

By: Hunter

H.B. No. 4438

A BILL TO BE ENTITLED

AN ACT

relating to access to and the security of certain critical infrastructure.

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

SECTION 1. Section 113.001, Business & Commerce Code, as added by Chapter 975 (S.B. 2116), Acts of the 87th Legislature, Regular Session, 2021, is amended by adding Subdivision (5) to read as follows:

(5) "Affiliate," with respect to a company entering into an agreement in which the critical infrastructure is electric grid equipment, has the meaning assigned by the February 1, 2023, version of the ERCOT Nodal Protocols.

SECTION 2. Section 113.002, Business & Commerce Code, as added by Chapter 975 (S.B. 2116), Acts of the 87th Legislature, Regular Session, 2021, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsection (a), a business entity may enter into an agreement described by Subsection (a)(1) in which the critical infrastructure is electric grid equipment if the business entity takes reasonable and necessary actions to ensure that remote access or control by the company is mitigated.

SECTION 3. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.1183 to read as follows:

Sec. 411.1183. ACCESS TO CRIMINAL HISTORY RECORD

1 INFORMATION: INDEPENDENT ORGANIZATION CERTIFIED UNDER UTILITIES  
2 CODE. (a) An independent organization certified under Section  
3 39.151, Utilities Code, for security reasons is entitled to obtain  
4 from the department criminal history record information maintained  
5 by the department that relates to a person who has or is seeking  
6 employment at or access to the independent organization's systems  
7 that affect the security of the electric grid.

8 (b) Criminal history information obtained from the  
9 department may not be released or disclosed except:

10 (1) as needed in protecting the security of the  
11 electric grid;

12 (2) as authorized by a court order or a federal or  
13 state law or order; or

14 (3) with the consent of the person who is the subject  
15 of the criminal history record information.

16 SECTION 4. Section 2274.0101, Government Code, as added by  
17 Chapter 975 (S.B. 2116), Acts of the 87th Legislature, Regular  
18 Session, 2021, is amended by amending Subdivision (5) and adding  
19 Subdivision (6) to read as follows:

20 (5) "Governmental entity" means a state agency, a [ex]  
21 political subdivision, or an independent organization certified  
22 under Section 39.151, Utilities Code, to perform a function  
23 described by Section 39.151(a), Utilities Code [of this state].

24 (6) "Affiliate," with respect to a company entering  
25 into an agreement in which the critical infrastructure is electric  
26 grid equipment, has the meaning assigned by the February 1, 2023,  
27 version of the ERCOT Nodal Protocols.

1 SECTION 5. Section [39.151](#), Utilities Code, is amended by  
2 adding Subsection (g-7) to read as follows:

3 (g-7) To maintain certification as an independent  
4 organization under this section, the organization must:

5 (1) identify all employee positions in the  
6 organization that are critical to the security of the electric  
7 grid; and

8 (2) before hiring a person for a position described by  
9 Subdivision (1), obtain from the Department of Public Safety or a  
10 private vendor all criminal history record information relating to  
11 the prospective employee.

12 SECTION 6. Subchapter H, Chapter 39, Utilities Code, is  
13 amended by adding Section 39.360 to read as follows:

14 Sec. 39.360. TRANSACTIONS WITH CERTAIN FOREIGN-OWNED  
15 COMPANIES IN CONNECTION WITH CRITICAL INFRASTRUCTURE. (a) In this  
16 section, "company" and "critical infrastructure" have the meanings  
17 assigned by Section [113.001](#), Business & Commerce Code, as added by  
18 Chapter 975 (S.B. 2116), Acts of the 87th Legislature, Regular  
19 Session, 2021.

20 (b) An independent organization certified under Section  
21 [39.151](#) may not register a business entity to operate in the power  
22 region for which the independent organization is certified unless  
23 the business entity:

24 (1) attests that the entity complies with Chapter [113](#),  
25 Business & Commerce Code, as added by Chapter 975 (S.B. 2116), Acts  
26 of the 87th Legislature, Regular Session, 2021, including by taking  
27 reasonable and necessary actions to mitigate remote access to or

1 control of the entity's electric grid equipment by a company  
2 described by Section 113.002(a)(2), Business & Commerce Code, as  
3 added by Chapter 975 (S.B. 2116), Acts of the 87th Legislature,  
4 Regular Session, 2021;

5 (2) takes reasonable and necessary actions to mitigate  
6 remote access to or control of the entity's electric grid equipment  
7 by a country designated under Section 113.003, Business & Commerce  
8 Code, as added by Chapter 975 (S.B. 2116), Acts of the 87th  
9 Legislature, Regular Session, 2021; and

10 (3) attests that the entity complies with Subdivision  
11 (2).

12 (c) An independent organization certified under Section  
13 39.151 shall require as a condition of operating in the region that  
14 a business entity:

15 (1) report to the independent organization the  
16 purchase of any critical electric grid equipment from a company  
17 described by Section 113.002(a)(2), Business & Commerce Code, as  
18 added by Chapter 975 (S.B. 2116), Acts of the 87th Legislature,  
19 Regular Session, 2021; and

20 (2) take reasonable and necessary actions to mitigate  
21 access to or control of the purchased critical electric grid  
22 equipment by a company described by Section 113.002(a)(2), Business  
23 & Commerce Code, as added by Chapter 975 (S.B. 2116), Acts of the  
24 87th Legislature, Regular Session, 2021.

25 (d) Notwithstanding any other law, an independent  
26 organization certified under Section 39.151 may immediately  
27 suspend or terminate a company's registration or access to any of

1 the independent organization's systems if the independent  
2 organization has a reasonable suspicion that the company meets any  
3 of the criteria described by Section 2274.0102(a)(2), Government  
4 Code, as added by Chapter 975 (S.B. 2116), Acts of the 87th  
5 Legislature, Regular Session, 2021.

6 (e) A contractual provision that limits or contradicts  
7 Subsection (d) is contrary to public policy and is unenforceable  
8 and void.

9 (f) An independent organization certified under Section  
10 39.151 may adopt guidelines or procedures relating to the  
11 suspension or termination of a company's registration or access to  
12 any of the independent organization's systems.

13 (g) The commission shall:

14 (1) adopt any rules necessary to administer this  
15 section or authorize an independent organization to carry out a  
16 duty imposed by this section; and

17 (2) by rule establish a process to allow a company that  
18 has been adversely affected by a suspension or termination under  
19 Subsection (d) to request that the commission review and approve or  
20 deny the suspension or termination.

21 SECTION 7. The changes made to Chapter 113, Business &  
22 Commerce Code, and Chapter 2274, Government Code, apply only to a  
23 contract or agreement entered into on or after the effective date of  
24 this Act.

25 SECTION 8. It is the intent of the 88th Legislature, Regular  
26 Session, 2023, that the amendments made by this Act be harmonized  
27 with another Act of the 88th Legislature, Regular Session, 2023,

1 relating to nonsubstantive additions to and corrections in enacted  
2 codes.

3           SECTION 9. This Act takes effect immediately if it receives  
4 a vote of two-thirds of all the members elected to each house, as  
5 provided by Section 39, Article III, Texas Constitution. If this  
6 Act does not receive the vote necessary for immediate effect, this  
7 Act takes effect September 1, 2023.