

## **BILL ANALYSIS**

C.S.H.B. 1202  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The electric market in Texas became fully deregulated on January 1, 2007 after a seven year long deregulation process initiated by the Legislature in 1999. Throughout that transition to a market-based environment, the electric industry continued to be subject to the authority of the Public Utility Commission and all disputes between competing market stakeholders have been required to be initiated with that executive agency.

C.S.H.B. 1202 leaves untouched the authority that the Legislature and the Public Utility Commission has over electric market participants in Texas. However, C.S.H.B. 1202 clarifies that disputes between competing business entities, at the initiation of one of the parties, over claims of market power abuse or violations of the Texas Free Enterprise and Antitrust Act of 1983 can be litigated in a forum other than the Public Utility Commission. Providing jurisdiction of these cases with the judicial branch recognizes that the proper forum for business disputes in a free market is not with state regulators but with judges and juries.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1: States the "filed rate" doctrine is at odds with the intent of the Legislature to restructure the electric utility industry and is, therefore, abolished in a private right of action for market power abuse violations (or Sections 15.01 through 15.26, Business & Commerce Code). Additionally, the findings conclude that the relevant markets for purposes of determining standing to sue and the existence of market power abuses are the deregulated wholesale and retail markets in ERCOT.

SECTION 2: The bill adds language that requires the Public Utility Commission to monitor market power associated with the generation, transmission, distribution and sale of electricity in the state to prevent market power abuse and other violations of Section 39.157, Utilities Code. Furthermore, the bill creates a private right of action for a qualified person to pursue under either the utilities Code or the Business & Commerce Code for violation of the of the market abuse provisions in Section 39.157, Utilities Code.

The bill defines a qualified person as a retail electric provider that meets the requirements for standing to sue for market power abuses under Sections 15.01 through 15.26, Business and Commerce Code. The cause of action can be for damages or injunctive relief against a power generation company, a power marketer, a retail electric provider, or any other supplier of wholesale or retail electricity, other than a transmission and distribution utility, operating in ERCOT.

Finally, the bill states that a qualifying person is not required to bring an administrative action before pursuing a private right of action.

### **EFFECTIVE DATE**

SECTION 3: September 1, 2007.

C.S.H.B. 1202 80(R)

## **COMPARISON OF ORIGINAL TO SUBSTITUTE**

In SECTION 2 of the substitute bill the phrase ", other than a transmission and distribution utility," was added to clarify that a transmission and distribution utility is not an entity which a qualified person can pursue a private right of action against for market power abuses. The original bill did not have this phrase.