

April 12, 2019

Members of the Legislature  
State of Texas

Dear Legislator,

I'm writing to express our concerns about companion bills HB 3995 and SB 1938, which would make fundamental, dramatic, anti-market changes in Texas' electrical infrastructure far beyond what you might have heard, and to urge you to carefully consider the problems with these bills. We appreciate the opportunity to share our thoughts on this important issue.

The Institute for Policy Innovation (IPI) is a 32 year-old free market policy think tank, based in Irving. In our policy work we emphasize economic growth through free markets, limited government, competition, and technological innovation. IPI does not lobby and does not engage in political activity, but we do analyze legislation and make recommendations, and we hope you will consider our input in this letter.

Filed very late in the process, *HB 3995 and SB 1938 would literally make it illegal for new entrants to competitively bid on new transmission projects in Texas, because it would make new entrants illegal.* Making new, competitive entrants illegal is breathtaking in its audacity. For policy makers in Texas who claim to believe in free-markets and competition to make it illegal for a new competitor to enter a market is about as bad as it gets. The bill literally reads:

“a certificate for a new transmission facility that directly interconnects with an existing electric utility [they all do] may only be granted to the owner of the existing facility.”

Language like that jumps off the page. This is an astonishing legislative protection for incumbent companies, legislatively shielding them from new competition. It is, frankly, inappropriate for the legislature to take such actions.

Competition, of course is the key factor that keeps prices to consumers competitive. Even in a regulated market, the capital costs of building new electrical transmission must be recovered through rates paid by consumers. Competitive bidding and a competitive marketplace is crucial to keeping capital costs as low as possible and ensuring that we can continue to build out the growing Texas economy without the price of electricity growing any higher than necessary.

The genesis of this legislation is, unfortunately, nefarious. It is designed to overturn a competitive bid for a project in East Texas that would save consumers millions of dollars over the lifetime of the project, but which went against the interests of the incumbent provider, who now seeks to not only overturn that competitive bid, but rule out any such inconveniences to their monopoly in the future.

No legislator who claims to believe in free markets should be able to endorse such an approach.

We hope you'll heed voices like ours urging you to slow down and carefully consider whether making it illegal for new entrants to enter a market and compete with entrenched incumbent monopolies is the right policy for Texas, a state that prides itself on a dynamic, competitive economy based on free market principles.

We think the effect of this legislation would be very harmful to Texas consumers, and at the very least, the Legislature should consider studying the matter much more carefully before moving legislation that would literally make it impossible for new competition to enter the marketplace.

We would be happy to answer any questions you might have, and to work constructively with you on this issue. Please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Tom Giovanetti". The signature is written in a cursive style with a prominent blue ink stroke.

Tom Giovanetti  
President



April 4, 2019

# How Conservative Texas Legislators Protect Business Rather Than Free Markets

by Tom Giovanetti | In The News | Op/Ed

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Dallas Morning News

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Each of the two major political philosophies has its own particular temptation to excess.

The left, for instance, can turn its natural and legitimate concern for the poor and marginalized in society into an unhinged and counterproductive socialism that destroys the productive economy, and into a class-focused Marxism that undermines individual liberty and dignity. We see quite a bit of that going on these days.

But the right can turn its natural defense of free enterprise and capitalism into protectionism for business interests and other policies that are actually counter to free markets and economic dynamism. We see quite a lot of that going on these days, too, even in Texas, supposedly one of the most free-market states in the Union.

Unfortunately, a lot of my friends on the right confuse being pro-business with being pro-markets. They're not the same thing. Supporting free markets means welcoming new competitors and disruptive new business models. For instance, welcoming ride-sharing even though it disrupts the existing taxi business, and welcoming wine being sold direct across state lines even though it disrupts existing distributor and retailer relationships.

New competition and new business models work to the benefit of consumers through lower prices and new services. Being pro-market means removing barriers to new entry and competition, not erecting new ones. And it certainly means that you support whatever result the market delivers, rather than trying to rig the game in favor of some favored, existing business or industry.

Some conservative Texas lawmakers this legislative session are presenting us with not one but two examples of confusing business protection with free-market support. This is unfortunate, but it may provide an object lesson in the difference between being pro-market and pro-business.

Sen. Kelly Hancock, R-North Richland Hills, and Rep. Dade Phelan, R-Beaumont, are moving SB 1938 and HB 3995, respectively, which are designed to protect incumbent electricity transmission companies from new competition. These bills, filed at the last minute, give existing electric utilities an inappropriate level of control over construction of distribution lines and would specifically overturn a competitive bid that could save East Texas consumers millions of dollars. Essentially, it protects an incumbent provider from the inconvenience of having to deal with new competition.

SB 1938 literally says that "a certificate for a new transmission facility that directly interconnects with an existing electric utility facility may only be granted to the owner of the existing facility." How's that for protecting existing companies against new competition? Just make new competition illegal.

But there's more. With SB 1415, Hancock (again) has introduced a bill that makes it illegal for Tesla to service cars in Texas. It's already preposterous that Tesla is prohibited from directly selling cars in Texas — that's another example of a law that simply protects an established business model against competition from new business models. But Hancock's bill doubles down on the offense, including "servicing" and "repairing" in the definition of dealership activity, and since Tesla doesn't have dealerships, Tesla would be forbidden from using its six Texas service centers to service its vehicles.

As a conservative, free-market Texan, I'm more than frustrated with elected Republicans who tell voters that they believe in free markets, but then spend their time in Austin protecting entrenched business interests against new competition. And that's exactly what these two legislative efforts are designed to do, protect existing electric companies and auto dealers from new competition.

In one of their bits of propaganda, the electric utility companies say "while competition is good in theory." No, actually, competition is good in fact and in practice. Whether you're an electric utility, an automobile dealer, or an elected member of the Texas Legislature, when you find yourself in the position of inhibiting competition, you're on the side of business, not the side of free markets. And they aren't the same thing.

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