

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 408
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Government Organization
4/24/2005
Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Public Utility Commission (PUC) is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the legislature. The Sunset Advisory Commission (commission) found the PUC has furthered its goals of fostering fair competition in the electric and telephone markets while protecting consumers, and that this mission should be continued. However, the commission has identified several key recommendations to make the PUC a more effective overseer of those industries.

C.S.S.B. 408 continues the PUC for six years, strengthens the oversight of the Electric Reliability Council of Texas (ERCOT), improves monitoring of the wholesale electricity market to uncover and prevent market manipulations, eliminates unnecessary reporting requirements for telecommunications utilities, increases the maximum administrative penalty for the most serious violations of the Public Utility Regulatory Act, and expands the use of the System Benefit Fund to assist needy patients on life support or with serious health problems who are threatened with disconnection for nonpayment.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 7 (Section 15.023, Utilities Code), SECTION 9 (Section 39.151, Utilities Code), SECTION 10 (Section 39.1515, Utilities Code) and SECTION 13 (Section 39.903, Utilities Code) of this bill.

Rulemaking authority previously granted to the Public Utility Commission of Texas is modified in SECTION 10 (Section 39.1511, Utilities Code) of this bill.

Rulemaking authority is expressly granted to an independent organization as delegated by the Public Utility Commission of Texas, subject to commission oversight and review in SECTION 9 (Section 39.151, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 12.005, Utilities Code, to provide that unless continued in existence as provided by Chapter 325 (Sunset Law), Government Code, the Public Utility Commission of Texas (commission) is abolished and this title expires September 1, 2011, rather than 2005.

SECTION 2. Amends Section 12.059, Utilities Code, by adding Subsection (c), to entitle a person appointed to the commission to reimbursement for the travel expenses incurred in attending a certain training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 3. Amends Section 12.102, Utilities Code, to require the commission to develop and implement policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the commission employees, rather than policies that clearly define the respective responsibilities of the commission and commission employees.

SECTION 4. Amends Section 12.153, Utilities Code, to prohibit certain persons from being specific types of commission employees. Deletes prohibition of those persons being commission

employees who are exempt from the state's position classification plan or are compensated at a certain level.

SECTION 5. Amends Subchapter A, Chapter 14, Utilities Code, by adding Section 14.0025, as follows:

Sec. 14.0025. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) Requires the commission to develop and implement a policy to encourage the use of negotiated rulemaking procedures for the adoption of commission rules and appropriate alternative dispute resolution procedures to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) Requires the commission's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires the commission to designate a trained person to coordinate the implementation of the policy adopted under Subsection (a), serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures, as implemented by the commission.

SECTION 6. Amends Subchapter B, Chapter 14, Utilities Code, by adding Section 14.059, as follows:

Sec. 14.059. TECHNOLOGY POLICY. Requires the commission to implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the commission on the Internet.

SECTION 7. Amends Section 15.023, Utilities Code, by amending Subsections (b) and (c) and adding Subsection (d), as follows:

(b) Authorizes the [administrative] penalty for a violation [of this title or a rule or order adopted under this title] to be in an amount not to exceed \$25,000, rather than \$5,000.

(c) Requires the commission by rule to establish a classification system for violations that includes a range of administrative penalties that may be assessed for each class of violation based on certain factors. Deletes the requirement that the amount of an administrative penalty be based on certain factors.

(d) Requires the classification system established under Subsection (c) to authorize a penalty in an amount that exceeds \$5,000 to be assessed only if the violation is included in the highest class of violations in the classification system.

SECTION 8. Amends Section 15.051(b), Utilities Code, to require the commission to keep for a reasonable period certain information regarding only those complaints filed with the commission that the commission has authority to resolve, rather than certain information for each complaint filed with the commission.

SECTION 9. Amends Section 39.151, Utilities Code, by amending Subsections (b), (c), (d), (e), (g), and (h) and adding Subsections (d-1) and (g-1), as follows:

(b) Redefines "independent organization."

(c) Requires the commission to apply the provisions of this section and Sections 39.1511, 39.1512 and 39.1515 so as to avoid conflict with a ruling of a federal regulatory body.

(d) Requires the commission to adopt and enforce rules, rather than an independent organization certified by the commission for a power region to establish and enforce

procedures consistent with this title and the commission's rules, relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and other market participants. Authorizes the commission to delegate to an independent organization responsibilities for establishing or enforcing such rules. Requires any rules adopted by the independent organization and any enforcement actions taken by the organization, rather than procedures, to be subject to commission oversight and review. Provides that an independent organization certified by the commission is directly responsible and accountable to the commission. Provides that the commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure accountability and performance of functions and duties. Requires the organization to fully cooperate with the commission in the commission's oversight and investigatory functions. Authorizes the commission take appropriate action against an organization that does not adequately perform the organization's functions or duties or does not comply with this section, including decertifying the organization or assessing an administrative penalty against the organization. Requires the commission by rule to adopt procedures governing decertification of an independent organization, and transferring assets to the successor organization to ensure continuity of operations in the region. Prohibits the commission from implementing, by order or by rule, a requirement that is contrary to an applicable federal law or rule.

(d-1) Authorizes the commission to require an independent organization to provide certain reports and information relating to the performance of the independent organization's functions; prescribe a system of accounts for an independent organization; conduct audits of the independent organization; inspect an independent organization's facilities, records, and accounts; assess administrative penalties against an independent organization that violates this title or rule or order adopted by the commission; request the attorney general to apply for a court order to require compliance with commission rules and orders; and resolve disputes between an affected person and an independent organization and adopt procedures for the efficient resolution of such disputes.

(e) Requires the commission to investigate the independent organization's cost efficiencies, salaries and benefits, and the use of debt financing. Authorizes the commission to require the organization to provide any information needed to effectively evaluate the organization's budget and the reasonableness and neutrality of a rate or proposed rate [charged to wholesale buyers and sellers to cover the organization's costs] or to evaluate the effectiveness or efficiency of the organization. Requires the commission to work with the organization to establish the detail of information and the time frames the commission needs to effectively evaluate a rate or a rate request.

(g) Requires the organization's governing body, to maintain certification as an independent organization under this section, to be composed of persons specified by this section and selected in accordance with formal bylaws or protocols of the organization. Requires the bylaws or protocols to be approved by the commission and reflect the input of the commission. Requires the bylaws to specify the process by which appropriate stakeholders elect members and, for unaffiliated members, prescribe professional qualifications for selection as a member. Requires the bylaws to require the use of a professional search firm to identify candidates for membership of unaffiliated members. Requires the process to allow for commission input in identifying candidates. Sets forth the required composition of the governing body. Deletes the provision that if ERCOT (Electric Reliability Council of Texas) amends its rules to provide that its governing body is composed as prescribed by this subsection, the existing independent operator in ERCOT will meet certain criteria. Deletes the provisions outlining the required composition of the governing body.

(g-1) Requires the presiding officer of the governing body to be one of the five members unaffiliated with any market segment and selected by the other members of the governing body to serve three-year terms.

(h) Authorizes the ERCOT independent system operator to meet the criteria relating to the other functions of an independent organization by adopting procedures and acquiring

resources needed to carry out those functions, consistent with any rules or orders of the commission.

SECTION 10. Amends Subchapter D, Chapter 39, Utilities Code, by adding Sections 39.1511, 39.1512, and 39.1515, as follows:

Sec. 39.1511. PUBLIC MEETINGS OF THE GOVERNING BODY OF AN INDEPENDENT ORGANIZATION. (a) Requires meetings of the governing body of an independent organization and meetings of the subcommittee that includes a member of the governing body to be open to the public. Authorizes the bylaws of the independent organization and the rules of the commission to provide for the governing body or subcommittee to enter into executive session closed to the public to address certain sensitive matters.

(b) Requires the bylaws of the independent organization and rules of the commission to ensure that a person interested in the activities of the independent organization has an opportunity to obtain at least seven days' advance notice of the meetings and the planned agenda of the meetings and an opportunity to comment on matters under discussion at the meetings. Authorizes the bylaws and commission rules governing meetings of the governing body to provide for a shorter period of advance notice and for meetings by teleconference technology for governing body meetings to take action on urgent matters. Requires the bylaws and rules to require actions taken on short notice or at teleconference meetings to be ratified at the governing body's next regular meeting. Authorizes the notice requirements to be met by a timely electronic posting on the Internet.

Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN DECISION. (a) Requires a member, if a member has a direct interest in, or is employed by or has a substantial financial interest in a person who has a direct interest in, a matter that comes before the governing body of an independent organization, to publicly disclose the fact of the interest to the governing body at the public meeting. Requires the member to recuse himself or herself from the governing body's deliberations and actions on the matter. Prohibits the member from voting or otherwise participating in the decision on the matter.

(b) Requires a disclosure under Subsection (a) to be entered in the minutes of the meeting at which the disclosure is made.

(c) Provides that the recusal of a member from a vote or decision by application of this section does not affect the existence of a quorum.

Sec. 39.1515. WHOLESALE ELECTRIC MARKET MONITOR. (a) Requires an independent organization to contract with an entity selected by the commission to act as the commission's wholesale electric market monitor to detect and prevent market manipulation strategies and recommend measures to enhance the efficiency of the wholesale market.

(b) Requires the independent organization to provide to the personnel of the market monitor certain access and other support and cooperation.

(c) Requires the independent organization to use certain funds to pay for the market monitor's activities.

(d) Provides that the commission is responsible for ensuring that the market monitor has the resources, expertise, and authority necessary to monitor the wholesale electric market effectively. Requires the commission to adopt rules and perform oversight of the market monitor as necessary. Requires the market monitor to operate under the supervision and oversight of the commission. Requires the commission to retain all enforcement authority conferred under this title. Prohibits this section from being construed to confer enforcement authority on the market monitor or to authorize the commission to delegate the

commission's enforcement authority to the market monitor. Requires the commission, by rule, to define certain standards, responsibilities, and qualifications for the market monitor and the personnel of the market monitor.

(e) Requires the commission, in adopting rules governing the standards for funding the market monitor, to consult with a subcommittee of the independent organization's governing body to receive certain information. Requires rules governing ethical standards to include certain provisions to ensure professional and financial independence of the personnel of the market monitor from market participants. Requires the commission to develop and implement policies that clearly separate the policymaking responsibilities of the commission and the operational responsibilities of the market monitor.

(f) Requires the market monitor to immediately report directly to the commission any potential market manipulations and any discovered or potential violations of commission rules or rules of the independent organization.

(g) Authorizes the personnel of the market monitor to communicate with commission staff on any matter without restriction.

(h) Requires the market monitor to annually submit to the commission and the independent organization a report that identifies market design flaws and recommends methods to correct the flaws. Requires the commission and the independent organization to review the report and evaluate whether changes to rules of the commission or the independent organization should be made.

SECTION 11. Amends Chapter 39, Utilities Code, by adding Subchapters J and K, as follows:

SUBCHAPTER J. STATUS OF COMPETITION IN CERTAIN NON-ERCOT AREAS

Sec. 39.451. APPLICABILITY. (a) Sets forth the investor-owned electric utilities to which this subchapter applies.

(b) Sets forth the findings of the legislature.

Sec. 39.452. REGULATION OF UTILITY AND TRANSITION TO COMPETITION.

(a) Requires the rates of the electric utility, until the later of January 1, 2012, or the date on which an electric utility subject to this subchapter is authorized by the commission to implement customer choice, to be regulated under traditional cost of service regulation and provides that the electric utility is subject to all applicable regulatory authority prescribed by this subtitle and certain other provisions. Provides that until the date on which an electric utility subject to this subchapter implements customer choice, the provisions of this chapter do not apply to that electric utility, other than this subchapter and certain other provisions.

(b) Authorizes the commission, on or after January 1, 2012, to require an electric utility subject to this subchapter to file a transition to competition plan with the commission. Requires the plan to identify how electric utilities subject to this subchapter intend to achieve full customer choice, including explanations of certain specified measures. Requires the utility to include in the plan a provision to establish a price to beat for certain residential customers and commercial customers. Authorizes the commission to prescribe additional information or provisions that must be included in the plan. Requires the commission to approve, modify, or reject a plan within 180 days after the date of a filing under this section unless a hearing is requested by any party to the proceeding. Provides that, if a hearing is requested, the 180-day deadline will be extended one day for each day of the hearing. Authorizes the plan to be updated or amended, subject to commission approval, until the applicable power region is certified as a qualifying power region under Section 39.152 and the plan is approved.

(c) Provides that an electric utility, on implementation of customer choice, is subject to this subchapter and certain other provisions to the same extent as other electric utilities, including the provisions of Chapter 37 concerning certificates of convenience and necessity.

Sec. 39.453. CUSTOMER CHOICE AND RELEVANT MARKET AND RELATED MATTERS. Prohibits the commission from authorizing customer choice until the later of January 1, 2012, or the date the applicable power region has been certified as a qualifying power region under Section 39.152.

SUBCHAPTER K. TRANSITION TO COMPETITION FOR CERTAIN AREAS OUTSIDE OF ERCOT

Sec. 39.501. APPLICABILITY. (a) Sets forth the multistate electric utilities to which this subchapter applies.

(b) Sets forth the findings of the legislature.

Sec. 39.502. COST-OF-SERVICE REGULATION. (a) Provides that until the date on which an electric utility subject to this subchapter is authorized by the commission to implement retail customer choice, the rates of the utility are subject to regulation under Chapter 36.

(b) Provides that until the date on which the electric utility subject to this subchapter implements customer choice, the provisions of this chapter, other than this subsection and certain other provisions, do not apply to that utility.

(c) Requires an electric utility subject to this subchapter, in accordance with Section 39.904, to obtain, at a minimum, renewable energy credits in an amount sufficient to meet the requirements for the compliance period beginning January 1, 2006, and for each compliance period after that date.

(d) Requires an electric utility subject to this subchapter, in accordance with Section 39.905, to begin administering energy efficiency programs on January 1, 2006. Requires the utility to meet, at a minimum, five percent of its growth in demand through energy efficiency savings resulting from those programs by January 1, 2007, and 10 percent of its growth in demand by January 1, 2008, and each year after that date.

Sec. 39.503. TRANSITION TO COMPETITION. Requires the sequence of events prescribed by this section to be followed in order to introduce retail competition in the service area of an electric utility subject to this subchapter. Requires all listed items in a stage to be completed before the events provided by the next stage are initiated. Prohibits full retail competition from beginning in the service area of the utility until all actions prescribed by those subsections are completed. Sets forth the activities to be completed for the first through fifth stages for the transition to competition.

SECTION 12. Reenacts and amends Section 39.903(e), Utilities Code, as amended by Chapters 1394, 1451, and 1466, Acts of the 77th Legislature, Regular Session, 2001, to authorize money in the system benefit fund to be appropriated to provide funding for programs to provide one-time bill payment assistance to electric customers who are or have in their households one or more seriously ill or disabled low-income persons and who have been threatened with disconnection for nonpayment. Authorizes money in the fund to be appropriated to provide funding to reimbursement to the commission and the Health and Human Services Commission, rather than to the commission and the Texas Department of Human Services, for certain expenses.

SECTION 13. Amends Section 39.903, Utilities Code, by adding Subsection (j-1), to require the commission to adopt rules governing the bill payment assistance program provided under Subsection (e). Requires the rules to provide that a customer is eligible to receive the assistance only if it is necessary to prevent the disconnection of service for nonpayment of bills, and the

electric customer is or has in the customer's household one or more seriously ill or disabled low-income persons whose health or safety may be injured by the disconnection. Authorizes the commission to prescribe the documentation necessary to demonstrate eligibility and to establish additional eligibility criteria. Requires the Health and Human Services Commission, on request of the commission, to assist in the adoption and implementation of the rules.

SECTION 14. (a) Requires the commission to conduct a comprehensive review of the reporting requirements relating to telecommunications providers that are prescribed by statute or commission rules.

(b) Requires the commission, in conducting the review, to solicit input and assistance from appropriate affected persons and to consider certain factors.

(c) Requires the commission to conclude the review required by this section not later than September 30, 2006, and to report to the legislature on the results of the review. Sets forth the information the report is required to include.

(d) Requires the commission, if it determines that legislation is necessary or appropriate to eliminate or change reporting requirements prescribed by statute, to include those recommendations in the biennial report to the legislature.

SECTION 15. Repealer: Section 52.254 (Report of Certain Expenses), Utilities Code.

SECTION 16. Makes application of the change in law made by this Act relating to qualifications and eligibility to serve as a commissioner or to be employed with the commission prospective.

SECTION 17. Makes application of the change in law made by this Act to Section 15.023, Utilities Code, prospective.

SECTION 18. Requires an independent organization certified by the commission before September 1, 2005, to modify the organization's governing body to comply with Section 39.151(g), Utilities Code, as amended by this Act, not later than September 1, 2006. Authorizes the commission, on or after September 1, 2006, to decertify an independent organization whose governing body does not comply with Section 39.151(g), Utilities Code, as amended by this Act.

SECTION 19. Effective date: September 1, 2005.