

By: Fraser

S.B. No. 921

Substitute the following for S.B. No. 921:

By: Solomons

C.S.S.B. No. 921

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. Subchapter A, Chapter 161, Utilities Code, is
21 amended by adding Section 161.006 to read as follows:

22 Sec. 161.006. NONAPPLICABILITY. The following sections of
23 this chapter do not apply to an electric cooperative of which one or
24 more members is another electric cooperative:

1 (1) Sections 161.072(d) through (m);

2 (2) Sections 161.075(a), (d), (e), and (f);

3 (3) Section 161.0751;

4 (4) Section 161.077(d);

5 (5) Section 161.080;

6 (6) Section 161.081;

7 (7) Section 161.082;

8 (8) Section 161.126; and

9 (9) Section 161.127.

10 SECTION 3. Subsection (b), Section 161.064, Utilities Code,
11 is amended to read as follows:

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

15 SECTION 4. Section 161.072, Utilities Code, is amended by
16 adding Subsections (c) through (m) to read as follows:

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

19 (d) A board committee of a cooperative with more than
20 170,000 members may not cast a member's proxy vote in a director
21 election.

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

27 (f) A member's proxy vote may be cast in a director election

1 only if:

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

5 (2) the proxy form designates each candidate who is an
6 incumbent director;

7 (3) an exact copy of the proxy form is posted on the
8 cooperative's Internet website, if the cooperative maintains a
9 website;

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

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

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

17 (C) the districts represented by each committee
18 member, if applicable; and

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

21 (A) "If you grant the committee your proxy, you
22 are giving the committee full authority to vote your proxy for the
23 candidates you selected, or, if you did not select any candidates,
24 to vote your proxy for candidates the committee selects";

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

27 (C) "State law prohibits any person from using

1 incentives or other enticements to encourage you to provide your
2 proxy in any board election."

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

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

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

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

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

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

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

22 (3) specify that only members residing in a district
23 may sign a petition for the nomination of a candidate to represent
24 that district.

25 (l) If the bylaws of a cooperative with not more than
26 170,000 members allow a committee of members to nominate qualified
27 members as candidates in a director election, the bylaws must also:

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

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

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

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

11 SECTION 5. Section 161.075, Utilities Code, is amended to
12 read as follows:

13 Sec. 161.075. BOARD MEETINGS. (a) The board shall hold a
14 regular or special board meeting at the place and time specified in
15 ~~[on]~~ the notice required by Section 161.0751 and ~~[prescribed by]~~
16 the bylaws.

17 (b) The attendance of a director at a board meeting
18 constitutes a waiver of notice to the director of the meeting unless
19 the director attends the meeting for the express purpose of
20 objecting to the transaction of business at the meeting because the
21 meeting is not lawfully called or convened.

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

25 (d) Except as provided by this section, each member of the
26 electric cooperative is entitled to attend a regular or special
27 board meeting. A person who is not a member of the cooperative may

1 not attend a regular or special board meeting.

2 (e) At the board's discretion, the board may convene an
3 executive session to which the members do not have access to
4 deliberate and take action on sensitive matters, such as matters
5 involving confidential personnel information, contracts, lawsuits,
6 real estate transactions, competitively sensitive information,
7 information related to the security of the electrical system or the
8 cooperative, or other privileged, confidential, or proprietary
9 information.

10 (f) The board shall reconvene the open session of the
11 regular or special board meeting to announce the final action taken
12 on a matter discussed in executive session, except matters
13 involving confidential personnel information, real estate
14 transactions, competitively sensitive information, or security
15 information.

16 (g) The board secretary or person designated by the
17 secretary shall make and keep written minutes of each regular or
18 special board meeting.

19 (h) The board shall adopt and comply with procedures for
20 providing a member with access to the entirety of a regular or
21 special board meeting, other than an executive session.

22 (i) The board secretary or person designated by the
23 secretary shall make and keep a written or audio record of each
24 executive session. The secretary shall preserve the record for at
25 least two years after the session. The record must include:

26 (1) a statement of the subject matter of each
27 deliberation;

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

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

4 (j) Subsections (e), (f), (g), (h), and (i) apply to an
5 electric cooperative with more than 170,000 members.

6 (k) Each electric cooperative with not more than 170,000
7 members shall hold an election every five years on the question of
8 whether to make Subsections (e), (f), (g), (h), and (i) applicable
9 to the electric cooperative.

10 SECTION 6. Subchapter B, Chapter 161, Utilities Code, is
11 amended by adding Section 161.0751 to read as follows:

12 Sec. 161.0751. NOTICE OF BOARD MEETINGS. (a) The board
13 shall give members notice of the date, hour, place, and planned
14 agenda of a regular or special board meeting. Notice of a board
15 meeting must be given at least three days before the scheduled time
16 of the meeting by:

17 (1) posting a notice on a bulletin board in a place
18 convenient to members at the electric cooperative's main office and
19 at each district office;

20 (2) posting a notice on the cooperative's Internet
21 website, if the cooperative maintains a website; and

22 (3) providing a copy of the notice to a member on a
23 request by the member.

24 (b) In the event of an emergency or urgent matter, notice
25 may be given in the manner prescribed by Subsection (a) at any time
26 before a regular or special board meeting is convened. An action
27 taken by the board at a meeting for which notice is given under this

1 subsection must be ratified by the board at the next meeting for
2 which notice is given under Subsection (a)

3 SECTION 7. Section 161.077, Utilities Code, is amended by
4 adding Subsection (d) to read as follows:

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

7 SECTION 8. Subchapter B, Chapter 161, Utilities Code, is
8 amended by adding Sections 161.080, 161.081, and 161.082 to read as
9 follows:

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

15 (b) An electric cooperative may charge a member for the cost
16 of providing information under Subsection (a).

17 (c) An electric cooperative may limit or deny a member's
18 request to inspect its books and records if the member:

19 (1) does not meet the requirements of Subsection (a);

20 (2) seeks information the release of which would
21 unduly infringe on or invade the privacy of a person;

22 (3) seeks information related to a trade secret;

23 (4) seeks personnel information the disclosure of
24 which would violate the law or constitute a clearly unwarranted
25 invasion of personal privacy;

26 (5) seeks information related to:

27 (A) pending or reasonably anticipated

1 litigation;

2 (B) a real estate transaction for a project that
3 has not been formally announced or for which contracts have not been
4 formally awarded;

5 (C) the cooperative's competitive activity,
6 including commercial information and utility-related matters that
7 would, if disclosed, give an advantage to a competitor or
8 prospective competitor; or

9 (D) the security of the cooperative's electrical
10 system; or

11 (6) seeks information that is confidential,
12 privileged, or proprietary.

13 Sec. 161.081. POLICIES AND AUDIT. (a) The board shall
14 adopt written policies relating to:

15 (1) travel expenditures for board members, officers,
16 and employees;

17 (2) reimbursement of expenses for board members,
18 officers, and employees;

19 (3) conflicts of interest for board members, officers,
20 and employees;

21 (4) whistleblower protections;

22 (5) criteria and procedures for the selection,
23 monitoring, review, and evaluation of outside vendors or contracted
24 professional services;

25 (6) budgets for use in planning and controlling costs;
26 and

27 (7) the creation of a committee that audits the

1 actions of the board.

2 (b) An electric cooperative shall provide for an
3 independent financial audit, to be performed annually by an
4 unaffiliated entity that is professionally qualified to perform
5 such an audit.

6 Sec. 161.082. COMPLAINTS BY MEMBERS. (a) A member may file
7 a written complaint with the general manager of the electric
8 cooperative if the member is aggrieved by an action of the board or
9 by an employee of the board or of the cooperative that the member
10 alleges infringes on a right of the member under Sections 161.072,
11 161.075, 161.0751, 161.080, 161.081, and 161.126.

12 (b) Not later than the 20th day after the date the general
13 manager receives a complaint under Subsection (a), the general
14 manager shall take corrective action regarding the complaint, if
15 the general manager determines that the action complained of
16 infringed on the member's rights under Sections 161.072, 161.075,
17 161.0751, 161.080, 161.081, and 161.126.

18 (c) If the general manager determines that the action
19 complained of did not infringe on the member's rights under this
20 chapter, or if the general manager otherwise fails to resolve the
21 member's complaint to the member's satisfaction before the 21st day
22 after the general manager receives the member's complaint, the
23 member may file a written complaint with the attorney general's
24 consumer protection division. A complaint filed with the attorney
25 general under this subsection must:

26 (1) identify the electric cooperative by name and
27 address;

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

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

5 (A) any relevant written request made by the
6 member to the cooperative;

7 (B) the written complaint made by the member to
8 the general manager under Subsection (a); and

9 (C) any relevant response from the cooperative
10 regarding a request or complaint.

11 (d) In reviewing a member's complaint under this section,
12 the attorney general may request that the cooperative provide to
13 the attorney general any information relevant to the complaint.
14 The attorney general must give a cooperative a reasonable
15 opportunity to inspect and copy the requested information before
16 providing the information to the attorney general. The attorney
17 general shall designate an employee of the office of the attorney
18 general to be the person responsible for receiving, inspecting, or
19 copying information received under this subsection.

20 (e) An electric cooperative shall cooperate with a request
21 for information under Subsection (d) and promptly provide the
22 requested information to the attorney general's designated
23 employee. The attorney general may not disclose to any person
24 information provided by a cooperative in response to the request
25 unless:

26 (1) the attorney general is required by a court to
27 provide the information to the person;

1 (2) the person is an authorized employee of the office
2 of the attorney general; or

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

5 (f) The attorney general shall return to a cooperative any
6 information provided under this section that is confidential or
7 sensitive to the cooperative.

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

10 Sec. 161.126. PROHIBITION ON ACQUISITION OF GENERATOR
11 CAPACITY BY CERTAIN ELECTRIC COOPERATIVES. An electric cooperative
12 with more than 170,000 members that provides retail electric
13 service may not acquire equipment capable of generating electricity
14 for sale other than equipment that uses an alternative energy
15 resource 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 or acquiring an interest in an entity that
24 does not generate, transmit, or distribute electricity, the
25 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 10. (a) The changes in law made by 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 Section 161.0751, Utilities
16 Code, as added by this Act, apply only to a meeting convened on or
17 after the effective date of this Act. A meeting convened before the
18 effective date of this Act is subject to the law in effect on the
19 date the meeting is held, and that law is continued in effect for
20 that purpose.

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

6 SECTION 11. Not later than December 31, 2010, each electric
7 cooperative with not more than 170,000 members shall hold an
8 election as required by Section 161.075(k), as added by this Act.

9 SECTION 12. This Act takes effect September 1, 2009.