

BILL ANALYSIS

Senate Research Center

S.B. 3
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Since Winter Storm Uri, legislators have heard hours of testimony from industry stakeholders and agency leadership regarding the Texas power grid's failure to supply enough power to meet demand. The most consequential and repeatedly mentioned problems include a lack of oversight, a breakdown of communication, and major failures in coordination within and between Texas' regulatory agencies. The proposed changes in S.B. 3 strengthen the state's prevention of and preparation for winter storm energy emergencies.

S.B. 3:

Establishes an energy emergency alert system to ensure Texans are properly notified when power demand may exceed supply, and directs the Texas Department of Emergency Management (TDEM) to categorize winter storms similarly to how hurricanes are categorized.

Formalizes the Texas Energy Reliability Council (TERC) and its duties related to ensuring the state's natural gas needs are met.

Requires the weatherization of all generation, transmission, and natural gas facilities and pipelines within the State of Texas. Failure to comply can result in a penalty of \$1,000,000 per day. Generators, natural gas well heads, pipelines, and compression units that experience weatherization failures will be required to obtain a third-party assessment of weatherization plans, procedures, and operations.

Ensures energy customers (including natural gas generators) are informed about procedures for rolling blackouts, including criteria for designation as a critical customer or critical load. Provides for more robust planning and oversight of load shedding during a rolling blackout, including geographic seasonal use variations.

Requires generators to obtain approval before conducting maintenance during summer and winter peaks.

Requires wind and solar power generators to meet reliability standards by committing to providing a specific load, set by the generator.

Prohibits retail electric variable rate plans.

Directs the Public Utility Commission of Texas (PUC) to establish an emergency system wide offer cap.

Strengthens reporting related to on-site generation to ensure the Electric Reliability Council of Texas (ERCOT) has a full picture of power generation in Texas.

Requires utility providers to defer collection of bills during an extreme weather emergency and to work with customers to establish pay schedules.

Directs the creation of a State Energy Plan.

As proposed, S.B. 3 amends current law relating to preparing for, preventing, and responding to weather emergencies, power outages, and other disasters, and increases the amount of administrative and civil penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the public safety director in SECTION 1 (Section 411.303, Government Code) of this bill.

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 5 (Section 86.044, Natural Resources Code) of this bill.

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 12 (Section 35.0021, Utilities Code), SECTION 15 (Sections 38.074 and 38.075, Utilities Code), SECTION 17 (Section 39.1026, Utilities Code), and SECTION 18 (Sections 39.159 and 39.160, Utilities Code) of this bill.

Rulemaking authority previously granted to the Railroad Commission of Texas is modified in SECTION 21 (Section 121.2015, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 411, Government Code, by adding Subchapter K-1, as follows:

SUBCHAPTER K-1. BLACKOUT ALERT

Sec. 411.301. DEFINITION. Defines "energy emergency alert."

Sec. 411.302. BLACKOUT ALERT. Requires the Department of Public Safety of the State of Texas (DPS), with the cooperation of the Texas Department of Transportation (TxDOT), the Office of the Governor, and the Public Utility Commission of Texas (PUC), to develop and implement a statewide alert to be activated when an energy emergency alert is issued.

Sec. 411.303. ADMINISTRATION. (a) Provides that the public safety director (director) is the statewide coordinator of the blackout alert.

(b) Requires the director to adopt rules and issue directives as necessary to ensure proper implementation of the blackout alert. Requires that the rules and directives include the procedures to be used by the PUC and the independent organization certified under Section 39.151 (Essential Organizations), Utilities Code, to communicate with the director about the blackout alert.

Sec. 411.304. DEPARTMENT TO RECRUIT PARTICIPANTS. Requires DPS to recruit public and commercial television and radio broadcasters, private commercial entities, state or local governmental entities, the public, and other appropriate persons to assist in developing and implementing the blackout alert system.

Sec. 411.305. STATE AGENCIES. (a) Requires a state agency participating in the blackout alert system to cooperate with DPS and assist in developing and implementing the alert system, and to establish a plan for providing relevant information to its officers, investigators, or employees, as appropriate, once the blackout alert system has been activated.

(b) Requires TxDOT, in addition to its duties as a state agency under Subsection (a), to establish a plan for providing relevant information to the public through an existing system of dynamic message signs located across Texas.

Sec. 411.306. ACTIVATION OF BLACKOUT ALERT. (a) Requires DPS, when the PUC or an independent organization certified under Section 39.151, Utilities Code,

notifies DPS that an energy emergency alert has been issued or is about to be issued, to confirm the accuracy of the information and, if confirmed, immediately issue an alert under this subchapter in accordance with DPS rules.

(b) Requires DPS, in issuing the blackout alert, to send the alert to designated media outlets in this state. Authorizes participating radio stations and television stations and other participating media outlets to issue the alert at designated intervals following receipt of the alert.

Sec. 411.307. CONTENT OF BLACKOUT ALERT. Requires that the blackout alert include a statement that electricity customers may experience a power outage.

Sec. 411.308. TERMINATION OF BLACKOUT ALERT. Requires the director to terminate any activation of the blackout alert with respect to a particular energy emergency alert not later than the date DPS receives notice that the energy emergency alert has been canceled.

Sec. 411.309. LIMITATION ON PARTICIPATION BY TEXAS DEPARTMENT OF TRANSPORTATION. Provides that, notwithstanding Section 411.305(b), TxDOT is not required to use any existing system of dynamic message signs in a statewide alert system created under this subchapter if TxDOT receives notice from the United States Department of Transportation Federal Highway Administration that the use of the signs would result in the loss of federal highway funding or other punitive actions taken against this state due to noncompliance with federal laws, regulations, or policies.

SECTION 2. Amends Section 418.043, Government Code, to require the Texas Division of Emergency Management (TDEM) to create a page on TDEM's Internet website for each state of disaster declared under Section 418.014 (Declaration of State of Disaster) to provide information to the public about that disaster, among other actions.

SECTION 3. Amends Section 418.048, Government Code, as follows:

Sec. 418.048. MONITORING WEATHER. (a) Creates this subsection from existing text and makes no further changes.

(b) Requires TDEM to establish a system to categorize winter storms according to predicted severity, and to create a list of suggested actions for state agencies to take to prepare for storms, organized by winter storm category.

SECTION 4. Amends Chapter 418, Government Code, by adding Subchapter J, as follows:

SUBCHAPTER J. TEXAS ENERGY RELIABILITY COUNCIL

Sec. 418.301. DEFINITIONS. Defines "chief" and "council."

Sec. 418.302. COUNCIL ESTABLISHED. Establishes the Texas Energy Reliability Council (council) to ensure that high priority human needs are met in the event of necessary curtailment of natural gas distribution or supplies.

Sec. 418.303. MEMBERSHIP. Provides that the council is composed of certain members.

Sec. 418.304. OFFICERS. (a) Provides that the chief of TDEM (chief) is designated as the interim presiding officer for purposes of calling and conducting the initial meeting of the council.

(b) Provides that the council, at its initial meeting, is required to select a presiding officer from among its members for the purpose of calling and conducting meetings, and is authorized to select an assistant presiding officer and secretary from among its members.

Sec. 418.305. COMPENSATION; REIMBURSEMENT. Provides that a member of the council is not entitled to compensation or reimbursement of expenses for service on the council.

Sec. 418.306. MEETINGS. (a) Requires the task force, after its initial meeting, to meet at least twice each year at a time and place determined by the presiding officer.

(b) Authorizes the council to meet at other times the council considers appropriate. Authorizes the presiding officer to call a meeting on the officer's own motion.

(c) Authorizes the council to meet by teleconference.

Sec. 418.307. ADMINISTRATIVE SUPPORT. Requires TDEM to provide administrative support to the council.

Sec. 418.308. DUTIES OF COUNCIL. Requires the council to foster communication and planning to ensure preparedness for natural gas availability and delivery to residences, hospitals, schools, churches, and other human needs customers during a period of necessary curtailment of natural gas distribution or supplies.

SECTION 5. Amends Subchapter C, Chapter 86, Natural Resources Code, by adding Section 86.044, as follows:

Sec. 86.044. WEATHER EMERGENCY PREPAREDNESS. (a) Requires the Railroad Commission of Texas (RRC) by rule to require an operator of a gas well to implement measures to prepare the well to operate during a weather emergency.

(b) Requires RRC by rule to require an operator of a gas well that experiences repeated or major weather-related forced interruptions of production to contract with a person who is not an employee of the provider to assess the operator's weatherization plans, procedures, and operations, and to submit the assessment to RRC.

(c) Requires RRC, if RRC determines that a person has violated a rule adopted under this section, to notify the attorney general of the violation. Requires the attorney general to initiate a suit to recover a penalty for the violation in the manner provided by Subchapter G (Enforcement; Judicial Review).

SECTION 6. Amends Section 86.222, Natural Resources Code, by adding Subsection (a-1), to provide that, notwithstanding Subsection (a) (relating to the provision that any person who violates a provision, rule, or order of Chapter 86 is liable for certain penalties), a person who violates a provision of a rule adopted under Section 86.044 is liable for a penalty of not more than \$1,000,000 for each offense.

SECTION 7. Amends Section 15.023, Utilities Code, by adding Subsection (b-1), as follows:

(b-1) Authorizes the penalty for a violation of a provision of Subtitle B (Electric Utilities) to be in an amount not to exceed \$1,000,000 for a violation, notwithstanding Subsections (b) (relating to the maximum penalty amount for a violation under the Public Utility Regulatory Act) and (d) (relating to the requirement that certain penalty amounts be assessed only for the highest class of violations under the violation classification system). Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

SECTION 8. Amends Section 17.003, Utilities Code, by adding Subsection (d-1), to require an electric utility providing transmission service for a retail electric provider, as defined by Section 31.002 (Definitions), to collaborate with the retail electric provider to ensure that information

about certain matters is regularly provided to the retail electric provider's retail customers together with bills sent to the customers.

SECTION 9. Amends Section 17.005, Utilities Code, as follows:

Sec. 17.005. PROTECTIONS FOR CUSTOMERS OF MUNICIPALLY OWNED UTILITIES. (a)-(e) Creates these subsections from existing text and makes no further changes.

(f) Requires a municipally owned utility to regularly provide with bills sent to retail customers of the utility information about:

- (1) the utility's procedure for implementing rolling blackouts;
- (2) the types of customers who are authorized to be considered critical customers or critical load according to the PUC rules adopted under Section 38.075;
- (3) the procedure for a customer to apply to be considered a critical customer or critical load according to the PUC rules adopted under Section 38.075; and
- (4) reducing electricity use at times when rolling blackouts are authorized to be implemented.

SECTION 10. Amends Section 17.006, Utilities Code, as follows:

Sec. 17.006. PROTECTIONS FOR CUSTOMERS OF ELECTRIC COOPERATIVES. (a)-(e) Creates these subsections from existing text and makes no further changes.

(f) Requires an electric cooperative to regularly provide with bills sent to retail customers of the cooperative information about:

- (1) the cooperative's procedure for implementing rolling blackouts;
- (2) the types of customers who are authorized to be considered critical customers or critical load according to the PUC rules adopted under Section 38.075;
- (3) the procedure for a customer to apply to be considered a critical customer or critical load according to the PUC rules adopted under Section 38.075; and
- (4) reducing electricity use at times when rolling blackouts are authorized to be implemented.

SECTION 11. Amends the heading to Chapter 35, Utilities Code, to read as follows:

CHAPTER 35. ENERGY PROVIDERS

SECTION 12. Amends Subchapter A, Chapter 35, Utilities Code, by adding Section 35.0021, as follows:

Sec. 35.0021. WEATHER EMERGENCY PREPAREDNESS. (a) Provides that this section applies only to a municipally owned utility, electric cooperative, qualifying facility, power generation company, or exempt wholesale generator, that provides generation service in the Electric Reliability Council of Texas (ERCOT) power region.

(b) Requires the PUC by rule to require each provider of generation service described by Subsection (a) to implement measures to prepare the provider's

generation assets to provide adequate electric generation service during a winter weather emergency according to reliability standards adopted by the PUC.

(c) Requires the independent organization certified under Section 39.151 for the ERCOT power region to inspect generation assets in the ERCOT power region for compliance with the reliability standards, and to report to the PUC any violation of a rule adopted under Subsection (b) that the independent organization discovers by an inspection conducted under this subsection.

(d) Requires the PUC by rule to require a provider of generation service described by Subsection (a) that experiences repeated or major weather-related forced interruptions of service to contract with a person who is not an employee of the provider to assess the provider's weatherization plans, procedures, and operations, and to submit the assessment to the PUC and the independent organization certified under Section 39.151 for the ERCOT power region.

(e) Requires a provider of generation service described by Subsection (a) to obtain the approval of the PUC and the independent organization certified under Section 39.151 for the ERCOT power region before the provider conducts maintenance during a month in which, historically, as determined by the PUC, electricity use has reached a summer or winter peak.

(f) Requires the PUC to impose an administrative penalty on a person who violates a rule adopted under this section in the manner provided by Chapter 15 (Judicial Review, Enforcement, and Penalties).

SECTION 13. Amends Section 36.205(d), Utilities Code, as follows:

(d) Authorizes the PUC to provide a mechanism to allow an electric utility that has a noncontiguous geographical service area and that purchases power for resale for that noncontiguous service area from electric utilities that are not members of the independent organization certified under Section 39.151 for the ERCOT power region, rather than that are not members of ERCOT, to recover purchased power costs for the area in a manner that reflects the purchased power cost for that specific geographical noncontiguous area.

SECTION 14. Amends Section 36.403(g), Utilities Code, to make a nonsubstantive change.

SECTION 15. Amends Subchapter D, Chapter 38, Utilities Code, by adding Sections 38.074 and 38.075, as follows:

Sec. 38.074. WINTER WEATHER EMERGENCY PREPAREDNESS. (a) Requires the PUC by rule to require each electric cooperative, municipally owned utility, and transmission and distribution utility providing transmission service in the ERCOT power region to implement measures to prepare the cooperative's or utility's facilities to maintain service quality and reliability during a winter weather emergency according to standards adopted by the PUC.

(b) Requires the PUC to impose an administrative penalty on a person who violates a rule adopted under this section in the manner provided by Chapter 15.

Sec. 38.075. LOAD SHEDDING DURING ROLLING BLACKOUT. (a) Requires the PUC by rule to adopt a system to allocate load shedding among electric cooperatives, municipally owned utilities, and transmission and distribution utilities providing transmission service in the ERCOT power region during a rolling blackout initiated by an independent organization certified under Section 39.151 for the region.

(b) Requires that the system provide for allocations for electric cooperatives, municipally owned utilities, and transmission and distribution utilities in different seasons based on typical seasonal usage in the geographic area served by the

electric cooperative, municipally owned utility, or transmission and distribution utility.

(c) Requires the PUC by rule to:

(1) categorize types of critical load that may be excluded from participation in load shedding; and

(2) require electric cooperatives, municipally owned utilities, and transmission and distribution utilities providing transmission service in the ERCOT power region to submit to the PUC and the independent organization certified under Section 39.151 for the region customers or circuits the cooperative or utility has designated as critical load, and a plan for participating in load shedding in response to a rolling blackout.

(d) Requires the PUC by rule to require electric cooperatives, municipally owned utilities, and transmission and distribution utilities providing transmission service in the ERCOT power region to maintain lists of customers willing to voluntarily participate in load shedding, and to coordinate with municipalities, businesses, and customers that consume large amounts of electricity to encourage voluntary load shedding.

SECTION 16. Amends Section 39.051(c), Utilities Code, to make nonsubstantive changes.

SECTION 17. Amends Subchapter C, Chapter 39, Utilities Code, by adding Section 39.1026, as follows:

Sec. 39.1026. VARIABLE RATE PLANS FOR ELECTRIC SERVICE PROHIBITED. Requires the PUC by rule to require a retail electric provider to offer service under a fixed-price contract. Prohibits a retail electric provider from offering a contract for service at a variable rate.

SECTION 18. Amends Subchapter D, Chapter 39, Utilities Code, by adding Sections 39.159 and 39.160, as follows:

Sec. 39.159. MARKET PROCEDURES FOR CERTAIN GENERATORS. Requires the PUC by rule to require the operator of a wind power generating unit or solar power generating unit providing output in the ERCOT power region to commit to the independent organization certified under Section 39.151 for the ERCOT power region to provide a specific load, and, if the operator cannot meet the load commitment using the generating unit, to meet the load commitment using electric energy storage or through a purchase from another generating unit.

Sec. 39.160. WHOLESALE PRICING PROCEDURES. (a) Requires the PUC by rule to establish an emergency system-wide offer cap program for the wholesale electric market.

(b) Provides that, if the program includes more than one system-wide offer cap, the program is prohibited from authorizing the high system-wide offer cap to be in effect for a continuous period of more than one hour, the program is authorized only to allow for a low system-wide offer cap that cannot exceed the high system-wide offer cap, and the price of ancillary services is prohibited from exceeding the high system-wide offer cap.

SECTION 19. Amends Subchapter Z, Chapter 39, Utilities Code, by adding Section 39.9165, as follows:

Sec. 39.9165. DISTRIBUTED GENERATION REPORTING. (a) Defines "distributed generation."

(b) Requires an independent organization certified under Section 39.151 to require an owner or operator of distributed generation to report to the organization the type of generation owned or operated, including whether the generation is powered by a renewable source or uses battery storage.

(c) Provides that this section does not apply to distributed generation located on residential property.

SECTION 20. Amends Section 105.023, Utilities Code, by adding Subsection (b-1), as follows:

(b-1) Requires that a civil penalty under Section 105.023 (Civil Penalty Against Gas Utility or Affiliate) be in an amount of not less than \$1,000 and not more than \$1,000,000 for each violation of Section 104.258(c) (relating to the prohibition of a natural gas provider from disconnecting service to a residential customer during an extreme weather emergency), notwithstanding Subsection (b) (relating to the minimum and maximum amounts for a civil penalty under this section).

SECTION 21. Amends Section 121.2015, Utilities Code, by amending Subsection (a) and adding Subsections (d) and (e), as follows:

(a) Requires RRC to adopt rules regarding:

(1) and (2) makes nonsubstantive changes to these subdivisions; and

(3) measures gas pipeline facility operators are required to implement to prepare gas pipeline facilities to maintain service quality and reliability during extreme weather conditions.

(d) Requires RRC by rule to require a gas pipeline facility operator that experiences repeated or major weather-related forced interruptions of service to contract with a person who is not an employee of the provider to assess the operator's weatherization plans, procedures, and operations, and to submit the assessment to the PUC.

(e) Requires RRC to assess an administrative penalty against a person who violates a rule adopted under Subsection (a)(3) in the manner provided by Subchapter E (Pipeline Safety).

SECTION 22. Amends Section 121.206, Utilities Code, by adding Subsection (b-1), as follows:

(b-1) Prohibits the penalty for each violation from exceeding \$1,000,000 for a violation of a rule adopted under Section 121.2015(a)(3), notwithstanding Subsection (b) (relating to the maximum amount of an administrative penalty for violation of pipeline safety standards or rules). Authorizes each day a violation continues to be considered a separate violation for the purpose of penalty assessment.

SECTION 23. Amends Subchapter E, Chapter 13, Water Code, by adding Section 13.151, as follows:

Sec. 13.151. BILLING FOR SERVICES PROVIDED DURING EXTREME WEATHER EMERGENCY. Requires a retail public utility that is required to possess a certificate of public convenience and necessity or a district and affected county that furnishes retail water or sewer utility service, to defer collection of the full payment of bills that are due during an extreme weather emergency until after the emergency is over and to work with customers to establish a pay schedule for deferred bills.

SECTION 24. Amends Section 13.414, Water Code, by adding Subsection (a-1), as follows:

(a-1) Provides that, notwithstanding Subsection (a) (relating to the minimum and maximum amounts of a penalty against a retail public utility or affiliated interest), a retail

public utility or affiliated interest that violates Section 13.151 is subject to a civil penalty of not less than \$100 nor more than \$1,000,000 for each violation.

SECTION 25. Amends Section 13.4151, Water Code, by adding Subsection (a-1), as follows:

(a-1) Authorizes the penalty for a violation of Section 13.151 to be in an amount not to exceed \$1,000,000 a day, notwithstanding Subsection (a) (relating to the assessment of an administrative penalty against certain persons). Authorizes each day a violation continues to be considered a separate violation.

SECTION 26. (a) Provides that the State Energy Plan Advisory Committee (advisory committee) is composed of 12 members. Requires the governor, lieutenant governor, and speaker of the Texas House of Representatives each to appoint four members to the advisory committee.

(b) Requires the advisory committee, not later than September 1, 2022, to prepare a comprehensive state energy plan. Requires that the plan:

(1) evaluate barriers in the electricity and natural gas markets that prevent sound economic decisions;

(2) evaluate methods to improve the reliability, stability, and affordability of electric service in Texas; and

(3) provide recommendations for removing the barriers described by Subdivision (1) and using the methods described by Subdivision (2).

(c) Requires that the state energy plan prepared under this section be submitted to the legislature not later than September 1, 2022.

SECTION 27. Requires the PUC and the independent organization certified under Section 39.151, Utilities Code, to review statutes, rules, protocols, and bylaws that apply to conflicts of interest for commissioners and for members of the governing body of the independent organization and to submit to the legislature a report on the effects the statutes, rules, protocols, and bylaws have on the ability of the PUC and the independent organization to fulfill their duties.

SECTION 28. Effective date: upon passage or September 1, 2021.