

Amend **CSHB 1243** (committee printing version) on page \_\_, line \_\_ insert the following new appropriately numbered sections and renumber subsequent sections accordingly:

"SECTION \_\_. Section 161.002, Utilities Code, is amended by adding Subdivision (2-a) to read as follows:

(2-a) "Board meeting" means a deliberation between a quorum of the voting board, or between a quorum of the voting board and another person, during which electric cooperative business or policy over which the board has responsibility is discussed or considered, or during which the board takes formal action. The term does not include the gathering of a quorum of the board at a social function unrelated to the business of the cooperative, or the attendance by a quorum of the board at a regional, state, or national convention or workshop, ceremonial event, or press conference, if formal action is not taken and any discussion of cooperative business is incidental to the social function, convention, workshop, ceremonial event, or press conference.

SECTION \_\_. Subchapter A, Chapter 161, Utilities Code, is amended by adding Section 161.006 to read as follows:

Sec. 161.006. NONAPPLICABILITY. 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 or to an electric cooperative whose service territory consists of eighteen counties in Texas and two counties in New Mexico and has fewer than 5,500 members:

- (1) Sections 161.072(d) through (m);
- (2) Sections 161.075(a), (d), (e), (f), (g), (h), (i), (j), and (k);
- (3) Section 161.0751;
- (4) Section 161.077(d);
- (5) Section 161.080;
- (6) Section 161.081;
- (7) Section 161.082;
- (8) Section 161.126; and
- (9) Section 161.127.

SECTION \_\_. Subsection (b), Section 161.064, Utilities

Code, is amended to read as follows:

(b) The bylaws may 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 \_\_. Section 161.072, Utilities Code, is amended by adding Subsections (c) through (m) to read as follows:

(c) Director elections shall be conducted in a manner that is fair and open to all members of the electric cooperative.

(d) A board committee of a cooperative with more than 170,000 members may not cast a member's proxy vote in a director election.

(e) A director who is standing for reelection to the board of a cooperative with not more than 170,000 members may not serve 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) A member's proxy vote may be cast by a committee established under the bylaws 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 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 for the purpose of casting proxy votes in a director election;

(B) the process prescribed in the bylaws for selecting members to serve on the committee; and

(C) the districts 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."

(g) Subsections (d) and (f) may not be 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) This section may not be 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.

(i) A person may not use 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) A cooperative with more than 170,000 members may elect directors only by district. A member may vote for a director to represent a district only if the member resides in that district.

(k) A cooperative with more than 170,000 members may nominate qualified members as candidates in a director election only through a written petition by members. The bylaws must:

(1) specify the number of printed names and dated signatures a petition nominating a candidate must contain;

(2) specify a period within which a petition nominating a candidate must be submitted to the cooperative; and

(3) specify that only members residing in a district may sign a petition for the nomination of a candidate to represent that district.

(1) If the bylaws of a cooperative with not more than 170,000 members allow a committee of members to nominate qualified members as candidates in a director election, the bylaws must also:

(1) allow nominations to be made through one or more written petitions by members;

(2) specify the number of printed names and dated

signatures a petition nominating a candidate must contain; and

(3) specify a period within which a petition nominating a candidate must be submitted to the cooperative.

(m) A petition submitted under Subsection (l) must 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 \_\_. Section 161.075, Utilities Code, is amended to read as follows:

Sec. 161.075. BOARD MEETINGS. (a) The board shall hold a regular or special board meeting at the place and time specified in ~~[on]~~ the notice required by Section 161.0751 and ~~[prescribed by]~~ the bylaws.

(b) 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) 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) Except as provided by this section, each member of the electric cooperative is entitled to attend a regular or special board meeting. A person who is not a member of the cooperative is not entitled to attend a regular or special board meeting.

(e) At the board's discretion, the board may 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 cooperative, or other privileged, confidential, or proprietary information.

(f) The board shall 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) The board secretary or person designated by the secretary shall make and keep written minutes of each regular or special board meeting.

(h) The board shall 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) The board secretary or person designated by the secretary shall make and keep a written or audio record of each executive session. The secretary shall preserve the record for at least two years after the session. The record must include:

(1) a statement of the subject matter of each deliberation;

(2) a record of any further action taken; and

(3) an announcement by the presiding director at the beginning and end of the session indicating the date and time.

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

(k) Each electric cooperative with not more than 170,000 members shall hold an election every five years at the electric cooperative's annual meeting on the question of whether to make Subsections (d), (e), (f), (g), (h), and (i) applicable to the electric cooperative.

SECTION \_\_\_\_\_. Subchapter B, Chapter 161, Utilities Code, is amended by adding Section 161.0751 to read as follows:

Sec. 161.0751. NOTICE OF BOARD MEETINGS. (a) The board shall give members notice of the date, hour, place, and planned agenda of a regular or special board meeting. Notice of a board meeting must 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 cooperative's Internet website, if the cooperative maintains a website; and

(3) providing a copy of the notice to a member on a

request by the member.

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

(c) On approval of the Legislative Audit Committee, the state auditor at the cooperative's expense may audit the financial transactions and operations of an electric cooperative with more than 170,000 members if:

(1) a former or current member of the cooperative's board of directors or senior management is the subject of an ongoing criminal investigation by the office of the attorney general on May 1, 2009; and

(2) the cooperative has been the subject of a court-ordered independent investigation:

(A) performed by an independent consulting entity; and

(B) reviewed by the state auditor.

(d) This subsection and Subsection (c) expire September 1, 2013.

SECTION \_\_\_\_ . Section 161.077, Utilities Code, is amended by adding Subsection (d) to read as follows:

(d) The provisions of this chapter that apply to the board also apply to the executive committee.

SECTION \_\_\_\_ . Subchapter B, Chapter 161, Utilities Code, is amended by adding Sections 161.080, 161.081, and 161.082 to read as follows:

Sec. 161.080. MEMBER'S RIGHT OF ACCESS TO RECORDS. (a) (a) Except as provided by Subsection (c), a member of an electric cooperative may, 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 cooperative relevant to that purpose.

(b) An electric cooperative may charge a member for the cost of providing information under Subsection (a).

(c) An electric cooperative may 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 the law or 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 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 cooperative's electrical system; or
- (6) seeks information that is confidential, privileged, or proprietary.

Sec. 161.081. POLICIES AND AUDIT. (a) The board shall adopt written policies relating to:

- (1) travel expenditures for board members, officers, and employees;
- (2) reimbursement of expenses for board members, officers, and employees;
- (3) conflicts of interest for board members, officers, and employees;
- (4) whistleblower protections;
- (5) criteria and procedures for the selection, monitoring, review, and evaluation of outside vendors or contracted professional services;
- (6) budgets for use in planning and controlling costs;
- and
- (7) the creation of a committee that audits the

actions of the board.

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

Sec. 161.082. COMPLAINTS BY MEMBERS. (a) A member may file a written complaint with the general manager of the electric 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 Sections 161.072, 161.075, 161.0751, 161.080, 161.081, and 161.126.

(b) Not later than the 20th day after the date the general manager receives a complaint under Subsection (a), the general manager shall take corrective action regarding the complaint, if the general manager determines that the action complained of infringed on the member's rights under Sections 161.072, 161.075, 161.0751, 161.080, 161.081, and 161.126.

(c) If the general manager determines that the action complained of did not infringe on the member's rights under Sections 161.072, 161.075, 161.0751, 161.080, 161.081, or 161.126, 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, the member may file a written complaint with the attorney general's consumer protection division. A complaint filed with the attorney general under this subsection must:

(1) identify the electric cooperative by name and address;

(2) describe in detail the nature of the member's complaint; and

(3) include copies of documents relevant to the member's complaint, including:

(A) any relevant written request made by the member to the cooperative;

(B) the written complaint made by the member to the general manager under Subsection (a); and

(C) any relevant response from the cooperative

regarding a request or complaint.

(d) In reviewing a member's complaint under this section, the consumer protection division may request that the cooperative provide to the division any information relevant to the complaint. The division must give a cooperative a reasonable opportunity to inspect and copy the requested information before providing the information to the division. The division shall designate an employee of the division to be the person responsible for receiving, inspecting, or copying information received under this subsection.

(e) An electric cooperative shall cooperate with a request for information under Subsection (d) and promptly provide the requested information to the consumer protection division's designated employee. The division may not disclose to any person information provided by a cooperative in response to the request unless:

(1) the division is required by a court to provide the information to the person;

(2) the person is an authorized employee of the division; or

(3) the cooperative that provided the information consents to the disclosure.

(f) The consumer protection division shall return to a cooperative any information provided under this section that is confidential or sensitive to the cooperative.

SECTION \_\_\_\_ Subchapter C, Chapter 161, Utilities Code, is amended by adding Sections 161.126 and 161.127 to read as follows:

Sec. 161.126. PROHIBITION ON ACQUISITION OF GENERATOR CAPACITY BY CERTAIN ELECTRIC COOPERATIVES. An electric cooperative with more than 170,000 members that provides retail electric service may not acquire equipment capable of generating electricity for sale other than equipment that uses an alternative energy resource unless the Public Utility Commission of Texas first approves of the acquisition. The commission by rule shall 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. Not later than the 30th day following the completion of a transaction that results in an electric cooperative or an affiliate of the cooperative creating or acquiring an interest in an entity that does not generate, transmit, or distribute electricity, the cooperative shall provide a notice to members that contains:

- (1) the name of the entity;
- (2) a description of the entity;
- (3) the reasons for the decision to enter into the transaction;
- (4) a description of the costs associated with the transaction, and the method of financing for those costs; and
- (5) a description of the anticipated effect the transaction will have on the cooperative's electric energy rates or prices.

SECTION \_\_\_\_.

(a) The changes in law made by Section 161.072, Utilities Code, as amended by this Act, apply only to a director election held on or after the effective date of this Act. A director election held before the effective date of this Act is subject to the law in effect on the date the election is held, and that law is continued in effect for that purpose.

(b) The changes in law made by Section 161.075, Utilities Code, as amended by this Act, and by Section 161.0751, Utilities Code, as added by this Act, apply only to a meeting convened on or after the effective date of this Act. A meeting convened before the effective date of this Act is subject to the law in effect on the date the meeting is held, and that law is continued in effect for that purpose.

(c) The changes in law made by Sections 161.080 and 161.082, Utilities Code, as added by this Act, apply only to a request to inspect records submitted on or after the effective date of this Act. A request submitted before the effective date of this Act is subject to the law in effect on the date of the request, and that law is continued in effect for that purpose.

(d) The changes in law made by Section 161.127, Utilities Code, as added by this Act, apply only to a transaction that is completed on or after the effective date of this Act. A transaction

that is completed before the effective date of this Act is subject to the law in effect on the date the transaction is completed, and that law is continued in effect for that purpose.

SECTION \_\_\_\_\_. Not later than December 31, 2010, each electric cooperative with not more than 170,000 members shall hold an election as required by Section 161.075(k), as added by this Act."