

1-1 By: Fraser S.B. No. 921
1-2 (In the Senate - Filed February 18, 2009; March 9, 2009,
1-3 read first time and referred to Committee on Business and Commerce;
1-4 April 8, 2009, reported favorably by the following vote: Yeas 7,
1-5 Nays 1; April 8, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to access by the members of electric cooperatives to
1-9 meetings of the boards of directors and certain information of the
1-10 electric cooperatives.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 161.002, Utilities Code, is amended by
1-13 adding Subdivision (2-a) to read as follows:

1-14 (2-a) "Board meeting" means a deliberation between a
1-15 quorum of the voting board, or between a quorum of the voting board
1-16 and another person, during which electric cooperative business or
1-17 policy over which the board has responsibility is discussed or
1-18 considered, or during which the board takes formal action. The term
1-19 does not include the gathering of a quorum of the board at a social
1-20 function unrelated to the business of the cooperative, or the
1-21 attendance by a quorum of the board at a regional, state, or
1-22 national convention or workshop, ceremonial event, or press
1-23 conference, if formal action is not taken and any discussion of
1-24 cooperative business is incidental to the social function,
1-25 convention, workshop, ceremonial event, or press conference.

1-26 SECTION 2. Subsection (b), Section 161.064, Utilities Code,
1-27 is amended to read as follows:

1-28 (b) The bylaws may contain any provision for the regulation
1-29 and management of the affairs of the electric cooperative that is
1-30 consistent with the articles of incorporation and this chapter.

1-31 SECTION 3. Section 161.072, Utilities Code, is amended by
1-32 adding Subsections (c) through (m) to read as follows:

1-33 (c) Director elections shall be conducted in a manner that
1-34 is fair and open to all members of the electric cooperative.

1-35 (d) A board committee of a cooperative with more than
1-36 210,000 members may not cast a member's proxy vote in a director
1-37 election.

1-38 (e) A director who is standing for reelection to the board
1-39 of a cooperative with not more than 210,000 members may not serve on
1-40 a committee established under the bylaws for the purpose of
1-41 casting, or being authorized to cast, the proxy vote of a member in
1-42 a director election.

1-43 (f) A member's proxy vote may be cast in a director election
1-44 only if:

1-45 (1) a proxy form is sent by regular mail to each member
1-46 of record not later than the 30th day before the date of the meeting
1-47 at which proxy votes are counted;

1-48 (2) the proxy form designates each candidate who is an
1-49 incumbent director;

1-50 (3) an exact copy of the proxy form is posted on the
1-51 cooperative's Internet website, if the cooperative maintains a
1-52 website;

1-53 (4) the proxy form includes information describing the
1-54 process by which proxy votes are authorized and cast, including:

1-55 (A) the name of each member of the committee, if
1-56 any, established under the bylaws for the purpose of casting proxy
1-57 votes in a director election;

1-58 (B) the process prescribed in the bylaws for
1-59 selecting members to serve on the committee; and

1-60 (C) the districts represented by each committee
1-61 member, if applicable; and

1-62 (5) the proxy form contains the following statements,
1-63 in bold type:

1-64 (A) "If you grant the committee your proxy, you

2-1 are giving the committee full authority to vote your proxy for the
 2-2 candidates you selected, or, if you did not select any candidates,
 2-3 to vote your proxy for candidates the committee selects";

2-4 (B) "You may rescind your proxy at any time
 2-5 before votes are cast at the meeting to elect directors"; and

2-6 (C) "State law prohibits any person from using
 2-7 incentives or other enticements to encourage you to provide your
 2-8 proxy in any board election."

2-9 (g) Subsections (d) and (f) may not be construed as limiting
 2-10 the right of an individual member to collect or cast the proxy votes
 2-11 of another member in a director election, if allowed by the bylaws.

2-12 (h) This section may not be construed as limiting the use of
 2-13 a proxy as provided by Section 161.069 to establish a quorum to
 2-14 transact business other than the election of a director.

2-15 (i) A person may not use an incentive or other enticement to
 2-16 encourage a member to authorize another person to cast the member's
 2-17 proxy vote in a director election.

2-18 (j) A cooperative with more than 210,000 members may elect
 2-19 directors only by district. A member may vote for a director to
 2-20 represent a district only if the member resides in that district.

2-21 (k) A cooperative with more than 210,000 members may
 2-22 nominate qualified members as candidates in a director election
 2-23 only through a written petition by members. The bylaws must:

2-24 (1) specify the number of printed names and dated
 2-25 signatures a petition nominating a candidate must contain;

2-26 (2) specify a period within which a petition
 2-27 nominating a candidate must be submitted to the cooperative; and

2-28 (3) specify that only members residing in a district
 2-29 may sign a petition for the nomination of a candidate to represent
 2-30 that district.

2-31 (l) If the bylaws of a cooperative with not more than
 2-32 210,000 members allow a committee of members to nominate qualified
 2-33 members as candidates in a director election, the bylaws must also:

2-34 (1) allow nominations to be made through one or more
 2-35 written petitions by members;

2-36 (2) specify the number of printed names and dated
 2-37 signatures a petition nominating a candidate must contain; and

2-38 (3) specify a period within which a petition
 2-39 nominating a candidate must be submitted to the cooperative.

2-40 (m) A petition submitted under Subsection (l) must provide
 2-41 on the petition the name and address of the member seeking
 2-42 nomination and, if the cooperative nominates or elects directors by
 2-43 district, the district the member seeks to represent.

2-44 SECTION 4. Section 161.075, Utilities Code, is amended to
 2-45 read as follows:

2-46 Sec. 161.075. BOARD MEETINGS. (a) The board shall hold a
 2-47 regular or special board meeting at the place and on ~~the~~ notice as
 2-48 provided by Section 161.0751 and ~~prescribed by~~ the bylaws.
 2-49 Except as provided by Section 161.0752, each member of the electric
 2-50 cooperative is entitled to attend a regular or special board
 2-51 meeting.

2-52 (b) The attendance of a director at a board meeting
 2-53 constitutes a waiver of notice to the director of the meeting unless
 2-54 the director attends the meeting for the express purpose of
 2-55 objecting to the transaction of business at the meeting because the
 2-56 meeting is not lawfully called or convened.

2-57 (c) A notice or waiver of notice of a board meeting given to
 2-58 a director is not required to specify the business to be transacted
 2-59 at the meeting or the purpose of the meeting.

2-60 (d) The board shall keep a record of each regular or special
 2-61 board meeting, in the form of written minutes or a taped recording
 2-62 of the meeting. A record of a meeting must state the subject of each
 2-63 deliberation and indicate each vote, order, decision, or other
 2-64 action taken by the board. The board shall make meeting records
 2-65 available to a member for inspection and copying on the member's
 2-66 written request to the board secretary or to a person the secretary
 2-67 designates.

2-68 (e) A member attending a regular or special board meeting
 2-69 may record all or part of the meeting by any means of audio or visual

3-1 reproduction, including a tape recorder or video camera.

3-2 (f) The board may adopt reasonable rules to maintain order
 3-3 at a regular or special board meeting, including rules relating to
 3-4 the location of recording equipment and the manner in which
 3-5 recording may be conducted. A rule adopted by the board under this
 3-6 section may not prevent or unreasonably impair a member from
 3-7 exercising a right granted by this section.

3-8 SECTION 5. Subchapter B, Chapter 161, Utilities Code, is
 3-9 amended by adding Sections 161.0751 and 161.0752 to read as
 3-10 follows:

3-11 Sec. 161.0751. NOTICE OF BOARD MEETINGS. (a) The board
 3-12 shall give members and the media written notice of the date, hour,
 3-13 place, and subject of a regular or special board meeting. Notice of
 3-14 a board meeting must be given at least 72 hours before the scheduled
 3-15 time of the meeting by:

3-16 (1) posting a notice on a bulletin board in a place
 3-17 convenient to members, at the electric cooperative's headquarters
 3-18 and at each district office;

3-19 (2) posting a notice on the cooperative's Internet
 3-20 website, if the cooperative maintains a website; and

3-21 (3) sending a notice by electronic mail to members of
 3-22 the media who, before the time notice is required by this section,
 3-23 requested notification of meetings.

3-24 (b) If the board recesses a regular or special board meeting
 3-25 to continue the following regular business day, the board is not
 3-26 required to post notice of the continued meeting if the recess is
 3-27 taken in good faith and not to circumvent this section and Section
 3-28 161.075. If a regular or special board meeting is continued to the
 3-29 following regular business day, and on that following day the board
 3-30 continues the meeting to another day, the board shall give written
 3-31 notice as required by this section of the meeting continued to that
 3-32 other day.

3-33 (c) In the event of an emergency or urgent necessity that
 3-34 requires immediate board action to meet a reasonably unforeseeable
 3-35 situation, notice may be given in the manner prescribed by
 3-36 Subsection (a) at least two hours before a regular or special board
 3-37 meeting is convened, in order to:

3-38 (1) call an emergency board meeting; or

3-39 (2) add a subject to the agenda of a previously
 3-40 scheduled board meeting.

3-41 (d) Notice under Subsection (c) shall clearly identify the
 3-42 emergency or urgent necessity for which the notice is given. If the
 3-43 board adds a subject to the agenda of a previously scheduled regular
 3-44 or special board meeting, the board secretary or person the
 3-45 secretary designates shall post a copy of the revised agenda on the
 3-46 electric cooperative's Internet website, if the cooperative
 3-47 maintains a website, and physically at the cooperative's
 3-48 headquarters and each district office, not less than two hours
 3-49 before the meeting convenes.

3-50 (e) If, at a regular or special board meeting, a member
 3-51 makes an inquiry regarding a subject for which notice has not been
 3-52 given as required by this section, the notice provisions of this
 3-53 section do not apply to:

3-54 (1) a statement by the board of specific factual
 3-55 information given in response to the inquiry; or

3-56 (2) a recitation of existing policy in response to the
 3-57 inquiry.

3-58 (f) Any deliberation of or decision relating to the subject
 3-59 of an inquiry made under Subsection (e) shall be limited to a
 3-60 proposal to place the subject on the agenda for a subsequent board
 3-61 meeting.

3-62 Sec. 161.0752. EXECUTIVE SESSIONS. (a) Before the board
 3-63 calls an executive session, the board shall convene in a regular or
 3-64 special board meeting for which notice has been given as provided by
 3-65 Section 161.0751. During that board meeting, the presiding
 3-66 director may call an executive session by announcing that an
 3-67 executive session will be held to deliberate a matter described by
 3-68 Subsection (d) and identifying the specific subdivision of
 3-69 Subsection (d) under which the executive session will be held.

4-1 (b) Except as provided by Subsection (c), a final action,
 4-2 decision, or vote on a matter deliberated in an executive session
 4-3 may only be made in a regular or special board meeting for which
 4-4 notice has been given as provided by Section 161.0751.

4-5 (c) The board may take action in an executive session for
 4-6 matters described by Subsections (d)(2), (4), and (5).

4-7 (d) The board may hold an executive session to which the
 4-8 members do not have access to deliberate:

4-9 (1) anticipated or pending litigation, settlement
 4-10 offers, or interpretations of the law with the electric
 4-11 cooperative's legal counsel and with any other person the board
 4-12 considers necessary;

4-13 (2) the purchase, exchange, lease, or value of real
 4-14 property, if the board determines in good faith that deliberation
 4-15 in an open board meeting may have a detrimental effect on the
 4-16 electric cooperative;

4-17 (3) business and financial issues relating to the
 4-18 negotiation of a contract, if the board determines in good faith
 4-19 that deliberation in an open board meeting may have a detrimental
 4-20 effect on the position of the electric cooperative;

4-21 (4) personnel issues, and complaints or charges
 4-22 against a director or electric cooperative employee or consultant,
 4-23 unless the director or employee who is the subject of the
 4-24 deliberation requests a public hearing;

4-25 (5) utility-related matters and commercial
 4-26 information that the board determines in good faith are related to
 4-27 the electric cooperative's competitive activity but only to the
 4-28 extent the board specifically determines that disclosure of the
 4-29 information could give an advantage to competitors or potential
 4-30 competitors; or

4-31 (6) issues related to security of the electric
 4-32 cooperative, including security personnel, security devices, and
 4-33 security audits.

4-34 (e) The board secretary or a person the secretary designates
 4-35 shall make and keep a written or audio record of each executive
 4-36 session. The secretary shall preserve the record for at least two
 4-37 years following the session. The record must include:

4-38 (1) a statement of the subject matter of each
 4-39 deliberation;

4-40 (2) a record of any further action taken; and

4-41 (3) an announcement by the presiding director at the
 4-42 beginning and end of the session indicating the date and time.

4-43 SECTION 6. Section 161.077, Utilities Code, is amended by
 4-44 adding Subsection (d) to read as follows:

4-45 (d) The provisions of this chapter that apply to the board
 4-46 also apply to the executive committee.

4-47 SECTION 7. Subchapter B, Chapter 161, Utilities Code, is
 4-48 amended by adding Sections 161.080, 161.081, 161.082, and 161.083
 4-49 to read as follows:

4-50 Sec. 161.080. MEMBER'S RIGHT OF ACCESS TO RECORDS.

4-51 (a) Except as provided by Subsection (c), a member of an electric
 4-52 cooperative may, at any reasonable time and on written request that
 4-53 states the purpose of the request:

4-54 (1) inspect books and records of the cooperative
 4-55 relevant to that purpose; and

4-56 (2) at the member's own expense, copy records the
 4-57 member is entitled to inspect under this section.

4-58 (b) An electric cooperative may charge a reasonable fee to
 4-59 the member if fulfilling the member's request will require a large
 4-60 amount of employee time.

4-61 (c) An electric cooperative may reject or limit a member's
 4-62 request to inspect its books and records if:

4-63 (1) the member refuses to warrant and furnish to the
 4-64 electric cooperative, on the electric cooperative's request, an
 4-65 affidavit that:

4-66 (A) the inspection is desired for a purpose
 4-67 reasonably related to the business of the cooperative; or

4-68 (B) the member does not intend to sell or offer to
 4-69 sell any list of members of the cooperative or assist another person

5-1 in obtaining a list of members for that purpose;
5-2 (2) the release of the information sought by the
5-3 member, such as individual member information or personnel
5-4 information, would unduly infringe on or invade the privacy of a
5-5 person;
5-6 (3) the inspection is sought for a dishonest purpose;
5-7 or
5-8 (4) the records sought to be inspected pertain to
5-9 trade secrets or information that is privileged, confidential, or
5-10 proprietary.
5-11 Sec. 161.081. POLICIES AND AUDITS. (a) The board shall
5-12 adopt written policies relating to:
5-13 (1) travel expenditures for board members, officers,
5-14 and employees;
5-15 (2) reimbursement of expenses for board members,
5-16 officers, and employees;
5-17 (3) conflicts of interest for board members, officers,
5-18 and employees;
5-19 (4) whistleblower protections;
5-20 (5) criteria and procedures for the selection,
5-21 monitoring, review, and evaluation of outside vendors or contracted
5-22 professional services;
5-23 (6) budgets for use in planning and controlling costs;
5-24 and
5-25 (7) the creation of a committee that audits the
5-26 actions of the board.
5-27 (b) An electric cooperative shall provide for an
5-28 independent financial audit, to be performed annually by an
5-29 unaffiliated entity that is professionally qualified to perform
5-30 such an audit.
5-31 (c) The state auditor may audit the financial transactions
5-32 and operations of a cooperative, at the cooperative's expense.
5-33 Sec. 161.082. COMPLAINTS BY MEMBERS. (a) In this section,
5-34 "commission" means the Public Utility Commission of Texas.
5-35 (b) A member may file a written complaint with the general
5-36 manager of the electric cooperative if the member is aggrieved by an
5-37 action of the board or by an employee of the board or of the
5-38 cooperative that the member alleges infringes on a right of the
5-39 member under this chapter.
5-40 (c) Not later than the 20th day after the date the general
5-41 manager receives a complaint under Subsection (b), the general
5-42 manager shall take corrective action regarding the complaint, if
5-43 the general manager determines that the action complained of
5-44 infringed on the member's rights under this chapter.
5-45 (d) If the general manager determines that the action
5-46 complained of did not infringe on the member's rights under this
5-47 chapter, or if the general manager otherwise fails to resolve the
5-48 member's complaint to the member's satisfaction before the 21st day
5-49 after the general manager receives the member's complaint, the
5-50 member may file a written complaint with the commission. A
5-51 complaint filed with the commission under this subsection must:
5-52 (1) identify the electric cooperative by name and
5-53 address;
5-54 (2) describe in detail the nature of the member's
5-55 complaint; and
5-56 (3) include copies of documents relevant to the
5-57 member's complaint, including:
5-58 (A) any relevant written request made by the
5-59 member to the cooperative;
5-60 (B) the written complaint made by the member to
5-61 the general manager under Subsection (b); and
5-62 (C) any relevant response from the cooperative
5-63 regarding a request or complaint.
5-64 (e) In reviewing a member's complaint under this section,
5-65 the commission may request that the cooperative provide to the
5-66 commission any information relevant to the complaint. The
5-67 commission must give a cooperative a reasonable opportunity to
5-68 inspect and copy the requested information before providing the
5-69 information to the commission. The commission shall designate an

6-1 employee of the commission to be the person responsible for
 6-2 receiving, inspecting, or copying information received under this
 6-3 subsection.

6-4 (f) An electric cooperative shall cooperate with a request
 6-5 for information under Subsection (e) and promptly provide the
 6-6 requested information to the commission's designated employee. The
 6-7 commission may not disclose to any person information provided by a
 6-8 cooperative in response to the request unless:

6-9 (1) the commission is required by a court to provide
 6-10 the information to the person;

6-11 (2) the person is an authorized employee of the
 6-12 commission; or

6-13 (3) the cooperative that provided the information
 6-14 consents to the disclosure.

6-15 (g) The commission shall give a cooperative notice before
 6-16 using information provided in response to a request under
 6-17 Subsection (e) in a contested case hearing. On objection by the
 6-18 cooperative that the information is confidential or sensitive, the
 6-19 administrative judge presiding over the contested case hearing
 6-20 shall determine whether the information is admissible in the
 6-21 hearing.

6-22 (h) The commission shall return to a cooperative any
 6-23 information provided under this section that is confidential or
 6-24 sensitive to the cooperative.

6-25 Sec. 161.083. ALTERNATIVE DISPUTE RESOLUTION. The Public
 6-26 Utility Commission of Texas may refer a complaint made under
 6-27 Section 161.082(d) to the State Office of Administrative Hearings
 6-28 as provided by Section 14.0025 for alternative dispute resolution
 6-29 if the commission determines a referral is in the public interest.

6-30 SECTION 8. Subchapter C, Chapter 161, Utilities Code, is
 6-31 amended by adding Sections 161.126 and 161.127 to read as follows:

6-32 Sec. 161.126. PROHIBITION ON ACQUISITION OF GENERATOR
 6-33 CAPACITY BY CERTAIN ELECTRIC COOPERATIVES. An electric cooperative
 6-34 with more than 210,000 members that provides retail electric
 6-35 service may not acquire equipment capable of generating electricity
 6-36 for sale unless the Public Utility Commission of Texas first
 6-37 approves of the acquisition. The commission by rule shall
 6-38 establish the standards and procedures by which it will approve an
 6-39 electric cooperative's acquisition of electric generation
 6-40 capacity.

6-41 Sec. 161.127. NOTIFICATION OF CERTAIN INVESTMENTS. Not
 6-42 later than the 30th day following the completion of a transaction
 6-43 that results in an electric cooperative or an affiliate of the
 6-44 cooperative creating, acquiring, or receiving an interest in an
 6-45 entity that does not generate, transmit, or distribute electricity,
 6-46 the cooperative shall provide a notice to members that contains:

6-47 (1) the name of the entity;

6-48 (2) a description of the entity;

6-49 (3) the reasons for the decision to enter into the
 6-50 transaction;

6-51 (4) a description of the costs associated with the
 6-52 transaction, and the method of financing for those costs; and

6-53 (5) a description of the anticipated effect the
 6-54 transaction will have on the cooperative's electric energy rates or
 6-55 prices.

6-56 SECTION 9. (a) The changes in law made to Section 161.072,
 6-57 Utilities Code, as amended by this Act, apply only to a director
 6-58 election held on or after the effective date of this Act. A
 6-59 director election held before the effective date of this Act is
 6-60 subject to the law in effect on the date the election is held, and
 6-61 that law is continued in effect for that purpose.

6-62 (b) The changes in law made by Section 161.075, Utilities
 6-63 Code, as amended by this Act, and by Sections 161.0751 and 161.0752,
 6-64 Utilities Code, as added by this Act, apply only to a meeting
 6-65 convened on or after the effective date of this Act. A meeting
 6-66 convened before the effective date of this Act is subject to the law
 6-67 in effect on the date the meeting is held, and that law is continued
 6-68 in effect for that purpose.

6-69 (c) The changes in law made by Sections 161.080, 161.082,

7-1 and 161.083, Utilities Code, as added by this Act, apply only to a
7-2 request to inspect records submitted on or after the effective date
7-3 of this Act. A request submitted before the effective date of this
7-4 Act is subject to the law in effect on the date of the request, and
7-5 that law is continued in effect for that purpose.

7-6 (d) The changes in law made by Section 161.127, Utilities
7-7 Code, as added by this Act, apply only to a transaction that is
7-8 completed on or after the effective date of this Act. A transaction
7-9 that is completed before the effective date of this Act is subject
7-10 to the law in effect on that date, and that law is continued in
7-11 effect for that purpose.

7-12 SECTION 10. This Act takes effect September 1, 2009.

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