

## BILL ANALYSIS

Senate Research Center

S.B. 2  
By: Hancock  
Business & Commerce  
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Enrolled

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

#### S.B. 2 - ERCOT Board Reform

February's winter storm exposed a range of weaknesses in the governance, administration, and infrastructure of the Texas electric grid. Elected officials in the Texas Legislature and statewide have expressed a desire for increased oversight in the selection of the leadership of the Board of Directors (BoD) of the Electric Reliability Council of Texas (ERCOT), the independent system operator responsible for operating the Texas grid. S.B. 2 would modify ERCOT's 16-member BoD to give state leadership more influence over its operations.

Changes in S.B. 2 as-filed:

S.B. 2 would require ERCOT's chairman and the members of its BoD to live in Texas. The ERCOT grid is unique in its energy-only market structure, and qualified utility professionals who have worked in this market should be the ones in charge of discussing any modifications to market protocols and other governance issues that the BoD considers.

The bill would require the chairman of the board to be selected by the governor and the proposed chairman would then require Texas Senate (senate) confirmation.

Currently, all protocol changes, from administrative to market protocols, are proposed by sub-groups within ERCOT (such as the Technical Advisory Committee, or TAC) and then adopted by the BoD. S.B. 2 would require all changes to ERCOT protocols to be presented to the Public Utility Commission of Texas (PUC) before adoption so that the PUC commissioners (all three of whom are governor appointees confirmed by the senate) would have the opportunity to veto any changes before they go into effect.

The bill would increase the eligibility requirement in the generation industry segment to require five percent ownership of the statewide fleet. This increase would ensure that the generation assets that the state depends on most are better represented in that market segment.

Current Board Structure:

Chair:

Vacant - Unaffiliated

Vice Chair:

Vacant - Unaffiliated

Board Members:

Mark Carpenter - Investor-Owned Utility Segment

Lori Cobos - Consumer - Residential Segment - Ex Officio

Arthur D'Andrea - PUC Chairman - Non-Voting - Ex Officio

Keith Emery - Independent Power Marketer Segment

Nick Fehrenbach - Consumer - Commercial Segment

Kevin Gresham - Independent Generator Segment

Sam Harper - Consumer - Industrial Segment

Bill Magness - ERCOT Chief Executive Officer - Ex Officio

Shannon McClendon - Independent Retail Electric Provider Segment

Julie Parsley - Cooperative Segment

Vacant - Unaffiliated

Vacant - Unaffiliated

Vacant - Unaffiliated

Vacant - Municipal Segment

(Original Author's / Sponsor's Statement of Intent)

S.B. 2 amends current law relating to the governance of the Public Utility Commission of Texas, the Office of Public Utility Counsel, and an independent organization certified to manage a power region.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Public Utility Commission of Texas is modified in SECTION 3 (Section 39.151, Utilities Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter B, Chapter 12, Utilities Code, by adding Section 12.0521, as follows:

Sec. 12.0521. PRESIDING OFFICER QUALIFICATIONS. Requires the Public Utility Commission of Texas (PUC) commissioner designated as the presiding officer of the PUC to be a resident of this state.

SECTION 2. Amends Section 13.022(a), Utilities Code, to require the chief executive of the Office of Public Utility Counsel to be a resident of this state.

SECTION 3. Amends Section 39.151, Utilities Code, by amending Subsections (d), (g), and (g-1) and adding Subsections (g-2), (g-3), (g-4), (g-5), and (g-6), as follows:

(d) Prohibits rules adopted by an independent organization and enforcement actions taken by the organization under delegated authority from the PUC from taking effect before receiving PUC approval. Makes nonsubstantive changes.

(g) Requires an organization's governing body, to maintain certification as an independent organization for the Electric Reliability Council of Texas (ERCOT) power region under Section 39.151 (Essential Organizations), to be composed of persons selected by the ERCOT board selection committee (committee), rather than to be

composed of persons specified by Section 39.151 and selected in accordance with formal bylaws or protocols of the organization.

(g-1) Creates this subsection from existing text. Requires that the independent organization's governing bylaws require that every member of the governing body be a resident of this state and prohibit a legislator from serving as a member. Requires that the governing body be composed of:

(1) and (2) makes no changes to these subdivisions;

(3) the chief executive officer of the independent organization as an ex officio nonvoting member, rather than as an ex officio voting member; and

(4) eight members selected by the committee under Section 39.1513 with executive-level experience in any of certain profession, including finance, business, engineering, including electrical engineering, trading, risk management, law, or electric market design.

Deletes existing text requiring that the bylaws specify the process by which appropriate stakeholders elect members and, for unaffiliated members, prescribe professional qualifications for selection as a member. Deletes existing text requiring that the bylaws require the use of a professional search firm to identify candidates for membership of unaffiliated members, and requiring that the process allow for PUC input in identifying candidates. Deletes existing text requiring that the governing body be composed of six market participants elected by certain respective market segments to serve one-year terms; one member representing industrial consumer interests and elected by the industrial consumer market segment to serve a one-year term; one member representing large commercial consumer interests selected in accordance with the bylaws to serve a one-year term; and five members unaffiliated with any market segment who are required to be appointed by the governor with the advice and consent of the senate to serve two-year terms, rather than five members unaffiliated with any market segment and selected by the other members of the governing body to serve three-year terms. Deletes existing text requiring the presiding officer to be one of the members described by Subsection (g)(7) (relating to five members unaffiliated with any market segment and selected by the other members of the governing body).

(g-2) Creates this subsection from existing text. Provides that members of the governing body are entitled to receive a salary for their service. Makes a nonsubstantive change.

(g-3) Provides that a person does not qualify for selection as a member of the governing body of an independent organization for the ERCOT power region if the person has a fiduciary duty or assets in the electricity market for that region.

(g-4) Prohibits the organization's governing body, to maintain certification as an independent organization under Section 39.151, from including more than two members who are employed by an institution of higher education, as defined by Section 61.003 (Definitions), Education Code, in a professorial role.

(g-5) Prohibits a former member of the governing body of an independent organization certified under Section 39.151 from, before the second anniversary of the date the member ceases to be a member of the governing body, engaging in an activity that requires registration under Chapter 305 (Registration of Lobbyists), Government Code.

(g-6) Requires the independent organization's governing body, to maintain certification as an independent organization under Section 39.151, to establish and implement a formal process for adopting new protocols or revisions to existing protocols. Requires that the process require that new or revised protocols are prohibited from taking effect until the PUC approves a market impact statement describing the new or revised protocols.

SECTION 4. Amends Subchapter D, Chapter 39, Utilities Code, by adding Section 39.1513, as follows:

Sec. 39.1513. ERCOT BOARD SELECTION COMMITTEE. (a) Provides that the committee is composed of one member appointed by the governor, one member appointed by the lieutenant governor, and one member appointed by the speaker of the Texas House of Representatives.

(b) Prohibits a person from being appointed as a member of the committee unless the person is a resident of this state.

(c) Provides that a member of the committee is not entitled to compensation for serving as a member but is entitled to reimbursement for actual and necessary expenses incurred in performing the official duties of office.

(d) Requires the committee to select members eligible under Section 39.151 to serve on the governing body of an independent organization certified under that section for the ERCOT power region and to designate the chair and vice chair of the governing body from those members.

(e) Requires the committee to retain an outside consulting firm to help select members of the governing body under Subsection (d).

SECTION 5. Requires an independent organization certified under Section 39.151, Utilities Code, by the PUC before September 1, 2021, to modify the organization to comply with Section 39.151, Utilities Code, as amended by this Act. Authorizes the PUC, after September 1, 2021, to decertify an independent organization that does not comply with Section 39.151, Utilities Code, as amended by this Act.

SECTION 6. Effective date: upon passage or September 1, 2021.