

By: Fraser

S.B. No. 921

A BILL TO BE ENTITLED

AN ACT

1
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. Subsection (b), Section 161.064, Utilities Code,
21 is amended to read as follows:

22 (b) The bylaws may contain any provision for the regulation
23 and management of the affairs of the electric cooperative that is
24 consistent with the articles of incorporation and this chapter.

1 SECTION 3. Section 161.072, Utilities Code, is amended by
2 adding Subsections (c) through (m) to read as follows:

3 (c) Director elections shall be conducted in a manner that
4 is fair and open to all members of the electric cooperative.

5 (d) A board committee of a cooperative with more than
6 170,000 members may not cast a member's proxy vote in a director
7 election.

8 (e) A director who is standing for reelection to the board
9 of a cooperative with not more than 170,000 members may not serve on
10 a committee established under the bylaws for the purpose of
11 casting, or being authorized to cast, the proxy vote of a member in
12 a director election.

13 (f) A member's proxy vote may be cast in a director election
14 only if:

15 (1) a proxy form is sent by regular mail to each member
16 of record not later than the 30th day before the date of the meeting
17 at which proxy votes are counted;

18 (2) the proxy form designates each candidate who is an
19 incumbent director;

20 (3) an exact copy of the proxy form is posted on the
21 cooperative's Internet website, if the cooperative maintains a
22 website;

23 (4) the proxy form includes information describing the
24 process by which proxy votes are authorized and cast, including:

25 (A) the name of each member of the committee, if
26 any, established under the bylaws for the purpose of casting proxy
27 votes in a director election;

1 (B) the process prescribed in the bylaws for
2 selecting members to serve on the committee; and

3 (C) the districts represented by each committee
4 member, if applicable; and

5 (5) the proxy form contains the following statements,
6 in bold type:

7 (A) "If you grant the committee your proxy, you
8 are giving the committee full authority to vote your proxy for the
9 candidates you selected, or, if you did not select any candidates,
10 to vote your proxy for candidates the committee selects";

11 (B) "You may rescind your proxy at any time
12 before votes are cast at the meeting to elect directors"; and

13 (C) "State law prohibits any person from using
14 incentives or other enticements to encourage you to provide your
15 proxy in any board election."

16 (g) Subsections (d) and (f) may not be construed as limiting
17 the right of an individual member to collect or cast the proxy votes
18 of another member in a director election, if allowed by the bylaws.

19 (h) This section may not be construed as limiting the use of
20 a proxy as provided by Section 161.069 to establish a quorum to
21 transact business other than the election of a director.

22 (i) A person may not use an incentive or other enticement to
23 encourage a member to authorize another person to cast the member's
24 proxy vote in a director election.

25 (j) A cooperative with more than 170,000 members may elect
26 directors only by district. A member may vote for a director to
27 represent a district only if the member resides in that district.

1 (k) A cooperative with more than 170,000 members may
2 nominate qualified members as candidates in a director election
3 only through a written petition by members. The bylaws must:

4 (1) specify the number of printed names and dated
5 signatures a petition nominating a candidate must contain;

6 (2) specify a period within which a petition
7 nominating a candidate must be submitted to the cooperative; and

8 (3) specify that only members residing in a district
9 may sign a petition for the nomination of a candidate to represent
10 that district.

11 (l) If the bylaws of a cooperative with not more than
12 170,000 members allow a committee of members to nominate qualified
13 members as candidates in a director election, the bylaws must also:

14 (1) allow nominations to be made through one or more
15 written petitions by members;

16 (2) specify the number of printed names and dated
17 signatures a petition nominating a candidate must contain; and

18 (3) specify a period within which a petition
19 nominating a candidate must be submitted to the cooperative.

20 (m) A petition submitted under Subsection (l) must provide
21 on the petition the name and address of the member seeking
22 nomination and, if the cooperative nominates or elects directors by
23 district, the district the member seeks to represent.

24 SECTION 4. Section 161.075, Utilities Code, is amended to
25 read as follows:

26 Sec. 161.075. BOARD MEETINGS. (a) The board shall hold a
27 regular or special board meeting at the place and on [~~the~~] notice as

1 provided by Section 161.0751 and [~~prescribed by~~] the bylaws.
2 Except as provided by Section 161.0752, each member of the electric
3 cooperative is entitled to attend a regular or special board
4 meeting.

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

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

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

21 (e) The board may adopt reasonable rules to maintain order
22 at a regular or special board meeting. A rule adopted by the board
23 under this section may not prevent or unreasonably impair a member
24 from exercising a right granted by this section.

25 SECTION 5. Subchapter B, Chapter 161, Utilities Code, is
26 amended by adding Sections 161.0751 and 161.0752 to read as
27 follows:

1 Sec. 161.0751. NOTICE OF BOARD MEETINGS. (a) The board
2 shall give members written notice of the date, hour, place, and
3 subject of a regular or special board meeting. Notice of a board
4 meeting must be given at least 72 hours before the scheduled time of
5 the meeting by:

6 (1) posting a notice on a bulletin board in a place
7 convenient to members at the electric cooperative's headquarters
8 and at each district office;

9 (2) posting a notice on the cooperative's Internet
10 website, if the cooperative maintains a website.

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

20 (c) In the event of an emergency or urgent necessity that
21 requires immediate board action to meet a reasonably unforeseeable
22 situation, notice may be given in the manner prescribed by
23 Subsection (a) at least two hours before a regular or special board
24 meeting is convened, in order to:

25 (1) call an emergency board meeting; or

26 (2) add a subject to the agenda of a previously
27 scheduled board meeting.

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

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

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

16 (2) a recitation of existing policy in response to the
17 inquiry.

18 (f) Any deliberation of or decision relating to the subject
19 of an inquiry made under Subsection (e) shall be limited to a
20 proposal to place the subject on the agenda for a subsequent board
21 meeting.

22 Sec. 161.0752. EXECUTIVE SESSIONS. (a) Before the board
23 calls an executive session, the board shall convene in a regular or
24 special board meeting for which notice has been given as provided by
25 Section 161.0751. During that board meeting, the presiding
26 director may call an executive session by announcing that an
27 executive session will be held to deliberate a matter described by

1 Subsection (d) and identifying the specific subdivision of
2 Subsection (d) under which the executive session will be held.

3 (b) Except as provided by Subsection (c), a final action,
4 decision, or vote on a matter deliberated in an executive session
5 may only be made in a regular or special board meeting for which
6 notice has been given as provided by Section 161.0751.

7 (c) The board may take action in an executive session for
8 matters described by Subsections (d)(2), (4), and (5).

9 (d) The board may hold an executive session to which the
10 members do not have access to deliberate:

11 (1) anticipated or pending litigation, settlement
12 offers, or interpretations of the law with the electric
13 cooperative's legal counsel and with any other person the board
14 considers necessary;

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

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

23 (4) personnel issues, and complaints or charges
24 against a director or electric cooperative employee or consultant,
25 unless the director or employee who is the subject of the
26 deliberation requests a public hearing;

27 (5) utility-related matters and commercial

1 information that the board determines in good faith are related to
2 the electric cooperative's competitive activity but only to the
3 extent the board specifically determines that disclosure of the
4 information could give an advantage to competitors or potential
5 competitors; or

6 (6) issues related to security of the electric
7 cooperative, including security personnel, security devices, and
8 security audits.

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

13 (1) a statement of the subject matter of each
14 deliberation;

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

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

18 SECTION 6. Section 161.077, Utilities Code, is amended by
19 adding Subsection (d) to read as follows:

20 (d) The provisions of this chapter that apply to the board
21 also apply to the executive committee.

22 SECTION 7. Subchapter B, Chapter 161, Utilities Code, is
23 amended by adding Sections 161.080, 161.081, 161.082, and 161.083
24 to read as follows:

25 Sec. 161.080. MEMBER'S RIGHT OF ACCESS TO RECORDS.

26 (a) Except as provided by Subsection (c), a member of an electric
27 cooperative may, at any reasonable time and on written request that

1 states the purpose of the request:

2 (1) inspect books and records of the cooperative
3 relevant to that purpose; and

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

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

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

11 (1) the member refuses to warrant and furnish to the
12 electric cooperative, on the electric cooperative's request, an
13 affidavit that:

14 (A) the inspection is desired for a purpose
15 reasonably related to the business of the cooperative; or

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

19 (2) the release of the information sought by the
20 member, such as individual member information or personnel
21 information, would unduly infringe on or invade the privacy of a
22 person;

23 (3) the inspection is sought for a dishonest purpose;
24 or

25 (4) the records sought to be inspected pertain to
26 trade secrets or information that is privileged, confidential, or
27 proprietary.

1 Sec. 161.081. POLICIES AND AUDITS. (a) The board shall
2 adopt written policies relating to:

3 (1) travel expenditures for board members, officers,
4 and employees;

5 (2) reimbursement of expenses for board members,
6 officers, and employees;

7 (3) conflicts of interest for board members, officers,
8 and employees;

9 (4) whistleblower protections;

10 (5) criteria and procedures for the selection,
11 monitoring, review, and evaluation of outside vendors or contracted
12 professional services;

13 (6) budgets for use in planning and controlling costs;
14 and

15 (7) the creation of a committee that audits the
16 actions of the board.

17 (b) An electric cooperative shall provide for an
18 independent financial audit, to be performed annually by an
19 unaffiliated entity that is professionally qualified to perform
20 such an audit.

21 (c) Upon approval of the Legislative Audit Committee, the
22 state auditor may audit the financial transactions and operations
23 of a cooperative, at the cooperative's expense.

24 Sec. 161.082. COMPLAINTS BY MEMBERS. (a) In this section,
25 "commission" means the Public Utility Commission of Texas.

26 (b) A member may file a written complaint with the general
27 manager of the electric cooperative if the member is aggrieved by an

1 action of the board or by an employee of the board or of the
2 cooperative that the member alleges infringes on a right of the
3 member under this chapter.

4 (c) Not later than the 20th day after the date the general
5 manager receives a complaint under Subsection (b), the general
6 manager shall take corrective action regarding the complaint, if
7 the general manager determines that the action complained of
8 infringed on the member's rights under this chapter.

9 (d) If the general manager determines that the action
10 complained of did not infringe on the member's rights under this
11 chapter, or if the general manager otherwise fails to resolve the
12 member's complaint to the member's satisfaction before the 21st day
13 after the general manager receives the member's complaint, the
14 member may file a written complaint with the commission. A
15 complaint filed with the commission under this subsection must:

16 (1) identify the electric cooperative by name and
17 address;

18 (2) describe in detail the nature of the member's
19 complaint; and

20 (3) include copies of documents relevant to the
21 member's complaint, including:

22 (A) any relevant written request made by the
23 member to the cooperative;

24 (B) the written complaint made by the member to
25 the general manager under Subsection (b); and

26 (C) any relevant response from the cooperative
27 regarding a request or complaint.

1 (e) In reviewing a member's complaint under this section,
2 the commission may request that the cooperative provide to the
3 commission any information relevant to the complaint. The
4 commission must give a cooperative a reasonable opportunity to
5 inspect and copy the requested information before providing the
6 information to the commission. The commission shall designate an
7 employee of the commission to be the person responsible for
8 receiving, inspecting, or copying information received under this
9 subsection.

10 (f) An electric cooperative shall cooperate with a request
11 for information under Subsection (e) and promptly provide the
12 requested information to the commission's designated employee. The
13 commission may not disclose to any person information provided by a
14 cooperative in response to the request unless:

15 (1) the commission is required by a court to provide
16 the information to the person;

17 (2) the person is an authorized employee of the
18 commission; or

19 (3) the cooperative that provided the information
20 consents to the disclosure.

21 (g) The commission shall give a cooperative notice before
22 using information provided in response to a request under
23 Subsection (e) in a contested case hearing. On objection by the
24 cooperative that the information is confidential or sensitive, the
25 administrative judge presiding over the contested case hearing
26 shall determine whether the information is admissible in the
27 hearing.

1 (h) The commission shall return to a cooperative any
2 information provided under this section that is confidential or
3 sensitive to the cooperative.

4 Sec. 161.083. ALTERNATIVE DISPUTE RESOLUTION. The Public
5 Utility Commission of Texas may refer a complaint made under
6 Section 161.082(d) to the State Office of Administrative Hearings
7 as provided by Section 14.0025 for alternative dispute resolution
8 if the commission determines a referral is in the public interest.

9 SECTION 8. Subchapter C, Chapter 161, Utilities Code, is
10 amended by adding Sections 161.126 and 161.127 to read as follows:

11 Sec. 161.126. PROHIBITION ON ACQUISITION OF GENERATOR
12 CAPACITY BY CERTAIN ELECTRIC COOPERATIVES. An electric cooperative
13 with more than 170,000 members that provides retail electric
14 service may not acquire equipment capable of generating electricity
15 for sale unless the Public Utility Commission of Texas first
16 approves of the acquisition. The commission by rule shall
17 establish the standards and procedures by which it will approve an
18 electric cooperative's acquisition of electric generation
19 capacity.

20 Sec. 161.127. NOTIFICATION OF CERTAIN INVESTMENTS. Not
21 later than the 30th day following the completion of a transaction
22 that results in an electric cooperative or an affiliate of the
23 cooperative creating, acquiring, or receiving an interest in an
24 entity that does not generate, transmit, or distribute electricity,
25 the cooperative shall provide a notice to members that contains:

- 26 (1) the name of the entity;
27 (2) a description of the entity;

1 (3) the reasons for the decision to enter into the
2 transaction;

3 (4) a description of the costs associated with the
4 transaction, and the method of financing for those costs; and

5 (5) a description of the anticipated effect the
6 transaction will have on the cooperative's electric energy rates or
7 prices.

8 SECTION 9. (a) The changes in law made to Section 161.072,
9 Utilities Code, as amended by this Act, apply only to a director
10 election held on or after the effective date of this Act. A
11 director election held before the effective date of this Act is
12 subject to the law in effect on the date the election is held, and
13 that law is continued in effect for that purpose.

14 (b) The changes in law made by Section 161.075, Utilities
15 Code, as amended by this Act, and by Sections 161.0751 and 161.0752,
16 Utilities Code, as added by this Act, apply only to a meeting
17 convened on or after the effective date of this Act. A meeting
18 convened before the effective date of this Act is subject to the law
19 in effect on the date the meeting is held, and that law is continued
20 in effect for that purpose.

21 (c) The changes in law made by Sections 161.080, 161.082,
22 and 161.083, Utilities Code, as added by this Act, apply only to a
23 request to inspect records submitted on or after the effective date
24 of this Act. A request submitted before the effective date of this
25 Act is subject to the law in effect on the date of the request, and
26 that law is continued in effect for that purpose.

27 (d) The changes in law made by Section 161.127, Utilities

1 Code, as added by this Act, apply only to a transaction that is
2 completed on or after the effective date of this Act. A transaction
3 that is completed before the effective date of this Act is subject
4 to the law in effect on that date, and that law is continued in
5 effect for that purpose.

6 SECTION 10. This Act takes effect September 1, 2009.