

BILL ANALYSIS

S.B. 1613
By: Ogden
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The state's open records law allows the public to seek the disclosure of public information by public entities subject to the statute. It also includes a number of statutory exceptions to such mandatory disclosure and in other cases allows a public entity to withhold requested information if the entity seeks and obtains a ruling from the Office of the Attorney General protecting the relevant information from disclosure. The state's open records law provides a specific exception to disclosure of certain information that is available only to public power utilities and authorizes each utility's governing body to determine which information may be withheld by its utility. The statute allows the attorney general to find that the information is outside the scope of the exception only if it can determine that the governing body failed to act in good faith in that body's decision that the information sought was outside the exception or the information sought was not reasonably related to a competitive matter as defined by the utility's governing body. These utilities have a similar open meetings exception in the state's open meetings law.

Under current law, different policies regarding the release of information by public power utilities have developed around the state and members of the public are concerned about the type and amount of information that is being withheld. S.B. 1613 attempts to balance the public's interest in having access to public information with its interest in protecting competitive information by amending current law relating to the application of the public meetings and public information laws to public power utilities.

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

S.B. 1613 amends the Government Code to specify that the state's open meetings law does not require a public power utility governing body to conduct an open meeting to deliberate, vote, or take final action on any competitive matter, as that term is defined in a statutory provision governing exceptions for public power utility competitive matters under the state's open records law, rather than as that term is defined in a statutory provision governing competitive matters of a public power utility under the state's open meetings law. The bill removes provisions requiring a public power utility governing body to make a good faith determination that a matter is a competitive matter under the superseded definition of that term before deliberating, voting, or taking final action on such competitive matter in a closed meeting; requiring the vote to be taken during the closed meeting and to be included in the certified agenda or tape recording of the closed meeting; and prohibiting any deliberation or final action on the matter in the closed meeting if the governing body fails to determine that the matter satisfies the criteria for a competitive matter.

S.B. 1613 includes in the definition of "competitive matter," for the purposes of a statutory provision governing exceptions for public power utility competitive matters under the state's

open records law, a matter that is reasonably related to the following categories of information:

- generation unit specific and portfolio fixed and variable costs, including forecasts of those costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling;
- bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies;
- effective fuel and purchased power agreements and fuel transportation arrangements and contracts;
- risk management information, contracts, and strategies, including fuel hedging and storage;
- plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission and distribution system improvements inside the service area for which the public power utility is the sole certificated retail provider; and
- customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies.

The bill specifies that the term does not include, among other excluded categories of information, generally applicable tariffs and rates adopted by the public power utility as authorized by law, salaries and total compensation of all employees of a public power utility, and information publicly released by the Electric Reliability Council of Texas in accordance with a law, rule, or protocol generally applicable to similarly situated market participants. The bill removes a provision excepting the text of any resolution of a public power utility governing body determining which issues, activities, or matters constitute competitive matters from a statutory requirement to make public information available to the public at a minimum during a governmental entity's normal business hours. The bill removes a provision requiring the attorney general, in rendering a written opinion in connection with any request for such an opinion with respect to information alleged to fall under the specified exception for information or records that are reasonably related to a competitive matter, to find the requested information to be outside the scope of the exception only on a determination by the attorney general that the power utility governing body failed to act in good faith in making the determination that the issue, matter, or activity in question is a competitive matter or that the information or records sought to be withheld are not reasonably related to a competitive matter. The bill removes the definition of "public power utility governing body."

S.B. 1613 repeals Section 551.086(b)(3), Government Code, defining "competitive matter" for the purposes of a statutory provision governing competitive matters of a public power utility under the state's open meetings law and makes conforming changes relating to the repeal.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.