

SUBJECT: Revising selection process for ERCOT board, requiring Texas residency

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 13 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson, Smithee

0 nays

SENATE VOTE: On final passage, April 14 — 30-1 (Eckhardt)

WITNESSES: For — (*Registered, but did not testify*: Linda Durnin)

Against — Jeffrey Clark, Advanced Power Alliance; Charlie Hemmeline, Texas Solar Power Association; Alison Silverstein; (*Registered, but did not testify*: Mark Stover, Apex Clean Energy; Michael Jewell, Pattern Energy)

On — Michael Jewell, Enel North America; Cyrus Reed, Lone Star Chapter Sierra Club; Katie Coleman, Texas Association of Manufacturers; Kenneth Flippin, US Green Building Council Texas Chapter; (*Registered, but did not testify*: Rene Perez, Libertarian Party of Texas; Thomas Gleeson, Public Utility Commission of Texas)

BACKGROUND: Utilities Code sec. 39.151 requires the Public Utility Commission (PUC) to certify at least one independent organization to perform certain functions related to the electric grid and electricity market in the ERCOT power region, including ensuring the reliability and adequacy of the regional electrical network.

In 1996, the Electric Reliability Council of Texas, also known as ERCOT and referred to here as the ERCOT organization, became the independent operator for the ERCOT power region.

Under sec. 39.151(g), to maintain certification as an independent organization, the organization's governing body must be selected in

accordance with formal bylaws and composed of:

- the PUC chairman as an ex officio nonvoting member;
- the public utility counsel as an ex officio voting member representing residential and small commercial consumer interests;
- the CEO of the independent organization (ERCOT organization) as an ex officio voting member;
- six market participants, with one each representing independent generators, investor-owned utilities, power marketers, retail electric providers, municipally owned utilities, and electric cooperatives;
- one representative of industrial consumer interests;
- one representative of large commercial consumer interests; and
- five members unaffiliated with any market segment and selected by the other members.

The presiding officer must be one of the unaffiliated members. The bylaws must require the use of a professional search firm to identify candidates for membership of unaffiliated members.

DIGEST:

CSSB 2 would revise the selection process and set residency requirements for the governing body of the independent organization certified by the Public Utility Commission (PUC) to perform certain functions related to the electric grid and electricity market in the ERCOT power region (ERCOT organization).

The bill would require every member of the ERCOT organization's governing body to be a Texas resident, including the ERCOT organization's CEO, the presiding officer of the PUC, and the public utility counsel.

The bill would require the use of a professional search firm to identify candidates for the six members representing market participants and the members representing industrial consumer interests and large commercial consumer interests, rather than for identifying candidates for the unaffiliated members.

The five unaffiliated members would, in addition to being selected by other members of the governing body, have to be approved by the PUC and approved by a majority of the governor, the lieutenant governor, and the House speaker. The bill would require the vice presiding officer to be one of the unaffiliated members.

A legislator would be prohibited from serving as a member of the ERCOT organization's governing body. A person would not qualify for selection as the ERCOT organization's CEO or an unaffiliated member of the board if the person was required to register as a lobbyist. In selecting the CEO or an unaffiliated member, the governing body would have to give preference to a person who had executive-level business experience representing a range of industries.

All members, other than the PUC chairman, public utility counsel, and ERCOT organization chief executive officer, would serve staggered, two-year terms. The six members representing market participants and the one representing industrial consumer interests would serve a term that expired in an even-numbered year. The five unaffiliated members and the one representing large commercial consumer interests would serve a term that expired in an odd-numbered year.

To maintain certification, the ERCOT organization's governing body would have to establish and implement a formal process for adopting new protocols or revisions to existing protocols. The process would have to require that new or revised protocols could not take effect until the PUC approved a market impact statement describing them.

Rules adopted by the ERCOT organization and enforcement actions taken by the organization under delegated authority from the PUC could not take effect before receiving PUC approval.

The ERCOT organization would have to comply with the bill by September 1, 2021. After that date, the organization could be decertified by the PUC if it did not comply with the bill's requirements.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

**SUPPORTERS
SAY:**

CSSB 2 would take the necessary first steps to reform the governance of the Electric Reliability Council of Texas (ERCOT organization) in the wake of Winter Storm Uri, which left millions of Texans without power in February. Many people voiced concerns about ERCOT organization board members living out of state during the storm and not experiencing the same hardships as Texas residents, as well as about the board's perceived lack of accountability to the Legislature and to residents. Many have called for increased oversight of the selection of ERCOT governing body members and of the governing body's actions.

The bill would create a system in which Texans could trust by balancing expertise with the needs of consumers, who were the most harmed during and after the winter storm. By requiring Texas residency of all ERCOT organization board members, the bill would ensure members had a personal stake in the Texas electricity market. As the energy capital of the world, Texas has many potential candidates to choose from who possess significant expertise in the state's unique electricity market.

Currently, all protocol changes, including administrative and market protocols, are proposed by sub-groups within the ERCOT organization before being adopted by the governing body. To allow for increased Public Utility Commission (PUC) oversight and accountability, the bill would require all changes to ERCOT protocols to be reviewed and approved by the PUC before adoption.

**CRITICS
SAY:**

CSSB 2 would not go far enough to address the issues with the current structure of the ERCOT organization's governing body. The bill should increase the number of members representing the interests of residential customers. Currently, there only is one member who represents those interests.

The bill also could limit the participation of knowledgeable experts on the

ERCOT organization's board. While it already is challenging to find individuals who meet certain qualifications, the bill could limit further the pool of potential candidates by requiring Texas residency of all members. The safety and resiliency of the ERCOT grid depends on board members who must understand technical protocols, write market rules, and design systems to implement policy from the PUC and the Legislature. Some of the most qualified candidates reside out of state.

**OTHER
CRITICS
SAY:**

By requiring the PUC to review and approve rules adopted by the ERCOT organization before they could take effect, CSSB 2 could result in delaying needed, short-order protocol changes.