

By: Bolton

H.B. No. 1002

A BILL TO BE ENTITLED

1 AN ACT

2 relating to access by the members of electric cooperatives to  
3 meetings of the boards of directors and certain information of the  
4 electric cooperatives.

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

6 SECTION 1. Section 161.002, Utilities Code, is amended by  
7 adding Subdivision (2-a) to read as follows:

8 (2-a) "Board meeting" means a deliberation between a  
9 quorum of the voting board, or between a quorum of the voting board  
10 and another person, during which electric cooperative business or  
11 policy over which the board has responsibility is discussed or  
12 considered, or during which the board takes formal action. The term  
13 does not include the gathering of a quorum of the board at a social  
14 function unrelated to the business of the cooperative, or the  
15 attendance by a quorum of the board at a regional, state, or  
16 national convention or workshop, ceremonial event, or press  
17 conference, if formal action is not taken and any discussion of  
18 cooperative business is incidental to the social function,  
19 convention, workshop, ceremonial event, or press conference.

20 SECTION 2. Section 161.075, Utilities Code, is amended to  
21 read as follows:

22 Sec. 161.075. BOARD MEETINGS. (a) The board shall hold a  
23 regular or special board meeting at the place and on ~~[the]~~ notice as  
24 provided by Section 161.0751 and ~~[prescribed by]~~ the bylaws.

1 Except as provided by Section 161.0752, each member of the electric  
2 cooperative is entitled to attend a regular or special board  
3 meeting.

4 (b) The attendance of a director at a board meeting  
5 constitutes a waiver of notice to the director of the meeting unless  
6 the director attends the meeting for the express purpose of  
7 objecting to the transaction of business at the meeting because the  
8 meeting is not lawfully called or convened.

9 (c) A notice or waiver of notice of a board meeting given to  
10 a director is not required to specify the business to be transacted  
11 at the meeting or the purpose of the meeting.

12 (d) The board shall keep a record of each regular or special  
13 board meeting, in the form of written minutes or a taped recording  
14 of the meeting. A record of a meeting must state the subject of each  
15 deliberation and indicate each vote, order, decision, or other  
16 action taken by the board. The board shall make meeting records  
17 available to a member for public inspection and copying on the  
18 member's written request to the board secretary or to a person the  
19 secretary designates.

20 (e) A member attending a regular or special board meeting  
21 may record all or part of the meeting by any means of audio or visual  
22 reproduction, including a tape recorder or video camera.

23 (f) The board may adopt reasonable rules to maintain order  
24 at a regular or special board meeting, including rules relating to  
25 the location of recording equipment and the manner in which  
26 recording may be conducted. A rule adopted by the board under this  
27 section may not prevent or unreasonably impair a member from

1 exercising a right granted by this section.

2 SECTION 3. Subchapter B, Chapter 161, Utilities Code, is  
3 amended by adding Sections 161.0751, 161.0752, 161.0753, 161.080,  
4 and 161.081 to read as follows:

5 Sec. 161.0751. NOTICE OF BOARD MEETINGS. (a) The board  
6 shall give members written notice of the date, hour, place, and  
7 subject of a regular or special board meeting. Notice of a board  
8 meeting must be posted at least 72 hours before the scheduled time  
9 of the meeting:

10 (1) on a bulletin board in a place convenient to  
11 members, at the electric cooperative's headquarters and at each  
12 district office; and

13 (2) on the cooperative's Internet website, if the  
14 cooperative maintains a website.

15 (b) If the board recesses a regular or special board meeting  
16 to continue the following regular business day, the board is not  
17 required to post notice of the continued meeting if the recess is  
18 taken in good faith and not to circumvent this section and Section  
19 161.075. If a regular or special board meeting is continued to the  
20 following regular business day, and on that following day the board  
21 continues the meeting to another day, the board shall give written  
22 notice as required by this section of the meeting continued to that  
23 other day.

24 (c) In the event of an emergency or urgent necessity that  
25 requires immediate board action to meet a reasonably unforeseeable  
26 situation, notice may be given in the manner prescribed by  
27 Subsection (a) at least two hours before a regular or special board

1 meeting is convened, in order to:

2 (1) call an emergency board meeting; or

3 (2) add a subject to the agenda of a previously  
4 scheduled board meeting.

5 (d) Notice under Subsection (c) shall clearly identify the  
6 emergency or urgent necessity for which the notice is given. If the  
7 board adds a subject to the agenda of a previously scheduled regular  
8 or special board meeting, the board secretary or person the  
9 secretary designates shall post a copy of the revised agenda on the  
10 electric cooperative's Internet website, if the cooperative  
11 maintains a website, and physically at the cooperative's  
12 headquarters and each district office, not less than two hours  
13 before the meeting convenes.

14 (e) If, at a regular or special board meeting, a member  
15 makes an inquiry regarding a subject for which notice has not been  
16 given as required by this section, the notice provisions of this  
17 section do not apply to:

18 (1) a statement by the board of specific factual  
19 information given in response to the inquiry; or

20 (2) a recitation of existing policy in response to the  
21 inquiry.

22 (f) Any deliberation of or decision relating to the subject  
23 of an inquiry made under Subsection (e) shall be limited to a  
24 proposal to place the subject on the agenda for a subsequent board  
25 meeting.

26 Sec. 161.0752. EXECUTIVE SESSIONS. (a) The board may hold  
27 an executive session to which the members do not have access to

1 deliberate:

2 (1) anticipated or pending litigation, settlement  
3 offers, or interpretations of the law with the electric  
4 cooperative's legal counsel and with any other person the board  
5 considers necessary;

6 (2) the purchase, exchange, lease, or value of real  
7 property, if the board determines in good faith that deliberation  
8 in an open board meeting may have a detrimental effect on the  
9 electric cooperative;

10 (3) business and financial issues relating to the  
11 negotiation of a contract, if the board determines in good faith  
12 that deliberation in an open board meeting may have a detrimental  
13 effect on the position of the electric cooperative;

14 (4) personnel issues, and complaints or charges  
15 against a director or electric cooperative employee or consultant,  
16 unless the director or employee who is the subject of the  
17 deliberation requests a public hearing;

18 (5) utility-related matters and commercial  
19 information that the board determines in good faith are related to  
20 the electric cooperative's competitive activity and that, if  
21 disclosed, could give an advantage to competitors or potential  
22 competitors; or

23 (6) issues related to security of the electric  
24 cooperative, including security personnel, security devices, and  
25 security audits.

26 (b) Before the board calls an executive session, the board  
27 shall convene in a regular or special board meeting for which notice

1 has been given as provided by Section 161.0751. During that board  
2 meeting, the presiding director may call an executive session by  
3 announcing that an executive session will be held to deliberate a  
4 matter described by Subsection (a) and identifying the specific  
5 subdivision of Subsection (a) under which the executive session  
6 will be held.

7 (c) Except as provided by Subsection (d), a final action,  
8 decision, or vote on a matter deliberated in an executive session  
9 may only be made in a regular or special board meeting for which  
10 notice has been given as provided by Section 161.0751.

11 (d) The board may take action in an executive session for  
12 matters described by Subsections (a)(2), (4), and (5).

13 (e) The board secretary or a person the secretary designates  
14 shall make and keep a written or audio record of each executive  
15 session. The secretary shall preserve the record for at least two  
16 years following the session. The record must include:

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

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

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

22 Sec. 161.0753. TRAINING FOR DIRECTORS AND CERTAIN  
23 EMPLOYEES. (a) The general manager of an electric cooperative  
24 shall make available a course of training regarding the  
25 responsibilities of the board, directors, and employees with regard  
26 to notice, open meetings, and open records. The course of training  
27 shall be completed by a person who is:

1           (1) a director, advisory director, or advisory  
2 director at large, not later than the 180th day after the date the  
3 person assumes responsibilities as a director; or

4           (2) a general manager, assistant general manager, or  
5 other staff member recommended by the general manager, not later  
6 than the 180th day after the person's date of hire by the  
7 cooperative.

8           (b) The failure of one or more directors to complete the  
9 training required by this section does not affect the validity of an  
10 action taken by the board.

11           Sec. 161.080. MEMBER'S RIGHT OF ACCESS TO RECORDS. (a)  
12 Except as provided by Subsection (c), a member of an electric  
13 cooperative may, at any reasonable time and on written request that  
14 states the purpose of the request:

15           (1) inspect books and records of the cooperative  
16 relevant to that purpose; and

17           (2) at the member's own expense, copy records the  
18 member is entitled to inspect under this section.

19           (b) An electric cooperative may charge a reasonable fee to  
20 the member if fulfilling the member's request will require a large  
21 amount of employee time.

22           (c) An electric cooperative may reject or limit a member's  
23 request to inspect its books and records if:

24           (1) the member refuses to warrant and furnish to the  
25 electric cooperative, on the electric cooperative's request, an  
26 affidavit that:

27                   (A) the inspection is desired for a purpose

1 reasonably related to the business of the cooperative; or

2 (B) the member does not intend to sell or offer to  
3 sell any list of members of the cooperative or assist another person  
4 in obtaining a list of members for that purpose;

5 (2) the release of the information sought by the  
6 member, such as individual member information or personnel  
7 information, would unduly infringe on or invade the privacy of a  
8 person;

9 (3) the inspection is sought for a dishonest purpose  
10 or to gratify mere curiosity, or is otherwise opposed to the  
11 interest of the electric cooperative, or is not reasonably germane  
12 to the interest of the member; or

13 (4) the records sought to be inspected pertain to  
14 trade secrets or information that is privileged, confidential, or  
15 proprietary.

16 Sec. 161.081. REMEDY FOR INFRINGEMENT OF CERTAIN MEMBERS  
17 RIGHTS. (a) A member aggrieved by an action of the board or by an  
18 employee of the board or cooperative that the member alleges  
19 infringes on a right of the member under Section 161.075, 161.0751,  
20 or 161.080 may file a written complaint with the board. On  
21 receiving a complaint under this subsection, the board shall:

22 (1) take corrective action requested by the member; or

23 (2) set a date for a hearing at which the member is  
24 entitled to appear and give testimony and other evidence concerning  
25 the grievance.

26 (b) If, after the hearing, the board determines that the  
27 action complained of infringed on the member's right under the



1 relevant section of this chapter, the board shall take corrective  
2 action.

3 (c) A member who is not satisfied with the result of a  
4 hearing under Subsection (a) or who is denied a hearing under  
5 Subsection (a) is entitled to have the matter arbitrated by the  
6 office of public utility counsel in accordance with procedures  
7 adopted by the office for this purpose. If the office determines  
8 that the action complained of infringed on the member's right under  
9 the relevant section of this chapter, the office may order the board  
10 to take corrective action as the office specifies.

11 (d) A member who is not satisfied with the result of an  
12 arbitration under Subsection (c) or who is denied arbitration under  
13 Subsection (c) may file a petition for judicial review in a district  
14 court of the district in which the cooperative's headquarters is  
15 located. A board may file a petition for judicial review of an  
16 order of the public utility counsel under Subsection (c) to a  
17 district court of the district in which the cooperative's  
18 headquarters is located.

19 (e) Judicial review under this section is by trial de novo.  
20 If the court determines the action complained of by the member  
21 infringes a right of the member under the relevant section of this  
22 chapter, the court may order or award any appropriate relief,  
23 including money damages, court costs, and reasonable and necessary  
24 attorney's fees.

25 SECTION 4. (a) The changes in law made by Sections 161.075,  
26 161.0751, and 161.0752, Utilities Code, as added by this Act, apply  
27 only to a meeting convened on or after the effective date of this

1 Act. A meeting convened before the effective date of this Act is  
2 subject to the law in effect on the date the meeting is held, and  
3 that law is continued in effect for that purpose.

4 (b) The general manager of each electric cooperative shall  
5 make available the first course of training required by Section  
6 161.0753, Utilities Code, as added by this Act, not later than  
7 October 1, 2009. A person who is employed by an electric  
8 cooperative or serving an electric cooperative as a director on the  
9 effective date of this Act and who is required by Section 161.0753  
10 to complete training shall complete the training not later than  
11 April 1, 2010.

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

18 (d) The changes in law made by Section 161.081, Utilities  
19 Code, as added by this Act, apply only to a complaint filed by a  
20 member of an electric cooperative concerning an action taken on or  
21 after the effective date of this Act. A complaint filed by a member  
22 of an electric cooperative concerning an action taken before the  
23 effective date of this Act is subject to the law in effect on the  
24 date of that action, and that law is continued in effect for that  
25 purpose.

26 SECTION 5. This Act takes effect September 1, 2009.