

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 10
By: Paddie; Hernandez (Schwertner)
Jurisprudence
5/21/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In February of this year, Winter Storm Uri struck Texas and paralyzed the state's electric grid, leaving millions of Texans in the ERCOT power region without power for upwards of a week in frigid weather. During this time, many Texans were concerned to learn about the makeup of the ERCOT board and its lack of accountability to the legislature. Of particular concern was the fact that numerous members of that board, including its chair and vice-chair, did not reside in Texas. H.B. 10 seeks to address these concerns by reconfiguring the requirements for the governing body of ERCOT, or another independent organization certified to perform essential market functions for a power region, so as to require all members of the governing body to be Texas residents and to give the governor, lieutenant governor, and speaker of the house of representatives the authority to appoint certain members to the governing body.

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

C.S.H.B. 10 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

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 12.051(a), Utilities Code, as follows:

(a) Provides that the Public Utility Commission of Texas (PUC) is composed of five commissioners, rather than three commissioners, appointed by the governor with the advice and consent of the Texas Senate (senate).

SECTION 2. Amends Section 12.053, Utilities Code, by amending Subsections (a) and (b) and adding Subsection (a-1), as follows:

(a) Requires a commissioner, to be eligible for appointment, to meet certain criteria, including to be a resident of this state and have at least five years of experience in certain fields, including as a professional engineer. Deletes existing text requiring a commissioner to be well informed and qualified in the field of public utilities and utility regulation. Makes nonsubstantive changes.

(a-1) Requires at least two commissioners to be well informed and qualified in the field of public utilities and utility regulation.

(b) Provides that a person is not eligible for appointment as a commissioner if the person:

(1) at any time during the one year preceding appointment, rather than during the two years preceding appointment:

(A) and (B) makes a nonsubstantive change to these paragraphs; or

(C) served as an executive officer listed under Section 1 (Officers Constituting Executive Department), Article IV (Executive Department), Texas Constitution, other than the secretary of state, or a member of the legislature; or

(2) makes no changes to this subdivision.

SECTION 3. 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 4. 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 for establishing, or enforcing such rules. Provides that rules adopted by an independent organization and enforcement actions taken by the organization under delegated authority from the PUC are subject to PUC oversight and review and are prohibited from taking effect before receiving PUC approval, rather than provides that any such rules adopted by an independent organization and any enforcement actions taken by the organization are subject to PUC oversight and review.

(g) Requires that an independent organization's formal 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 the bylaws to require the use of a professional search firm to identify candidates for members described by Subdivisions (4), (5), and (6), rather than requires the bylaws to require the use of a professional search firm to identify candidates for membership of unaffiliated members. Requires an independent organization's governing body to 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 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;

(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 to serve 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 to serve a one-year term;

(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.

(g-1) Requires the bylaws of an independent organization to require that the presiding officer and vice presiding officer of the governing body are required to be:

(1) creates this subdivision from existing text and makes nonsubstantive and conforming changes;

(2) selected by the governor with the advice and consent of the senate.

(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):

(1) is required to give preference to a person who has executive-level business experience representing a range of industries; and

(2) 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 are prohibited from taking effect until the PUC approves a market impact statement describing the new or revised protocols.

SECTION 5. Requires the governor, in making appointments of commissioners to the PUC under Section 12.051 (Appointment; Term), Utilities Code, as amended by this Act, to assign staggered terms to the commissioners appointed to fill vacancies and to the commissioners appointed to new positions to ensure that the requirements of Section 30a (Members of State Boards; Terms of Office), Article XVI (General Provisions), Texas Constitution, are met.

SECTION 6. 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 7. Effective date: upon passage or September 1, 2021.