

1-1 By: Fraser S.B. No. 743  
1-2 (In the Senate - Filed February 24, 2005; March 10, 2005,  
1-3 read first time and referred to Committee on Business and Commerce;  
1-4 April 6, 2005, reported favorably by the following vote: Yeas 9,  
1-5 Nays 0; April 6, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to independent organizations in ERCOT and their regulation  
1-9 and certification by the Public Utility Commission of Texas;  
1-10 providing an administrative penalty.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 39.151, Utilities Code, is amended by  
1-13 amending Subsections (b), (d), (g), and (h) and adding Subsection  
1-14 (g-1) to read as follows:

1-15 (b) "Independent organization" means an independent system  
1-16 operator or other person that is sufficiently independent of any  
1-17 producer or seller of electricity that its decisions will not be  
1-18 unduly influenced by any producer or seller. ~~[An entity will be  
1-19 deemed to be independent if it is governed by a board that has three  
1-20 representatives from each segment of the electric market, with the  
1-21 consumer segment being represented by one residential customer, one  
1-22 commercial customer, and one industrial retail customer.]~~

1-23 (d) The commission has the general power to regulate and  
1-24 supervise the business of an independent organization in ERCOT and  
1-25 to do anything specifically designated or implied by this title  
1-26 that is necessary and convenient to the exercise of that power and  
1-27 jurisdiction. The commission, by order or rule, may not implement a  
1-28 requirement that is contrary to an applicable federal law or rule.  
1-29 The commission may:

1-30 (1) require an independent organization to provide  
1-31 reports and information relating to the independent organization's  
1-32 performance of the functions prescribed by this section and  
1-33 relating to its revenues, expenses, and other financial matters;

1-34 (2) prescribe a system of accounts for an independent  
1-35 organization;

1-36 (3) conduct audits of an independent organization's  
1-37 performance of the functions prescribed by this section or relating  
1-38 to its revenues, expenses, and other financial matters and may  
1-39 require an independent organization to conduct such audits;

1-40 (4) inspect an independent organization's facilities,  
1-41 records, and accounts during reasonable hours and after reasonable  
1-42 notice to the independent organization;

1-43 (5) assess administrative penalties against an  
1-44 independent organization that violates this title or a rule or  
1-45 order adopted by the commission, and the attorney general, at the  
1-46 request of the commission, may apply for a court order to require an  
1-47 independent organization to comply with commission rules and  
1-48 orders, in the manner provided by Chapter 15;

1-49 (6) resolve disputes between an affected person and an  
1-50 independent organization and may adopt procedures for the efficient  
1-51 resolution of such disputes; and

1-52 (7) adopt and enforce rules ~~[An independent~~  
1-53 ~~organization certified by the commission for a power region shall~~  
1-54 ~~establish and enforce procedures, consistent with this title and~~  
1-55 ~~the commission's rules,]~~ relating to the reliability of the  
1-56 regional electrical network and accounting for the production and  
1-57 delivery of electricity among generators and all other market  
1-58 participants, or may delegate to an independent organization  
1-59 responsibilities for establishing and enforcing such rules. Any  
1-60 such rules adopted by an independent organization and any  
1-61 enforcement actions taken by it ~~[. The procedures]~~ shall be subject  
1-62 to commission oversight and review.

1-63 (g) To maintain certification as an independent  
1-64 organization under this section, an organization's ~~[If it amends~~

2-1 ~~its governance rules to provide that its governing body is composed~~  
 2-2 ~~as prescribed by this subsection, the existing independent system~~  
 2-3 ~~operator in ERCOT will meet the criteria provided by Subsection (a)~~  
 2-4 ~~with respect to ensuring access to the transmission systems for all~~  
 2-5 ~~buyers and sellers of electricity in the ERCOT region and ensuring~~  
 2-6 ~~the reliability of the regional electrical network. To comply with~~  
 2-7 ~~this subsection, the] governing body must be composed of persons~~  
 2-8 ~~specified by this section and selected in accordance with formal~~  
 2-9 ~~bylaws or protocols of the organization. The bylaws or protocols~~  
 2-10 ~~must be approved by the commission and must reflect the input of the~~  
 2-11 ~~commission. The bylaws or protocols must prescribe professional~~  
 2-12 ~~qualifications for selection as a member, require the use of a~~  
 2-13 ~~professional search firm to identify candidates for membership, and~~  
 2-14 ~~specify the process by which appropriate stakeholders elect~~  
 2-15 ~~members. The process must allow for commission input in~~  
 2-16 ~~identifying candidates. The governing body must be composed of:~~

2-17 ~~(1) the chairman of the commission as an ex officio~~  
 2-18 ~~nonvoting member;~~

2-19 ~~(2) the counsellor as an ex officio voting member~~  
 2-20 ~~representing residential and small commercial consumer interests;~~

2-21 ~~(3) the chief executive officer [director] of the~~  
 2-22 ~~independent system operator as an ex officio voting member;~~

2-23 ~~(4) six market participants elected by their~~  
 2-24 ~~respective market segments to serve one-year terms, with:~~

2-25 ~~(A) one representing independent generators;~~

2-26 ~~(B) one representing investor-owned utilities;~~

2-27 ~~(C) one representing power marketers;~~

2-28 ~~(D) one representing retail electric providers;~~

2-29 ~~(E) one representing municipally owned~~  
 2-30 ~~utilities; and~~

2-31 ~~(F) one representing electric cooperatives [four~~  
 2-32 ~~representatives of the power generation sector as voting members];~~

2-33 ~~(5) one member representing industrial consumer~~  
 2-34 ~~interests and elected by the industrial consumer market segment to~~  
 2-35 ~~serve a one-year term [four representatives of the transmission and~~  
 2-36 ~~distribution sector as voting members];~~

2-37 ~~(6) one member representing large commercial consumer~~  
 2-38 ~~interests selected by the outgoing large commercial consumer~~  
 2-39 ~~representative to serve a one-year term [four representatives of~~  
 2-40 ~~the power sales sector as voting members]; and~~

2-41 ~~(7) five members unaffiliated with any market segment~~  
 2-42 ~~and selected by the other members of the governing body to serve~~  
 2-43 ~~three-year terms [the following people as voting members, appointed~~  
 2-44 ~~by the commission:~~

2-45 ~~[(A) one representative of residential~~  
 2-46 ~~customers;~~

2-47 ~~[(B) one representative of commercial customers;~~  
 2-48 ~~and~~

2-49 ~~[(C) one representative of industrial~~  
 2-50 ~~customers].~~

2-51 ~~[The four representatives specified in each of Subdivisions~~  
 2-52 ~~(4), (5), and (6) shall be selected in a manner that ensures~~  
 2-53 ~~equitable representation for the various sectors of industry~~  
 2-54 ~~participants.]~~

2-55 ~~(g-1) The presiding officer of the governing body must be~~  
 2-56 ~~one of the members described by Subsection (g)(7).~~

2-57 ~~(h) The ERCOT independent system operator may meet the~~  
 2-58 ~~criteria relating to the other functions of an independent~~  
 2-59 ~~organization provided by Subsection (a) by adopting procedures and~~  
 2-60 ~~acquiring resources needed to carry out those functions, consistent~~  
 2-61 ~~with any rules or orders of the commission.~~

2-62 SECTION 2. Subchapter D, Chapter 39, Utilities Code, is  
 2-63 amended by adding Sections 39.1511, 39.1512, and 39.1515 to read as  
 2-64 follows:

2-65 Sec. 39.1511. PUBLIC MEETINGS OF THE GOVERNING BODY OF AN  
 2-66 INDEPENDENT ORGANIZATION. (a) Meetings of the governing body of  
 2-67 an independent organization certified under Section 39.151 and  
 2-68 meetings of a subcommittee of the governing body must be open to the  
 2-69 public. The bylaws of the independent organization and the rules of

3-1 the commission may provide for the governing body or subcommittee  
 3-2 to enter into executive session closed to the public to address  
 3-3 sensitive matters such as confidential personnel information,  
 3-4 contracts, lawsuits, competitively sensitive information, or other  
 3-5 information related to the security of the regional electrical  
 3-6 network.

3-7 (b) The bylaws of the independent organization and rules of  
 3-8 the commission must ensure that a person interested in the  
 3-9 activities of the independent organization has an opportunity to  
 3-10 obtain at least seven days' advance notice of meetings and the  
 3-11 planned agendas of the meetings and an opportunity to comment on  
 3-12 matters under discussion at the meetings.

3-13 Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE  
 3-14 INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN  
 3-15 DECISION. (a) If a matter comes before the governing body of an  
 3-16 independent organization certified under Section 39.151 and a  
 3-17 member or a person that member represents has a direct interest in  
 3-18 that matter, the member shall publicly disclose the fact of that  
 3-19 interest to the governing body at a public meeting of the body. The  
 3-20 member shall recuse himself or herself from the governing body's  
 3-21 deliberations and actions on the matter and may not vote on the  
 3-22 matter or otherwise participate in a governing body decision on the  
 3-23 matter.

3-24 (b) A disclosure made under Subsection (a) shall be entered  
 3-25 in the minutes of the meeting at which the disclosure is made.

3-26 (c) The fact that a member is recused from a vote or decision  
 3-27 by application of this section does not affect the existence of a  
 3-28 quorum.

3-29 Sec. 39.1515. WHOLESALE ELECTRIC MARKET MONITOR. (a) An  
 3-30 independent organization certified under Section 39.151 shall  
 3-31 contract with a private person selected by the commission to act as  
 3-32 the state's wholesale electric market monitor and to detect and  
 3-33 prevent market manipulation strategies.

3-34 (b) The independent organization shall provide to the  
 3-35 personnel of the market monitor:

3-36 (1) full access to the organization's main operations  
 3-37 center; and

3-38 (2) other support and cooperation the commission  
 3-39 determines is necessary for the market monitor to perform the  
 3-40 market monitor's functions.

3-41 (c) The independent organization shall use money from the  
 3-42 rate authorized by Section 39.151(e) to pay for the market  
 3-43 monitor's activities.

3-44 (d) The commission is responsible for ensuring that the  
 3-45 market monitor has the resources, expertise, and authority  
 3-46 necessary to monitor the wholesale electric market effectively and  
 3-47 shall adopt rules and perform oversight of the market monitor as  
 3-48 necessary. The commission by rule shall define:

3-49 (1) the market monitor's monitoring responsibilities;

3-50 (2) the standards for funding the market monitor,  
 3-51 including staffing requirements;

3-52 (3) qualifications for personnel of the market  
 3-53 monitor; and

3-54 (4) ethical standards for the market monitor and the  
 3-55 personnel of the market monitor.

3-56 (e) In adopting rules governing the standards for funding  
 3-57 the market monitor, the commission shall consult with a  
 3-58 subcommittee of the independent organization's governing body to  
 3-59 receive information on how money is or should be spent for  
 3-60 monitoring functions. Rules governing ethical standards must  
 3-61 include provisions designed to ensure that the personnel of the  
 3-62 market monitor are professionally and financially independent from  
 3-63 market participants. The commission shall develop and implement  
 3-64 policies that clearly separate the policymaking responsibilities  
 3-65 of the commission and the operational responsibilities of the  
 3-66 market monitor.

3-67 (f) The market monitor shall immediately report directly to  
 3-68 the commission any potential market manipulations and any  
 3-69 discovered or potential violations of commission rules or rules of

4-1 the independent organization.

4-2 (g) The personnel of the market monitor may communicate with  
4-3 commission staff on any matter without restriction.

4-4 (h) The market monitor annually shall submit to the  
4-5 commission and the independent organization a report that  
4-6 identifies market design flaws and recommends methods to correct  
4-7 the flaws. The commission and the independent organization shall  
4-8 review the report and evaluate whether changes to rules of the  
4-9 commission or the independent organization should be made.

4-10 SECTION 3. An independent organization certified by the  
4-11 Public Utility Commission of Texas before September 1, 2005, shall  
4-12 modify the organization's governing body to comply with Subsection  
4-13 (g), Section 39.151, Utilities Code, as amended by this Act, not  
4-14 later than September 1, 2006. On or after September 1, 2006, the  
4-15 Public Utility Commission of Texas may decertify an independent  
4-16 organization whose governing body does not comply with Subsection  
4-17 (g), Section 39.151, Utilities Code, as amended by this Act.

4-18 SECTION 4. This Act takes effect September 1, 2005.

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