

SUBJECT: Allowing access to electric cooperative meetings and certain records

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 13 ayes — Solomons, Menendez, Cook, Craddick, Farabee, Geren,
Harless, Hilderbran, Jones, Lucio, Maldonado, Swinford, S. Turner

0 nays

2 absent — Gallego, Oliveira

SENATE VOTE: On final passage, April 22 — 26-4 (Eltife, Hegar, Hinojosa, Lucio)

WITNESSES:

(On House companion bill, HB 1390:)

For — Patrick Cox; Milton Hawkins, Pedernales Electric Cooperative members; Carlos Higgins; Tom “Smitty” Smith, Public Citizen; John Watson, PEC4u.org; *(Registered, but did not testify:* Melissa Dison, Public Citizen; Karen Hadden, Sustainable Energy and Economic Development Coalition; Brynne Vanhettinga, ACLU of Texas; Peggy Venable, Americans for Prosperity; Richard Viktorin, Audits in the Public Interest; Ken Whalen, Texas Daily Newspaper Association, Texas Press Association)

Against — Ernest Altgelt; Don Boyett, Sam Houston Electric Cooperative, Inc.; Juan Garza, Pedernales Electric Cooperative, Inc.; Linda Kaye Rogers; Mike Williams, Texas Electric Cooperatives; *(Registered, but did not testify:* Bill Adamson, Rusk County Electric Cooperative; Ray Beavers, United Cooperative Services; Mark Boyd, Barron Christensen, Bowie-Cass Electric Cooperative; Jerry Boze, Trinity Valley Electric Cooperative, Inc.; Fredda Buckner, Carl Williams, Big Country Electric Cooperative; Burke Bullock, Brent Glenn, Wood County Electric Cooperative, Inc.; J.T. Calhoun; Charles Castleberry, Swisher Electric Cooperative, Inc.; Debra Cole, HILCO; James Driver, South Plains Electric Cooperative, Inc.; Lindsey Durrett; Sarah Fisher, Nueces Electric Cooperative; Rick Haile, Heart of Texas Electric Cooperative; John Herrera, Magic Valley Electric Cooperative; Bob Kamm, Brazos Electric Cooperative; Kerry Kelton, James Morrison, Mid-South Electric Cooperative; Mike Kezar, San Miguel Electric Cooperative; Fred

Lancaster, Medina Electric Cooperative; Kelly Lankford, Concho Valley Electric Cooperative; Bryan Lightfoot, Bartlett Electric Cooperative, Inc.; Robert Loth, Central Texas Electric Cooperative; Steve Louder, Donald Wright, Deaf Smith Electric Cooperative; Randy Mahannah, North Plains Electric Cooperative; Billy Marricle, San Bernard Electric Cooperative; J.C. Mathiews; Kendall Montgomery, Fort Belknap Electric Cooperative, Inc.; Joe Raibourn, Hamilton County Electric Cooperative; Arlon Retzloff, South Texas Electric Cooperative; Leeland Robinson; Ronnie Robinson, Comanche Electric Cooperative; Darren Schauer, Guadalupe Valley Electric Cooperative, Inc.; Darryl Schriver, Taylor Electric Cooperative, Inc.; Vic Schwartz, Panola-Harrison Electric Cooperative; Leroy Skloss, Karnes Electric Cooperative; Delbert Smith, Lamb County Electric Cooperative; Kerry Sweatt, Bandera Electric Cooperative; Mark Tamplin, Jasper-Newton Electric Cooperative; Bob Turner, Texas Electric Cooperatives, Texas Sheep and Goat Raisers Association; Elizabeth Vaden, Coserv Electric; Thomas Walch, Central Texas Electric Cooperative; Roland Witt, Coleman County Electric Cooperative)

On — John Owens, Office of Texas Attorney General; Barry Smitherman, Public Utility Commission

BACKGROUND: There are 63 distribution electric cooperatives operating in Texas. The Pedernales Electric Cooperative (PEC) is the only cooperative with more than 170,000 members.

DIGEST: CSSB 971 would amend various provision of Utilities Code, ch. 161, regarding electric cooperative board meetings, member elections, casting of proxy votes, and board procedures.

Electric cooperative director elections and casting of proxy votes.

Director elections would be required to be conducted in a manner that was fair and open to all members of the electric cooperative. Rules would differ depending on the number of members in the cooperative.

Electric cooperatives with more than 170,000 members. A board would not be able to cast a member's proxy vote in a director election. Members could elect directors only by district and could vote for a director to represent a district only if the member resided in that district.

Members could nominate qualified members as candidates in a director election only through a written petition. Bylaws would have to:

- specify the number of printed names and dated signatures a petition nominating a candidate would have to contain;
- specify a period within which a petition nominating a candidate would have to be submitted to the cooperative; and
- specify that only members residing in a district could sign a petition for the nomination of a candidate to represent that district.

Electric cooperatives with 170,000 members or less. A director who was standing for reelection to the board would not be able to serve on a committee established under the bylaws for the purpose of casting, or being authorized to cast, the proxy vote of a member in a director election.

A member's proxy vote could be cast in a director election only if the proxy form:

- was sent to each member of record no later than 30 days before the meeting at which proxy votes are counted;
- designated each candidate who was an incumbent director;
- was posted on the cooperative's website;
- included information describing the proxy vote process; and
- contained certain statements.

If the bylaws allowed a committee of members to nominate qualified members as candidates in a director election, the bylaws also would have to:

- allow nominations to be made through written petitions;
- specify the number of names and signatures a petition would have to contain; and
- specify a time for submitting the petition to the cooperative.

A petition would have to provide the name and address of the member seeking nomination and, if the cooperative nominated or elected directors by district, the district the member sought to represent.

Board meeting requirements. Each member of an electric cooperative would be entitled to attend a regular or special board meeting. Nonmembers would be prohibited.

Electric cooperatives with more than 170,000 members. At the board's discretion, the board could convene an executive session, to which the

members would not have access, to deliberate and take action on sensitive matters, such as confidential personnel information, contracts, lawsuits, real estate transactions, competitively sensitive information, or security information.

The board would be required to reconvene the open session of the regular or special board meeting to announce the final action taken on a matter discussed in executive session, except involving sensitive matters.

The board secretary would be required to keep written minutes of each regular or special board meeting, as well as a written or audio record of each executive session. The records would be required to be preserved for at least two years.

The board would be required to adopt and comply with procedures for providing a member with access to the entirety of a regular or special board meeting, other than an executive session.

Electric cooperatives with 170,000 members or less. Electric cooperatives with 170,000 members or less would be required to hold an election every five years, beginning December 31, 2010, on whether to make the above board meeting requirements applicable to them.

Notice of board meetings. A board would be required to give members notice of the date, hour, place, and planned agenda of a regular or special board meeting at least three days before the meeting.

In the event of an emergency, notice could be given at any time before a regular or special board meeting was convened. Any action taken by the board at that meeting would have to be ratified.

Access to records. A member of an electric cooperative would be able to inspect and copy the books and records of the cooperative. An electric cooperative could charge a member for the cost of providing information.

An electric cooperative could limit or deny a member's request to inspect its books and records if the member requested sensitive, confidential, privileged, or proprietary information.

Policies and audit. A board would be required to adopt written policies relating to travel expenditures, reimbursement of expenses, conflicts of

interest, whistleblower protections, criteria of contracted professional services, budgets, and the creation of an audit committee that would audit the actions of the board.

An electric cooperative would be required to have an independent financial audit performed annually.

Complaints by members. A member could file a written complaint with the general manager of an electric cooperative if the member was aggrieved by an action of the board, by an employee of the board, or of the cooperative that the member alleged infringed on a right of the member.

Within 20 days of the complaint, the general manager would be required to take corrective action if it was determined that the member's rights were infringed on.

If the general manager determined that the action complained of did not infringe on the member's rights, or if the general manager failed to resolve the complaint to the member's satisfaction before the 21st day after the general manager received the complaint, the member could file a complaint with the attorney general's consumer protection division. An electric cooperative would be required to cooperate and provide promptly any requested information to the attorney general.

Prohibition on acquisition of generator capacity. An electric cooperative with more than 170,000 members would not be able to acquire equipment capable of generating electricity for sale, other than equipment that used an alternative energy resource, unless approved by the Public Utility Commission (PUC). The PUC, by rule, would be required to establish the standards and procedures for approval.

Notification of certain investments. Within 30 days of completion of a transaction resulting in an electric cooperative creating or acquiring an interest in an entity that did not generate, transmit, or distribute electricity, the cooperative would be required to provide a notice containing certain information about the entity to members.

Effective date: CSSB 971 would take effect September 1, 2009, and would not be retroactive.

**SUPPORTERS
SAY:**

Issues have been raised related specifically to the Pedernales Electric Cooperative (PEC), including lack of access to board meetings and public information, misappropriation of funds, and irregularities in director elections. CSSB 921 would bring more transparency and accountability not only to PEC, but also to all electric cooperatives around the state. The laws governing electric cooperatives now establish only a rough framework for organization and operation. The bylaws adopted by a board have the biggest impact on the election of board members and on how an electric cooperative functions. SB 921 would provide guidelines to ensure open meetings, records, and director elections while maintaining local control.

CSSB 921 would address issues that were an isolated problem at the PEC without over-regulating other electric cooperatives. The language in the committee substitute would address many of the concerns expressed over provisions contained in the bill as filed. The committee substitute is the product of a stakeholder process with input from electric cooperatives. The provisions of the bill would mirror the best management practices currently utilized at other electric cooperatives. Also, concerns were addressed regarding the open meetings and records requirements, because they were the same rules that governmental entities abide by. Because electric cooperatives are not governmental entities, those requirements were not entirely appropriate. The substitute would tailor the provisions to fit better the operation of an electric cooperative.

**OPPONENTS
SAY:**

CSSB 921 would impose requirements that already are the best management practices at electric cooperatives, including at the PEC under its current board. The problems with electric cooperatives were isolated to the PEC under a board that is no longer in control.

CSSB 921 contains provisions that are bracketed specifically for the PEC. It is questionable public policy for legislation to target one entity specifically.

NOTES:

The House committee substitute differs from the Senate version by:

- changing the provisions regarding open meetings and records to affect electric cooperatives rather than governmental entities.
- providing requirements for the PEC regarding the conduct of board meetings and requiring other cooperatives to hold an election on the question of whether to adopt those requirements;

- allowing a member to file a further complaint with the attorney general, rather than the PUC;
- including equipment that used alternative energy resources as an exception to the PEC's prohibition against acquiring equipment capable of generating electricity without PUC approval.