

BILL ANALYSIS

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S.B. 1743
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2008, some light was shed on problems concerning management practices at electric cooperatives, including unfair elections and lack of transparency in records and meetings by the board of directors and senior management. While the law governing the 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.

A board of directors of an electric cooperative has the ability to use a cooperative member's vote via proxy for a board approval 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.

S.B. 1743 requires elections for an electric cooperative's board of directors to be conducted in a manner than is fair and open to all members of the electric cooperative, and establishes other requirements relating to such elections. This bill sets forth requirements relating to board meetings and the rights of members of a cooperative. The bill includes restrictions on the acquisition of generator capacity by certain cooperatives.

As proposed, S.B. 1743 amends current law relating to access by members of electric cooperatives to meetings of the boards of directors and certain information of the electric cooperatives.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 10 (Section 161.126, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 161.002, Utilities Code, by adding Subdivision (2-a) to define "board meeting."

SECTION 2. Amends Subchapter A, Chapter 161, Utilities Code, by adding Section 161.006, as follows:

Sec. 161.006. NONAPPLICABILITY. Provides that the following sections of this chapter do not apply to an electric cooperative that engages exclusively or primarily in the wholesale sale or transmission of electricity and does not have a certificated service area for the retail sale of electricity.

- (1) Sections 161.075(a), (d), (e), (f), (g), (h), (i), (j), and (k);
- (2) Section 161.0751;
- (3) Section 161.077(d);
- (4) Section 161.080;

(5) Section 161.081;

(6) Section 161.126; and

(7) Section 161.127.

SECTION 3. 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 that is consistent with the articles of incorporation and this chapter.

SECTION 4. Amends Section 161.072, Utilities Code by adding Subsection (c) to require that director elections be conducted in a manner that is fair and open to all members of the electric cooperative.

SECTION 5. Amends Subchapter B, Chapter 161, Utilities Code, by adding Sections 161.0721 and 161.0722, as follows:

Sec. 161.0721. ELECTION OF DIRECTORS IN LARGE COOPERATIVES. (a) Provides that this section applies only to an electric cooperative with more than 170,000 members.

(b) Authorizes directors to be elected only by district. Requires the board of directors of an electric cooperative (board) to establish single-member districts from which the directors are to be elected. Requires the board, in establishing districts, to attempt to have directors represent geographic areas with equal numbers of people.

(c) Authorizes a member to vote for a director to represent a district only if the member resides in that district.

(d) Authorizes qualified members to be nominated as candidates in a director election only through a written petition by members. Requires that the bylaws of the electric cooperative specify the number of printed names and dated signatures a petition nominating a candidate is required to contain, specify a period within which a petition nominating a candidate is required to be submitted to the electric cooperative, and specify that only members residing in a district are authorized to sign a petition for the nomination of a candidate to represent that district.

(e) Prohibits a director or board committee from casting a member's proxy vote in a director election.

(f) Prohibits Subsection (e) from being construed as limiting the right of an individual member to collect or cast a proxy vote of another member in a director election to the extent allowed by the bylaws of the electric cooperative.

(g) 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.

(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.

Sec. 161.0722. ELECTION OF DIRECTORS IN SMALL COOPERATIVES. (a) Provides that this section applies only to an electric cooperative with not more than 170,000 members.

(b) Prohibits a director who is standing for reelection from serving on a committee established under the bylaws of the electric cooperative for the purpose

of casting, or being authorized to cast, the proxy vote of a member in a director election.

(c) Authorizes a member's proxy vote to be cast in a director election only if:

(1) a proxy form is sent by regular mail to each member of record not later than the 30th day before the date of the meeting at which proxy votes are counted;

(2) the proxy form designates each candidate who is an incumbent director;

(3) an exact copy of the proxy form is posted on the electric cooperative's Internet website, if the cooperative maintains a website;

(4) the proxy form includes information describing the process by which proxy votes are authorized and cast, including:

(A) the name of each member of the committee, if any, established under the bylaws of the electric cooperative for the purpose of casting proxy votes in a director election;

(B) the process prescribed by the bylaws of the electric cooperative for selecting members to serve on the committee; and

(C) the district represented by each committee member, if applicable; and

(5) the proxy form contains the following statements, in bold type:

(A) "If you grant the committee your proxy, you are giving the committee full authority to vote your proxy for the candidates you selected, or, if you did not select any candidates, to vote your proxy for candidates the committee selects.";

(B) "You may rescind your proxy at any time before votes are cast at the meeting to elect directors."; and

(C) "State law prohibits any person from using incentives or other enticements to encourage you to provide your proxy in any board election."

(d) Prohibits Subsection (c) from being construed as limiting the right of an individual member to collect or cast a proxy vote of another member in a director election to the extent allowed by the bylaws of the electric cooperative.

(e) 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.

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

(g) Requires that the bylaws, if the bylaws of the electric cooperative allow a committee of members to nominate qualified members as candidates in a director election, also allow nominations to be made through one or more written petitions by members, specify the number of printed names and dated signatures a petition nominating a candidate must contain, and specify a period within which a petition nominating a candidate must be submitted to the electric cooperative.

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

SECTION 6. Amends Section 161.075, Utilities Code, as follows:

Sec. 161.075. BOARD MEETINGS. (a) Requires the board to hold a regular or special board meeting at the place and time specified by the notice required by Section 161.0751 and the bylaws of the electric cooperative, rather than requires the board to hold a regular or special board meeting at the place and on the notice prescribed by the bylaws.

(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) Entitles each member of the electric cooperative, except as provided by this section, to attend a regular or special board meeting. Prohibits a person who is not a member of the electric cooperative from attending a regular or special board meeting unless the person has been invited by a member.

(e) Authorizes the board, at the board's discretion, to convene an executive session to which the members do not have access to deliberate and take action on sensitive matters, such as matters involving confidential personnel information, contracts, lawsuits, real estate transactions, competitively sensitive information, information related to the security of the electrical system or the electric cooperative, or other privileged, confidential, or proprietary information.

(f) Requires the board 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 matters involving confidential personnel information, real estate transactions, competitively sensitive information, or security information.

(g) Requires the board secretary or person designated by the secretary to make and keep written minutes of each regular or special board meeting.

(h) Requires the board 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.

(i) Requires the board secretary or person designated by the secretary to make and keep a written or audio record of each executive session. Requires the secretary to preserve the record for at least two years after the session. Requires that the record include a statement of the subject matter of each deliberation, a record of any further action taken, and an announcement by the presiding director at the beginning and end of the session indicating the date and time.

(j) Provides that Subsections (d), (e), (f), (g), (h), and (i) apply to an electric cooperative with more than 170,000 members.

(k) Requires an electric cooperative with not more than 170,000 members to hold an election at the electric cooperative's first annual meeting held after December 31, 2011, on the question of whether the electric cooperative will be subject to the

requirements of Subsections (d)-(i). Requires the electric cooperative, if a majority of the members voting at the election vote in favor of the electric cooperative remaining subject to those requirements, to hold another election on the same question at every subsequent fifth annual meeting until the majority of members voting at an election under this subsection vote against the electric cooperative remaining subject to those requirements.

SECTION 7. Amends Subchapter B, Chapter 161, Utilities Code, by adding Section 161.0751, as follows:

Sec. 161.0751. NOTICE OF BOARD MEETINGS. (a) Requires the board to give members notice of the date, hour, place, and planned agenda of a regular or special board meeting. Requires that notice of a board meeting be given at least three days before the scheduled time of the meeting by:

- (1) posting a notice on a bulletin board in a place convenient to members at the electric cooperative's main office and at each district office;
- (2) posting a notice on the electric cooperative's Internet website, if the cooperative maintains a website; and
- (3) providing a copy of the notice to a member upon a member's request.

(b) Authorizes notice, in the event of an emergency or urgent matter, to be given in the manner prescribed by Subsection (a) at any time before a regular or special board meeting is convened. Requires that an action taken by the board at a meeting for which notice is given under this subsection be ratified by the board at the next meeting for which notice is given under Subsection (a).

SECTION 8. 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 9. Amends Subchapter B, Chapter 161, Utilities Code, by adding Sections 161.080 and 161.081, as follows:

Sec. 161.080. MEMBER'S RIGHT OF ACCESS TO RECORDS. (a) Authorizes a member of an electric cooperative, except as provided by Subsection (c), to, at any reasonable time and on written request that states a proper purpose for the request, inspect and copy the books and records of the electric cooperative relevant to that purpose.

(b) Authorizes an electric cooperative to charge a member for the cost of providing information under Subsection (a).

(c) Authorizes an electric cooperative to limit or deny a member's request to inspect its books and records if the member:

- (1) does not meet the requirements of Subsection (a);
- (2) seeks information the release of which would unduly infringe on or invade the privacy of a person;
- (3) seeks information related to a trade secret;
- (4) seeks personnel information the disclosure of which would violate other law or would constitute a clearly unwarranted invasion of personal privacy;
- (5) seeks information related to:

(A) pending or reasonably anticipated litigation;

(B) a real estate transaction for a project that has not been formally announced or for which contracts have not been formally awarded;

(C) the electric cooperative's competitive activity, including commercial information and utility-related matters that would, if disclosed, give an advantage to a competitor or prospective competitor; or

(D) the security of the electric cooperative's electrical system; or

(6) seeks information that is confidential, privileged, or proprietary.

Sec. 161.081. POLICIES AND AUDIT. (a) Requires the board to adopt written policies relating to travel expenditures for board members, officers, and employees; reimbursement of expenses for board members, officers, and employees; conflicts of interest for board members, officers, and employees; whistle-blower protections; criteria and procedures for the selection, monitoring, review, and evaluation of outside vendors or contracted professional services; budgets for use in planning and controlling costs; and the creation of a committee that audits the actions of the board.

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

SECTION 10. 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 an electric cooperative with more than 170,000 members that provides retail electric service from acquiring equipment capable of generating electricity for sale other than equipment that uses an alternative energy resource unless the Public Utility Commission of Texas (PUC) first approves of the acquisition. Requires PUC by rule to establish the standards and procedures by which it will approve an electric cooperative's acquisition of electric generation capacity.

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

SECTION 11. (a) Makes application of Section 161.072, Utilities Code, as amended by this Act, and Sections 161.0721 and 161.0722, Utilities Code, as added by this Act, prospective.

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

(c) Makes application of Section 161.080, Utilities Code, as added by this Act, prospective.

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

SECTION 12. Effective date: September 1, 2011.