

BILL ANALYSIS

Senate Research Center

S.B. 1613
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Open Government
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Chapter 552 (Public Information), Government Code, 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 required public disclosures. In order for a public entity to keep requested information from the public, the entity must seek a ruling on the relevant information from the Office of the Attorney General (OAG).

Section 552.133 (Exception: Public Power Utility Competitive Matters), Government Code, provides a specific exception to required disclosure of public information that is available only to public power utilities. It grants authority to each utility's governing body to determine what information may be withheld by its utility. It allows OAG 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 the governing 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 Section 551.086 (Certain Public Power Utilities; Competitive Matters).

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.

S.B. 1613 eliminates the involvement of a utility's governing body in the open records process and leaves to OAG the determination of whether certain information is reasonably related to a competitive matter and may be withheld by the utility under Section 552.133.

As proposed, S.B. 1613 amends current law relating to public meetings and information disclosure exemptions for public power utilities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 551.086(c), Government Code, as follows:

(c) Provides that this chapter 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 Section 552.133, rather than Subsection (b)(3). Provides that this section does not limit the right of a public power utility governing body to hold a closed session under any other exception provided for in this chapter.

Deletes existing text requiring a public power utility governing body, before the public power utility is authorized to deliberate, vote, or take final action on any competitive matter in a closed meeting, to first make a good faith determination, by majority vote of

its members, that the matter is a competitive matter that satisfies the requirements of Subsection (b)(3). Deletes existing text requiring that the vote be taken during the closed meeting and be included in the certified agenda or tape recording of the closed meeting. Deletes existing text prohibiting the public power utility governing body, if a public power utility governing body fails to determine by that vote that the matter satisfies the requirements of Subsection (b)(3), from deliberating or taking any further action on the matter in the closed meeting.

SECTION 2. Amends Section 552.133, Government Code, as follows:

Sec. 552.133. EXCEPTION: PUBLIC POWER UTILITY COMPETITIVE MATTERS.

(a) Redefines, in this section, "public power utility" and "competitive matter."

(b) Creates this subsection from existing text. Provides that for purposes of this section:

(1) a competitive matter is a matter that is reasonably related to the following categories of information:

(A) generation unit specific and portfolio fixed and variable costs, including forecasts of such costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling;

(B) bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies;

(C) effective fuel and purchased power agreements and fuel transportation arrangements and contracts;

(D) risk management information, contracts, and strategies, including fuel hedging and storage;

(E) 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

(F) customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies; and

(2) a competitive matter may not be deemed to include certain categories of information, including any substantive rule or tariff of general applicability regarding rates, service offerings, service regulation, customer protections, or customer service adopted by the public power utility as authorized by law; salaries and total compensation of all employees of a public power utility; or information publicly released by the Electric Reliability Council of Texas pursuant to a law, rule, or protocol generally applicable to similarly situated market participants. Makes a nonsubstantive change.

(c) Redesignates existing Subsection (b) as Subsection (c). Provides that information or records are excepted from the requirements of Section 552.021 (Availability of Public Information) if the information or records are reasonably related to a competitive matter, as defined in this section. Provides that information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer

choice or serves in a multiply certificated service area. Provides that this section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.

Deletes existing text providing that excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive matters. Deletes existing Subsection (c) requiring the attorney general, in connection with any request for an opinion of the attorney general under Section 552.301 with respect to information alleged to fall under this exception, in rendering a written opinion under Section 552.306, to find the requested information to be outside the scope of this exception only if the attorney general determines, based on the information provided in connection with the request, that the public power utility governing body has 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.

(d) Makes no change to this subsection.

SECTION 3. Repealer: Section 551.086(b)(3) (defining "competitive matter"), Government Code.

SECTION 4: Effective date: upon passage or on the 91st day after the last day of the legislative session.