

By: Fraser

S.B. No. 1743

A BILL TO BE ENTITLED

AN ACT

1
2 relating to access by members of electric cooperatives to meetings
3 of the boards of directors and certain information of the electric
4 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 that engages
24 exclusively or primarily in the wholesale sale or transmission of

1 electricity and does not have a certificated service area for the
2 retail sale of electricity:

3 (1) Sections 161.075(a), (d), (e), (f), (g), (h), (i),
4 (j), and (k);

5 (2) Section 161.0751;

6 (3) Section 161.077(d);

7 (4) Section 161.080;

8 (5) Section 161.081;

9 (6) Section 161.126; and

10 (7) Section 161.127.

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

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

16 SECTION 4. Section 161.072, Utilities Code, is amended by
17 adding Subsection (c) to read as follows:

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

20 SECTION 5. Subchapter B, Chapter 161, Utilities Code, is
21 amended by adding Sections 161.0721 and 161.0722 to read as
22 follows:

23 Sec. 161.0721. ELECTION OF DIRECTORS IN LARGE COOPERATIVES.

24 (a) This section applies only to an electric cooperative with more
25 than 170,000 members.

26 (b) Directors may be elected only by district. The board
27 shall establish single-member districts from which the directors

1 are to be elected. In establishing districts, the board shall
2 attempt to have directors represent geographic areas with equal
3 numbers of people.

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

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

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

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

14 (3) specify that only members residing in a district
15 may sign a petition for the nomination of a candidate to represent
16 that district.

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

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

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

26 (h) This section may not be construed as limiting the use of
27 a proxy as provided by Section 161.069 to establish a quorum to

1 transact business other than the election of a director.

2 Sec. 161.0722. ELECTION OF DIRECTORS IN SMALL COOPERATIVES.

3 (a) This section applies only to an electric cooperative with not
4 more than 170,000 members.

5 (b) A director who is standing for reelection may not serve
6 on a committee established under the bylaws of the electric
7 cooperative for the purpose of casting, or being authorized to
8 cast, the proxy vote of a member in a director election.

9 (c) A member's proxy vote may be cast in a director election
10 only if:

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

14 (2) the proxy form designates each candidate who is an
15 incumbent director;

16 (3) an exact copy of the proxy form is posted on the
17 electric cooperative's Internet website, if the cooperative
18 maintains a website;

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

21 (A) the name of each member of the committee, if
22 any, established under the bylaws of the electric cooperative for
23 the purpose of casting proxy votes in a director election;

24 (B) the process prescribed by the bylaws of the
25 electric cooperative for selecting members to serve on the
26 committee; and

27 (C) the district represented by each committee

1 member, if applicable; and

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

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

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

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

13 (d) Subsection (c) may not be construed as limiting the
14 right of an individual member to collect or cast a proxy vote of
15 another member in a director election to the extent allowed by the
16 bylaws of the electric cooperative.

17 (e) A person may not use an incentive or other enticement to
18 encourage a member to authorize another person to cast the member's
19 proxy vote in a director election.

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

23 (g) If the bylaws of the electric cooperative allow a
24 committee of members to nominate qualified members as candidates in
25 a director election, the bylaws must also:

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

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

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

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

10 SECTION 6. Section 161.075, Utilities Code, is amended to
11 read as follows:

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

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

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

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

1 unless the person has been invited by a member.

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 electric cooperative, or other privileged, confidential, or
9 proprietary 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 (d), (e), (f), (g), (h), and (i) apply to an
5 electric cooperative with more than 170,000 members.

6 (k) An electric cooperative with not more than 170,000
7 members shall hold an election at the electric cooperative's first
8 annual meeting held after December 31, 2011, on the question of
9 whether the electric cooperative will be subject to the
10 requirements of Subsections (d)-(i). If a majority of the members
11 voting at the election vote in favor of the electric cooperative
12 remaining subject to those requirements, the electric cooperative
13 shall hold another election on the same question at every
14 subsequent fifth annual meeting until the majority of members
15 voting at an election under this subsection vote against the
16 electric cooperative remaining subject to those requirements.

17 SECTION 7. Subchapter B, Chapter 161, Utilities Code, is
18 amended by adding Section 161.0751 to read as follows:

19 Sec. 161.0751. NOTICE OF BOARD MEETINGS. (a) The board
20 shall give members notice of the date, hour, place, and planned
21 agenda of a regular or special board meeting. Notice of a board
22 meeting must be given at least three days before the scheduled time
23 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 (b) In the event of an emergency or urgent matter, notice
5 may be given in the manner prescribed by Subsection (a) 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 (a).

10 SECTION 8. Section 161.077, Utilities Code, is amended by
11 adding Subsection (d) to read as follows:

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

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

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

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

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

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

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

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

2 (4) seeks personnel information the disclosure of
3 which would violate other law or would constitute a clearly
4 unwarranted invasion of personal privacy;

5 (5) seeks information related to:

6 (A) pending or reasonably anticipated
7 litigation;

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

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

15 (D) the security of the electric cooperative's
16 electrical system; or

17 (6) seeks information that is confidential,
18 privileged, or proprietary.

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

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

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

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

27 (4) whistle-blower protections;

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

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

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

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

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

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

24 Sec. 161.127. NOTIFICATION OF CERTAIN INVESTMENTS. Not
25 later than the 30th day following the completion of a transaction
26 that results in an electric cooperative or an affiliate of the
27 electric cooperative creating or acquiring an interest in an entity

1 that does not generate, transmit, or distribute electricity, the
2 electric cooperative shall provide a notice to members that
3 contains:

4 (1) the name of the entity;

5 (2) a description of the entity;

6 (3) the reasons for the decision to enter into the
7 transaction;

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

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

13 SECTION 11. (a) The changes in law made by Section
14 161.072, Utilities Code, as amended by this Act, and Sections
15 161.0721 and 161.0722, Utilities Code, as added by this Act, apply
16 only to a director election held on or after the effective date of
17 this Act. A director election held before the effective date of
18 this Act is subject to the law in effect on the date the election is
19 held, and that law is continued in effect for that purpose.

20 (b) The changes in law made by Section 161.075, Utilities
21 Code, as amended by this Act, and Section 161.0751, Utilities Code,
22 as added by this Act, apply only to a meeting convened on or after
23 the effective date of this Act. A meeting convened before the
24 effective date of this Act is subject to the law in effect on the
25 date the meeting is held, and that law is continued in effect for
26 that purpose.

27 (c) The changes in law made by Section 161.080, Utilities

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

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

12 SECTION 12. This Act takes effect September 1, 2011.