

BILL ANALYSIS

C.S.H.B. 4821
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Power generators can enter into a voluntary mitigation plan (VMP) with the Public Utility Commission of Texas if they are concerned they may be in violation of market power rules. Currently, a VMP serves as an absolute defense against an alleged violation in regard to activities covered by the VMP and there is no requirement to update or change a VMP. With the ERCOT market having undergone dramatic changes over the last decade, including the introduction of new technologies, the retirement of certain assets, and changes in the asset mix, updates to the provisions governing VMPs are long overdue. C.S.H.B. 4821 seeks to increase the maximum daily administrative penalty for a violation of a VMP from \$25,000 to \$1,000,000, while also updating multiple aspects of existing VMP regulations, including requiring regular reviews of all VMPs and removing the absolute defense.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

C.S.H.B. 4821 amends the Utilities Code to increase the maximum daily administrative penalty the Public Utility Commission of Texas (PUC) may impose for a violation of a voluntary mitigation plan (VMP) developed and entered into by the PUC and a person relating to a violation of applicable provisions of the Public Utility Regulatory Act (PURA) or of rules adopted by the PUC under those provisions from \$25,000 to \$1,000,000. In addition, with respect to a VMP, the bill also does the following:

- conditions the authority of the PUC to approve a VMP on the PUC determining that the VMP is in the public interest;
- requires a VMP to be reviewed at least once every two years and not later than the 90th day after the implementation date of a wholesale market design change;
- requires the PUC, as part of the review, to determine whether the VMP remains in the public interest;
- establishes that, if the PUC determines that the VMP is no longer in the public interest, the PUC and the person must agree to a modification of the VMP or the PUC must terminate the VMP; and
- replaces the provision establishing that adherence to the VMP constitutes an absolute defense against an alleged violation with respect to activities covered by the VMP with a provision establishing that adherence to the VMP may be considered in determining whether a violation occurred, and if so, the penalty to be assessed.

The bill's provisions apply only to a violation committed on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 4821 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Whereas the introduced increased the maximum daily administrative penalty for any violation of the PURA to \$1,000,000, the substitute instead only increases the maximum daily administrative penalty to \$1,000,000 for a violation of a VMP. Accordingly, the substitute omits the provision from the introduced repealing the provision that sets the maximum amount the daily administrative penalty for certain other specified violations of PURA at \$1,000,000.

The substitute includes a provision not in the introduced conditioning the authority of the PUC to approve a VMP on the PUC determining that the VMP is in the public interest.

Whereas the introduced required a VMP to be updated at least once every two years, the substitute requires instead only that a VMP be reviewed at least once every two years.

Moreover, whereas the introduced required the PUC to review each existing VMP not later the 90th day after the implementation date of a substantial wholesale market design change, the substitute requires that a VMP be reviewed not later than the 90th day after the implementation date of any wholesale market design change, regardless of whether the change is considered substantial. With respect to the contents of these reviews, the substitute requires the PUC, as part of the review, to determine whether the VMP remains in the public interest. Conversely, the introduced required the PUC, in conducting the review, to determine whether any changes to the VMP are necessary. The substitute includes a provision not in the introduced establishing that if the PUC determines the VMP is no longer in the public interest, the PUC and the person must agree to a modification of the VMP or the PUC must terminate the VMP. The substitute omits the provision from the introduced entitling a party with a justiciable interest in the result of a proceeding to adopt or renew a VMP to participate in the proceeding.