

BILL ANALYSIS

Senate Research Center

S.B. 743
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, there is ambiguity surrounding the regulatory authority of the Public Utility Commission of Texas (commission) in relation to an independent organization operating in the Electric Reliability Council of Texas (ERCOT). This ambiguity has led to several problems at the organization, some of which have evolved into indictments from the attorney general.

S.B. 743 provides the commission the authority to regulate and supervise the business of an independent organization. S.B. 743 allows the commission to require reports, prescribe systems of accounts, conduct audits, inspect facilities, assess penalties, resolve disputes, and adopt and enforce rules of an independent organization. S.B. 743 also amends the composition of the board of directors and provides requirements for the presiding officer and requires that meetings of the organization be open to the public and that members disclose any interest in matters before the governing body. Finally, S.B. 743 provides for a wholesale market monitor operating at the organization.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 1 (Section 39.151, Utilities Code) and SECTION 2 (Section 39.1515, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

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

(b) Redefines "independent organization."

(d) Provides that the Public Utility Commission of Texas (commission) has the general power to regulate and supervise the business of an independent organization in the Electric Reliability Council of Texas (ERCOT) and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction. Prohibits the commission, by order or rule, from implementing a requirement that is contrary to applicable federal law or rule. Authorizes the commission to perform certain actions, including adopting and enforcing rules relating to the reliability of the regional electric network. Deletes existing text requiring 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.

(g) Requires an organization, to maintain certification as an independent organization under this section, to have a governing body composed of persons specified by this section and selected in accordance with formal bylaws or protocols of the organization. Deletes existing text relating to the composition of the governing body. Sets forth requirements for said bylaws and protocols and sets forth new and amends existing requirements for the composition of the governing body.

(g-1) Requires the presiding officer of the governing body to be one of the members described by Subsection (g)(7).

(h) Authorizes the ERCOT independent system operator to meet the criteria relating to the other functions of an independent organization provided by Subsection (a) by adopting procedures and acquiring resources needed to carry out those functions, consistent with any rules or orders of the commission.

SECTION 2. 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. Requires meetings of the governing body of an independent organization and meetings of a subcommittee of the governing body to be open to the public, with certain exceptions for executive sessions. 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 meetings and the planned agendas of meetings and an opportunity to comment on matters under discussion at the meeting.

Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN DECISION. Requires a member, if a matter comes before the governing body and a member or a person that member represents has a direct interest in that matter, to publicly disclose that information at a public meeting of the body and recuse himself or herself from the governing body's deliberations and actions on the matter, including voting or otherwise participating in a governing body decision on the matter. Requires said disclosure to be entered into the minutes of the meeting at which the disclosure is made and provides that the fact that a member is recused 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 a private person selected by the commission to act as the state's wholesale electric market monitor and to detect and prevent market manipulation strategies.

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

(c) Requires the independent organization to use money from the rate authorized by Section 39.151(e) 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 successfully. Requires the commission to adopt rules and perform oversight of the market monitor as necessary and, by rule, to define certain guidelines for the market monitor.

(e) Sets forth requirements for rules adopted by the commission under this section and 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 submit annually 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 3. Requires an independent organization certified by the Public Utility Commission of Texas 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 Public Utility Commission of Texas, 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 4. Effective date: September 1, 2005.