

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 2
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Committee Report (Substituted)

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)

C.S.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 Section 12.052(a), Utilities Code, to require the commissioner designated as the presiding officer of the Public Utility Commission of Texas (PUC) by the governor 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), and (g-4), as follows:

(d) Authorizes the PUC to delegate to an independent organization responsibilities for adopting, rather than establishing, certain rules. 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 that an 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. Authorizes, rather than requires, the bylaws to require the use of a professional search firm to identify candidates for members described by Subdivisions (4), (5), and (6) (relating to members representing certain markets and interests), rather

than to identify candidates for membership of unaffiliated members. 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 voting member, who is required to be appointed by the governor with the advice and consent of the Texas Senate (senate), rather than the chief executive officer of the independent organization as an ex officio voting member;

(4) six market participants elected by their respective market segments to serve two-year terms, rather than one-year terms, with:

(A) one representing independent generators, elected by a majority vote of the members of this market segment who each own and control five percent or more of the installed generation capacity located in the power region, rather than one representing independent generators;

(B) and (C) makes no changes to these paragraphs;

(D) one representing retail electric providers who is prohibited from being affiliated with an independent generator, rather than one representing retail electric providers; and

(E) and (F) makes no changes to these paragraphs;

(5) one member representing industrial consumer interests and elected by the industrial consumer market segment to serve a two-year term, rather than a one-year term;

(6) one member representing large commercial consumer interests selected in accordance with the bylaws to serve a two-year term, rather than a one-year term; and

(7) 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.

Makes nonsubstantive changes.

(g-1) Requires that the bylaws of an independent organization require that the presiding officer and vice presiding officer of the governing body be members described by Subsection (g)(7) and be selected by the governor with the advice and consent of the senate. Makes nonsubstantive changes.

(g-2) Provides that a person does not qualify for appointment as a member of the governing body of an independent organization under Subsection (g)(3) or (7) if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code. Provides that the governor, in making an appointment under Subsection (g)(3) or (7), is required to give preference to a person who has executive-level business experience representing a range of industries, and is authorized to consider a person recommended by the legislature.

(g-3) Requires members of the governing body of an independent organization certified under Section 39.151 (Essential Organizations) to serve staggered terms. Requires a member described by Subsection (g)(4) or (5) to serve a term that expires in an even-numbered year. Requires a member described by Subsection (g)(6) or (7) to serve a term that expires in an odd-numbered year. Requires the appropriate authority, as soon as practicable after the date a member of the governing body's term expires, to appoint or

arrange for the election of a replacement in the same manner as the original appointment or election. Requires the appropriate authority, if a vacancy occurs on the governing body, to appoint or arrange for the election of a successor in the same manner as the original appointment or election to serve for the remainder of the unexpired term.

(g-4) Requires an 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 may not take effect until the PUC approves a market impact statement describing the new or revised protocols.

SECTION 4. 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, not later than September 1, 2021. 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 5. Effective date: upon passage or September 1, 2021.