

## **BILL ANALYSIS**

C.S.S.B. 921  
By: Fraser  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

During the legislative interim, 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 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 approved" 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.

C.S.S.B. 921 requires elections for an 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 a cooperative. The bill includes restrictions on the acquisition of generator capacity by certain cooperatives.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 9 of this bill.

### **ANALYSIS**

C.S.S.B. 921 amends the Electric Cooperative Corporation Act, within the Utilities Code, to enhance the access of members of electric cooperatives to meetings and records of such cooperatives. The bill amends provisions relating to the bylaws of an electric cooperative to require that any provision for the regulation and management of the affairs of the cooperative be consistent with the act. The bill establishes that certain of its provisions do not apply to an electric cooperative of which one or more members is another electric cooperative.

C.S.S.B. 921 requires that elections for directors of an electric cooperative be conducted in a manner that is fair and open to all members of the electric cooperative. The bill prohibits a board committee of a cooperative with more than 170,000 members from casting a member's proxy vote in a director election. The bill prohibits a director who is standing for reelection to the board of a cooperative with not more than 170,000 members from serving 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. The bill authorizes a member's proxy vote to be cast in a director election only if specified requirements regarding the proxy form are satisfied. The bill establishes proxy form requirements applicable to all director elections and provides that the prohibition against proxy voting by a board committee in a cooperative of more than 170,000 members 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. The bill provides that its provisions concerning the selection of directors may not be construed as limiting the use of a proxy to establish a quorum to transact business other than the election of a director. The bill prohibits the use of an incentive or other enticement to encourage a member to authorize another person to cast a member's proxy vote in a director election. The bill authorizes a cooperative with more than 170,000 members to elect directors only by district, and in such a cooperative allows a member to vote for a director to represent a district only if the member resides in that district. The bill authorizes such a cooperative to nominate qualified members as candidates in a director election only through a written petition by members. The bill requires that cooperative's bylaws to specify certain requirements concerning the petition. The bill requires that if 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 meet certain specified requirements governing a nominating petition. The bill requires a nominating petition to 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. The bill makes such provisions inapplicable to an electric cooperative of which one or more members is another electric cooperative, except for the requirement that elections for directors be conducted in a manner that is fair and open to all members.

C.S.S.B. 921 defines "board meeting" to mean 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 bill provides that 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.

C.S.S.B. 921 specifies that the board is required to hold a regular or special board meeting at the place and time specified in the notice required under the bill's provisions and the bylaws. The bill entitles each member of an electric cooperative to attend a regular or special board meeting, except for authorized executive sessions. The bill prohibits a person who is not a member of the cooperative from attending a regular or special board meeting. The bill makes such provisions inapplicable to an electric cooperative of which one or more members is another electric cooperative, but includes certain other provisions, relating to a notice or waiver of notice to a board director, that are applicable to such a cooperative.

C.S.S.B. 921 establishes provisions that apply to an electric cooperative with more than 170,000 members but, for each other electric cooperative, requires an election every five years on the issue of whether they apply. The bill, in such provisions, authorizes the board at its 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 cooperative, or other privileged, confidential, or proprietary information. The bill 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. The bill requires the board secretary or person designated by the secretary to make and to keep written minutes of each regular or special board meeting. The bill requires the board to adopt and to comply with procedures for providing a member with access to the entirety of a regular or special board meeting, other than an executive session. The bill requires the board secretary or person designated by the secretary to make and keep a written or audio record of each executive session. The bill requires the secretary to preserve that record for at least two years after the session. The

bill requires that record to 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. The bill requires the initial election on the applicability of such provisions for an electric cooperative that is required to conduct such an election to be held not later than December 31, 2010. The bill makes such provisions, except for those relating to executive sessions and reconvening after executive sessions, all applicable to an electric cooperative of which one or more members is another electric cooperative, including the provisions relating to whether or not an election is required.

C.S.S.B. 921 makes the rest of its changes to the Electric Cooperative Corporation Act, described below, inapplicable to an electric cooperative of which one or more members is another electric cooperative.

C.S.S.B. 921 requires the board to give members written notice of the date, hour, place, and planned agenda of a regular or special board meeting. The bill requires notice of a board meeting to be given at least three days before the scheduled time of the meeting by 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, posting a notice on the cooperative's Internet website, if the cooperative maintains a website, and providing a copy of the notice to a member on a request by the member. The bill authorizes notice to be given, in the event of an emergency or urgent matter, at any time before a regular or special board meeting is convened. The bill requires an action taken by the board at a meeting for which notice in the event of an emergency or urgent matter is given to be ratified by the board at the next regular or special board meeting.

C.S.S.B. 921 makes provisions of the Electric Cooperative Corporation Act that apply to the board of directors of an electric cooperative applicable also to the executive committee of an electric cooperative.

C.S.S.B. 921 gives a member of an electric cooperative, at any reasonable time via a written request that states the proper purpose for the request, the right to inspect and copy the books and records of the cooperative relevant to that purpose. The bill authorizes an electric cooperative to limit or deny a member's request to inspect its books and records if the member does not meet the requirements; seeks information the release of which would unduly infringe on or invade the privacy of a person; seeks information related to a trade secret; seeks personnel information the disclosure of which would violate the law or constitute a clearly unwarranted invasion of personal privacy; seeks information related to pending or reasonably anticipated litigation, a real estate transaction for a project that has not been formally announced or for which contracts have not been formally awarded, 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 the security of the cooperative's electrical system; or seeks information that is confidential, privileged, or proprietary. The bill authorizes an electric cooperative to charge a member for the cost of providing the requested information.

C.S.S.B. 921 requires the board to adopt written policies relating to travel expenditures and reimbursement of expenses for board members, officers, and employees; conflicts of interest for board members, officers, and employees; whistleblower 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. The bill 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 such an audit.

C.S.S.B. 921 authorizes a member aggrieved by an action of the cooperative, board, or a board employee that the member alleges infringes on specified rights of the member under the provisions of the bill, to file a written complaint with the general manager of the electric cooperative. The bill requires the general manager, not later than the 20th day after the date of

receipt of the complaint, to take corrective action if the general manager determines that the action complained of infringed on the member's rights. The bill authorizes the member, if the general manager determines that the action complained of did not infringe on the member's rights 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's receipt of the complaint, to file a written complaint with the attorney general's consumer protection division. The bill requires a complaint filed with the attorney general to include specified information, and authorizes the attorney general, in reviewing a member's complaint, to request that the cooperative provide to the attorney general any information relevant to the complaint. The bill requires the attorney general to give a cooperative a reasonable opportunity to inspect and copy the requested information before providing it. The bill requires the attorney general to designate an employee of the office of the attorney general to be responsible for receiving, inspecting, or copying such information. The bill requires an electric cooperative to cooperate with a request for such information and to promptly provide the requested information to the attorney general's designated employee. The bill prohibits the attorney general from disclosing to any person information provided by the cooperative in response to the request unless the attorney general is required by a court to provide the information to the person, the person is an authorized employee of the office of the attorney general, or the cooperative consents to the disclosure. The bill requires the attorney general to return to a cooperative any provided information that is confidential or sensitive to the cooperative.

C.S.S.B. 921 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. The bill requires the PUC by rule to establish the standards and procedures by which it will approve an electric cooperative's acquisition of electric generation capacity.

C.S.S.B. 921 requires an electric cooperative, not later than the 30th day following the completion of a transaction that results in a cooperative or an affiliate of the cooperative creating or acquiring an interest in an entity that does not generate, transmit, or distribute electricity, to provide a related notice to members containing specified information.

#### **EFFECTIVE DATE**

September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 921 adds a provision not included in the original itemizing specific provisions of the Electric Cooperative Corporation Act added or amended by the bill that do not apply to an electric cooperative of which one or more members is another electric cooperative.

C.S.S.B. 921 differs from the original by specifying that the board is required to hold a regular or special board meeting at the time, in addition to the place, specified in the meeting notice required by, rather than as provided by, the bill's provisions and the bylaws. The substitute adds a provision not included in the original prohibiting a person who is not a member of the cooperative from attending a regular or special meeting. The substitute adds a provision not in the original requiring the board to adopt and comply with procedures for providing a member with access to the entirety of a meeting, other than an executive session.

C.S.S.B. 921 omits a provision in the original authorizing a board to keep a taped recording of a meeting as an alternative to minutes. The substitute omits other provisions in the original elaborating on the required contents of the record of a meeting and requiring the board to make meeting records available to a member for inspection and copying on request. The substitute omits provisions in the original authorizing the board to adopt reasonable rules to maintain order

but setting certain limits on such rules.

C.S.S.B. 921 adds provisions not included in the original making certain procedures and requirements relating to the conduct of board meetings applicable to an electric cooperative with more than 170,000 members, and requiring each electric cooperative with not more than 170,000 members to hold an election every five years on the question of whether to make those provisions applicable to the electric cooperative, with the first such election to be held not later than December 31, 2010.

C.S.S.B. 921 differs from the original by requiring a copy of the notice of a board meeting to be given to a member on a request by the member. The substitute omits provisions included in the original establishing procedures and requirements for the continuance of a meeting to one or more subsequent business days.

C.S.S.B. 921 differs from the original by authorizing notice to be given, in the event of an emergency or urgent matter, at any time before a regular or special board meeting is convened, whereas the original authorizes notice to be given, in the event of an emergency or urgent necessity that requires immediate board action, at least two hours before a regular or special board meeting is convened, in order to call an emergency board meeting or add a subject to the agenda of a previously scheduled board meeting. The substitute adds a provision not included in the original requiring action taken by the board at a meeting in the event of an emergency or urgent matter to be ratified by the board at the next meeting. The substitute omits provisions included in the original requiring notice of a meeting in the event of an emergency or urgent necessity to clearly identify the emergency or urgent necessity and setting other related notice requirements. The substitute omits a provision establishing that notice provisions do not apply to a statement by the board of specific factual information or a recitation of existing policy given in response to a member's inquiry at a regular special board meeting regarding a subject for which a required notice has not been given. The substitute omits a provision included in the original requiring any deliberation of or decision relating to the subject of such an inquiry to be limited to a proposal to place the subject on the agenda for a subsequent board meeting.

C.S.S.B. 921 differs, in provisions relating to executive sessions of the board, by condensing and reducing the original's elaborative provisions relating to the procedures and the authorized purposes for holding such a session. The substitute differs by requiring the board to reconvene the open session following an executive session to announce the final action on matters discussed in executive session, other than matters involving confidential personnel information, real estate transactions, competitively sensitive information, or security information, whereas the original requires a final action, decision, or vote on a matter to be made in a regular or special meeting for which notice has been given, except for action related to real property transactions, personnel matters, and the cooperative's competitive status, on which the original allows final action to be taken in the executive session.

C.S.S.B. 921, in provisions relating to a member's right to inspect and copy the records of the cooperative, omits provisions in the original allowing a cooperative to reject or limit a member's inspection request if the inspection is sought for a dishonest purpose or if the member refuses on request of the cooperative to warrant and furnish an affidavit that the inspection is desired for a purpose reasonably related to the business or that the member does not intend to sell or offer to sell any list of members of the cooperative or assist another person in obtaining such a list. The substitute instead adds provisions not in the original allowing a cooperative to limit or deny a member's inspection request if the member does not meet certain preliminary requirements or if the member seeks information that involves improper personnel-related disclosures or that is related to litigation, to a real estate transaction for a project that is only prospective, to the cooperative's competitive status, or to the security of the cooperative's electrical system.

C.S.S.B. 921 omits a provision included in the original authorizing the state auditor to audit the financial transactions and operations of a cooperative.

C.S.S.B. 921, in provisions relating to complaints by members, omits an associated definition of "commission," referring to the Public Utility Commission of Texas (PUC). The substitute, in provisions authorizing a member to file a complaint for infringement of the member's rights, limits the authorization to specific listed rights under the Electric Cooperative Corporation Act, rather than applying the authorization to any rights in the entire act as in the original. The substitute differs from the original by allowing the member, if the general manager of the cooperative fails to resolve the complaint or makes an adverse determination in response to the complaint, to file a further complaint with the attorney general's consumer protection division, rather than with the PUC as provided in the original, and making conforming changes. The substitute omits provisions included in the original requiring the PUC to give a cooperative notice before using information provided in response to a request in a contested case hearing, and requiring the administrative judge presiding over a contested case hearing to determine whether the information is admissible in the hearing. The substitute omits provisions included in the original relating to an alternative method for dispute resolution.

C.S.S.B. 921 differs from the original, in provisions prohibiting an electric cooperative with more than 170,000 members that provides retail electric service from acquiring equipment capable of generating electricity for sale without PUC approval, by including an exception not in the original for equipment that uses an alternative energy resource.

C.S.S.B. 921 differs from the original by making technical changes in the saving provisions with respect to the differing statutory organization of the substitute and original.