

BILL ANALYSIS

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C.S.S.B. 1743
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2008, some light was shed on problems concerning management practices at Pedernales Electric Cooperative, 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.

C.S.S.B. 1743 requires elections for the Pedernales Electric Cooperative's board of directors to be conducted in a manner that 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 this cooperative to access cooperative information. The bill includes restrictions on the acquisition of generator capacity by the cooperative.

C.S.S.B. 1743 amends current law relating to access by members to certain 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 2 (Section 161.126, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 161, Utilities Code, by adding Sections 161.0721, 161.0751, 161.0752, 161.080, and 161.081, 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 180,000 members that is partially located in a county with a population of more than one million and less than 1.5 million.

(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. 161.0751. BOARD MEETINGS IN CERTAIN LARGE COOPERATIVES. (a) Provides that this section applies only to an electric cooperative with more than 180,000 members that is partially located in a county with a population of more than one million and less than 1.5 million.

(b) Requires the board to hold a regular or special board meeting at the place and time specified by the notice required by Section 161.0752 and the bylaws of the electric cooperative.

(c) 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.

(d) Provides that a notice or waiver of notice to 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.

(e) 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.

(f) 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.

(g) 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.

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

(i) 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.

(j) 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.

Sec. 161.0752. NOTICE OF BOARD MEETINGS IN CERTAIN COOPERATIVES. (a) Provides that this section applies only to an electric cooperative with more than 180,000 members that is partially located in a county with a population of more than one million and less than 1.5 million.

(b) 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.

(c) Authorizes notice, in the event of an emergency or urgent matter, to be given in the manner prescribed by Subsection (b) 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 (b).

Sec. 161.080. MEMBER'S RIGHT OF ACCESS TO RECORDS IN CERTAIN COOPERATIVES. (a) Provides that this section applies only to an electric cooperative with more than 180,000 members that is partially located in a county with a population of more than one million and less than 1.5 million.

(b) Authorizes a member of an electric cooperative, except as provided by Subsection (d), 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.

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

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

(1) seeks information the release of which would unduly infringe on or invade the privacy of a person;

(2) seeks information related to a trade secret;

(3) seeks personnel information the disclosure of which would violate other law or would constitute a clearly unwarranted invasion of personal privacy;

(4) 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

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

Sec. 161.081. POLICIES AND AUDIT IN CERTAIN COOPERATIVES. (a) Provides that this section applies only to an electric cooperative with more than 180,000 members that is partially located in a county with a population of more than one million and less than 1.5 million.

(b) 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.

(c) 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 2. 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. (a) Provides that this section applies only to an electric cooperative with more than 180,000 members that is partially located in a county with a population of more than one million and less than 1.5 million.

(b) Prohibits an electric cooperative from acquiring equipment capable of generating electricity for sale 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. (a) Provides that this section applies only to an electric cooperative with more than 180,000 members that is partially located in a county with a population of more than one million and less than 1.5 million.

(b) 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 required content of the notice.

SECTION 3. (a) Makes application of Section 161.0721, Utilities Code, as added by this Act, prospective.

(b) Makes application of Section 161.0751, Utilities Code, and Section 161.0752, 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 4. Effective date: September 1, 2011.