

1-1 By: Ogden S.B. No. 1613
1-2 (In the Senate - Filed March 11, 2011; March 23, 2011, read
1-3 first time and referred to Select Committee on Open Government;
1-4 April 4, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 4, Nays 0; April 4, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1613 By: Davis

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the application of the public meetings and public
1-11 information laws to public power utilities.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (c), Section 551.086, Government
1-14 Code, is amended to read as follows:

1-15 (c) This chapter does not require a public power utility
1-16 governing body to conduct an open meeting to deliberate, vote, or
1-17 take final action on any competitive matter, as that term is defined
1-18 by Section 552.133 [~~in Subsection (b)(3). Before a public power~~
1-19 ~~utility governing body may deliberate, vote, or take final action~~
1-20 ~~on any competitive matter in a closed meeting, the public power~~
1-21 ~~utility governing body must first make a good faith determination,~~
1-22 ~~by majority vote of its members, that the matter is a competitive~~
1-23 ~~matter that satisfies the requirements of Subsection (b)(3). The~~
1-24 ~~vote shall be taken during the closed meeting and be included in the~~
1-25 ~~certified agenda or tape recording of the closed meeting. If a~~
1-26 ~~public power utility governing body fails to determine by that vote~~
1-27 ~~that the matter satisfies the requirements of Subsection (b)(3),~~
1-28 ~~the public power utility governing body may not deliberate or take~~
1-29 ~~any further action on the matter in the closed meeting]. This~~
1-30 section does not limit the right of a public power utility governing
1-31 body to hold a closed session under any other exception provided for
1-32 in this chapter.

1-33 SECTION 2. Section 552.133, Government Code, is amended to
1-34 read as follows:

1-35 Sec. 552.133. EXCEPTION: PUBLIC POWER UTILITY COMPETITIVE
1-36 MATTERS. (a) In this section, "public[+

1-37 [~~(1) "Public~~] power utility" means an entity providing
1-38 electric or gas utility services that is subject to the provisions
1-39 of this chapter.

1-40 (a-1) For purposes of this section, "competitive

1-41 [~~(2) "Public power utility governing body" means the~~
1-42 ~~board of trustees or other applicable governing body, including a~~
1-43 ~~city council, of a public power utility.~~

1-44 [~~(3) "Competitive" matter" means a utility-related~~
1-45 ~~matter that [the public power utility governing body in good faith~~
1-46 ~~determines by a vote under this section] is related to the public~~
1-47 ~~power utility's competitive activity, including commercial~~
1-48 ~~information, and would, if disclosed, give advantage to competitors~~
1-49 ~~or prospective competitors. The term:~~

1-50 (1) means a matter that is reasonably related to the
1-51 following categories of information:

1-52 (A) generation unit specific and portfolio fixed
1-53 and variable costs, including forecasts of those costs, capital
1-54 improvement plans for generation units, and generation unit
1-55 operating characteristics and outage scheduling;

1-56 (B) bidding and pricing information for
1-57 purchased power, generation and fuel, and Electric Reliability
1-58 Council of Texas bids, prices, offers, and related services and
1-59 strategies;

1-60 (C) effective fuel and purchased power
1-61 agreements and fuel transportation arrangements and contracts;

1-62 (D) risk management information, contracts, and
1-63 strategies, including fuel hedging and storage;

2-1 (E) plans, studies, proposals, and analyses for
2-2 system improvements, additions, or sales, other than transmission
2-3 and distribution system improvements inside the service area for
2-4 which the public power utility is the sole certificated retail
2-5 provider; and

2-6 (F) customer billing, contract, and usage
2-7 information, electric power pricing information, system load
2-8 characteristics, and electric power marketing analyses and
2-9 strategies; and

2-10 (2) does not [~~but may not be deemed to~~] include the
2-11 following categories of information:

2-12 (A) information relating to the provision of
2-13 distribution access service, including the terms and conditions of
2-14 the service and the rates charged for the service but not including
2-15 information concerning utility-related services or products that
2-16 are competitive;

2-17 (B) information relating to the provision of
2-18 transmission service that is required to be filed with the Public
2-19 Utility Commission of Texas, subject to any confidentiality
2-20 provided for under the rules of the commission;

2-21 (C) information for the distribution system
2-22 pertaining to reliability and continuity of service, to the extent
2-23 not security-sensitive, that relates to emergency management,
2-24 identification of critical loads such as hospitals and police,
2-25 records of interruption, and distribution feeder standards;

2-26 (D) any substantive rule or tariff of general
2-27 applicability regarding rates, service offerings, service
2-28 regulation, customer protections, or customer service adopted by
2-29 the public power utility as authorized by law;

2-30 (E) aggregate information reflecting receipts or
2-31 expenditures of funds of the public power utility, of the type that
2-32 would be included in audited financial statements;

2-33 (F) information relating to equal employment
2-34 opportunities for minority groups, as filed with local, state, or
2-35 federal agencies;

2-36 (G) information relating to the public power
2-37 utility's performance in contracting with minority business
2-38 entities;

2-39 (H) information relating to nuclear
2-40 decommissioning trust agreements, of the type required to be
2-41 included in audited financial statements;

2-42 (I) information relating to the amount and timing
2-43 of any transfer to an owning city's general fund;

2-44 (J) information relating to environmental
2-45 compliance as required to be filed with any local, state, or
2-46 national environmental authority, subject to any confidentiality
2-47 provided under the rules of those authorities;

2-48 (K) names of public officers of the public power
2-49 utility and the voting records of those officers for all matters
2-50 other than those within the scope of a competitive resolution
2-51 provided for by this section;

2-52 (L) a description of the public power utility's
2-53 central and field organization, including the established places at
2-54 which the public may obtain information, submit information and
2-55 requests, or obtain decisions and the identification of employees
2-56 from whom the public may obtain information, submit information or
2-57 requests, or obtain decisions; [~~or~~]

2-58 (M) information identifying the general course
2-59 and method by which the public power utility's functions are
2-60 channeled and determined, including the nature and requirements of
2-61 all formal and informal policies and procedures;

2-62 (N) salaries and total compensation of all
2-63 employees of a public power utility; or

2-64 (O) information publicly released by the
2-65 Electric Reliability Council of Texas in accordance with a law,
2-66 rule, or protocol generally applicable to similarly situated market
2-67 participants.

2-68 (b) Information or records are excepted from the
2-69 requirements of Section 552.021 if the information or records are

3-1 reasonably related to a competitive matter, as defined in this
3-2 section. ~~[Excepted information or records include the text of any~~
3-3 ~~resolution of the public power utility governing body determining~~
3-4 ~~which issues, activities, or matters constitute competitive~~
3-5 ~~matters.]~~ Information or records of a municipally owned utility
3-6 that are reasonably related to a competitive matter are not subject
3-7 to disclosure under this chapter, whether or not, under the
3-8 Utilities Code, the municipally owned utility has adopted customer
3-9 choice or serves in a multiply certificated service area. This
3-10 section does not limit the right of a public power utility governing
3-11 body to withhold from disclosure information deemed to be within
3-12 the scope of any other exception provided for in this chapter,
3-13 subject to the provisions of this chapter.

3-14 (c) ~~[In connection with any request for an opinion of the~~
3-15 ~~attorney general under Section 552.301 with respect to information~~
3-16 ~~alleged to fall under this exception, in rendering a written~~
3-17 ~~opinion under Section 552.306 the attorney general shall find the~~
3-18 ~~requested information to be outside the scope of this exception~~
3-19 ~~only if the attorney general determines, based on the information~~
3-20 ~~provided in connection with the request:~~

3-21 ~~[(1) that the public power utility governing body has~~
3-22 ~~failed to act in good faith in making the determination that the~~
3-23 ~~issue, matter, or activity in question is a competitive matter; or~~

3-24 ~~[(2) that the information or records sought to be~~
3-25 ~~withheld are not reasonably related to a competitive matter.~~

3-26 ~~[(d)]~~ The requirement of Section 552.022 that a category of
3-27 information listed under Section 552.022(a) is public information
3-28 and not excepted from required disclosure under this chapter unless
3-29 expressly confidential under law does not apply to information that
3-30 is excepted from required disclosure under this section.

3-31 SECTION 3. Subdivision (3), Subsection (b), Section
3-32 551.086, Government Code, is repealed.

3-33 SECTION 4. This Act takes effect immediately if it receives
3-34 a vote of two-thirds of all the members elected to each house, as
3-35 provided by Section 39, Article III, Texas Constitution. If this
3-36 Act does not receive the vote necessary for immediate effect, this
3-37 Act takes effect September 1, 2011.

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