

## **BILL ANALYSIS**

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S.B. 921  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

During the legislative interim, some light was shed on problems concerning management practices at the Pedernales Electric Cooperative (PEC), including lack of transparency in records and meetings by the board of directors and senior management and unfair elections. While the law governing electric cooperatives establishes a rough framework for organization and operation of the entities, the bylaws adopted by the board have the biggest impact on how an electric cooperative functions and the election of board members.

PEC's board of directors have the ability to utilize a cooperative member's vote via proxy for a "board approved" slate of candidates, thus undermining cooperative members' potential to affect any change at the board level. This bill would address the rights of members to access board meetings and cooperative records.

As proposed, S.B. 921 requires elections for an electric cooperative's board of directors to be conducted in a manner that is fair and open to all members of the electric cooperative. This bill sets forth requirements of a board of a cooperative and the rights of members of a cooperative.

### **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 161.002, Utilities Code, by adding Subdivision (2-a), to define "board meeting."

SECTION 2. Amends Section 161.064(b), Utilities Code, to authorize the bylaws to contain any provision for the regulation and management of the affairs of the electric cooperative (cooperative) that is consistent with the articles of incorporation and this chapter.

SECTION 3. Amends Section 161.072, Utilities Code, by adding Subsections (c)-(m), as follows:

- (c) Requires that director elections be conducted in a manner that is fair and open to all members of the electric cooperative.
- (d) Prohibits a board committee of a cooperative with more than 210,000 members from casting a member's proxy vote in a director election.
- (e) Prohibits a director who is standing for reelection to the board of a cooperative with not more than 210,000 members from serving 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.
- (f) Authorizes a member's proxy vote to be cast in a director election only if the proxy form meets certain requirements.

(g) Prohibits Subsections (d) and (f) from being construed as limiting the right of an individual member to collect or cast the proxy votes of another member in a director election, if allowed by the bylaws.

(h) Prohibits this section from being construed as limiting the use of a proxy as provided by Section 161.069 (Quorum of Members) to establish a quorum to transact business other than the election of a director.

(i) Prohibits a person from using an incentive or other enticement to encourage a member to authorize another person to cast the member's proxy vote in a director election.

(j) Authorizes a cooperative with more than 210,000 members to elect directors only by district. Authorizes a member to vote for a director to represent a district only if the member resides in that district.

(k) Authorizes a cooperative with more than 210,000 members to nominate qualified members as candidates in a director election only through a written petition by members. Requires that the bylaws specify certain information.

(l) Requires that the bylaws also specify other certain information, if the bylaws of a cooperative with not more than 210,000 members allow a committee of members to nominate qualified members as candidates in a director election.

(m) Requires that a petition submitted under Subsection (l) provide on the petition the name and address of the member seeking nomination and, if the cooperative nominates or elects directors by district, the district the member seeks to represent.

#### SECTION 4. Amends Section 161.075, Utilities Code, as follows:

Sec. 161.075. BOARD MEETINGS. (a) Requires the board of directors of an electric cooperative (board) to hold a regular or special board meeting at the place and on notice as provided by Section 161.0751 and the bylaws, rather than on the notice prescribed by the bylaws. Entitles each member of the cooperative to attend a regular or special board meeting, except as provided by Section 161.0752.

(b) Provides that the attendance of a director at a board meeting constitutes a waiver of notice to the director of the meeting unless the director attends the meeting for the express purpose of objecting to the transaction of business at the meeting because the meeting is not lawfully called or convened.

(c) Provides that a notice or waiver of notice of a board meeting given to a director is not required to specify the business to be transacted at the meeting or the purpose of the meeting.

(d) Requires the board to keep a record of each regular or special board meeting, in the form of written minutes or a taped recording of the meeting. Requires that a record of a meeting state the subject of each deliberation and indicate each vote, order, decision, or other action by the board. Requires the board to make meeting records available to a member for inspection and copying on the member's written request to the board secretary or to a person the secretary designates.

(e) Authorizes a member attending a regular or special board meeting to record all or part of the meeting by any means of audio or visual reproduction, including a tape recorder or video camera.

(f) Authorizes the board to adopt reasonable rules to maintain order at a regular or special board meeting, including rules relating to the location of recording equipment and the manner in which recording is authorized to be conducted. Prohibits a rule adopted by the board under this section from preventing or unreasonably impairing a member from exercising a right granted by this section.

SECTION 5. Amends Subchapter B, Chapter 161, Utilities Code, by adding Sections 161.0751 and 161.0752, as follows:

Sec. 161.0751. NOTICE OF BOARD MEETINGS. (a) Requires the board to give members and the media written notice of the date, hour, place, and subject of a regular or special board meeting. Requires that notice of a board meeting be given by certain means at least 72 hours before the scheduled time of the meeting.

(b) Provides that if the board recesses a regular or special board meeting to continue the following regular business day, the board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section and Section 161.075. Requires the board, if a regular or special board meeting is continued to the following regular business day, and on that following day the board continues the meeting to another day, to give written notice as required by this section of the meeting continued to that other day.

(c) Authorizes notice, in the event of an emergency or urgent necessity that requires immediate board action to meet a reasonably unforeseeable situation, to be given in the manner prescribed by Subsection (a) at least two hours before a regular or special board meeting is convened, in order to call an emergency board meeting or add a subject to the agenda of a previously scheduled board meeting.

(d) Requires that notice under Subsection (c) clearly identify the emergency or urgent necessity for which the notice is given. Requires the board secretary or person the secretary designates, if the board adds a subject to the agenda of a previously scheduled regular or special board meeting, to post a copy of the revised agenda on the cooperative's Internet website, if the cooperative maintains a website, and physically at the cooperative's headquarters and each district office, not less than two hours before the meeting convenes.

(e) Provides that if, at a regular or special board meeting, a member makes an inquiry regarding a subject for which notice has not been given as required by this section, the notice provisions of this section do not apply to a statement by the board of specific factual information given in response to the inquiry or a recitation of existing policy in response to the inquiry.

(f) Requires that any deliberation of or decision relating to the subject of an inquiry made under Subsection (e) be limited to a proposal to place the subject on the agenda for a subsequent board meeting.

Sec. 161.0752. EXECUTIVE SESSIONS. (a) Requires the board, before calling an executive session, to convene in a regular or special board meeting for which notice has been given as provided by Section 161.0751. Authorizes the presiding director, during that board meeting, to call an executive session by announcing that an executive session will be held to deliberate a matter described by Subsection (d) and identifying the specific subdivision of Subsection (d) under which the executive session will be held.

(b) Authorizes, except as provided by Subsection (c), a final action, decision, or vote on a matter deliberated in an executive session to only be made in a regular or special board meeting for which notice has been given as provided by Section 161.0751.

(c) Authorizes the board to take action in an executive session for matters described by Subsections (d)(2), (4), and (5).

(d) Authorizes the board to hold an executive session to which the members do not have access to deliberate:

(1) anticipated or pending litigation, settlement offers, or interpretations of the law with the cooperative's legal counsel and with any other person the board considers necessary;

(2) the purchase, exchange, lease, or value of real property, if the board determines in good faith that deliberation in an open board meeting may have a detrimental effect on the cooperative;

(3) business and financial issues relating to the negotiation of a contract, if the board determines in good faith that deliberation in an open board meeting may have a detrimental effect on the position of the cooperative;

(4) personnel issues, and complaints or charges against a director or cooperative employee or consultant, unless the director or employee who is the subject of the deliberation requests a public hearing;

(5) utility-related matters and commercial information that the board determines in good faith are related to the cooperative's competitive activity but only to the extent the board specifically determines that disclosure of the information could give an advantage to competitors or potential competitors; or

(6) issues related to security of the cooperative, including security personnel, security devices, and security audits.

(e) Requires the board secretary or a person the secretary designates to make and keep a written or audio record of each executive session and to preserve the record for at least two years following the session. Sets forth certain requirements of the record.

SECTION 6. Amends Section 161.077, Utilities Code, by adding Subsection (d), to provide that the provisions of this chapter that apply to the board also apply to the executive committee.

SECTION 7. Amends Subchapter B, Chapter 161, Utilities Code, by adding Sections 161.080-161.083, as follows:

Sec. 161.080. MEMBER'S RIGHT OF ACCESS TO RECORDS. (a) Authorizes a member of a cooperative, except as provided by Subsection (c), at any reasonable time and on written request that states the purpose of the request, to inspect books and records of the cooperative relevant to that purpose and at the member's own expense, copy records the member is entitled to inspect under this section.

(b) Authorizes a cooperative to charge a reasonable fee to the member if fulfilling the member's request will require a large amount of employee time.

(c) Authorizes a cooperative to reject or limit a member's request to inspect its books and records for certain reasons.

Sec. 161.081. POLICIES AND AUDITS. (a) Requires the board to adopt certain written policies.

(b) Requires a cooperative to provide for an independent financial audit, to be performed annually by an unaffiliated entity that is professionally qualified to perform such an audit.

(c) Authorizes the state auditor to audit the financial transactions and operations of a cooperative, at the cooperative's expense.

Sec. 161.082. COMPLAINTS BY MEMBERS. (a) Defines "commission."

(b) Authorizes a member to file a written complaint with the general manager of the cooperative if the member is aggrieved by an action of the board or by an employee of the board or of the cooperative that the member alleges infringes on a right of the member under this chapter.

(c) Requires the general manager, not later than the 20th day after the date the general manager receives a complaint under Subsection (b), to take corrective action regarding the complaint, if the general manager determines that the action complained of infringed on the member's rights under this chapter.

(d) Authorizes the member to file a written complaint with the Public Utility Commission (PUC) if the general manager determines that the action complained of did not infringe on the member's rights under this chapter, or if the general manager otherwise fails to resolve the member's complaint to the member's satisfaction before the 21st day after the general manager receives the member's complaint. Sets forth certain requirements of a complaint filed with PUC under this subsection.

(e) Authorizes PUC, in reviewing a member's complaint under this section, to request that the cooperative provide to PUC any information relevant to the complaint. Requires PUC to give a cooperative a reasonable opportunity to inspect and copy the requested information before providing the information to PUC. Requires PUC to designate an employee of PUC to be the person responsible for receiving, inspecting, or copying information received under this subsection.

(f) Requires a cooperative to cooperate with a request for information under Subsection (e) and to promptly provide the requested information to PUC's designated employee. Prohibits PUC from disclosing to any person information provided by a cooperative in response to the request unless PUC is required by a court to provide the information to the person, the person is an authorized employee of PUC, or the cooperative that provided the information consents to the disclosure.

(g) Requires PUC to give a cooperative notice before using information provided in response to a request under Subsection (e) in a contested case hearing. Requires the administrative judge presiding over the contested case hearing, on objection by the cooperative that the information is confidential or sensitive, to determine whether the information is admissible in the hearing.

(h) Requires PUC to return to a cooperative any information provided under this section that is confidential or sensitive to the cooperative.

Sec. 161.083. ALTERNATIVE DISPUTE RESOLUTION. Authorizes PUC to refer a complaint made under Section 161.082(d) to the State Office of Administrative Hearings as provided by Section 14.0025 (Negotiated Rulemaking and Alternative Dispute Resolution) for alternative dispute resolution if PUC determines a referral is in the public interest.

SECTION 8. Amends Subchapter C, Chapter 161, Utilities Code, by adding Sections 161.126 and 161.127, as follows:

Sec. 161.126. PROHIBITION ON ACQUISITION OF GENERATOR CAPACITY BY CERTAIN ELECTRIC COOPERATIVES. Prohibits a cooperative with more than 210,000 members that provides retail electric service from acquiring equipment capable of generating electricity for sale unless PUC first approves of the acquisition. Requires PUC by rule to establish the standards and procedures by which it will approve a cooperative's acquisition of electric generation capacity.

Sec. 161.127. NOTIFICATION OF CERTAIN INVESTMENTS. Requires the cooperative, not later than the 30th day following the completion of a transaction that results in a cooperative or an affiliate of the cooperative creating, acquiring, or receiving an interest in an entity that does not generate, transmit, or distribute electricity, to provide a notice to members that contains certain information.

SECTION 9. (a) Makes application of Section 161.072, Utilities Code, as amended by this Act, prospective.

(b) Makes application of Section 161.075, Utilities Code, as amended by this Act, and Sections 161.0751 and 161.0752, Utilities Code, as added by this Act, prospective.

(c) Makes application of Sections 161.080, 161.082, and 161.083, Utilities Code, as added by this Act, prospective.

(d) Makes application of Section 161.127, Utilities Code, as added by this Act, prospective.

SECTION 10. Effective date: September 1, 2009.