

BILL ANALYSIS

Senate Research Center

S.B. 2116
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas General Land Office (GLO) was authorized to sell electricity to government entities, namely school districts, military bases, and state facilities in 1999. The State Power Program (SPP) was a byproduct of S.B. 7, the electric deregulation bill that established the competitive power market in Texas. The program was created to provide a power purchase option for government entities to ease any transitions to a deregulated power market.

The GLO program has been in direct competition with private companies from its inception, and GLO has several advantages in bidding against retail power companies in the competitive market. The primary advantage is an almost two percent gross receipts tax exemption on all electric power sales to government entities that participate in the program.

Nearly 20 years after deregulation, the market is sufficiently developed, the participants are sophisticated, and the rates they can offer are exceptionally competitive compared to anywhere in the country. ERCOT reports that, as of February 2019, 95 percent of eligible non-residential customers have participated in retail electric choice. Before deregulation, Texas' retail electricity rates for non-residential customers were the 15th highest in the country. The latest annual pricing data shows that non-residential customers in Texas pay the fifth-lowest retail electricity rate in the country, over 20 percent below the national average. The GLO state power program is no longer necessary to serve the purpose for which it was created, and it is time to end this program that is in direct competition with private companies.

As proposed, S.B. 2116 amends current law relating to the sale of electric power to certain public customers.

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 52.133(d), Natural Resources Code, to authorize the commissioner of the Texas General Land Office (commissioner; GLO), the owner of the soil under Subchapter F (Relinquishment), or the commissioner acting on behalf of and at the direction of an owner of the soil under Subchapter F, the school land board (SLB), or a board for lease to negotiate and execute contracts or any other instruments or agreements necessary to convert that portion of the royalty taken in kind into other forms of energy, other than electricity, rather than including electricity.

SECTION 2. Amends Section 53.026(b), Natural Resources Code, to authorize the commissioner or the commissioner acting on behalf of and at the direction of SLB or a board for lease to negotiate and execute a contract or any other instrument or agreement necessary to convert that portion of the royalty taken in kind to other forms of energy, other than electricity, rather than including electricity.

SECTION 3. Amends Section 53.077(b), Natural Resources Code, to authorize the commissioner, each owner of the soil under this subchapter (Lease of Minerals by Surface

Owner), or the commissioner acting on behalf of and at the direction of the owner of the soil under this subchapter to negotiate and execute a contract or any other instrument or agreement necessary to convert that portion of the royalty taken in kind to other forms of energy, other than electricity, rather than including electricity.

SECTION 4. Amends Section 182.022, Tax Code, by adding Subsection (d) to prohibit a tax under this chapter (Miscellaneous Gross Receipts Taxes), notwithstanding any other provision of this chapter, from being imposed on the gross receipts from the sale of electricity to a public school district customer.

SECTION 5. Transfers Section 35.102, Utilities Code, to Subchapter A, Chapter 101, Utilities Code, redesignates it as Section 101.009, Utilities Code, and amends it as follows:

Sec. 101.009. New heading: STATE AUTHORITY TO SELL OR CONVEY NATURAL GAS. (a)(1) Defines "commissioner" for purposes of this section.

(2) Defines "public retail customer."

(b) Creates this subsection from existing text and authorizes the commissioner, acting on behalf of the state, to sell or otherwise convey natural gas, rather than power or natural gas, generated from royalties taken in kind as provided by Sections 52.133(f) (relating to providing that, for purposes of this section (Payment of Royalty in Kind), royalty taken in kind includes oil or gas sold or marketed by the commissioner that has been produced on state mineral lands or from the first three miles of federal waters adjacent to the state boundaries), 53.026 (In Kind Royalty), and 53.077 (In Kind Royalty), Natural Resources Code, directly to a public retail customer, rather than directly to a public retail customer regardless of whether the public retail customer is also classified as a wholesale customer under other provisions of this title (Public Utility Regulatory Act).

(c) Creates this subsection from existing text and makes conforming changes.

SECTION 6. Amends Section 104.2545(d), Utilities Code, to make a conforming change.

SECTION 7. Repealer: the heading to Subchapter D (State Authority to Sell or Convey Power), Chapter 35, Utilities Code.

Repealer: Section 35.101 (Definitions), Utilities Code.

Repealer: Section 35.103 (Access to Transmission and Distribution Systems; Rates), Utilities Code.

Repealer: Section 35.104 (Limit in Certain Areas), Utilities Code.

Repealer: Section 35.105 (Wholesale Customers), Utilities Code.

Repealer: Section 35.106 (Access to Power Generation), Utilities Code.

SECTION 8. Authorizes GLO or an entity operating under a contract with GLO to continue to provide retail electric service in accordance with Subchapter D, Chapter 35, Utilities Code, as that subchapter existed before the effective date of this Act, under the terms of an agreement with a customer entered into before the effective date of this Act, only until the date the agreement expires. Authorizes an agreement described by this section to be extended to a date not later than January 1, 2024.

SECTION 9. Provides that the change in law made by this Act does not affect taxes imposed before the effective date of this Act, and the law in effect before the effective date of this Act is continued in effect for purposes of the liability for and collection of those taxes.

SECTION 10. (a) Requires the Public Utility Commission of Texas (PUC), as soon as practicable after January 1, 2024, for an electric utility regulated under Chapter 36 (Rates), Utilities Code, to provide for the adjustment of the electric utility's billing of a public school district customer to reflect any decrease in the utility's tax liability to this state if the decrease is attributable to the exemption in Section 182.022(d), Tax Code, as added by this Act. Requires an adjustment to be made effective at the same time as the decrease in tax liability or as soon after that decrease occurs as is reasonably practicable. Provides that PUC is not required to provide for an adjustment if PUC enters an order for the utility under Subchapter C (General Procedures For Rate Changes Proposed by Utility) or D (Rate Changes Proposed by Regulatory Authority), Chapter 36, Utilities Code, that accounts for any decrease in the utility's tax liability attributable to the exemption in Section 182.022(d), Tax Code, as added by this Act. Provides that an adjustment is not a rate case under Subchapter C or D, Chapter 36, Utilities Code.

(b) Requires a retail electric provider, as defined by Section 31.002 (Definitions), Utilities Code, as soon as practicable after January 1, 2024, to adjust the billing of a public school district customer to reflect any decrease in the retail electric provider's tax liability to this state if the decrease is attributable to the exemption in Section 182.022(d), Tax Code, as added by this Act. Requires an adjustment to be made effective at the same time as the decrease in tax liability or as soon after that decrease occurs as is reasonably practicable.

SECTION 11. (a) Effective date, except as provided by Subsection (b) of this section: upon passage or September 1, 2019.

(b) Effective date for Section 182.022(d), Tax Code, as added by this Act: January 1, 2024.