

By: Fraser

S.B. No. 1743

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Subchapter B, Chapter 161, Utilities Code, is amended by adding Sections 161.0721, 161.0751, 161.0752, 161.080, and 161.081 to read as follows:

Sec. 161.0721. ELECTION OF DIRECTORS IN LARGE COOPERATIVES.

(a) This section applies only to an electric cooperative with more than 180,000 members that is partially located in a county with a population of more than one million and less than 1.5 million.

(b) Directors may be elected only by district. The board shall establish single-member districts from which the directors are to be elected. In establishing districts, the board shall attempt to have directors represent geographic areas with equal numbers of people.

(c) A member may vote for a director to represent a district only if the member resides in that district.

(d) Qualified members may be nominated as candidates in a director election only through a written petition by members. The bylaws of the electric cooperative must:

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

1 (2) specify a period within which a petition
2 nominating a candidate must be submitted to the electric
3 cooperative; and

4 (3) specify that only members residing in a district
5 may sign a petition for the nomination of a candidate to represent
6 that district.

7 (e) A director or board committee may not cast a member's
8 proxy vote in a director election.

9 (f) Subsection (e) may not be construed as limiting the
10 right of an individual member to collect or cast a proxy vote of
11 another member in a director election to the extent allowed by the
12 bylaws of the electric cooperative.

13 (g) A person may not use an incentive or other enticement to
14 encourage a member to authorize another person to cast the member's
15 proxy vote in a director election.

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

19 Sec. 161.0751. BOARD MEETINGS IN CERTAIN LARGE
20 COOPERATIVES. (a) This section applies only to an electric
21 cooperative with more than 180,000 members that is partially
22 located in a county with a population of more than one million and
23 less than 1.5 million.

24 (b) The board shall hold a regular or special board meeting
25 at the place and time specified by the notice required by Section
26 161.0752 and the bylaws of the electric cooperative.

27 (c) The attendance of a director at a board meeting

1 constitutes a waiver of notice to the director of the meeting unless
2 the director attends the meeting for the express purpose of
3 objecting to the transaction of business at the meeting because the
4 meeting is not lawfully called or convened.

5 (d) A notice or waiver of notice of a board meeting given to
6 a director is not required to specify the business to be transacted
7 at the meeting or the purpose of the meeting.

8 (e) Except as provided by this section, each member of the
9 electric cooperative is entitled to attend a regular or special
10 board meeting. A person who is not a member of the electric
11 cooperative may not attend a regular or special board meeting
12 unless the person has been invited by a member.

13 (f) At the board's discretion, the board may convene an
14 executive session to which the members do not have access to
15 deliberate and take action on sensitive matters, including matters
16 involving confidential personnel information, contracts, lawsuits,
17 real estate transactions, competitively sensitive information,
18 information related to the security of the electrical system or the
19 electric cooperative, and other privileged, confidential, or
20 proprietary information.

21 (g) The board shall reconvene the open session of the
22 regular or special board meeting to announce the final action taken
23 on a matter discussed in executive session, except matters
24 involving confidential personnel information, real estate
25 transactions, competitively sensitive information, or security
26 information.

27 (h) The board secretary or a person designated by the

1 secretary shall make and keep written minutes of each regular or
2 special board meeting.

3 (i) The board shall adopt and comply with procedures for
4 providing a member with access to the entirety of a regular or
5 special board meeting, other than an executive session.

6 (j) The board secretary or person designated by the
7 secretary shall make and keep a written or audio record of each
8 executive session. The secretary shall preserve the record for at
9 least two years after the session. The record must include:

10 (1) a statement of the subject matter of each
11 deliberation;

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

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

15 Sec. 161.0752. NOTICE OF BOARD MEETINGS IN CERTAIN
16 COOPERATIVES. (a) This section applies only to an electric
17 cooperative with more than 180,000 members that is partially
18 located in a county with a population of more than one million and
19 less than 1.5 million.

20 (b) The board shall give members notice of the date, hour,
21 place, and planned agenda of a regular or special board meeting.
22 Notice of a board meeting must be given at least three days before
23 the scheduled time of the meeting by:

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

27 (2) posting a notice on the electric cooperative's

1 Internet website, if the cooperative maintains a website; and

2 (3) providing a copy of the notice to a member upon a
3 member's request.

4 (c) In the event of an emergency or urgent matter, notice
5 may be given in the manner prescribed by Subsection (b) at any time
6 before a regular or special board meeting is convened. An action
7 taken by the board at a meeting for which notice is given under this
8 subsection must be ratified by the board at the next meeting for
9 which notice is given under Subsection (b).

10 Sec. 161.080. MEMBER'S RIGHT OF ACCESS TO RECORDS IN
11 CERTAIN COOPERATIVES. (a) This section applies only to an
12 electric cooperative with more than 180,000 members that is
13 partially located in a county with a population of more than one
14 million and less than 1.5 million.

15 (b) Except as provided by Subsection (d), a member of an
16 electric cooperative may, at any reasonable time and on written
17 request that states a proper purpose for the request, inspect and
18 copy the books and records of the electric cooperative relevant to
19 that purpose.

20 (c) An electric cooperative may charge a member for the cost
21 of providing information under Subsection (b).

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

24 (1) seeks information the release of which would
25 unduly infringe on or invade the privacy of a person;

26 (2) seeks information related to a trade secret;

27 (3) seeks personnel information the disclosure of

1 which would violate other law or would constitute a clearly
2 unwarranted invasion of personal privacy;

3 (4) seeks information related to:

4 (A) pending or reasonably anticipated
5 litigation;

6 (B) a real estate transaction for a project that
7 has not been formally announced or for which contracts have not been
8 formally awarded;

9 (C) the electric cooperative's competitive
10 activity, including commercial information and utility-related
11 matters that would, if disclosed, give an advantage to a competitor
12 or prospective competitor; or

13 (D) the security of the electric cooperative's
14 electrical system; or

15 (5) seeks information that is confidential,
16 privileged, or proprietary.

17 Sec. 161.081. POLICIES AND AUDIT IN CERTAIN COOPERATIVES.

18 (a) This section applies only to an electric cooperative with more
19 than 180,000 members that is partially located in a county with a
20 population of more than one million and less than 1.5 million.

21 (b) The board shall adopt written policies relating to:

22 (1) travel expenditures for board members, officers,
23 and employees;

24 (2) reimbursement of expenses for board members,
25 officers, and employees;

26 (3) conflicts of interest for board members, officers,
27 and employees;

1 (4) whistle-blower protections;

2 (5) criteria and procedures for the selection,
3 monitoring, review, and evaluation of outside vendors or contracted
4 professional services;

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

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

9 (c) An electric cooperative shall provide for an
10 independent financial audit, to be performed annually by an
11 unaffiliated entity that is professionally qualified to perform the
12 audit.

13 SECTION 2. Subchapter C, Chapter 161, Utilities Code, is
14 amended by adding Sections 161.126 and 161.127 to read as follows:

15 Sec. 161.126. PROHIBITION ON ACQUISITION OF GENERATOR
16 CAPACITY BY CERTAIN ELECTRIC COOPERATIVES. (a) This section
17 applies only to an electric cooperative with more than 180,000
18 members that is partially located in a county with a population of
19 more than one million and less than 1.5 million.

20 (b) An electric cooperative may not acquire equipment
21 capable of generating electricity for sale unless the Public
22 Utility Commission of Texas first approves of the acquisition. The
23 commission by rule shall establish the standards and procedures by
24 which it will approve an electric cooperative's acquisition of
25 electric generation capacity.

26 Sec. 161.127. NOTIFICATION OF CERTAIN INVESTMENTS.
27 (a) This section applies only to an electric cooperative with more

1 than 180,000 members that is partially located in a county with a
2 population of more than one million and less than 1.5 million.

3 (b) Not later than the 30th day following the completion of
4 a transaction that results in an electric cooperative or an
5 affiliate of the electric cooperative creating or acquiring an
6 interest in an entity that does not generate, transmit, or
7 distribute electricity, the electric cooperative shall provide a
8 notice to members that contains:

9 (1) the name of the entity;

10 (2) a description of the entity;

11 (3) the reasons for the decision to enter into the
12 transaction;

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

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

18 SECTION 3. (a) The changes in law made by Section
19 161.0721, Utilities Code, as added by this Act, apply only to a
20 director election held on or after the effective date of this Act.
21 A director election held before the effective date of this Act is
22 subject to the law in effect on the date the election is held, and
23 that law is continued in effect for that purpose.

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

1 the law in effect on the date the meeting is held, and that law is
2 continued in effect for that purpose.

3 (c) The changes in law made by Section 161.080, Utilities
4 Code, as added by this Act, apply only to a request to inspect
5 records submitted on or after the effective date of this Act. A
6 request submitted before the effective date of this Act is subject
7 to the law in effect on the date of the request, and that law is
8 continued in effect for that purpose.

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

15 SECTION 4. This Act takes effect September 1, 2011.