

BILL ANALYSIS

S.B. 2011
By: Schwertner
State Affairs
Committee Report (Unamended)

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. S.B. 2011 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

S.B. 2011 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. A violation committed before the bill's effective date is governed by the law in effect when the violation was committed, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2023.