By:  Paddie, et al. (Senate Sponsor - Schwertner) H.B. No. 10

(In the Senate - Received from the House March 31, 2021; April 8, 2021, read first time and referred to Committee on Jurisprudence; May 22, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 5, Nays 0; May 22, 2021, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Huffman           X

Hinojosa             X

Creighton            X

Hughes               X

Johnson              X

COMMITTEE SUBSTITUTE FOR H.B. No. 10 By:  Hinojosa

A BILL TO BE ENTITLED

AN ACT

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.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 12.051(a), Utilities Code, is amended to read as follows:

(a)  The commission is composed of five [~~three~~] commissioners appointed by the governor with the advice and consent of the senate.

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

(a)  To be eligible for appointment, a commissioner must:

(1)  be a qualified voter;

(2)  be a citizen of the United States;

(3)  be a resident of this state;

(4)  be a competent and experienced administrator;

[~~(4) be well informed and qualified in the field of public utilities and utility regulation;~~] and

(5)  have at least five years of experience:

(A)  in the administration of business or government; or

(B)  as a practicing attorney, [~~or~~] certified public accountant, or professional engineer.

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

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

(1)  at any time during the one year [~~two years~~] preceding appointment:

(A)  personally served as an officer, director, owner, employee, partner, or legal representative of a public utility regulated by the commission or of an affiliate or direct competitor of a public utility regulated by the commission; [~~or~~]

(B)  owned or controlled, directly or indirectly, more than a 10 percent interest in a public utility regulated by the commission or in an affiliate or direct competitor of a public utility regulated by the commission; or

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

(2)  is not qualified to serve under Section 12.151, 12.152, or 12.153.

SECTION 3.  Section 13.022(a), Utilities Code, is amended to read as follows:

(a)  The counsellor must:

(1)  be licensed to practice law in this state and a resident of this state;

(2)  have demonstrated a strong commitment to and involvement in efforts to safeguard the rights of the public; and

(3)  possess the knowledge and experience necessary to practice effectively in utility proceedings.

SECTION 4.  Section 39.151, Utilities Code, is amended by amending Subsections (d), (g), and (g-1) and adding Subsections (g-2), (g-3), and (g-4) to read as follows:

(d)  The commission shall adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, or may delegate to an independent organization responsibilities for adopting [~~establishing~~] or enforcing such rules. Rules [~~Any such rules~~] adopted by an independent organization and [~~any~~] enforcement actions taken by the organization under delegated authority from the commission are subject to commission oversight and review and may not take effect before receiving commission approval. An independent organization certified by the commission is directly responsible and accountable to the commission. The commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that the organization adequately performs the organization's functions and duties. The organization shall fully cooperate with the commission in the commission's oversight and investigatory functions. The commission may take appropriate action against an organization that does not adequately perform the organization's functions or duties or does not comply with this section, including decertifying the organization or assessing an administrative penalty against the organization. The commission by rule shall adopt procedures governing decertification of an independent organization, selecting and certifying a successor organization, and transferring assets to the successor organization to ensure continuity of operations in the region. The commission may not implement, by order or by rule, a requirement that is contrary to an applicable federal law or rule.

(g)  To maintain certification as an independent organization under this section, an organization's governing body must be composed of persons specified by this section and selected in accordance with formal bylaws or protocols of the organization. The bylaws or protocols must be approved by the commission and must reflect the input of the commission. The bylaws must specify the process by which appropriate stakeholders elect members and, for unaffiliated members, prescribe professional qualifications for selection as a member. The bylaws must require that every member of the governing body be a resident of this state and prohibit a legislator from serving as a member. The bylaws may require the use of a professional search firm to identify candidates for [~~membership of unaffiliated~~] members described by Subdivisions (4), (5), and (6). The process must allow for commission input in identifying candidates. The governing body must be composed of:

(1)  the chairman of the commission as an ex officio nonvoting member;

(2)  the counsellor as an ex officio voting member representing residential and small commercial consumer interests;

(3)  the chief executive officer of the independent organization as an ex officio voting member, who must be appointed by the governor with the advice and consent of the senate;

(4)  six market participants elected by their respective market segments to serve two-year [~~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;

(B)  one representing investor-owned utilities;

(C)  one representing power marketers;

(D)  one representing retail electric providers who may not be affiliated with an independent generator;

(E)  one representing municipally owned utilities; and

(F)  one representing electric cooperatives;

(5)  one member representing industrial consumer interests and elected by the industrial consumer market segment to serve a two-year [~~one-year~~] term;

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

(7)  five members unaffiliated with any market segment who must be appointed by the governor with the advice and consent of the senate [~~and selected by the other members of the governing body~~] to serve two-year [~~three-year~~] terms.

(g-1)  The bylaws of an independent organization must require that the [~~The~~] presiding officer and vice presiding officer of the governing body must be:

(1)  [~~one of the~~] members described by Subsection (g)(7); and

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

(g-2)  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, Government Code. In making an appointment under Subsection (g)(3) or (7), the governor:

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

(2)  may consider a person recommended by the legislature.

(g-3)  Members of the governing body of an independent organization certified under this section must serve staggered terms. A member described by Subsection (g)(4) or (5) must serve a term that expires in an even-numbered year. A member described by Subsection (g)(6) or (7) must serve a term that expires in an odd-numbered year. As soon as practicable after the date a member of the governing body's term expires, the appropriate authority must appoint or arrange for the election of a replacement in the same manner as the original appointment or election. If a vacancy occurs on the governing body, the appropriate authority must 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)  To maintain certification as an independent organization under this section, the organization's governing body must establish and implement a formal process for adopting new protocols or revisions to existing protocols. The process must require that new or revised protocols may not take effect until the commission approves a market impact statement describing the new or revised protocols.

SECTION 5.  In making appointments of commissioners to the Public Utility Commission of Texas under Section 12.051, Utilities Code, as amended by this Act, the governor shall 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, Article XVI, Texas Constitution, are met.

SECTION 6.  An independent organization certified under Section 39.151, Utilities Code, by the Public Utility Commission of Texas before September 1, 2021, shall modify the organization to comply with Section 39.151, Utilities Code, as amended by this Act, not later than September 1, 2021. After September 1, 2021, the Public Utility Commission of Texas may decertify an independent organization that does not comply with Section 39.151, Utilities Code, as amended by this Act.

SECTION 7.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.

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