

By: Fraser

S.B. No. 743

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to independent organizations in ERCOT and their regulation  
3 and certification by the Public Utility Commission of Texas;  
4 providing an administrative penalty.

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

6 SECTION 1. Section 39.151, Utilities Code, is amended by  
7 amending Subsections (b), (d), (g), and (h) and adding Subsection  
8 (g-1) to read as follows:

9 (b) "Independent organization" means an independent system  
10 operator or other person that is sufficiently independent of any  
11 producer or seller of electricity that its decisions will not be  
12 unduly influenced by any producer or seller. [~~An entity will be  
13 deemed to be independent if it is governed by a board that has three  
14 representatives from each segment of the electric market, with the  
15 consumer segment being represented by one residential customer, one  
16 commercial customer, and one industrial retail customer.~~]

17 (d) The commission has the general power to regulate and  
18 supervise the business of an independent organization in ERCOT and  
19 to do anything specifically designated or implied by this title  
20 that is necessary and convenient to the exercise of that power and  
21 jurisdiction. The commission, by order or rule, may not implement a  
22 requirement that is contrary to an applicable federal law or rule.  
23 The commission may:

24 (1) require an independent organization to provide

1 reports and information relating to the independent organization's  
2 performance of the functions prescribed by this section and  
3 relating to its revenues, expenses, and other financial matters;

4 (2) prescribe a system of accounts for an independent  
5 organization;

6 (3) conduct audits of an independent organization's  
7 performance of the functions prescribed by this section or relating  
8 to its revenues, expenses, and other financial matters and may  
9 require an independent organization to conduct such audits;

10 (4) inspect an independent organization's facilities,  
11 records, and accounts during reasonable hours and after reasonable  
12 notice to the independent organization;

13 (5) assess administrative penalties against an  
14 independent organization that violates this title or a rule or  
15 order adopted by the commission, and the attorney general, at the  
16 request of the commission, may apply for a court order to require an  
17 independent organization to comply with commission rules and  
18 orders, in the manner provided by Chapter 15;

19 (6) resolve disputes between an affected person and an  
20 independent organization and may adopt procedures for the efficient  
21 resolution of such disputes; and

22 (7) adopt and enforce rules [~~An independent~~  
23 ~~organization certified by the commission for a power region shall~~  
24 ~~establish and enforce procedures, consistent with this title and~~  
25 ~~the commission's rules,~~] relating to the reliability of the  
26 regional electrical network and accounting for the production and  
27 delivery of electricity among generators and all other market

1 participants, or may delegate to an independent organization  
2 responsibilities for establishing and enforcing such rules. Any  
3 such rules adopted by an independent organization and any  
4 enforcement actions taken by it [~~The procedures~~] shall be subject  
5 to commission oversight and review.

6 (g) To maintain certification as an independent  
7 organization under this section, an organization's [~~If it amends~~  
8 ~~its governance rules to provide that its governing body is composed~~  
9 ~~as prescribed by this subsection, the existing independent system~~  
10 ~~operator in ERCOT will meet the criteria provided by Subsection (a)~~  
11 ~~with respect to ensuring access to the transmission systems for all~~  
12 ~~buyers and sellers of electricity in the ERCOT region and ensuring~~  
13 ~~the reliability of the regional electrical network. To comply with~~  
14 ~~this subsection, the~~] governing body must be composed of persons  
15 specified by this section and selected in accordance with formal  
16 bylaws or protocols of the organization. The bylaws or protocols  
17 must be approved by the commission and must reflect the input of the  
18 commission. The bylaws or protocols must prescribe professional  
19 qualifications for selection as a member, require the use of a  
20 professional search firm to identify candidates for membership, and  
21 specify the process by which appropriate stakeholders elect  
22 members. The process must allow for commission input in  
23 identifying candidates. The governing body must be composed of:

24 (1) the chairman of the commission as an ex officio  
25 nonvoting member;

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

1           (3) the chief executive officer [~~director~~] of the  
2 independent system operator as an ex officio voting member;

3           (4) six market participants elected by their  
4 respective market segments to serve one-year terms, with:

5                   (A) one representing independent generators;

6                   (B) one representing investor-owned utilities;

7                   (C) one representing power marketers;

8                   (D) one representing retail electric providers;

9                   (E) one representing municipally owned  
10 utilities; and

11                   (F) one representing electric cooperatives [~~four~~  
12 ~~representatives of the power generation sector as voting members~~];

13           (5) one member representing industrial consumer  
14 interests and elected by the industrial consumer market segment to  
15 serve a one-year term [~~four representatives of the transmission and~~  
16 ~~distribution sector as voting members~~];

17           (6) one member representing large commercial consumer  
18 interests selected by the outgoing large commercial consumer  
19 representative to serve a one-year term [~~four representatives of~~  
20 ~~the power sales sector as voting members~~]; and

21           (7) five members unaffiliated with any market segment  
22 and selected by the other members of the governing body to serve  
23 three-year terms [~~the following people as voting members, appointed~~  
24 ~~by the commission~~];

25                   [~~(A) one representative of residential~~  
26 ~~customers,~~

27                   [~~(B) one representative of commercial customers,~~

1 and

2 [(C) one representative of industrial  
3 customers].

4 [~~The four representatives specified in each of Subdivisions  
5 (4), (5), and (6) shall be selected in a manner that ensures  
6 equitable representation for the various sectors of industry  
7 participants.~~]

8 (g-1) The presiding officer of the governing body must be  
9 one of the members described by Subsection (g)(7).

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

15 SECTION 2. Subchapter D, Chapter 39, Utilities Code, is  
16 amended by adding Sections 39.1511, 39.1512, and 39.1515 to read as  
17 follows:

18 Sec. 39.1511. PUBLIC MEETINGS OF THE GOVERNING BODY OF AN  
19 INDEPENDENT ORGANIZATION. (a) Meetings of the governing body of  
20 an independent organization certified under Section 39.151 and  
21 meetings of a subcommittee of the governing body must be open to the  
22 public. The bylaws of the independent organization and the rules of  
23 the commission may provide for the governing body or subcommittee  
24 to enter into executive session closed to the public to address  
25 sensitive matters such as confidential personnel information,  
26 contracts, lawsuits, competitively sensitive information, or other  
27 information related to the security of the regional electrical

1 network.

2 (b) The bylaws of the independent organization and rules of  
3 the commission must ensure that a person interested in the  
4 activities of the independent organization has an opportunity to  
5 obtain at least seven days' advance notice of meetings and the  
6 planned agendas of the meetings and an opportunity to comment on  
7 matters under discussion at the meetings.

8 Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE  
9 INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN  
10 DECISION. (a) If a matter comes before the governing body of an  
11 independent organization certified under Section 39.151 and a  
12 member or a person that member represents has a direct interest in  
13 that matter, the member shall publicly disclose the fact of that  
14 interest to the governing body at a public meeting of the body. The  
15 member shall recuse himself or herself from the governing body's  
16 deliberations and actions on the matter and may not vote on the  
17 matter or otherwise participate in a governing body decision on the  
18 matter.

19 (b) A disclosure made under Subsection (a) shall be entered  
20 in the minutes of the meeting at which the disclosure is made.

21 (c) The fact that a member is recused from a vote or decision  
22 by application of this section does not affect the existence of a  
23 quorum.

24 Sec. 39.1515. WHOLESALE ELECTRIC MARKET MONITOR. (a) An  
25 independent organization certified under Section 39.151 shall  
26 contract with a private person selected by the commission to act as  
27 the state's wholesale electric market monitor and to detect and

1 prevent market manipulation strategies.

2 (b) The independent organization shall provide to the  
3 personnel of the market monitor:

4 (1) full access to the organization's main operations  
5 center; and

6 (2) other support and cooperation the commission  
7 determines is necessary for the market monitor to perform the  
8 market monitor's functions.

9 (c) The independent organization shall use money from the  
10 rate authorized by Section 39.151(e) to pay for the market  
11 monitor's activities.

12 (d) The commission is responsible for ensuring that the  
13 market monitor has the resources, expertise, and authority  
14 necessary to monitor the wholesale electric market effectively and  
15 shall adopt rules and perform oversight of the market monitor as  
16 necessary. The commission by rule shall define:

17 (1) the market monitor's monitoring responsibilities;

18 (2) the standards for funding the market monitor,  
19 including staffing requirements;

20 (3) qualifications for personnel of the market  
21 monitor; and

22 (4) ethical standards for the market monitor and the  
23 personnel of the market monitor.

24 (e) In adopting rules governing the standards for funding  
25 the market monitor, the commission shall consult with a  
26 subcommittee of the independent organization's governing body to  
27 receive information on how money is or should be spent for

1 monitoring functions. Rules governing ethical standards must  
2 include provisions designed to ensure that the personnel of the  
3 market monitor are professionally and financially independent from  
4 market participants. The commission shall develop and implement  
5 policies that clearly separate the policymaking responsibilities  
6 of the commission and the operational responsibilities of the  
7 market monitor.

8 (f) The market monitor shall immediately report directly to  
9 the commission any potential market manipulations and any  
10 discovered or potential violations of commission rules or rules of  
11 the independent organization.

12 (g) The personnel of the market monitor may communicate with  
13 commission staff on any matter without restriction.

14 (h) The market monitor annually shall submit to the  
15 commission and the independent organization a report that  
16 identifies market design flaws and recommends methods to correct  
17 the flaws. The commission and the independent organization shall  
18 review the report and evaluate whether changes to rules of the  
19 commission or the independent organization should be made.

20 SECTION 3. An independent organization certified by the  
21 Public Utility Commission of Texas before September 1, 2005, shall  
22 modify the organization's governing body to comply with Subsection  
23 (g), Section 39.151, Utilities Code, as amended by this Act, not  
24 later than September 1, 2006. On or after September 1, 2006, the  
25 Public Utility Commission of Texas may decertify an independent  
26 organization whose governing body does not comply with Subsection  
27 (g), Section 39.151, Utilities Code, as amended by this Act.



1 SECTION 4. This Act takes effect September 1, 2005.