal directive to direct an independent
25 organization to take an official action in an urgent or emergency
26 situation that poses an imminent threat to public health, public
27 safety, or the reliability of the power grid. If the commission

1 uses a verbal directive, the commission shall provide written
2 documentation of the directive to the independent organization not
3 later than 72 hours after the urgent or emergency situation ends.
4 The commission by rule shall establish criteria for determining
5 whether a situation is urgent or an emergency under this subsection
6 and establish a process by which the commission will issue
7 directives to the independent organization under this subsection.

8 SECTION 18. Section 39.1515, Utilities Code, is amended by
9 amending Subsections (a) and (f) and adding Subsection (i) to read
10 as follows:

11 (a) An independent organization certified under Section
12 39.151 shall contract with an entity selected by the commission to
13 act as the commission's wholesale electric market monitor to detect
14 and prevent market manipulation strategies, ~~and~~ recommend
15 measures to enhance the efficiency of the wholesale market, and
16 provide independent analysis of any material changes proposed to
17 the wholesale market. The commission may not restrict the market
18 monitor from appearing or speaking before or providing analysis to
19 the legislature. The independent organization may not
20 substantially modify the market monitor's contract unless the
21 modification is approved by a majority of the commissioners.

22 (f) The market monitor immediately shall report in writing
23 directly to the commission and commission staff all ~~any~~ potential
24 market manipulations and all ~~any~~ discovered or potential
25 violations of commission rules or rules of the independent
26 organization.

27 (i) Not later than December 1 of each year, the commission

1 shall submit a report to the legislature that describes for the
2 12-month period preceding the report's submission:

3 (1) the number of instances in which the market
4 monitor reported potential market manipulation to the commission or
5 commission staff;

6 (2) the statutes, commission rules, and rules of the
7 independent organization alleged to have been violated by the
8 reported entities; and

9 (3) the number of instances reported under Subdivision
10 (1) for which the commission instituted a formal investigation on
11 its own motion or commission staff initiated an enforcement action.

12 SECTION 19. Section 39.155(d), Utilities Code, is amended
13 to read as follows:

14 (d) In a qualifying power region, the report [~~reports~~]
15 required by Subsection (c) [~~Subsections (b) and (c)~~] shall be
16 submitted by the independent organization or organizations having
17 authority over the power region or discrete areas thereof.

18 SECTION 20. Section 39.157(f), Utilities Code, is amended
19 to read as follows:

20 (f) Following review of the annual report [~~reports~~]
21 submitted to it under Section 39.155(c) [~~Sections 39.155(b) and~~
22 ~~(c)~~], the commission shall determine whether specific transmission
23 or distribution constraints or bottlenecks within this state give
24 rise to market power in specific geographic markets in the state.
25 The commission, on a finding that specific transmission or
26 distribution constraints or bottlenecks within this state give rise
27 to market power, may order reasonable mitigation of that potential

1 market power by ordering, under Section 39.203(e), one or more
2 electric utilities or transmission and distribution utilities to
3 construct additional transmission or distribution capacity, or
4 both, subject to the certification provisions of this title.

5 SECTION 21. The heading to Section 39.159, Utilities Code,
6 as added by Chapter 426 (S.B. 3), Acts of the 87th Legislature,
7 Regular Session, 2021, is amended to read as follows:

8 Sec. 39.159. POWER REGION RELIABILITY AND DISPATCHABLE
9 GENERATION.

10 SECTION 22. Section 39.159, Utilities Code, as added by
11 Chapter 426 (S.B. 3), Acts of the 87th Legislature, Regular
12 Session, 2021, is amended by adding Subsections (d) and (e) to read
13 as follows:

14 (d) The commission shall require the independent
15 organization certified under Section 39.151 for the ERCOT power
16 region to develop and implement an ancillary services program to
17 procure dispatchable reliability reserve services on a day-ahead
18 and real-time basis to account for market uncertainty. Under the
19 required program, the independent organization shall:

20 (1) determine the quantity of services necessary based
21 on historical variations in generation availability for each season
22 based on a targeted reliability standard or goal, including
23 intermittency of non-dispatchable generation facilities and forced
24 outage rates, for dispatchable generation facilities;

25 (2) develop criteria for resource participation that
26 require a resource to:

27 (A) be capable of running for at least four hours

1 at the resource's high sustained limit;

2 (B) be online and dispatchable not more than two
3 hours after being called on for deployment; and

4 (C) have the dispatchable flexibility to address
5 inter-hour operational challenges; and

6 (3) reduce the amount of reliability unit commitment
7 by the amount of dispatchable reliability reserve services procured
8 under this section.

9 (e) Notwithstanding Subsection (d)(2)(A), the independent
10 organization certified under Section 39.151 for the ERCOT power
11 region may require a resource to be capable of running for more than
12 four hours as the organization determines is needed.

13 SECTION 23. Subchapter D, Chapter 39, Utilities Code, is
14 amended by adding Sections 39.1591, 39.1592, 39.1593, 39.1594, and
15 39.1595 to read as follows:

16 Sec. 39.1591. REPORT ON DISPATCHABLE AND NON-DISPATCHABLE
17 GENERATION FACILITIES. Not later than December 1 of each year, the
18 commission shall file a report with the legislature that:

19 (1) includes:

20 (A) the estimated annual costs incurred by
21 load-serving entities under this subchapter associated with
22 backing up dispatchable and non-dispatchable electric generation
23 facilities to guarantee that a firm amount of electric energy will
24 be available to the ERCOT power grid; and

25 (B) as calculated by the independent system
26 operator, the cumulative annual costs that have been incurred in
27 the ERCOT market to facilitate the transmission of dispatchable and

1 non-dispatchable electricity to load and to interconnect
2 transmission level loads, including a statement of the total
3 cumulative annual costs and of the cumulative annual costs incurred
4 for each type of activity described by this paragraph; and

5 (2) documents the status of the implementation of this
6 subchapter, including whether the rules and protocols adopted to
7 implement this subchapter have materially improved the
8 reliability, resilience, and transparency of the electricity
9 market.

10 Sec. 39.1592. GENERATION RELIABILITY REQUIREMENTS. (a)
11 This section applies only to an electric generation facility in the
12 ERCOT power region for which a standard generator interconnection
13 agreement is signed on or after January 1, 2027, that has been in
14 operation for at least one year, and that is not a self-generator.

15 (b) Not later than December 1 of each year, an owner or
16 operator of an electric generation facility, other than a battery
17 energy storage resource, shall demonstrate to the commission the
18 ability of the owner or operator's portfolio to operate or be
19 available to operate when called on for dispatch at or above the
20 seasonal average generation capability during the times of highest
21 reliability risk, as determined by the commission, due to low
22 operation reserves, as determined by the commission. The owner or
23 operator must be allowed to meet the performance requirements
24 described by this subsection by supplementing or contracting with
25 on-site or off-site resources, including battery energy storage
26 resources. The commission shall determine the average generation
27 capability based on expected resource availability and

1 seasonal-rated capacity on a standalone basis.

2 (c) The commission shall require the independent
3 organization certified under Section 39.151 for the ERCOT power
4 region to:

5 (1) enforce the requirements of Subsection (b) by
6 imposing financial penalties, as determined by the commission, for
7 failing to comply with the performance requirements described by
8 that subsection; and

9 (2) provide financial incentives, as determined by the
10 commission, for exceeding the performance requirements described
11 by that subsection.

12 (d) The independent organization certified under Section
13 39.151 for the ERCOT power region may not impose penalties under
14 Subsection (c):

15 (1) for resource unavailability due to planned
16 maintenance outages or transmission outages;

17 (2) on resources that are already subject to
18 performance obligations during the highest reliability risk hours
19 under the day-ahead market rules or other ancillary or reliability
20 services established by the commission or the independent
21 organization; or

22 (3) during hours outside a baseline established by the
23 commission that includes morning and evening ramping periods.

24 Sec. 39.1593. COST ALLOCATION OF RELIABILITY SERVICES. (a)
25 The commission shall direct the independent organization certified
26 under Section 39.151 for the ERCOT power region to evaluate with
27 input from a technical advisory committee established under the

1 bylaws of the independent organization that includes market
2 participants whether allocating the costs of ancillary and
3 reliability services, including those procured under Section
4 39.159, as added by Chapter 426 (S.B. 3), Acts of the 87th
5 Legislature, Regular Session, 2021, using a methodology described
6 by Subsection (b) would result in a net savings to consumers in the
7 ERCOT power region compared to allocating all costs of ancillary
8 and reliability services to load to ensure reliability.

9 (b) The commission shall evaluate whether to allocate the
10 cost of ancillary and reliability services:

11 (1) on a semiannual basis among electric generation
12 facilities and load-serving entities in proportion to their
13 contribution to unreliability during the times of highest
14 reliability risk due to low operating reserves by season, as
15 determined by the commission based on a number of hours adopted by
16 the commission for that season; or

17 (2) using another method identified by the commission.

18 (c) The evaluation must:

19 (1) use historical ancillary and reliability services
20 data;

21 (2) consider the causes for ancillary services
22 deployments; and

23 (3) consider the design, procurement, and cost
24 allocation of ancillary services required by Section 35.004(h).

25 (d) Not later than December 1, 2026, the commission shall
26 submit a report on the evaluation to the legislature.

27 Sec. 39.1594. RELIABILITY PROGRAM. (a) Under Section

1 39.159(b), as added by Chapter 426 (S.B. 3), Acts of the 87th
2 Legislature, Regular Session, 2021, or other law, the commission
3 may not require retail customers or load-serving entities in the
4 ERCOT power region to purchase credits designed to support a
5 required reserve margin or other capacity or reliability
6 requirement unless the commission ensures that:

7 (1) the net cost to the ERCOT market of the credits
8 does not exceed \$1 billion annually, less the cost of any interim or
9 bridge solutions that are lawfully implemented, except that the
10 commission may adjust the limit:

11 (A) proportionally according to the highest net
12 peak demand year-over-year with a base year of 2026; and

13 (B) for inflation with a base year of 2026;

14 (2) credits are available only for dispatchable
15 generation;

16 (3) the independent organization certified under
17 Section 39.151 for the ERCOT power region is required to procure the
18 credits centrally in a manner designed to prevent market
19 manipulation by affiliated generation and retail companies;

20 (4) a generator cannot receive credits that exceed the
21 amount of generation bid into the forward market by that generator;

22 (5) an electric generating unit can receive a credit
23 only for being available to perform in real time during the tightest
24 intervals of low supply and high demand on the grid, as defined by
25 the commission on a seasonal basis;

26 (6) a penalty structure is established, resulting in a
27 net benefit to load, for generators that bid into the forward market

1 but do not meet the full obligation;

2 (7) any program reliability standard reasonably
3 balances the incremental reliability benefits to customers against
4 the incremental costs of the program based on an evaluation by the
5 wholesale electric market monitor;

6 (8) a single ERCOT-wide clearing price is established
7 for the program and does not differentiate payments or credit
8 values based on locational constraints;

9 (9) any market changes implemented as a bridge
10 solution for the program are removed not later than the first
11 anniversary of the date the program was implemented;

12 (10) the independent organization certified under
13 Section 39.151 for the ERCOT power region begins implementing real
14 time co-optimization of energy and ancillary services in the ERCOT
15 wholesale market before the program is implemented;

16 (11) all elements of the program are initially
17 implemented on a single starting date;

18 (12) the terms of the program and any associated
19 market rules do not assign costs, credit, or collateral for the
20 program in a manner that provides a cost advantage to load-serving
21 entities who own, or whose affiliates own, generation facilities;

22 (13) secured financial credit and collateral
23 requirements are adopted for the program to ensure that other
24 market participants do not bear the risk of nonperformance or
25 nonpayment; and

26 (14) the wholesale electric market monitor has the
27 authority and necessary resources to investigate potential

1 instances of market manipulation by program participants,
2 including financial and physical actions, and recommend penalties
3 to the commission.

4 (b) This section does not require the commission to adopt a
5 reliability program that requires an entity to purchase capacity
6 credits.

7 (c) The commission and the independent organization
8 certified under Section 39.151 for the ERCOT power region shall
9 consider comments and recommendations from a technical advisory
10 committee established under the bylaws of the independent
11 organization that includes market participants when adopting and
12 implementing a program described by Subsection (a), if any.

13 (d) Before the commission adopts a program described by
14 Subsection (a), the commission shall require the independent
15 organization certified under Section 39.151 for the ERCOT power
16 region and the wholesale electric market monitor to complete an
17 updated assessment on the cost to and effects on the ERCOT market of
18 the proposed reliability program and submit to the commission and
19 the legislature a report on the costs and benefits of continuing the
20 program. The assessment must include:

21 (1) an evaluation of the cost of new entry and the
22 effects of the proposed reliability program on consumer costs and
23 the competitive retail market;

24 (2) a compilation of detailed information regarding
25 cost offsets realized through a reduction in costs in the energy and
26 ancillary services markets and use of reliability unit commitments;

27 (3) a set of metrics to measure the effects of the

1 proposed reliability program on system reliability;

2 (4) an evaluation of the cost to retain existing
3 dispatchable resources in the ERCOT power region;

4 (5) an evaluation of the planned timeline for
5 implementation of real time co-optimization for energy and
6 ancillary services in the ERCOT power region; and

7 (6) anticipated market and reliability effects of new
8 and updated ancillary service products.

9 (e) If the commission adopts a program described by
10 Subsection (a), the commission by rule shall prohibit a generator
11 that receives credits through the program for a dispatchable
12 electric generating unit operated by the generator from
13 decommissioning or removing from service that unit while the
14 generator participates in the program unless the decommissioning or
15 removal from service begins after September 1, 2028, or the
16 commission finds that the decommissioning or removal from service:

17 (1) is required by or is a result of federal law; or

18 (2) would alleviate significant financial hardship
19 for the generator.

20 (f) If the commission adopts a program described by
21 Subsection (a), the wholesale electric market monitor described by
22 Section 39.1515 biennially shall:

23 (1) evaluate the incremental reliability benefits of
24 the program for consumers compared to the costs to consumers of the
25 program and the costs in the energy and ancillary services markets;
26 and

27 (2) report the results of each evaluation to the

1 legislature.

2 Sec. 39.1595. GRID RELIABILITY LEGISLATIVE OVERSIGHT
3 COMMITTEE. (a) In this section, "committee" means the Grid
4 Reliability Legislative Oversight Committee established under this
5 section.

6 (b) The Grid Reliability Legislative Oversight Committee is
7 created to oversee the commission's implementation of legislation
8 related to the regulation of the electricity market in this state
9 enacted by the 87th and 88th Legislatures.

10 (c) The committee is composed of eight members as follows:

11 (1) three members of the senate, appointed by the
12 lieutenant governor;

13 (2) three members of the house of representatives,
14 appointed by the speaker of the house of representatives;

15 (3) the chair of the committee of the senate having
16 primary jurisdiction over matters relating to the generation of
17 electricity; and

18 (4) the chair of the committee of the house having
19 primary jurisdiction over matters relating to the generation of
20 electricity.

21 (d) An appointed member of the committee serves at the
22 pleasure of the appointing official.

23 (e) The committee members described by Subsections (c)(3)
24 and (4) serve as presiding co-chairs.

25 (f) A member of the committee may not receive compensation
26 for serving on the committee but is entitled to reimbursement for
27 travel expenses incurred by the member while conducting the

1 business of the committee as provided by the General Appropriations
2 Act.

3 (g) The committee shall meet at least twice each year at the
4 call of either co-chair and shall meet at other times at the call of
5 either co-chair, as that officer determines appropriate.

6 (h) Chapter 551, Government Code, applies to the committee.

7 SECTION 24. (a) This section takes effect only if the Act
8 of the 88th Legislature, Regular Session, 2023, relating to
9 nonsubstantive additions to and corrections in enacted codes
10 becomes law.

11 (b) Subchapter D, Chapter 39, Utilities Code, is amended by
12 adding Sections 39.166, 39.167, and 39.168 to read as follows:

13 Sec. 39.166. ELECTRIC INDUSTRY REPORT. (a) Not later than
14 January 15 of each odd-numbered year, the commission, in
15 consultation with the independent organization certified under
16 Section 39.151 for the ERCOT power region, shall prepare and submit
17 to the legislature an electric industry report.

18 (b) Each electric industry report submitted under this
19 section must:

20 (1) identify existing and potential transmission and
21 distribution constraints and system needs within the ERCOT power
22 region, alternatives for meeting system needs, and recommendations
23 for meeting system needs;

24 (2) summarize key findings from:

25 (A) the grid reliability assessment conducted
26 under Section 39.165; and

27 (B) the report required by Section 39.9112;

1 (3) outline basic information regarding the electric
2 grid and market in this state, including generation capacity,
3 customer demand, and transmission capacity currently installed on
4 the grid and projected in the future; and

5 (4) be presented in plain language that is readily
6 understandable by a person with limited knowledge of the electric
7 industry.

8 Sec. 39.167. CONFLICTS OF INTEREST REPORT. The commission
9 and the independent organization certified under Section 39.151 for
10 the ERCOT power region annually shall review statutes, rules,
11 protocols, and bylaws that apply to conflicts of interest for
12 commissioners and for members of the governing body of the
13 independent organization and submit to the legislature a report on
14 the effects the statutes, rules, protocols, and bylaws have on the
15 ability of the commission and the independent organization to
16 fulfill their duties.

17 Sec. 39.168. RETAIL SALES REPORT. (a) Each retail electric
18 provider that offers electricity for sale shall report to the
19 commission:

20 (1) its annual retail sales in this state;
21 (2) the annual retail sales of its affiliates by
22 number of customers, kilowatts per hour sold, and revenue from
23 kilowatts per hour sold by customer class; and

24 (3) any other information the commission requires
25 relating to affiliations between retail electric providers.

26 (b) The commission by rule shall prescribe the nature and
27 detail of the reporting requirements. The commission may accept

1 information reported under other law to satisfy the requirements of
2 this section. Information reported under this section is
3 confidential and not subject to disclosure if the information is
4 competitively sensitive information. The commission shall
5 administer the reporting requirements in a manner that ensures the
6 confidentiality of competitively sensitive information.

7 SECTION 25. (a) This section takes effect only if the Act of
8 the 88th Legislature, Regular Session, 2023, relating to
9 nonsubstantive additions to and corrections in enacted codes does
10 not become law.

11 (b) Subchapter D, Chapter 39, Utilities Code, is amended by
12 adding Sections 39.166, 39.167, and 39.168 to read as follows:

13 Sec. 39.166. ELECTRIC INDUSTRY REPORT. (a) Not later than
14 January 15 of each odd-numbered year, the commission, in
15 consultation with the independent organization certified under
16 Section 39.151 for the ERCOT power region, shall prepare and submit
17 to the legislature an electric industry report.

18 (b) Each electric industry report submitted under this
19 section must:

20 (1) identify existing and potential transmission and
21 distribution constraints and system needs within the ERCOT power
22 region, alternatives for meeting system needs, and recommendations
23 for meeting system needs;

24 (2) summarize key findings from:

25 (A) the grid reliability assessment conducted
26 under Section 39.159, as added by Chapter 876 (S.B. 1281), Acts of
27 the 87th Legislature, Regular Session, 2021; and

1 (B) the report required by Section 39.9112;

2 (3) outline basic information regarding the electric
3 grid and market in this state, including generation capacity,
4 customer demand, and transmission capacity currently installed on
5 the grid and projected in the future; and

6 (4) be presented in plain language that is readily
7 understandable by a person with limited knowledge of the electric
8 industry.

9 Sec. 39.167. CONFLICTS OF INTEREST REPORT. The commission
10 and the independent organization certified under Section 39.151 for
11 the ERCOT power region annually shall review statutes, rules,
12 protocols, and bylaws that apply to conflicts of interest for
13 commissioners and for members of the governing body of the
14 independent organization and submit to the legislature a report on
15 the effects the statutes, rules, protocols, and bylaws have on the
16 ability of the commission and the independent organization to
17 fulfill their duties.

18 Sec. 39.168. RETAIL SALES REPORT. (a) Each retail electric
19 provider that offers electricity for sale shall report to the
20 commission:

21 (1) its annual retail sales in this state;

22 (2) the annual retail sales of its affiliates by
23 number of customers, kilowatts per hour sold, and revenue from
24 kilowatts per hour sold by customer class; and

25 (3) any other information the commission requires
26 relating to affiliations between retail electric providers.

27 (b) The commission by rule shall prescribe the nature and

1 detail of the reporting requirements. The commission may accept
2 information reported under other law to satisfy the requirements of
3 this section. Information reported under this section is
4 confidential and not subject to disclosure if the information is
5 competitively sensitive information. The commission shall
6 administer the reporting requirements in a manner that ensures the
7 confidentiality of competitively sensitive information.

8 SECTION 26. Sections 39.203(e) and (i), Utilities Code, are
9 amended to read as follows:

10 (e) The commission may require an electric utility or a
11 transmission and distribution utility to construct or enlarge
12 facilities to ensure safe and reliable service for the state's
13 electric markets and to reduce transmission constraints within
14 ERCOT in a cost-effective manner where the constraints are such
15 that they are not being resolved through Chapter 37 or the ERCOT
16 transmission planning process. [~~The commission shall require an~~
17 ~~electric utility or a transmission and distribution utility to~~
18 ~~construct or enlarge transmission or transmission-related~~
19 ~~facilities for the purpose of meeting the goal for generating~~
20 ~~capacity from renewable energy technologies under Section~~
21 ~~39.904(a).~~] In any proceeding brought under Chapter 37, an
22 electric utility or transmission and distribution utility ordered
23 to construct or enlarge facilities under this subchapter need not
24 prove that the construction ordered is necessary for the service,
25 accommodation, convenience, or safety of the public and need not
26 address the factors listed in Sections 37.056(c)(1)-(3) and (4)(E).
27 Notwithstanding any other law, including Section 37.057, in any

1 proceeding brought under Chapter 37 by an electric utility or a
2 transmission and distribution utility related to an application for
3 a certificate of public convenience and necessity to construct or
4 enlarge transmission or transmission-related facilities under this
5 subsection, the commission shall issue a final order before the
6 181st day after the date the application is filed with the
7 commission. If the commission does not issue a final order before
8 that date, the application is approved.

9 (i) The commission, in cooperation with transmission and
10 distribution utilities and the ERCOT independent system operator,
11 shall study whether existing transmission and distribution
12 planning processes are sufficient to provide adequate
13 infrastructure for seawater desalination projects. If the
14 commission determines that statutory changes are needed to ensure
15 that adequate infrastructure is developed for projects of that
16 kind, the commission shall include recommendations in the report
17 required by Section 12.203 [~~31.003~~].

18 SECTION 27. Section 39.206(q), Utilities Code, is amended
19 to read as follows:

20 (q) The commission shall, in conjunction with the Nuclear
21 Regulatory Commission, investigate the development of a mechanism
22 whereby the State of Texas could ensure that funds for
23 decommissioning will be obtained when necessary in the same manner
24 as if the State of Texas were the licensee under federal law. [~~The~~
25 ~~commission shall file legislative recommendations regarding any~~
26 ~~changes in law that may be necessary to carry out the purposes of~~
27 ~~this subsection prior to January 15, 2009, which may be combined~~

1 ~~with the report required by Section 31.003.]~~

2 SECTION 28. Section 39.402(a), Utilities Code, is amended
3 to read as follows:

4 (a) Until the date on which an electric utility subject to
5 this subchapter is authorized by the commission to implement
6 customer choice, the rates of the utility shall be regulated under
7 traditional cost of service regulation and the utility is subject
8 to all applicable regulatory authority prescribed by this subtitle
9 and Subtitle A, including Chapters 14, 32, 33, 36, and 37. Until the
10 date on which an electric utility subject to this subchapter
11 implements customer choice, the provisions of this chapter, other
12 than this subchapter, Sections 39.1516 [~~39.904~~] and 39.905, and
13 the provisions relating to the duty to obtain a permit from the
14 Texas Commission on Environmental Quality for an electric
15 generating facility and to reduce emissions from an electric
16 generating facility, shall not apply to that utility. That portion
17 of any commission order entered before September 1, 2001, to comply
18 with this subchapter shall be null and void.

19 SECTION 29. Section 39.408(g), Utilities Code, is amended
20 to read as follows:

21 (g) This section expires September 1, 2029 [~~2023~~].

22 SECTION 30. Section 39.452(d), Utilities Code, is amended
23 to read as follows:

24 (d) Until the date on which an electric utility subject to
25 this subchapter implements customer choice:

26 (1) the provisions of this chapter do not apply to that
27 electric utility, other than this subchapter, Sections 39.1516 [~~39.904~~]

1 ~~39.904,~~] and 39.905, the provisions relating to the duty to obtain a
2 permit from the Texas Commission on Environmental Quality for an
3 electric generating facility and to reduce emissions from an
4 electric generating facility, and the provisions of Subchapter G
5 that pertain to the recovery and securitization of hurricane
6 reconstruction costs authorized by Sections 39.458-39.463; and

7 (2) the electric utility is not subject to a rate
8 freeze and, subject to the limitation provided by Subsection (b),
9 may file for rate changes under Chapter 36 and for approval of one
10 or more of the rate rider mechanisms authorized by Sections 39.454
11 and 39.455.

12 SECTION 31. Section 39.4525(g), Utilities Code, is amended
13 to read as follows:

14 (g) This section expires September 1, 2029 [~~2023~~].

15 SECTION 32. Section 39.502(b), Utilities Code, is amended
16 to read as follows:

17 (b) Until the date on which an electric utility subject to
18 this subchapter implements customer choice, the provisions of this
19 chapter, other than this subchapter and Sections 39.1516 [~~39.904,~~]
20 and 39.905, do not apply to that utility.

21 SECTION 33. Section 39.504(g), Utilities Code, is amended
22 to read as follows:

23 (g) This section expires September 1, 2029 [~~2023~~].

24 SECTION 34. Section 39.552(b), Utilities Code, is amended
25 to read as follows:

26 (b) Until the date on which an electric utility subject to
27 this subchapter implements customer choice, the provisions of this

1 chapter, other than this subchapter and Sections 39.1516 [~~39.904~~],
2 and 39.905, do not apply to that utility.

3 SECTION 35. Section 39.9055, Utilities Code, is amended to
4 read as follows:

5 Sec. 39.9055. EXAMINATION OF DEMAND RESPONSE POTENTIAL OF
6 SEAWATER DESALINATION PROJECTS. The commission and the ERCOT
7 independent system operator shall study the potential for seawater
8 desalination projects to participate in existing demand response
9 opportunities in the ERCOT market. To the extent feasible, the
10 study shall determine whether the operational characteristics of
11 seawater desalination projects enable projects of that kind to
12 participate in ERCOT-operated ancillary services markets or other
13 competitively supplied demand response opportunities. The study
14 shall also determine the potential economic benefit to a seawater
15 desalination project if the project is able to reduce its demand
16 during peak pricing periods. The commission shall include the
17 results of the study in the report required by Section 12.203
18 [~~31.003~~].

19 SECTION 36. Section 39.908, Utilities Code, is amended to
20 read as follows:

21 Sec. 39.908. EFFECT OF SUNSET PROVISION. [~~(a)~~] If the
22 commission is abolished under Section 12.005 or other law, the [~~and~~
23 ~~the other provisions of this title expire as provided by Chapter~~
24 ~~325, Government Code (Texas Sunset Act), this subchapter, including~~
25 ~~the provisions of this title referred to in this subchapter,~~
26 ~~continues in full force and effect and does not expire.~~

27 [~~(b) The~~] authorities, duties, and functions of the

1 commission under this chapter shall be performed and carried out by
2 a successor agency to be designated by the legislature before
3 abolishment of the commission or, if the legislature does not
4 designate the successor, by the secretary of state.

5 SECTION 37. Subchapter 2, Chapter 39, Utilities Code, is
6 amended by adding Sections 39.9111, 39.9112, and 39.9113 to read as
7 follows:

8 Sec. 39.9111. RULES RELATED TO RENEWABLE POWER FACILITIES.
9 The commission may adopt rules requiring renewable power facilities
10 to have reactive power control capabilities or any other feasible
11 technology designed to reduce the facilities' effects on system
12 reliability.

13 Sec. 39.9112. REPORT ON TRANSMISSION AND GENERATION
14 CAPACITY. The commission and the independent organization
15 certified under Section 39.151 for the ERCOT power region shall
16 study the need for increased transmission and generation capacity
17 throughout this state and report to the legislature the results of
18 the study and any recommendations for legislation. The report must
19 be filed with the legislature not later than December 31 of each
20 even-numbered year.

21 Sec. 39.9113. RENEWABLE ENERGY CREDITS. To facilitate
22 voluntary contractual obligations and verify claims regarding
23 environmental attributes of renewable energy production in this
24 state, the independent organization certified under Section 39.151
25 for the ERCOT power region shall maintain an accreditation and
26 banking system to award and track voluntary renewable energy
27 credits generated by eligible facilities.

1 SECTION 38. Section 39.916(a), Utilities Code, is amended
2 by amending Subdivision (1) and adding Subdivision (4) to read as
3 follows:

4 (1) "Distributed renewable generation" means electric
5 generation with a capacity of not more than 2,000 kilowatts
6 provided by a renewable energy technology [~~as defined by Section~~
7 ~~39.904,~~] that is installed on a retail electric customer's side of
8 the meter.

9 (4) "Renewable energy technology" means any
10 technology that relies exclusively on an energy source that is
11 naturally regenerated over a short time and is derived from the sun
12 directly or indirectly or from moving water or other natural
13 movements or mechanisms of the environment. The term includes a
14 technology that relies on energy derived from the sun directly, on
15 wind, geothermal, hydroelectric, wave, or tidal energy, or on
16 biomass or biomass-based waste products, including landfill gas.
17 The term does not include a technology that relies on an energy
18 resource derived from a fossil fuel, a waste product from a fossil
19 fuel, or a waste product from an inorganic source.

20 SECTION 39. The heading to Section 39.918, Utilities Code,
21 is amended to read as follows:

22 Sec. 39.918. UTILITY FACILITIES FOR POWER RESTORATION AFTER
23 SIGNIFICANT [~~WIDESPREAD~~] POWER OUTAGE.

24 SECTION 40. Section 39.918, Utilities Code, is amended by
25 amending Subsections (a) and (b) and adding Subsection (a-1) to
26 read as follows:

27 (a) In this section, "significant [~~"widespread~~] power

1 outage" means an event that [~~results in~~]:

2 (1) results in a loss of electric power that:

3 (A) affects a significant number of distribution
4 customers of a transmission and distribution utility[+] and
5 [~~(B)~~] has lasted or is expected to last for at
6 least six [~~eight~~] hours;

7 (B) affects distribution customers of a
8 transmission and distribution utility in an area for which the
9 governor has issued a disaster or emergency declaration;

10 (C) affects distribution customers served by a
11 radial transmission or distribution facility, creates a risk to
12 public health or safety, and has lasted or is expected to last for
13 at least 12 hours; or

14 (D) creates [~~and~~
15 [~~(2)~~] a risk to public health or safety because it
16 affects a critical infrastructure facility that serves the public
17 such as a hospital, health care facility, law enforcement facility,
18 fire station, or water or wastewater facility; or

19 (2) causes the independent system operator to order a
20 transmission and distribution utility to shed load.

21 (a-1) The Texas Division of Emergency Management, the
22 independent organization certified under Section 39.151 for the
23 ERCOT power region, or the executive director of the commission may
24 determine that a power outage other than an outage described by
25 Subsection (a) is a significant power outage for the purposes of
26 this section.

27 (b) Notwithstanding any other provision of this subtitle, a

1 transmission and distribution utility may:

2 (1) lease and operate facilities that provide
3 temporary emergency electric energy to aid in restoring power to
4 the utility's distribution customers during a significant
5 ~~[widespread]~~ power outage in which:

6 (A) the independent system operator has ordered
7 the utility to shed load; or

8 (B) the utility's distribution facilities are
9 not being fully served by the bulk power system under normal
10 operations; and

11 (2) procure, own, and operate, or enter into a
12 cooperative agreement with other transmission and distribution
13 utilities to procure, own, and operate jointly, transmission and
14 distribution facilities that have a lead time of at least six months
15 and would aid in restoring power to the utility's distribution
16 customers following a significant ~~[widespread]~~ power outage. In
17 this section, long lead time facilities may not be electric energy
18 storage equipment or facilities under Chapter 35, Utilities Code.

19 SECTION 41. Section 40.001(a), Utilities Code, is amended
20 to read as follows:

21 (a) Notwithstanding any other provision of law, except
22 Sections 39.155, 39.157(e), and 39.203, ~~[and 39.904]~~, this chapter
23 governs the transition to and the establishment of a fully
24 competitive electric power industry for municipally owned
25 utilities. With respect to the regulation of municipally owned
26 utilities, this chapter controls over any other provision of this
27 title, except for sections in which the term "municipally owned

1 utility" is specifically used.

2 SECTION 42. Section 40.004, Utilities Code, is amended to
3 read as follows:

4 Sec. 40.004. JURISDICTION OF COMMISSION. Except as
5 specifically otherwise provided in this chapter, the commission has
6 jurisdiction over municipally owned utilities only for the
7 following purposes:

8 (1) to regulate wholesale transmission rates and
9 service, including terms of access, to the extent provided by
10 Subchapter A, Chapter 35;

11 (2) to regulate certification of retail service areas
12 to the extent provided by Chapter 37;

13 (3) to regulate rates on appeal under Subchapters D
14 and E, Chapter 33, subject to Section 40.051(c);

15 (4) to establish a code of conduct as provided by
16 Section 39.157(e) applicable to anticompetitive activities and to
17 affiliate activities limited to structurally unbundled affiliates
18 of municipally owned utilities, subject to Section 40.054;

19 (5) to establish terms and conditions for open access
20 to transmission and distribution facilities for municipally owned
21 utilities providing customer choice, as provided by Section 39.203;

22 (6) to administer ~~[the renewable energy credits~~
23 ~~program under Section 39.904(b) and]~~ the natural gas energy credits
24 program under Section 39.9044(b);

25 (7) to require reports of municipally owned utility
26 operations only to the extent necessary to:

27 (A) enable the commission to determine the

1 aggregate load and energy requirements of the state and the
2 resources available to serve that load; or

3 (B) enable the commission to determine
4 information relating to market power as provided by Section 39.155;
5 and

6 (8) to evaluate and monitor the cybersecurity
7 preparedness of a municipally owned utility described by Section
8 39.1516(a)(3) or (4).

9 SECTION 43. Section 41.001, Utilities Code, is amended to
10 read as follows:

11 Sec. 41.001. APPLICABLE LAW. Notwithstanding any other
12 provision of law, except Sections 39.155, 39.157(e), and 39.203,
13 [~~and 39.904,~~] this chapter governs the transition to and the
14 establishment of a fully competitive electric power industry for
15 electric cooperatives. Regarding the regulation of electric
16 cooperatives, this chapter shall control over any other provision
17 of this title, except for sections in which the term "electric
18 cooperative" is specifically used.

19 SECTION 44. Section 52.060, Utilities Code, is amended to
20 read as follows:

21 Sec. 52.060. ADMINISTRATIVE FEE OR ASSESSMENT. The
22 commission may prescribe and collect a fee or assessment from local
23 exchange companies necessary to recover the cost to the commission
24 and to the office of activities carried out and services provided
25 under this subchapter and Section 12.203 [~~52.006~~].

26 SECTION 45. Section 13.4132, Water Code, is amended by
27 adding Subsection (b-1) to read as follows:

1 (b-1) Notwithstanding Section 5.505, the term of an
2 emergency order issued under this section by the utility commission
3 or the commission may not exceed 360 days. The emergency order may
4 be renewed:

5 (1) once for a period not to exceed 360 days; or

6 (2) if the utility is undergoing a sale, transfer,
7 merger, consolidation, or acquisition required to be reported to
8 the utility commission under Section 13.301, for a reasonable time
9 until the sale, transfer, merger, consolidation, or acquisition is
10 complete.

11 SECTION 46. (a) The following provisions are repealed:

12 (1) Section 304.201, Business & Commerce Code;

13 (2) Section 31.003, Utilities Code;

14 (3) Section 39.155(b), Utilities Code;

15 (4) Section 39.904, Utilities Code;

16 (5) Section 39.916(g), Utilities Code;

17 (6) Section 39.918(k), Utilities Code; and

18 (7) Section 52.006, Utilities Code.

19 (b) Section 34, Chapter 426 (S.B. 3), Acts of the 87th
20 Legislature, Regular Session, 2021, is repealed.

21 SECTION 47. The Public Utility Commission of Texas is not
22 required to conduct the first review of an allowance under Section
23 35.004(d-3), Utilities Code, as added by this Act, until the fifth
24 year after the adoption of the rules required by Section
25 35.004(d-1), Utilities Code, as added by this Act.

26 SECTION 48. The Public Utility Commission of Texas shall
27 adopt rules as necessary to implement the changes in law made by

1 this Act to Section 35.004, Utilities Code, not later than the 180th
2 day after the effective date of this Act.

3 SECTION 49. The changes in law made by this Act to Section
4 35.004, Utilities Code, apply only to an electric generation
5 facility that executes a standard generator interconnection
6 agreement with a transmission-owning utility after December 31,
7 2025.

8 SECTION 50. (a) The presiding officer of the Public Utility
9 Commission of Texas shall designate a commissioner to serve a term
10 on the governing body of the independent organization certified
11 under Section 39.151, Utilities Code, for the ERCOT power region
12 that begins January 1, 2024, to comply with Section 39.151(g-1),
13 Utilities Code, as amended by this Act.

14 (b) Except as provided by Subsection (c) of this section,
15 Section 12.059, Utilities Code, as amended by this Act, applies to a
16 member of the Public Utility Commission of Texas appointed before,
17 on, or after the effective date of this Act.

18 (c) A member of the Public Utility Commission of Texas who,
19 before the effective date of this Act, completed the training
20 program required by Section 12.059, Utilities Code, as that law
21 existed before the effective date of this Act, is only required to
22 complete additional training on the subjects added by this Act to
23 the training program required by Section 12.059, Utilities Code. A
24 commission member described by this subsection may not vote,
25 deliberate, or be counted as a member in attendance at a meeting of
26 the commission held on or after December 1, 2023, until the member
27 completes the additional training.

1 SECTION 51. The Public Utility Commission of Texas shall
2 require the independent organization certified under Section
3 39.151, Utilities Code, for the ERCOT power region to implement the
4 program required by Section 39.159(d), Utilities Code, as added by
5 this Act, not later than December 1, 2024.

6 SECTION 52. (a) The Public Utility Commission of Texas
7 shall prepare the portions of the report required by Section
8 39.1591(2), Utilities Code, as added by this Act, only for reports
9 due on or after December 1, 2024.

10 (b) The Public Utility Commission of Texas shall implement
11 Section 39.1592, Utilities Code, as added by this Act, not later
12 than December 1, 2027.

13 (c) Notwithstanding Subsection (b) of this section and the
14 deadline provided by Section 39.1592(b), Utilities Code, as added
15 by this Act, an owner or operator of an electric generation facility
16 to which Section 39.1592(b), Utilities Code, as added by this Act,
17 applies shall make the first demonstration required by that
18 subsection not later than January 1, 2028.

19 (d) The Public Utility Commission of Texas and the
20 independent organization certified under Section 39.151, Utilities
21 Code, for the ERCOT power region shall:

22 (1) conduct a study on whether implementing an
23 alternative to the single market clearing price for energy,
24 ancillary services, and other products would reduce costs to
25 residential and small commercial customers or their load-serving
26 entities, such as paying generators the price bid and not the
27 additional amounts up to the highest cost generator needed to clear

1 the market;

2 (2) analyze:

3 (A) whether cost savings can be achieved for
4 consumers, or load-serving entities serving residential and small
5 commercial consumers, by:

6 (i) limiting generators that have received
7 state or federal subsidies to receiving the price bid by that type
8 of generator; or

9 (ii) limiting a generator to receiving the
10 price bid by that generator; and

11 (B) if a pay as bid mechanism is used or a single
12 market clearing price mechanism is retained, whether
13 non-dispatchable and dispatchable generation facilities should bid
14 into separate markets for ERCOT power region products such that the
15 generation facilities are directly competing against technologies
16 with similar attributes; and

17 (3) report the results of the study and analysis
18 conducted under this subsection to the legislature not later than
19 December 1, 2025.

20 SECTION 53. (a) Except as provided by Subsection (b) of
21 this section, notwithstanding the repeal by this Act of Section
22 [39.904](#), Utilities Code, the Public Utility Commission of Texas by
23 rule shall adopt a program to apply that section as it existed
24 immediately before the effective date of this Act, and to apply
25 other statutes that referred to that section immediately before the
26 effective date of this Act, as if that section had not been repealed
27 by this Act and the other statutes that referred to that section had

1 not been repealed or amended by this Act.

2 (b) Under Subsection (a) of this section, the statutes
3 described in that subsection must be applied as if Section 39.904
4 were applicable only to renewable energy technologies that
5 exclusively rely on an energy source that is naturally regenerated
6 over a short time and derived directly from the sun.

7 (c) This section expires September 1, 2025, and the Public
8 Utility Commission of Texas shall phase out the program required by
9 Subsection (a) of this section so that it terminates on that date.

10 SECTION 54. The changes in law made by this Act to Section
11 15.023, Utilities Code, apply only to a violation committed on or
12 after the effective date of this Act. A violation committed before
13 the effective date of this Act is governed by the law in effect when
14 the violation was committed, and the former law is continued in
15 effect for that purpose.

16 SECTION 55. It is the intent of the 88th Legislature,
17 Regular Session, 2023, that the amendments made by this Act be
18 harmonized with another Act of the 88th Legislature, Regular
19 Session, 2023, relating to nonsubstantive additions to and
20 corrections in enacted codes.

21 SECTION 56. This Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 1500 was passed by the House on April 19, 2023, by the following vote: Yeas 140, Nays 1, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1500 on May 25, 2023, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1500 on May 28, 2023, by the following vote: Yeas 140, Nays 1, 2 present, not voting.

Chief Clerk of the House

H.B. No. 1500

I certify that H.B. No. 1500 was passed by the Senate, with amendments, on May 24, 2023, by the following vote: Yeas 30, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1500 on May 28, 2023, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to state preemption of and the effect of certain state or federal law on certain municipal and county regulation.

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

SECTION 1. This Act shall be known as the Texas Regulatory Consistency Act.

SECTION 2. The legislature finds that:

(1) the state has historically been the exclusive regulator of many aspects of commerce and trade in this state;

(2) in recent years, several local jurisdictions have sought to establish their own regulations of commerce that are different than the state's regulations; and

(3) the local regulations have led to a patchwork of regulations that apply inconsistently across this state.

SECTION 3. The purpose of this Act is to provide statewide consistency by returning sovereign regulatory powers to the state where those powers belong in accordance with Section 5, Article XI, Texas Constitution.

SECTION 4. This Act:

(1) may not be construed to prohibit a municipality or county from building or maintaining a road, imposing a tax, or carrying out any authority expressly authorized by statute;

(2) may not be construed to prohibit a home-rule municipality from providing the same services and imposing the same

1 regulations that a general-law municipality is authorized to
2 provide or impose;

3 (3) does not, except as expressly provided by this
4 Act, affect the authority of a municipality to adopt, enforce, or
5 maintain an ordinance or rule that relates to the control, care,
6 management, welfare, or health and safety of animals;

7 (4) does not affect the authority of a municipality or
8 county to conduct a public awareness campaign;

9 (5) does not affect the authority of a municipality or
10 county to:

11 (A) enter into or negotiate terms of a collective
12 bargaining agreement with its employees; or

13 (B) adopt a policy related to its employees; and

14 (6) does not affect the authority of a municipality or
15 county to repeal or amend an existing ordinance, order, or rule that
16 violates the provisions of this Act for the limited purpose of
17 bringing that ordinance, order, or rule in compliance with this
18 Act.

19 SECTION 5. Chapter 1, Agriculture Code, is amended by
20 adding Section 1.004 to read as follows:

21 Sec. 1.004. PREEMPTION. Unless expressly authorized by
22 another statute, a municipality or county may not adopt, enforce,
23 or maintain an ordinance, order, or rule regulating conduct in a
24 field of regulation that is occupied by a provision of this code.
25 An ordinance, order, or rule that violates this section is void,
26 unenforceable, and inconsistent with this code.

27 SECTION 6. Subchapter A, Chapter 1, Business & Commerce

1 Code, is amended by adding Section 1.109 to read as follows:

2 Sec. 1.109. PREEMPTION. Unless expressly authorized by
3 another statute, a municipality or county may not adopt, enforce,
4 or maintain an ordinance, order, or rule regulating conduct in a
5 field of regulation that is occupied by a provision of this code.
6 An ordinance, order, or rule that violates this section is void,
7 unenforceable, and inconsistent with this code.

8 SECTION 7. Title 5, Civil Practice and Remedies Code, is
9 amended by adding Chapter 102A to read as follows:

10 CHAPTER 102A. MUNICIPAL AND COUNTY LIABILITY FOR CERTAIN
11 REGULATION

12 Sec. 102A.001. DEFINITION. In this chapter, "person" means
13 an individual, corporation, business trust, estate, trust,
14 partnership, limited liability company, association, joint
15 venture, agency or instrumentality, public corporation, any legal
16 or commercial entity, or protected or registered series of a
17 for-profit entity.

18 Sec. 102A.002. LIABILITY FOR CERTAIN REGULATION. Any
19 person who has sustained an injury in fact, actual or threatened,
20 from a municipal or county ordinance, order, or rule adopted or
21 enforced by a municipality or county in violation of any of the
22 following provisions or a trade association representing the person
23 has standing to bring and may bring an action against the
24 municipality or county:

- 25 (1) Section 1.004, Agriculture Code;
26 (2) Section 1.109, Business & Commerce Code;
27 (3) Section 1.004, Finance Code;

- 1 (4) Section 30.005, Insurance Code;
- 2 (5) Section 1.005, Labor Code;
- 3 (6) Section 229.901, Local Government Code;
- 4 (7) Section 1.003, Natural Resources Code;
- 5 (8) Section 1.004, Occupations Code; or
- 6 (9) Section 1.004, Property Code.

7 Sec. 102A.003. REMEDIES. (a) A claimant is entitled to
8 recover in an action brought under this chapter:

- 9 (1) declaratory and injunctive relief; and
- 10 (2) costs and reasonable attorney's fees.

11 (b) A municipality or county is entitled to recover in an
12 action brought under this chapter costs and reasonable attorney's
13 fees if the court finds the action to be frivolous.

14 Sec. 102A.004. IMMUNITY WAIVER. Governmental immunity of a
15 municipality or county to suit and from liability is waived to the
16 extent of liability created by this chapter.

17 Sec. 102A.005. NOTICE. A municipality or county is
18 entitled to receive notice of a claim against it under this chapter
19 not later than three months before the date a claimant files an
20 action under this chapter. The notice must reasonably describe:

- 21 (1) the injury claimed; and
- 22 (2) the ordinance, order, or rule that is the cause of
23 the injury.

24 Sec. 102A.006. VENUE. (a) Notwithstanding any other law,
25 including Chapter 15, a claimant may bring an action under this
26 chapter in:

- 27 (1) the county in which all or a substantial part of

1 the events giving rise to the cause of action occurred; or

2 (2) if the defendant is a municipality, a county in
3 which the municipality is located.

4 (b) If the action is brought in a venue authorized by this
5 section, the action may not be transferred to a different venue
6 without the written consent of all parties.

7 SECTION 8. Chapter 1, Finance Code, is amended by adding
8 Section 1.004 to read as follows:

9 Sec. 1.004. PREEMPTION. (a) Unless expressly authorized
10 by another statute and except as provided by Subsection (b), a
11 municipality or county may not adopt, enforce, or maintain an
12 ordinance, order, or rule regulating conduct in a field of
13 regulation that is occupied by a provision of this code. An
14 ordinance, order, or rule that violates this section is void,
15 unenforceable, and inconsistent with this code.

16 (b) A municipality or county may enforce or maintain an
17 ordinance, order, or rule regulating any conduct under Chapter 393
18 and any conduct related to a credit services organization, as
19 defined by Section 393.001 or by any other provision of this code,
20 or a credit access business, as defined by Section 393.601 or by any
21 other provision of this code, if:

22 (1) the municipality or county adopted the ordinance,
23 order, or rule before January 1, 2023; and

24 (2) the ordinance, order, or rule would have been
25 valid under the law as it existed before the date this section was
26 enacted.

27 SECTION 9. Chapter 30, Insurance Code, is amended by adding

1 Section 30.005 to read as follows:

2 Sec. 30.005. PREEMPTION. Unless expressly authorized by
3 another statute, a municipality or county may not adopt, enforce,
4 or maintain an ordinance, order, or rule regulating conduct in a
5 field of regulation that is occupied by a provision of this code.
6 An ordinance, order, or rule that violates this section is void,
7 unenforceable, and inconsistent with this code.

8 SECTION 10. Chapter 1, Labor Code, is amended by adding
9 Section 1.005 to read as follows:

10 Sec. 1.005. PREEMPTION. (a) Unless expressly authorized
11 by another statute, a municipality or county may not adopt,
12 enforce, or maintain an ordinance, order, or rule regulating
13 conduct in a field of regulation that is occupied by a provision of
14 this code. An ordinance, order, or rule that violates this section
15 is void, unenforceable, and inconsistent with this code.

16 (b) For purposes of Subsection (a), a field occupied by a
17 provision of this code includes employment leave, hiring practices,
18 breaks, employment benefits, scheduling practices, and any other
19 terms of employment that exceed or conflict with federal or state
20 law for employers other than a municipality or county.

21 SECTION 11. Subchapter A, Chapter 51, Local Government
22 Code, is amended by adding Section 51.002 to read as follows:

23 Sec. 51.002. ORDINANCE OR RULES INCONSISTENT WITH STATE LAW
24 PROHIBITED. Notwithstanding Section 51.001, the governing body of
25 a municipality may adopt, enforce, or maintain an ordinance or rule
26 only if the ordinance or rule is consistent with the laws of this
27 state.

1 SECTION 12. Chapter 229, Local Government Code, is amended
2 by adding Subchapter Z to read as follows:

3 SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

4 Sec. 229.901. AUTHORITY TO REGULATE ANIMAL BUSINESSES. (a)

5 A municipality may not adopt, enforce, or maintain an ordinance or
6 rule that restricts, regulates, limits, or otherwise impedes a
7 business involving the breeding, care, treatment, or sale of
8 animals or animal products, including a veterinary practice, or the
9 business's transactions if the person operating that business holds
10 a license for the business that is issued by the federal government
11 or a state.

12 (b) Except as provided by this subsection, a municipality
13 may not adopt, enforce, or maintain an ordinance or rule that
14 restricts, regulates, limits, or otherwise impedes the retail sale
15 of dogs or cats. A municipality may enforce or maintain an
16 ordinance or rule adopted before April 1, 2023, that restricts,
17 regulates, limits, or otherwise impedes the retail sale of dogs or
18 cats until the state adopts statewide regulation for the retail
19 sale of dogs or cats, as applicable.

20 SECTION 13. Chapter 1, Natural Resources Code, is amended
21 by adding Section 1.003 to read as follows:

22 Sec. 1.003. PREEMPTION. Unless expressly authorized by
23 another statute, a municipality or county may not adopt, enforce,
24 or maintain an ordinance, order, or rule regulating conduct in a
25 field of regulation that is occupied by a provision of this code.
26 An ordinance, order, or rule that violates this section is void,
27 unenforceable, and inconsistent with this code.

1 SECTION 14. Chapter 1, Occupations Code, is amended by
2 adding Section 1.004 to read as follows:

3 Sec. 1.004. PREEMPTION. (a) Unless expressly authorized
4 by another statute, a municipality or county may not adopt,
5 enforce, or maintain an ordinance, order, or rule regulating
6 conduct in a field of regulation that is occupied by a provision of
7 this code. An ordinance, order, or rule that violates this section
8 is void, unenforceable, and inconsistent with this code.

9 (b) Subsection (a) may not be construed to affect municipal
10 or county authority to regulate a massage establishment in
11 accordance with Section 455.005.

12 SECTION 15. Chapter 1, Property Code, is amended by adding
13 Section 1.004 to read as follows:

14 Sec. 1.004. PREEMPTION. (a) Unless expressly authorized
15 by another statute, a municipality or county may not adopt,
16 enforce, or maintain an ordinance, order, or rule regulating
17 conduct in a field of regulation that is occupied by a provision of
18 this code. An ordinance, order, or rule that violates this section
19 is void, unenforceable, and inconsistent with this code.

20 (b) For purposes of Subsection (a), a field occupied by a
21 provision of this code includes an ordinance, order, or rule
22 regulating evictions or otherwise prohibiting, restricting, or
23 delaying delivery of a notice to vacate or filing a suit to recover
24 possession of the premises under Chapter 24.

25 SECTION 16. Chapter 102A, Civil Practice and Remedies Code,
26 as added by this Act, applies only to a cause of action that accrues
27 on or after the effective date of this Act.

1 SECTION 17. This Act takes effect immediately if it
2 receives a vote of two-thirds of all the members elected to each
3 house, as provided by Section 39, Article III, Texas Constitution.
4 If this Act does not receive the vote necessary for immediate
5 effect, this Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 2127 was passed by the House on April 19, 2023, by the following vote: Yeas 92, Nays 55, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2127 on May 19, 2023, by the following vote: Yeas 84, Nays 58, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2127 was passed by the Senate, with amendments, on May 16, 2023, by the following vote: Yeas 18, Nays 13.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to the use of Parks and Wildlife Department land for carbon sequestration or similar ecosystem services projects.

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

SECTION 1. Section 11.032(b), Parks and Wildlife Code, is amended to read as follows:

(b) The department shall deposit to the credit of the game, fish, and water safety account all revenue, less allowable costs, from the following sources:

(1) all types of fishing licenses and stamps and shrimping licenses;

(2) all types of hunting licenses and stamps;

(3) trapping licenses and other licenses relating to the taking, propagation, and sale of fur-bearing animals or their pelts;

(4) sale of marl, sand, gravel, shell, and mudshell;

(5) oyster bed rentals and permits;

(6) federal funds received for fish and wildlife research, management, development and conservation, resource protection, and law enforcement, unless the funds are received for the specific purposes of Subchapter F, Chapter 77;

(7) sale of property, less advertising costs, purchased from this account or a special fund or account that is now part of this account;

1 (8) fines and penalties collected for violations of a
2 law pertaining to the protection and conservation of wild birds,
3 wild fowl, wild animals, fish, shrimp, oysters, game birds and
4 animals, fur-bearing animals, alligators, and any other wildlife
5 resources of this state;

6 (9) sale of rough fish by the department;

7 (10) fees for importation permits;

8 (11) fees from supplying fish for or placing fish in
9 water located on private property;

10 (12) sale of seized pelts;

11 (13) sale or lease of grazing rights to and the
12 products from game preserves, sanctuaries, and management areas;

13 (14) contracts for the removal of fur-bearing animals
14 and reptiles from wildlife management areas;

15 (15) vessel registration fees;

16 (16) vessel manufacturer or dealer licensing fees;

17 (17) fines or penalties imposed by a court for
18 violation of water safety laws contained in Chapter 31 of this code;

19 (18) alligator hunter's or alligator buyer's licenses;

20 (19) sale of alligators or any part of an alligator by
21 the department;

22 (20) fees and revenue collected under Section
23 11.027(b) or (c) of this code that are associated with the
24 conservation of fish and wildlife;

25 (21) fees related to cultivated oyster mariculture;

26 (22) vessel and outboard motor titling fees;

27 (23) participation fees collected under Section

1 43.976; ~~and~~

2 (24) money received by the department from carbon
3 sequestration or similar ecosystem services projects described by
4 Section 11.302(b)(1); and

5 (25) any other source provided by law.

6 SECTION 2. Section 11.035(b), Parks and Wildlife Code, is
7 amended to read as follows:

8 (b) The department shall deposit to the credit of the state
9 parks account all revenue, less allowable costs, received from the
10 following sources:

11 (1) grants or operation of concessions in state parks
12 or fishing piers;

13 (2) publications on state parks, state historic sites,
14 or state scientific areas;

15 (3) fines or penalties received from violations of
16 regulations governing parks issued pursuant to Subchapter B,
17 Chapter 13;

18 (4) fees and revenue collected under Section 11.027(b)
19 or (c) that are associated with state park lands;

20 (5) credits made to the department under Section
21 151.801, Tax Code, in an amount not to exceed the amount of the tax
22 proceeds allocated by the legislature to the account under Section
23 151.801(c-1), Tax Code, to be used only for the purposes provided by
24 that section; ~~and~~

25 (6) money received by the department from carbon
26 sequestration or similar ecosystem services projects described by
27 Section 11.302(b)(2); and

1 (7) any other source provided by law.

2 SECTION 3. The heading to Subchapter L, Chapter 11, Parks
3 and Wildlife Code, is amended to read as follows:

4 SUBCHAPTER L. USE [~~GRANT OR LEASE~~] OF DEPARTMENT LAND

5 SECTION 4. Subchapter L, Chapter 11, Parks and Wildlife
6 Code, is amended by adding Section 11.302 to read as follows:

7 Sec. 11.302. CARBON SEQUESTRATION AND SIMILAR ECOSYSTEM
8 SERVICES PROJECTS. (a) Except as otherwise provided by this
9 subsection, the department may enter into an agreement with a
10 public or private entity for the purpose of developing a
11 nature-based carbon sequestration or similar ecosystem services
12 project on department land. This subsection does not authorize the
13 department to enter into an agreement to develop a carbon dioxide
14 injection well on department land.

15 (b) Money received by the department from a carbon
16 sequestration or similar ecosystem services project under this
17 section shall be deposited:

18 (1) to the credit of the game, fish, and water safety
19 account, if the project is located on land primarily used for game
20 or fish conservation, protection, or management; and

21 (2) to the credit of the state parks account, if the
22 project is located on land primarily used for parks, recreation, or
23 historic sites.

24 SECTION 5. This Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 4018 was passed by the House on April 26, 2023, by the following vote: Yeas 126, Nays 18, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 4018 on May 15, 2023, by the following vote: Yeas 133, Nays 9, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 4018 was passed by the Senate, with amendments, on May 12, 2023, by the following vote: Yeas 28, Nays 2.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to financial assistance provided and programs administered by the Texas Water Development Board.

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

SECTION 1. Section 10.010, Water Code, is amended to read as follows:

Sec. 10.010. POWERS AND DUTIES OF COUNCIL. The council shall:

(1) monitor trends in water conservation implementation;

(2) monitor new technologies for possible inclusion by the board as best management practices in the best management practices guide developed by the water conservation implementation task force under Chapter 109, Acts of the 78th Legislature, Regular Session, 2003;

(3) monitor the effectiveness of the statewide water ~~conservation~~ public awareness program developed under Section 16.026 [~~16.401~~] and associated local involvement in implementation of the program;

(4) develop and implement a state water management resource library;

(5) develop and implement a public recognition program for water conservation;

(6) monitor the implementation of water conservation

1 strategies by water users included in regional water plans; and

2 (7) monitor target and goal guidelines for water
3 conservation to be considered by the board and commission.

4 SECTION 2. Chapter 15, Water Code, is amended by adding
5 Subchapter C-1 to read as follows:

6 SUBCHAPTER C-1. NEW WATER SUPPLY FOR TEXAS FUND

7 Sec. 15.151. DEFINITION. In this subchapter, "fund" means
8 the new water supply for Texas fund.

9 Sec. 15.152. FUND. (a) The new water supply for Texas fund
10 is a special fund in the state treasury administered by the board.
11 The fund consists of:

12 (1) money appropriated for transfer or deposit to the
13 credit of the fund;

14 (2) money the board transfers to the fund from any
15 available source;

16 (3) depository interest allocable to the fund and
17 other investment returns on money in the fund;

18 (4) money from gifts, grants, or donations to the
19 fund; and

20 (5) any other fees or sources of revenue that the
21 legislature may dedicate for deposit to the fund.

22 (b) The fund is exempt from the application of Section
23 403.095, Government Code.

24 Sec. 15.153. USE OF FUND. (a) The board by rule shall
25 undertake to finance projects through the fund that will lead to
26 seven million acre-feet of new water supplies by December 31, 2033.

27 (b) The fund may be used to:

1 (1) provide financial assistance to political
2 subdivisions to develop water supply projects that create new water
3 sources for the state, including:

4 (A) desalination projects, including marine and
5 brackish water desalination;

6 (B) produced water treatment projects, other
7 than projects that are only for purposes of oil and gas exploration;

8 (C) aquifer storage and recovery projects; and

9 (D) the development of infrastructure to
10 transport water that is made available by a project described by
11 this subdivision;

12 (2) make transfers from the fund:

13 (A) to the state water implementation fund for
14 Texas established under Subchapter G or the Texas Water Development
15 Fund II established under Subchapter L, Chapter 17; and

16 (B) for a purpose described by Subdivision (1);
17 and

18 (3) make transfers from the fund to the water bank
19 account established under Section 15.707.

20 (c) The fund may be used for any purpose described by
21 Subsection (b) under criteria developed by the board. A loan made
22 from the fund under this subchapter may provide for repayment terms
23 of up to 30 years, in the board's discretion.

24 (d) Financial assistance for a purpose described by
25 Subsection (b)(1):

26 (1) may be provided for a qualifying project under
27 Chapter 2267, Government Code, only if the project complies with

1 that chapter; and

2 (2) may not be provided for expenses associated with
3 the maintenance or operation of a water supply project described by
4 Subsection (b)(1).

5 Sec. 15.154. FINANCIAL ASSISTANCE. (a) The board shall
6 adopt rules necessary to administer this subchapter, including
7 rules establishing procedures for the application for and award of
8 financial assistance, the distribution of financial assistance,
9 the investment of funds, and the administration of financial
10 assistance and the fund.

11 (b) When evaluating an application for financial assistance
12 from a political subdivision, the board shall consider:

13 (1) the intended end users of the water supply, the
14 needs of the area to be served by the project, the expected benefit
15 of the project to the area, the relationship of the project to the
16 water supply needs of this state overall, and the relationship of
17 the project to the state water plan;

18 (2) the amount of water expected to be produced by the
19 project; and

20 (3) the availability of money or revenue to the
21 political subdivision from all sources for the ultimate repayment
22 of the cost of the project, including all interest.

23 (c) The board by resolution may approve an application if,
24 after considering the factors listed in Subsection (b) and other
25 relevant factors, the board finds that:

26 (1) the public interest is served by state assistance
27 for the project; and

1 (2) for an application for financial assistance in the
2 form of a loan, the money or revenue pledged by the political
3 subdivision will be sufficient to meet all the obligations assumed
4 by the political subdivision during the term of the loan.

5 (d) The repayment of principal or interest on a loan made
6 under this subchapter must be deposited to the credit of the Texas
7 water fund. This subsection does not apply to a loan made under
8 other law with money transferred under Section 15.153(b)(2).

9 (e) An application from a political subdivision for
10 financial assistance under this subchapter must comply with the
11 requirements of Section 16.4021.

12 (f) Sections 17.183-17.187 apply to the construction of
13 projects funded under this subchapter.

14 SECTION 3. Section 15.438(a), Water Code, is amended to
15 read as follows:

16 (a) The State Water Implementation Fund for Texas Advisory
17 Committee is composed of the following seven members:

18 (1) the comptroller, or a person designated by the
19 comptroller;

20 (2) three members of the senate appointed by the
21 lieutenant governor, including:

22 (A) a member of the committee of the senate
23 having primary jurisdiction over matters relating to finance; and

24 (B) the chair [~~a member~~] of the committee of the
25 senate having primary jurisdiction over water [~~natural~~] resources;
26 and

27 (3) three members of the house of representatives

1 appointed by the speaker of the house of representatives,
2 including:

3 (A) a member of the committee of the house of
4 representatives having primary jurisdiction over appropriations;
5 and

6 (B) the chair [~~a member~~] of the committee of the
7 house of representatives having primary jurisdiction over water
8 [~~natural~~] resources.

9 SECTION 4. Section 15.472(a), Water Code, is amended to
10 read as follows:

11 (a) The state water implementation revenue fund for Texas is
12 a special fund in the state treasury outside the general revenue
13 fund to be used by the board, without further legislative
14 appropriation, only for the purpose of providing financing for
15 projects included in the state water plan that are authorized under
16 Subchapter C-1, Q, or R of this chapter, Subchapter E or F, Chapter
17 16, or Subchapter J or L, Chapter 17. The board may establish
18 separate accounts in the fund. The board has legal title to money
19 and investments in the fund until the money is disbursed as provided
20 by this subchapter and board rules. It is the intent of the
21 legislature that the fund will never be used:

22 (1) for a purpose other than the support of projects in
23 the state water plan; or

24 (2) to certify that appropriations from the treasury
25 are within the amount estimated to be available in a fund of the
26 treasury affected by the appropriation.

27 SECTION 5. Section 15.474(a), Water Code, is amended to

1 read as follows:

2 (a) Except as provided by Subsection (c), money in the fund
3 may be used by the board only to provide financing or refinancing,
4 under terms specified by the board, for projects included in the
5 state water plan that are authorized under Subchapter C-1, Q, or R
6 of this chapter, Subchapter E or F, Chapter 16, or Subchapter J or
7 L, Chapter 17, including water conservation or reuse projects
8 designed to reduce the need for this state or political
9 subdivisions of this state to develop additional water resources.

10 SECTION 6. Chapter 15, Water Code, is amended by adding
11 Subchapter H-1 to read as follows:

12 SUBCHAPTER H-1. TEXAS WATER FUND

13 Sec. 15.501. DEFINITION. In this subchapter, "fund" means
14 the Texas water fund.

15 Sec. 15.502. FUND. (a) The Texas water fund is a special
16 fund in the state treasury outside the general revenue fund. The
17 fund is administered by the board.

18 (b) The board may use the fund only to transfer money to:

19 (1) the water assistance fund established under
20 Subchapter B;

21 (2) the new water supply for Texas fund established
22 under Subchapter C-1;

23 (3) the state water implementation fund for Texas
24 established under Subchapter G;

25 (4) the state water implementation revenue fund for
26 Texas established under Subchapter H;

27 (5) a revolving fund established under Subchapter J;

1 (6) the rural water assistance fund established under
2 Subchapter R;

3 (7) the statewide water public awareness account
4 established under Section 16.027;

5 (8) the Texas Water Development Fund II water
6 financial assistance account established under Section 17.959; and

7 (9) the Texas Water Development Fund II state
8 participation account established under Section 17.957.

9 (c) Money and investments in the fund shall be kept and held
10 for and in the name of the board.

11 (d) Money in the fund may be used only as provided by this
12 subchapter.

13 (e) The fund consists of:

14 (1) money transferred or deposited to the credit of
15 the fund by law, including money appropriated by the legislature
16 directly to the fund and money from any source transferred or
17 deposited to the credit of the fund as authorized by law;

18 (2) any other revenue that the legislature by statute
19 dedicates for deposit to the credit of the fund;

20 (3) investment earnings and interest earned on amounts
21 credited to the fund;

22 (4) money from gifts, grants, or donations to the
23 fund; and

24 (5) money returned from any authorized transfer.

25 Sec. 15.503. MANAGEMENT AND INVESTMENT OF FUND. (a) Money
26 in the fund shall be held and invested by the Texas Treasury
27 Safekeeping Trust Company, taking into account the purposes for

1 which money in the fund may be used.

2 (b) The fund and any accounts established in the fund shall
3 be kept and maintained by or at the direction of the board.

4 (c) In managing the assets of the fund, the trust company
5 may acquire, exchange, sell, supervise, manage, or retain any kind
6 of investment that a prudent investor, exercising reasonable care,
7 skill, and caution, would acquire or retain in light of the
8 purposes, terms, distribution requirements, and other
9 circumstances of the fund then prevailing, taking into
10 consideration the investment of all the assets of the fund rather
11 than a single investment. The reasonable expenses of managing the
12 fund's assets shall be paid from the fund.

13 (d) Section 404.094(d), Government Code, applies to the
14 fund.

15 Sec. 15.504. USE OF FUND. (a) The board by resolution may
16 make transfers from the fund to a fund or account described by
17 Section 15.502(b) for an authorized purpose of the receiving fund
18 or account.

19 (b) The board may not transfer money to a fund or account
20 described by Section 15.502(b) until the application for the
21 project for which the money is to be used has been approved.

22 (c) The board shall ensure that a portion of the money
23 transferred from the fund is used for:

24 (1) water infrastructure projects, prioritized by
25 risk or need, for:

26 (A) rural political subdivisions; and

27 (B) municipalities with a population of less than

1 150,000;

2 (2) projects for which all required state or federal
3 permitting has been substantially completed, as determined by the
4 board;

5 (3) the statewide water public awareness program
6 established under Section 16.026;

7 (4) water conservation strategies; and

8 (5) water loss mitigation projects.

9 (d) Money transferred from the fund for the purposes
10 described by Subsection (c) may be transferred to funds or accounts
11 described by Section 15.502(b) to be used to provide financial
12 assistance for any purpose described by Subsection (c) under
13 criteria developed by the board and in accordance with law.

14 (e) Money deposited to the credit of the fund as provided by
15 Section 15.154(d) may be used only for the purposes described by
16 Section 15.153(b).

17 (f) The board may use the fund to pay the necessary and
18 reasonable expenses of the board in administering the fund not to
19 exceed two percent.

20 Sec. 15.505. TRANSFER OF MONEY. Notwithstanding any other
21 law:

22 (1) the board may:

23 (A) transfer money from the fund into any other
24 fund or account described by Section 15.502(b); and

25 (B) restore to the fund money transferred from
26 the fund and deposited to the credit of a fund or account described
27 by Section 15.502(b); and

1 (2) a fund or account described by Section 15.502(b)
2 may accept a transfer of money made under this subchapter.

3 Sec. 15.506. ADVISORY COMMITTEE. (a) The State Water
4 Implementation Fund for Texas Advisory Committee established under
5 Section 15.438:

6 (1) shall submit comments and recommendations to the
7 board regarding the use of money in the fund for use by the board in
8 adopting rules under Section 15.507;

9 (2) shall review the overall operation, function, and
10 structure of the fund at least annually and may provide comments and
11 recommendations to the board on any matter; and

12 (3) may adopt rules, procedures, and policies as
13 needed to administer this section and implement its
14 responsibilities.

15 (b) The advisory committee may not recommend specific
16 projects for consideration for receipt of financial assistance from
17 the fund.

18 Sec. 15.507. RULES. (a) The board may adopt rules
19 providing for the use of money in the fund that are consistent with
20 this subchapter.

21 (b) Rules adopted under this section must require each
22 recipient of financial assistance administered through the fund to
23 submit to the board a water conservation plan consistent with the
24 requirements of Section 16.4021.

25 SECTION 7. Section 15.994(c), Water Code, is amended to
26 read as follows:

27 (c) The board may use money in the fund to contract for

1 outreach, financial, planning, and technical assistance to assist
2 rural political subdivisions [~~in obtaining and using financing from~~
3 ~~any source~~] for a purpose described by this section, including in
4 obtaining and using financing from funds and accounts administered
5 by the board.

6 SECTION 8. Section 16.0121, Water Code, is amended by
7 adding Subsections (k) and (l) to read as follows:

8 (k) The board by rule shall establish a program to provide
9 technical assistance to retail public utilities in conducting water
10 audits required under Subsections (b) and (b-1) and in applying for
11 financial assistance from the board to mitigate the utility
12 system's water loss. The board may provide for the implementation
13 of the program established under this subsection by contracting or
14 partnering with other entities. Rules adopted under this section
15 must provide for the prioritization of technical assistance to
16 retail public utilities based on:

- 17 (1) water loss audits submitted to the board;
18 (2) the population served by the utility; and
19 (3) the integrity of the utility's system.

20 (l) The board shall post on the board's Internet website
21 information that:

- 22 (1) summarizes the information compiled under
23 Subsection (f);
24 (2) summarizes the measures taken by retail public
25 utilities to reduce water loss; and
26 (3) identifies the retail public utilities
27 participating in the program established under Subsection (k) and

1 details the use of financial assistance provided under that
2 subsection.

3 SECTION 9. Section 16.401, Water Code, is transferred to
4 Subchapter B, Chapter 16, Water Code, redesignated as Section
5 16.026, Water Code, and amended to read as follows:

6 Sec. 16.026 [16.401]. STATEWIDE WATER [CONSERVATION]
7 PUBLIC AWARENESS PROGRAM. (a) The executive administrator shall
8 develop and implement a statewide water [conservation] public
9 awareness program to educate residents of this state about water
10 [conservation]. The program shall take into account the
11 differences in water [conservation] needs of various geographic
12 regions of the state and shall be designed to complement and support
13 existing local and regional water education or awareness
14 [~~conservation~~] programs.

15 (b) The executive administrator is required to develop and
16 implement the program required by Subsection (a) in a state fiscal
17 biennium only if the legislature appropriates sufficient money in
18 that biennium specifically for that purpose.

19 SECTION 10. Subchapter B, Chapter 16, Water Code, is
20 amended by adding Section 16.027 to read as follows:

21 Sec. 16.027. STATEWIDE WATER PUBLIC AWARENESS ACCOUNT. (a)
22 The statewide water public awareness account is an account in the
23 general revenue fund. The account consists of:

24 (1) money appropriated to the board for deposit to the
25 credit of the account;

26 (2) money transferred by the board to the credit of the
27 account from other funds available to the board;

1 (3) money from gifts or grants to the account from any
2 source, including the federal government, an educational
3 institution, or a private donor;

4 (4) proceeds from the sale of educational or public
5 awareness materials, publications, and other items deposited to the
6 credit of the account; and

7 (5) interest earned on the investment of money in the
8 account and depository interest allocable to the account.

9 (b) The account may be used by the board to develop,
10 administer, and implement the statewide water public awareness
11 program established by Section 16.026.

12 (c) The account is exempt from the application of Section
13 403.095, Government Code.

14 SECTION 11. Section 16.4021(b), Water Code, is amended to
15 read as follows:

16 (b) This section applies to an application for financial
17 assistance under:

18 (1) Subchapters C, C-1, D, E, G, H, J, O, Q, and R,
19 Chapter 15;

20 (2) Subchapters E and F of this chapter; and

21 (3) Subchapters D, F, I, K, and L, Chapter 17.

22 SECTION 12. Not later than January 1, 2024, the Texas Water
23 Development Board shall adopt rules as required by Section
24 16.0121(k), Water Code, as added by this Act.

25 SECTION 13. (a) Except as otherwise provided by this Act,
26 this Act takes effect September 1, 2023.

27 (b) Section 6 of this Act takes effect January 1, 2024, but

S.B. No. 28

1 only if the constitutional amendment proposed by the 88th
2 Legislature, Regular Session, 2023, creating the Texas water fund
3 to assist in financing water projects in this state is approved by
4 the voters. If that constitutional amendment is not approved by
5 the voters, Section 6 of this Act has no effect.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 28 passed the Senate on April 3, 2023, by the following vote: Yeas 31, Nays 0; May 22, 2023, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 23, 2023, House granted request of the Senate; May 28, 2023, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 28 passed the House, with amendments, on May 17, 2023, by the following vote: Yeas 136, Nays 8, one present not voting; May 23, 2023, House granted request of the Senate for appointment of Conference Committee; May 28, 2023, House adopted Conference Committee Report by the following vote: Yeas 134, Nays 4, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

AN ACT

relating to the creation of the Fifteenth Court of Appeals with jurisdiction over certain civil cases, the compensation of the justices of that court, and the jurisdiction of the courts of appeals in this state.

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

ARTICLE 1. FIFTEENTH COURT OF APPEALS

SECTION 1.01. Section 22.201, Government Code, is amended by amending Subsection (a) and adding Subsection (p) to read as follows:

(a) The state is organized [~~divided~~] into 15 [~~14~~] courts of appeals districts with a court of appeals in each district.

(p) The Fifteenth Court of Appeals District is composed of all counties in this state.

SECTION 1.02. Subchapter C, Chapter 22, Government Code, is amended by adding Section 22.2151 to read as follows:

Sec. 22.2151. FIFTEENTH COURT OF APPEALS. (a) The Court of Appeals for the Fifteenth Court of Appeals District shall be held in the City of Austin.

(b) The Fifteenth Court of Appeals may transact its business in any county in the district as the court determines is necessary and convenient.

SECTION 1.03. Subchapter C, Chapter 22, Government Code, is amended by adding Section 22.2152 to read as follows:

1 Sec. 22.2152. REPORT ON FIFTEENTH COURT OF APPEALS. Not
2 later than December 1 of each year, the Office of Court
3 Administration of the Texas Judicial System shall submit to the
4 legislature a report on the number and types of cases heard by the
5 Court of Appeals for the Fifteenth Court of Appeals District in the
6 preceding state fiscal year.

7 SECTION 1.04. Section 22.216, Government Code, is amended
8 by adding Subsections (n-1) and (n-2) to read as follows:

9 (n-1) The Court of Appeals for the Fifteenth Court of
10 Appeals District consists of a chief justice and of four justices
11 holding places numbered consecutively beginning with Place 2.

12 (n-2) Notwithstanding Subsection (n-1), the Court of
13 Appeals for the Fifteenth Court of Appeals District consists of a
14 chief justice and of two justices holding places numbered
15 consecutively beginning with Place 2 for the first three years
16 following the court's creation. This subsection expires September
17 1, 2027.

18 SECTION 1.05. Section 22.220, Government Code, is amended
19 by amending Subsection (a) and adding Subsection (d) to read as
20 follows:

21 (a) Except as provided by Subsection (d), each ~~Each~~ court
22 of appeals has appellate jurisdiction of all civil cases within its
23 district of which the district courts or county courts have
24 jurisdiction when the amount in controversy or the judgment
25 rendered exceeds \$250, exclusive of interest and costs.

26 (d) The Court of Appeals for the Fifteenth Court of Appeals
27 District has exclusive intermediate appellate jurisdiction over

1 the following matters arising out of or related to a civil case:

2 (1) matters brought by or against the state or a board,
3 commission, department, office, or other agency in the executive
4 branch of the state government, including a university system or
5 institution of higher education as defined by Section 61.003,
6 Education Code, or by or against an officer or employee of the state
7 or a board, commission, department, office, or other agency in the
8 executive branch of the state government arising out of that
9 officer's or employee's official conduct, other than:

10 (A) a proceeding brought under the Family Code
11 and any related motion or proceeding;

12 (B) a proceeding brought under Chapter 7B or
13 Article 17.292, Code of Criminal Procedure;

14 (C) a proceeding brought against a district
15 attorney, a criminal district attorney, or a county attorney with
16 criminal jurisdiction;

17 (D) a proceeding relating to a mental health
18 commitment;

19 (E) a proceeding relating to civil asset
20 forfeiture;

21 (F) a condemnation proceeding for the
22 acquisition of land or a proceeding related to eminent domain;

23 (G) a proceeding brought under Chapter 101, Civil
24 Practice and Remedies Code;

25 (H) a claim of personal injury or wrongful death;

26 (I) a proceeding brought under Chapter 125, Civil
27 Practice and Remedies Code, to enjoin a common nuisance;

1 (J) a proceeding brought under Chapter 55, Code
2 of Criminal Procedure;

3 (K) a proceeding under Chapter 22A, Government
4 Code;

5 (L) a proceeding brought under Subchapter E-1,
6 Chapter 411, Government Code;

7 (M) a proceeding brought under Chapter 21, Labor
8 Code;

9 (N) a removal action under Chapter 87, Local
10 Government Code; or

11 (O) a proceeding brought under Chapter 841,
12 Health and Safety Code;

13 (2) matters in which a party to the proceeding files a
14 petition, motion, or other pleading challenging the
15 constitutionality or validity of a state statute or rule and the
16 attorney general is a party to the case; and

17 (3) any other matter as provided by law.

18 SECTION 1.06. Section 22.221, Government Code, is amended
19 by amending Subsection (b) and adding Subsections (c) and (c-1) to
20 read as follows:

21 (b) Subject to Subsection (c-1), each [~~Each~~] court of
22 appeals for a court of appeals district may issue all writs of
23 mandamus, agreeable to the principles of law regulating those
24 writs, against [+]

25 [~~1~~] a judge of a district, statutory county,
26 statutory probate county, or county court in the court of appeals
27 district[+]

1 ~~[(2) a judge of a district court who is acting as a~~
2 ~~magistrate at a court of inquiry under Chapter 52, Code of Criminal~~
3 ~~Procedure, in the court of appeals district; or~~

4 ~~[(3) an associate judge of a district or county court~~
5 ~~appointed by a judge under Chapter 201, Family Code, in the court of~~
6 ~~appeals district for the judge who appointed the associate judge].~~

7 (c) Each court of appeals for a court of appeals district,
8 other than the Court of Appeals for the Fifteenth Court of Appeals
9 District, may issue all writs of mandamus, agreeable to the
10 principles of law regulating those writs, against:

11 (1) a judge of a district court who is acting as a
12 magistrate at a court of inquiry under Chapter 52, Code of Criminal
13 Procedure, in the court of appeals district; or

14 (2) an associate judge of a district or county court
15 appointed by a judge under Chapter 201, Family Code, in the court of
16 appeals district for the judge who appointed the associate judge.

17 (c-1) The original jurisdiction of the Court of Appeals for
18 the Fifteenth Court of Appeals District to issue writs is limited to
19 writs arising out of matters over which the court has exclusive
20 intermediate appellate jurisdiction under Section 22.220(d).

21 SECTION 1.07. Section 22.229(a), Government Code, is
22 amended to read as follows:

23 (a) An appellate judicial system fund is established for
24 each court of appeals, other than the Court of Appeals of the
25 Fifteenth Court of Appeals District, to:

26 (1) assist the court of appeals in the processing of
27 appeals filed with the court of appeals from the county courts,

1 statutory county courts, statutory probate courts, and district
2 courts in the counties the court of appeals serves; and

3 (2) defray costs and expenses incurred in the
4 operation of the court of appeals.

5 SECTION 1.08. Section 73.001, Government Code, is amended
6 to read as follows:

7 Sec. 73.001. AUTHORITY TO TRANSFER. (a) Except as provided
8 by Subsection (b), the ~~[The]~~ supreme court may order cases
9 transferred from one court of appeals to another at any time that,
10 in the opinion of the supreme court, there is good cause for the
11 transfer.

12 (b) The supreme court may not transfer any case or
13 proceeding properly filed in the Court of Appeals for the Fifteenth
14 Court of Appeals District to another court of appeals for the
15 purpose of equalizing the dockets of the courts of appeals.

16 (c) The supreme court shall adopt rules for:

17 (1) transferring an appeal inappropriately filed in
18 the Fifteenth Court of Appeals to a court of appeals with
19 jurisdiction over the appeal; and

20 (2) transferring to the Fifteenth Court of Appeals
21 from another court of appeals the appeals over which the Fifteenth
22 Court of Appeals has exclusive intermediate appellate jurisdiction
23 under Section 22.220(d).

24 SECTION 1.09. Section 659.012(a), Government Code, is
25 amended to read as follows:

26 (a) Notwithstanding Section 659.011 and subject to
27 Subsections (b) and (b-1):

1 (1) a judge of a district court is entitled to an
2 annual base salary from the state as set by the General
3 Appropriations Act in an amount equal to at least \$140,000, except
4 that the combined base salary of a district judge from all state and
5 county sources, including compensation for any extrajudicial
6 services performed on behalf of the county, may not exceed the
7 amount that is \$5,000 less than the maximum combined base salary
8 from all state and county sources for a justice of a court of
9 appeals other than a chief justice as determined under this
10 subsection;

11 (2) except as provided by Subdivision (3), a justice
12 of a court of appeals other than the chief justice is entitled to an
13 annual base salary from the state in the amount equal to 110 percent
14 of the state base salary of a district judge as set by the General
15 Appropriations Act, except that the combined base salary of a
16 justice of the court of appeals other than the chief justice from
17 all state and county sources, including compensation for any
18 extrajudicial services performed on behalf of the county, may not
19 exceed the amount that is \$5,000 less than the base salary for a
20 justice of the supreme court as determined under this subsection;

21 (3) a justice of the Court of Appeals for the Fifteenth
22 Court of Appeals District other than the chief justice is entitled
23 to an annual base salary from the state in the amount equal to
24 \$5,000 less than 120 percent of the state base salary of a district
25 judge as set by the General Appropriations Act;

26 (4) a justice of the supreme court other than the chief
27 justice or a judge of the court of criminal appeals other than the

1 presiding judge is entitled to an annual base salary from the state
2 in the amount equal to 120 percent of the state base salary of a
3 district judge as set by the General Appropriations Act; and

4 (5) [~~4~~] the chief justice or presiding judge of an
5 appellate court is entitled to an annual base salary from the state
6 in the amount equal to \$2,500 more than the state base salary
7 provided for the other justices or judges of the court, except that
8 the combined base salary of the chief justice of a court of appeals
9 from all state and county sources may not exceed the amount equal to
10 \$2,500 less than the base salary for a justice of the supreme court
11 as determined under this subsection.

12 SECTION 1.10. Section 2001.038(f), Government Code, is
13 amended to read as follows:

14 (f) A Travis County district court in which an action is
15 brought under this section, on its own motion or the motion of any
16 party, may request transfer of the action to the Court of Appeals
17 for the Fifteenth [~~Third~~] Court of Appeals District if the district
18 court finds that the public interest requires a prompt,
19 authoritative determination of the validity or applicability of the
20 rule in question and the case would ordinarily be appealed. After
21 filing of the district court's request with the court of appeals,
22 transfer of the action may be granted by the court of appeals if it
23 agrees with the findings of the district court concerning the
24 application of the statutory standards to the action. On entry of
25 an order by the court of appeals granting transfer, the action is
26 transferred to the court of appeals for decision, and the validity
27 or applicability of the rule in question is subject to judicial

1 review by the court of appeals. The administrative record and the
2 district court record shall be filed by the district clerk with the
3 clerk of the court of appeals. The court of appeals may direct the
4 district court to conduct any necessary evidentiary hearings in
5 connection with the action.

6 SECTION 1.11. Section 2001.176(c), Government Code, is
7 amended to read as follows:

8 (c) A Travis County district court in which an action is
9 brought under this section, on its own motion or on motion of any
10 party, may request transfer of the action to the Court of Appeals
11 for the Fifteenth [~~Third~~] Court of Appeals District if the district
12 court finds that the public interest requires a prompt,
13 authoritative determination of the legal issues in the case and the
14 case would ordinarily be appealed. After filing of the district
15 court's request with the court of appeals, transfer of the action
16 may be granted by the court of appeals if it agrees with the
17 findings of the district court concerning the application of the
18 statutory standards to the action. On entry of an order by the
19 court of appeals granting transfer, the action is transferred to
20 the court of appeals for decision, and the agency decision in the
21 contested case is subject to judicial review by the court of
22 appeals. The administrative record and the district court record
23 shall be filed by the district clerk with the clerk of the court of
24 appeals. The court of appeals may direct the district court to
25 conduct any necessary evidentiary hearings in connection with the
26 action.

27 SECTION 1.12. Section 2301.751(a), Occupations Code, is

1 amended to read as follows:

2 (a) A party to a proceeding affected by a final order, rule,
3 or decision or other final action of the board with respect to a
4 matter arising under this chapter or Chapter 503, Transportation
5 Code, may seek judicial review of the action under the substantial
6 evidence rule in:

7 (1) a district court in Travis County; or

8 (2) the court of appeals for the Fifteenth [~~Third~~]
9 Court of Appeals District.

10 SECTION 1.13. Section 39.001(e), Utilities Code, is amended
11 to read as follows:

12 (e) Judicial review of competition rules adopted by the
13 commission shall be conducted under Chapter 2001, Government Code,
14 except as otherwise provided by this chapter. Judicial review of
15 the validity of competition rules shall be commenced in the Court of
16 Appeals for the Fifteenth [~~Third~~] Court of Appeals District and
17 shall be limited to the commission's rulemaking record. The
18 rulemaking record consists of:

19 (1) the notice of the proposed rule;

20 (2) the comments of all interested persons;

21 (3) all studies, reports, memoranda, or other
22 materials on which the commission relied in adopting the rule; and

23 (4) the order adopting the rule.

24 SECTION 1.14. (a) Except as otherwise provided by this Act,
25 the Court of Appeals for the Fifteenth Court of Appeals District is
26 created September 1, 2024.

27 (b) If the Court of Appeals for the Fifteenth Court of

1 Appeals District is created, the initial vacancies in the offices
2 of chief justice and justices of the court shall be filled by
3 appointment.

4 SECTION 1.15. (a) The changes in law made by this Act apply
5 to appeals perfected on or after September 1, 2024.

6 (b) On September 1, 2024, all cases pending in other courts
7 of appeal that were filed on or after September 1, 2023, and of
8 which the Court of Appeals for the Fifteenth Court of Appeals
9 District has exclusive intermediate appellate jurisdiction are
10 transferred to the Court of Appeals for the Fifteenth Court of
11 Appeals District.

12 (c) When a case is transferred as provided by Subsection (b)
13 of this section:

14 (1) all processes, writs, bonds, recognizances, or
15 other obligations issued from the other courts of appeal are
16 returnable to the Court of Appeals for the Fifteenth Court of
17 Appeals District as if originally issued by that court; and

18 (2) the obligees on all bonds and recognizances taken
19 in and for the other courts of appeal and all witnesses summoned to
20 appear in another court of appeals are required to appear before the
21 Court of Appeals for the Fifteenth Court of Appeals District as if
22 originally required to appear before the Court of Appeals for the
23 Fifteenth Court of Appeals District.

24 ARTICLE 2. CONFORMING AMENDMENTS

25 SECTION 2.01. Article 4.01, Code of Criminal Procedure, is
26 amended to read as follows:

27 Art. 4.01. WHAT COURTS HAVE CRIMINAL JURISDICTION. The

1 following courts have jurisdiction in criminal actions:

- 2 1. The Court of Criminal Appeals;
- 3 2. Courts of appeals, other than the Court of Appeals
- 4 for the Fifteenth Court of Appeals District;
- 5 3. The district courts;
- 6 4. The criminal district courts;
- 7 5. The magistrates appointed by the judges of the
- 8 district courts of Bexar County, Dallas County, Tarrant County, or
- 9 Travis County that give preference to criminal cases and the
- 10 magistrates appointed by the judges of the criminal district courts
- 11 of Dallas County or Tarrant County;
- 12 6. The county courts;
- 13 7. All county courts at law with criminal
- 14 jurisdiction;
- 15 8. County criminal courts;
- 16 9. Justice courts;
- 17 10. Municipal courts;
- 18 11. The magistrates appointed by the judges of the
- 19 district courts of Lubbock County;
- 20 12. The magistrates appointed by the El Paso Council
- 21 of Judges;
- 22 13. The magistrates appointed by the Collin County
- 23 Commissioners Court;
- 24 14. The magistrates appointed by the Brazoria County
- 25 Commissioners Court or the local administrative judge for Brazoria
- 26 County; and
- 27 15. The magistrates appointed by the judges of the

1 district courts of Tom Green County.

2 SECTION 2.02. Article 4.03, Code of Criminal Procedure, is
3 amended to read as follows:

4 Art. 4.03. COURTS OF APPEALS. The Courts of Appeals, other
5 than the Court of Appeals for the Fifteenth Court of Appeals
6 District, shall have appellate jurisdiction coextensive with the
7 limits of their respective districts in all criminal cases except
8 those in which the death penalty has been assessed. This article
9 [~~Article~~] shall not be so construed as to embrace any case which has
10 been appealed from any inferior court to the county court, the
11 county criminal court, or county court at law, in which the fine
12 imposed or affirmed by the county court, the county criminal court
13 or county court at law does not exceed one hundred dollars, unless
14 the sole issue is the constitutionality of the statute or ordinance
15 on which the conviction is based.

16 SECTION 2.03. Article 44.25, Code of Criminal Procedure, is
17 amended to read as follows:

18 Art. 44.25. CASES REMANDED. The courts of appeals, other
19 than the Court of Appeals of the Fifteenth Court of Appeals
20 District, or the Court of Criminal Appeals may reverse the judgment
21 in a criminal action, as well upon the law as upon the facts.

22 SECTION 2.04. Section 31.001, Government Code, is amended
23 to read as follows:

24 Sec. 31.001. AUTHORITY FOR COUNTY PAYMENT OF COMPENSATION.
25 The commissioners courts in the counties of each of the 15 [~~14~~]
26 courts of appeals districts may pay additional compensation in an
27 amount that does not exceed the limitations of Section 659.012 to

1 each of the justices of the courts of appeals, other than a justice
2 of the Court of Appeals of the Fifteenth Court of Appeals District,
3 residing within the court of appeals district that includes those
4 counties. The compensation is for all extrajudicial services
5 performed by the justices.

6 ARTICLE 3. SPECIFIC APPROPRIATION REQUIRED; CONSTITUTIONAL
7 CHALLENGE; EFFECTIVE DATE

8 SECTION 3.01. (a) Notwithstanding Section 22.201(a),
9 Government Code, as amended by this Act, and Sections 22.201(p) and
10 22.2151, Government Code, as added by this Act, the Court of Appeals
11 for the Fifteenth Court of Appeals District is not created unless
12 the legislature makes a specific appropriation of money for that
13 purpose. For purposes of this subsection, a specific appropriation
14 is an appropriation identifying the Court of Appeals for the
15 Fifteenth Court of Appeals District or an Act of the 88th
16 Legislature, Regular Session, 2023, relating to the creation of the
17 Court of Appeals for the Fifteenth Court of Appeals District.

18 (b) Notwithstanding Section 22.220(a), Government Code, as
19 amended by this Act, a court of appeals has the same jurisdiction
20 the court had on August 31, 2023, if the Court of Appeals for the
21 Fifteenth Court of Appeals District is not created as a result of
22 Subsection (a) of this section.

23 SECTION 3.02. The Texas Supreme Court has exclusive and
24 original jurisdiction over a challenge to the constitutionality of
25 this Act or any part of this Act and may issue injunctive or
26 declaratory relief in connection with the challenge.

27 SECTION 3.03. This Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1045 passed the Senate on March 30, 2023, by the following vote: Yeas 19, Nays 12; and that the Senate concurred in House amendments on May 21, 2023, by the following vote: Yeas 19, Nays 12.

Secretary of the Senate

I hereby certify that S.B. No. 1045 passed the House, with amendments, on May 19, 2023, by the following vote: Yeas 91, Nays 47, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

AN ACT

relating to the continuation and functions of the Texas Commission on Environmental Quality.

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

SECTION 1. Section 382.05101, Health and Safety Code, is amended to read as follows:

Sec. 382.05101. DE MINIMIS AIR CONTAMINANTS. The commission may develop by rule the criteria to establish a de minimis level of air contaminants for facilities or groups of facilities below which the following types of permits are not required:

(1) a permit under Section 382.0518 or 382.0519;

(2) ~~[a]~~ a standard permit under Section 382.05195, ~~[or 382.05198],~~ or 382.051985; or

(3) ~~[a]~~ a permit by rule under Section 382.05196 ~~[is not required]~~.

SECTION 2. Section 382.0511(c), Health and Safety Code, is amended to read as follows:

(c) The commission may authorize changes in a federal source to proceed before the owner or operator obtains a federal operating permit or revisions to a federal operating permit if:

(1) the changes are de minimis under Section 382.05101; or

(2) the owner or operator:

1 (A) has obtained a preconstruction permit or
2 permit amendment required by Section 382.0518; or

3 (B) is operating under:

4 (i) a standard permit under Section
5 382.05195, ~~or~~ 382.05198, or 382.051985;

6 (ii) a permit by rule under Section
7 382.05196; or

8 (iii) an exemption allowed under Section
9 382.057.

10 SECTION 3. Subchapter C, Chapter 382, Health and Safety
11 Code, is amended by adding Section 382.051985 to read as follows:

12 Sec. 382.051985. STANDARD PERMIT FOR CERTAIN TEMPORARY
13 CONCRETE PLANTS FOR PUBLIC WORKS. (a) The commission shall issue a
14 standard permit that meets the requirements of Section 382.05195
15 for a temporary concrete plant that performs wet batching, dry
16 batching, or central mixing to support a public works project. A
17 plant operating under the permit:

18 (1) may not support a project that is not related to
19 the public works project; and

20 (2) must be located in or contiguous to the
21 right-of-way of the public works project.

22 (b) A plant permitted under this section may occupy a
23 designated site for not more than 180 consecutive days or to supply
24 material for a single project, but not other unrelated projects.

25 SECTION 4. Section 382.056, Health and Safety Code, is
26 amended by adding Subsection (k-2) to read as follows:

27 (k-2) Notwithstanding any other law, if the commission

1 holds a public meeting for a permit application for which
2 consolidated notice was issued under this subchapter, the
3 commission shall hold open the public comment period and the period
4 for which a contested case hearing may be requested for the permit
5 application for at least 36 hours after the end of the meeting.

6 SECTION 5. Section 5.014, Water Code, is amended to read as
7 follows:

8 Sec. 5.014. SUNSET PROVISION. The Texas Commission on
9 Environmental Quality is subject to Chapter 325, Government Code
10 (Texas Sunset Act). Unless continued in existence as provided by
11 that chapter, the commission is abolished [~~and this chapter~~
12 ~~expires~~] September 1, 2035 [~~2023~~].

13 SECTION 6. Section 5.0535, Water Code, is amended by
14 amending Subsection (b) and adding Subsection (d) to read as
15 follows:

16 (b) The training program must provide the person with
17 information regarding:

18 (1) the law governing [~~legislation that created the~~]
19 commission operations;

20 (2) the programs, functions, rules, and budget of
21 [~~operated by~~] the commission;

22 (3) the scope of and limitations on the rulemaking
23 authority of the commission [~~the role and functions of the~~
24 ~~commission~~];

25 (4) [~~the rules of the commission, with an emphasis on~~
26 ~~the rules that relate to disciplinary and investigatory authority,~~

27 [~~(5) the current budget for the commission,~~

1 ~~[(6)]~~ the results of the most recent formal audit
2 ~~[significant internal and external audits]~~ of the commission;

3 (5) ~~[(7)]~~ the requirements of:

4 (A) laws relating to ~~[the]~~ open meetings, ~~[law,~~
5 ~~Chapter 551, Government Code,~~

6 ~~[(B) the]~~ public information, ~~[law, Chapter 552,~~
7 ~~Government Code,~~

8 ~~[(C) the]~~ administrative procedure, and
9 disclosing conflicts-of-interest ~~[law, Chapter 2001, Government~~
10 ~~Code; and~~

11 ~~[(D) other laws relating to public officials,~~
12 ~~including conflict-of-interest laws]; and~~

13 (B) other laws applicable to members of a state
14 policy-making body in performing their duties; and

15 (6) ~~[(8)]~~ any applicable ethics policies adopted by
16 the commission or the Texas Ethics Commission.

17 (d) The executive director shall create a training manual
18 that includes the information required by Subsection (b). The
19 executive director shall distribute a copy of the training manual
20 annually to each member of the commission. Each member of the
21 commission shall sign and submit to the executive director a
22 statement acknowledging that the member received and has reviewed
23 the training manual.

24 SECTION 7. Section 5.113, Water Code, is amended to read as
25 follows:

26 Sec. 5.113. COMMISSION AND STAFF RESPONSIBILITY POLICY.
27 The commission shall develop and implement policies that clearly

1 separate the policy-making [~~the respective~~] responsibilities of
2 the commission and the management responsibilities of the executive
3 director and the staff of the commission.

4 SECTION 8. The heading to Section 5.129, Water Code, is
5 amended to read as follows:

6 Sec. 5.129. SUMMARY OF AND INFORMATION PROVIDED BY [~~FOR~~]
7 PUBLIC NOTICES.

8 SECTION 9. Section 5.129, Water Code, is amended by
9 amending Subsection (a) and adding Subsection (a-1) to read as
10 follows:

11 (a) The commission by rule shall provide for each public
12 notice issued or published by the commission or by a person under
13 the jurisdiction of the commission as required by law or by
14 commission rule to include:

15 (1) at the beginning of the notice a succinct
16 statement of the subject of the notice; and

17 (2) to the extent applicable, the name of the permit
18 applicant, the type of permit applied for, and the location of each
19 proposed or existing site subject to the proposed permit.

20 (a-1) Rules adopted under this section [~~The rules~~] must
21 provide that a summary statement must be designed to inform the
22 reader of the subject matter of the notice without having to read
23 the entire text of the notice.

24 SECTION 10. Subchapter D, Chapter 5, Water Code, is amended
25 by adding Section 5.136 to read as follows:

26 Sec. 5.136. COMMUNITY OUTREACH. The commission shall
27 provide outreach and education to the public on participating in

1 the permitting process under the air, waste, and water programs
2 within the commission's jurisdiction.

3 SECTION 11. Subchapter E, Chapter 5, Water Code, is amended
4 by adding Section 5.1734 to read as follows:

5 Sec. 5.1734. ELECTRONIC POSTING OF PERMIT APPLICATIONS.

6 (a) The commission shall post on its website at the time a permit
7 application becomes administratively complete:

8 (1) the permit application and any associated
9 materials; and

10 (2) for a permit application under Subchapter D,
11 Chapter 11, any map accompanying the permit application.

12 (b) If a permit application is revised or amended after the
13 permit application has become administratively complete, the
14 commission shall post on its website the revised or amended permit
15 application.

16 (c) The commission may exempt any associated materials from
17 being posted on its website under Subsections (a) and (b) if the
18 commission determines that:

19 (1) posting the materials on the website would be
20 unduly burdensome; or

21 (2) the materials are too large to be posted on the
22 website.

23 (d) Notwithstanding any other law, the commission shall
24 require each applicant for a permit, permit amendment, or permit
25 renewal that requires notice be published to include in the notice
26 the address of the website where the public can access information
27 about the permit as described by Subsection (a).

1 (e) In implementing this section, the commission shall
2 consider and accommodate residents of each area affected by a
3 proposed permit, permit amendment, or permit renewal who may need
4 assistance accessing the application and associated materials
5 because of a lack of access to Internet services, particularly when
6 there is a heightened public interest or in response to public
7 comment.

8 SECTION 12. Chapter 5, Water Code, is amended by adding
9 Subchapter M-1 to read as follows:

10 SUBCHAPTER M-1. PERMITTING PROCEDURES GENERALLY

11 Sec. 5.581. DEFINITION. In this subchapter, "permit" means
12 a permit, approval, registration, or other form of authorization
13 required by law for a person to engage in an action.

14 Sec. 5.582. APPLICABILITY. This subchapter applies to
15 programs and permits arising under the air, waste, or water
16 programs within the commission's jurisdiction.

17 Sec. 5.583. ELECTRONIC PUBLICATION OF NOTICE. (a) The
18 commission shall publish notice of a permit application on the
19 commission's website and may provide additional electronic notice
20 through other means, including direct e-mail. Notice published
21 under this section is in addition to any other notice requirement.

22 (b) The commission shall consider and accommodate residents
23 of each area affected by a proposed permit, permit amendment, or
24 permit renewal who may need assistance accessing notice published
25 by electronic means because of a lack of access to Internet
26 services, particularly when there is a heightened public interest
27 or in response to public comment.

1 Sec. 5.584. VERIFICATION OF NOTICE BY NEWSPAPER. If an
2 applicant for a permit is required to publish notice in a newspaper,
3 the applicant shall provide to the commission a copy of the
4 published notice and an affidavit from the publisher certifying
5 that the notice was published and the publication meets all
6 applicable requirements, including newspaper circulation.

7 Sec. 5.585. SECURITY AT PUBLIC MEETING OR PUBLIC HEARING.
8 The commission may request that an applicant for a permit that is
9 the subject of a public meeting or public hearing provide uniformed
10 security at the meeting or hearing sufficient to provide for the
11 safety of all attendees and orderly conduct at the meeting or
12 hearing.

13 Sec. 5.586. NOTICE TO STATE SENATOR AND STATE
14 REPRESENTATIVE. (a) This section applies only to a permit
15 application for which public notice is required.

16 (b) The commission shall send notice of receipt of the
17 application for a permit to each state senator and state
18 representative who represent the area in which the facility or
19 activity to which the application relates is or will be located.

20 Sec. 5.587. TEMPORARY AND INDEFINITE PERMIT REPORTING. (a)
21 This section does not apply to a person who holds a temporary permit
22 or permit with an indefinite term that has a regular reporting
23 requirement.

24 (b) A person who holds a temporary permit or permit with an
25 indefinite term shall report to the commission annually whether the
26 activity subject to the permit is ongoing.

27 SECTION 13. Section [5.754](#), Water Code, is amended by

1 amending Subsection (c) and adding Subsection (c-1) to read as
2 follows:

3 (c) In classifying a person's compliance history, the
4 commission shall:

5 (1) determine whether a violation of an applicable
6 legal requirement is of major, moderate, or minor significance;

7 (2) establish criteria for classifying a repeat
8 violator, including:

9 (A) setting the number of major, moderate, and
10 minor violations needed to be classified as a repeat violator; and

11 (B) giving consideration to the size and
12 complexity of the site at which the violations occurred, and
13 limiting consideration to violations of the same nature and the
14 same environmental media that occurred in the preceding five years;
15 and

16 (3) consider:

17 (A) the significance of the violation and whether
18 the person is a repeat violator;

19 (B) the size and complexity of the site,
20 including whether the site is subject to Title V of the federal
21 Clean Air Act (42 U.S.C. Section 7661 et seq.); and

22 (C) the potential for a violation at the site
23 that is attributable to the nature and complexity of the site.

24 (c-1) The executive director may review, suspend, or
25 reclassify a person's compliance history in accordance with
26 commission rules if the executive director determines that exigent
27 circumstances exist.

1 SECTION 14. Section 7.052(c), Water Code, is amended to
2 read as follows:

3 (c) Except as provided by this subsection, the [The] amount
4 of the penalty for all other violations within the jurisdiction of
5 the commission to enforce may not exceed \$25,000 a day for each
6 violation. The amount of the penalty for such a violation may not
7 exceed \$40,000 a day if:

8 (1) the violation involves:

9 (A) an actual release of pollutants to the air,
10 water, or land that exceeds levels that are protective of human
11 health or environmental receptors; or

12 (B) an actual unauthorized diversion, taking, or
13 storage of state water or an unauthorized change in the flood
14 elevation of a stream that deprives others of water, severely
15 affects aquatic life, or results in a safety hazard, property
16 damage, or economic loss;

17 (2) the person previously committed a violation of the
18 same nature that resulted in the assessment of an administrative
19 penalty; and

20 (3) the commission determines the person could have
21 reasonably anticipated and avoided the violation.

22 SECTION 15. Subchapter C, Chapter 7, Water Code, is amended
23 by adding Section 7.0675 to read as follows:

24 Sec. 7.0675. ENFORCEMENT DIVERSION PROGRAM FOR SMALL
25 BUSINESSES AND LOCAL GOVERNMENTS. (a) In this section, "small
26 business" means a legal entity, including a corporation,
27 partnership, or sole proprietorship, that:

1 (1) is formed for the purpose of making a profit;

2 (2) is independently owned and operated; and

3 (3) has fewer than 100 employees.

4 (b) The commission shall establish an enforcement diversion
5 program for small businesses and local governments. The program
6 must include:

7 (1) resources developed for the small business
8 compliance assistance program under Section 5.135;

9 (2) compliance assistance training; and

10 (3) on-site technical assistance and training
11 performed by commission staff.

12 (c) Before the commission initiates an enforcement action
13 for a violation committed by a small business or local government,
14 the commission may enroll the business or government into the
15 enforcement diversion program.

16 (d) The commission may not enroll a small business or local
17 government into the enforcement diversion program if an enforcement
18 action against the business or government is required by federal
19 law.

20 (e) The commission may not initiate against a small business
21 or local government an enforcement action for a violation that
22 prompted enrollment in the enforcement diversion program after the
23 business or government has successfully completed the program.

24 (f) A small business or local government is not eligible to
25 enroll in the enforcement diversion program if the business or
26 government:

27 (1) committed a violation that:

1 (A) resulted in an imminent threat to public
2 health; or

3 (B) was a major violation, as classified under
4 Section 5.754; or

5 (2) was enrolled in the program in the two years
6 preceding the date of the violation.

7 SECTION 16. Subchapter B, Chapter 11, Water Code, is
8 amended by adding Section 11.02363 to read as follows:

9 Sec. 11.02363. PERIODIC REVIEW OF ENVIRONMENTAL FLOW
10 STANDARDS; STATEWIDE WORK PLAN. (a) Periodically, the advisory
11 group shall review the environmental flow standards for each river
12 basin and bay system adopted by the commission under Section
13 11.1471. In conducting a review of the environmental flow
14 standards, the advisory group shall:

15 (1) work with the science advisory committee and the
16 pertinent basin and bay area stakeholder committees and basin and
17 bay expert science teams in a manner similar to that provided by
18 Section 11.02362;

19 (2) take into consideration the work plans developed
20 under Section 11.02362(p);

21 (3) analyze previous environmental flow
22 recommendations and standards;

23 (4) prescribe future monitoring, studies, and
24 activities needed to better understand the environmental flow; and

25 (5) validate or refine:

26 (A) the environmental flow recommendations;

27 (B) the environmental flow standards adopted by

1 the commission; and

2 (C) strategies to achieve the environmental flow
3 standards.

4 (b) The advisory group shall develop a biennial statewide
5 work plan to prioritize and schedule the review of environmental
6 flow standards under Subsection (a). The work plan must establish:

7 (1) the methodology used to prioritize the review of
8 the environmental flow standards of each river basin and bay
9 system; and

10 (2) a timeline for the review of the environmental
11 flow standards of each river basin and bay system.

12 (c) The advisory group shall submit to the commission:

13 (1) any review conducted under Subsection (a),
14 including recommendations to the commission for use in adopting
15 rules under Section 11.1471; and

16 (2) the biennial work plan developed under Subsection
17 (b).

18 SECTION 17. Section 11.1471, Water Code, is amended by
19 amending Subsection (f) and adding Subsection (g) to read as
20 follows:

21 (f) An environmental flow standard or environmental flow
22 set-aside adopted under Subsection (a) may be altered by the
23 commission in a rulemaking process undertaken in accordance with a
24 schedule established by the commission. The commission shall
25 consider the review of environmental flow standards by the advisory
26 group under Section 11.02363(a) when altering an environmental flow
27 standard or environmental flow set-aside. In establishing a

1 schedule, the commission shall consider the work plan developed by
2 the advisory group under Section 11.02363(b) and the applicable
3 work plan approved by the advisory group under Section 11.02362(p).
4 The commission's schedule may not provide for the rulemaking
5 process to occur more frequently than once every 10 years unless the
6 work plans provide [~~plan provides~~] for a periodic review under
7 Sections 11.02363(a) and [~~Section~~] 11.02362(p) to occur more
8 frequently than once every 10 years. In that event, the commission
9 may provide for the rulemaking process to be undertaken in
10 conjunction with the periodic review if the commission determines
11 that schedule to be appropriate. A rulemaking process undertaken
12 under this subsection must provide for the participation of
13 stakeholders having interests in the particular river basin and bay
14 system for which the process is undertaken.

15 (g) The commission shall submit a biennial report to the
16 advisory group on the implementation and effectiveness of
17 environmental flow standards. The report must include:

18 (1) a description of progress made over the previous
19 biennium in implementing environmental flow standards, including
20 the status of any efforts to set aside unappropriated water for
21 environmental flow protection;

22 (2) input provided by the board and the Parks and
23 Wildlife Department on their:

24 (A) activities related to environmental flow
25 standards; and

26 (B) recommendations for the work plan developed
27 under Section 11.02363(b); and

1 Subsection (a) once a week for two consecutive weeks in a newspaper
2 regularly published or circulated in the county where the district
3 is proposed to be located not later than the 30th day before the
4 date on which the commission may act on the application. The
5 commission shall provide the notice to each state representative
6 and state senator who represents an area inside the proposed
7 district's boundaries.

8 SECTION 21. The following provisions are repealed:

9 (1) Section 11.0236(m), Water Code;

10 (2) Section 11.02361(g), Water Code; and

11 (3) Section 11.02362(s), Water Code.

12 SECTION 22. (a) Except as provided by Subsection (b) of
13 this section, Section 5.0535, Water Code, as amended by this Act,
14 applies to a member of the Texas Commission on Environmental
15 Quality appointed before, on, or after the effective date of this
16 Act.

17 (b) A member of the Texas Commission on Environmental
18 Quality who, before the effective date of this Act, completed the
19 training program required by Section 5.0535, Water Code, as that
20 law existed before the effective date of this Act, is only required
21 to complete additional training on the subjects added by this Act to
22 the training program required by Section 5.0535, Water Code. A
23 member described by this subsection may not vote, deliberate, or be
24 counted as a member in attendance at a meeting of the commission
25 held on or after December 1, 2023, until the member completes the
26 additional training.

27 SECTION 23. A permit holder subject to Section 5.587, Water

1 Code, as added by this Act, shall first report to the Texas
2 Commission on Environmental Quality the status of the permitted
3 activity not later than December 31, 2024.

4 SECTION 24. The change in law made by this Act to Section
5 7.052, Water Code, applies only to a violation that occurs on or
6 after the effective date of this Act. A violation that occurs
7 before the effective date of this Act is governed by the law in
8 effect on the date the violation occurred, and the former law is
9 continued in effect for that purpose.

10 SECTION 25. (a) The Texas Commission on Environmental
11 Quality shall submit to the environmental flows advisory group the
12 first biennial report on the implementation and effectiveness of
13 environmental flow standards under Section 11.1471(g), Water Code,
14 as added by this Act, not later than January 1, 2024.

15 (b) The environmental flows advisory group shall produce
16 and deliver to the commission the first biennial statewide work
17 plan developed under Section 11.02363, Water Code, as added by this
18 Act, not later than January 1, 2025.

19 SECTION 26. This Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1397 passed the Senate on April 17, 2023, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 23, 2023, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1397 passed the House, with amendment, on May 17, 2023, by the following vote: Yeas 142, Nays 2, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor