

1-1 By: Fraser S.B. No. 1743  
1-2 (In the Senate - Filed March 11, 2011; March 23, 2011, read  
1-3 first time and referred to Committee on Business and Commerce;  
1-4 April 29, 2011, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 29, 2011,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1743 By: Jackson

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

1-10 relating to access by members of certain electric cooperatives to  
1-11 meetings of the boards of directors and certain information of the  
1-12 electric cooperatives.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subchapter B, Chapter 161, Utilities Code, is  
1-15 amended by adding Sections 161.0721, 161.0751, 161.0752, 161.080,  
1-16 and 161.081 to read as follows:

1-17 Sec. 161.0721. ELECTION OF DIRECTORS IN LARGE COOPERATIVES.

1-18 (a) This section applies only to an electric cooperative with more  
1-19 than 180,000 members that is partially located in a county with a  
1-20 population of more than one million and less than 1.5 million.

1-21 (b) Directors may be elected only by district. The board  
1-22 shall establish single-member districts from which the directors  
1-23 are to be elected. In establishing districts, the board shall  
1-24 attempt to have directors represent geographic areas with equal  
1-25 numbers of people.

1-26 (c) A member may vote for a director to represent a district  
1-27 only if the member resides in that district.

1-28 (d) Qualified members may be nominated as candidates in a  
1-29 director election only through a written petition by members. The  
1-30 bylaws of the electric cooperative must:

1-31 (1) specify the number of printed names and dated  
1-32 signatures a petition nominating a candidate must contain;

1-33 (2) specify a period within which a petition  
1-34 nominating a candidate must be submitted to the electric  
1-35 cooperative; and

1-36 (3) specify that only members residing in a district  
1-37 may sign a petition for the nomination of a candidate to represent  
1-38 that district.

1-39 (e) A director or board committee may not cast a member's  
1-40 proxy vote in a director election.

1-41 (f) Subsection (e) may not be construed as limiting the  
1-42 right of an individual member to collect or cast a proxy vote of  
1-43 another member in a director election to the extent allowed by the  
1-44 bylaws of the electric cooperative.

1-45 (g) A person may not use an incentive or other enticement to  
1-46 encourage a member to authorize another person to cast the member's  
1-47 proxy vote in a director election.

1-48 (h) This section may not be construed as limiting the use of  
1-49 a proxy as provided by Section 161.069 to establish a quorum to  
1-50 transact business other than the election of a director.

1-51 Sec. 161.0751. BOARD MEETINGS IN CERTAIN LARGE  
1-52 COOPERATIVES. (a) This section applies only to an electric  
1-53 cooperative with more than 180,000 members that is partially  
1-54 located in a county with a population of more than one million and  
1-55 less than 1.5 million.

1-56 (b) The board shall hold a regular or special board meeting  
1-57 at the place and time specified by the notice required by Section  
1-58 161.0752 and the bylaws of the electric cooperative.

1-59 (c) The attendance of a director at a board meeting  
1-60 constitutes a waiver of notice to the director of the meeting unless  
1-61 the director attends the meeting for the express purpose of  
1-62 objecting to the transaction of business at the meeting because the  
1-63 meeting is not lawfully called or convened.

2-1 (d) A notice or waiver of notice of a board meeting given to  
 2-2 a director is not required to specify the business to be transacted  
 2-3 at the meeting or the purpose of the meeting.

2-4 (e) Except as provided by this section, each member of the  
 2-5 electric cooperative is entitled to attend a regular or special  
 2-6 board meeting. A person who is not a member of the electric  
 2-7 cooperative may not attend a regular or special board meeting  
 2-8 unless the person has been invited by a member.

2-9 (f) At the board's discretion, the board may convene an  
 2-10 executive session to which the members do not have access to  
 2-11 deliberate and take action on sensitive matters, including matters  
 2-12 involving confidential personnel information, contracts, lawsuits,  
 2-13 real estate transactions, competitively sensitive information,  
 2-14 information related to the security of the electrical system or the  
 2-15 electric cooperative, and other privileged, confidential, or  
 2-16 proprietary information.

2-17 (g) The board shall reconvene the open session of the  
 2-18 regular or special board meeting to announce the final action taken  
 2-19 on a matter discussed in executive session, except matters  
 2-20 involving confidential personnel information, real estate  
 2-21 transactions, competitively sensitive information, or security  
 2-22 information.

2-23 (h) The board secretary or a person designated by the  
 2-24 secretary shall make and keep written minutes of each regular or  
 2-25 special board meeting.

2-26 (i) The board shall adopt and comply with procedures for  
 2-27 providing a member with access to the entirety of a regular or  
 2-28 special board meeting, other than an executive session.

2-29 (j) The board secretary or person designated by the  
 2-30 secretary shall make and keep a written or audio record of each  
 2-31 executive session. The secretary shall preserve the record for at  
 2-32 least two years after the session. The record must include:

2-33 (1) a statement of the subject matter of each  
 2-34 deliberation;

2-35 (2) a record of any further action taken; and

2-36 (3) an announcement by the presiding director at the  
 2-37 beginning and end of the session indicating the date and time.

2-38 Sec. 161.0752. NOTICE OF BOARD MEETINGS IN CERTAIN  
 2-39 COOPERATIVES. (a) This section applies only to an electric  
 2-40 cooperative with more than 180,000 members that is partially  
 2-41 located in a county with a population of more than one million and  
 2-42 less than 1.5 million.

2-43 (b) The board shall give members notice of the date, hour,  
 2-44 place, and planned agenda of a regular or special board meeting.  
 2-45 Notice of a board meeting must be given at least three days before  
 2-46 the scheduled time of the meeting by:

2-47 (1) posting a notice on a bulletin board in a place  
 2-48 convenient to members at the electric cooperative's main office and  
 2-49 at each district office;

2-50 (2) posting a notice on the electric cooperative's  
 2-51 Internet website, if the cooperative maintains a website; and

2-52 (3) providing a copy of the notice to a member upon a  
 2-53 member's request.

2-54 (c) In the event of an emergency or urgent matter, notice  
 2-55 may be given in the manner prescribed by Subsection (b) at any time  
 2-56 before a regular or special board meeting is convened. An action  
 2-57 taken by the board at a meeting for which notice is given under this  
 2-58 subsection must be ratified by the board at the next meeting for  
 2-59 which notice is given under Subsection (b).

2-60 Sec. 161.080. MEMBER'S RIGHT OF ACCESS TO RECORDS IN  
 2-61 CERTAIN COOPERATIVES. (a) This section applies only to an  
 2-62 electric cooperative with more than 180,000 members that is  
 2-63 partially located in a county with a population of more than one  
 2-64 million and less than 1.5 million.

2-65 (b) Except as provided by Subsection (d), a member of an  
 2-66 electric cooperative may, at any reasonable time and on written  
 2-67 request that states a proper purpose for the request, inspect and  
 2-68 copy the books and records of the electric cooperative relevant to  
 2-69 that purpose.

3-1 (c) An electric cooperative may charge a member for the cost  
3-2 of providing information under Subsection (b).

3-3 (d) An electric cooperative may limit or deny a member's  
3-4 request to inspect its books and records if the member:

3-5 (1) seeks information the release of which would  
3-6 unduly infringe on or invade the privacy of a person;

3-7 (2) seeks information related to a trade secret;

3-8 (3) seeks personnel information the disclosure of  
3-9 which would violate other law or would constitute a clearly  
3-10 unwarranted invasion of personal privacy;

3-11 (4) seeks information related to:  
3-12 (A) pending or reasonably anticipated  
3-13 litigation;

3-14 (B) a real estate transaction for a project that  
3-15 has not been formally announced or for which contracts have not been  
3-16 formally awarded;

3-17 (C) the electric cooperative's competitive  
3-18 activity, including commercial information and utility-related  
3-19 matters that would, if disclosed, give an advantage to a competitor  
3-20 or prospective competitor; or

3-21 (D) the security of the electric cooperative's  
3-22 electrical system; or

3-23 (5) seeks information that is confidential,  
3-24 privileged, or proprietary.

3-25 Sec. 161.081. POLICIES AND AUDIT IN CERTAIN COOPERATIVES.

3-26 (a) This section applies only to an electric cooperative with more  
3-27 than 180,000 members that is partially located in a county with a  
3-28 population of more than one million and less than 1.5 million.

3-29 (b) The board shall adopt written policies relating to:

3-30 (1) travel expenditures for board members, officers,  
3-31 and employees;

3-32 (2) reimbursement of expenses for board members,  
3-33 officers, and employees;

3-34 (3) conflicts of interest for board members, officers,  
3-35 and employees;

3-36 (4) whistle-blower protections;

3-37 (5) criteria and procedures for the selection,  
3-38 monitoring, review, and evaluation of outside vendors or contracted  
3-39 professional services;

3-40 (6) budgets for use in planning and controlling costs;  
3-41 and

3-42 (7) the creation of a committee that audits the  
3-43 actions of the board.

3-44 (c) An electric cooperative shall provide for an  
3-45 independent financial audit, to be performed annually by an  
3-46 unaffiliated entity that is professionally qualified to perform the  
3-47 audit.

3-48 SECTION 2. Subchapter C, Chapter 161, Utilities Code, is  
3-49 amended by adding Sections 161.126 and 161.127 to read as follows:

3-50 Sec. 161.126. PROHIBITION ON ACQUISITION OF GENERATOR  
3-51 CAPACITY BY CERTAIN ELECTRIC COOPERATIVES. (a) This section  
3-52 applies only to an electric cooperative with more than 180,000  
3-53 members that is partially located in a county with a population of  
3-54 more than one million and less than 1.5 million.

3-55 (b) An electric cooperative may not acquire equipment  
3-56 capable of generating electricity for sale unless the Public  
3-57 Utility Commission of Texas first approves of the acquisition. The  
3-58 commission by rule shall establish the standards and procedures by  
3-59 which it will approve an electric cooperative's acquisition of  
3-60 electric generation capacity.

3-61 Sec. 161.127. NOTIFICATION OF CERTAIN INVESTMENTS.

3-62 (a) This section applies only to an electric cooperative with more  
3-63 than 180,000 members that is partially located in a county with a  
3-64 population of more than one million and less than 1.5 million.

3-65 (b) Not later than the 30th day following the completion of  
3-66 a transaction that results in an electric cooperative or an  
3-67 affiliate of the electric cooperative creating or acquiring an  
3-68 interest in an entity that does not generate, transmit, or  
3-69 distribute electricity, the electric cooperative shall provide a

4-1 notice to members that contains:  
4-2 (1) the name of the entity;  
4-3 (2) a description of the entity;  
4-4 (3) the reasons for the decision to enter into the  
4-5 transaction;  
4-6 (4) a description of the costs associated with the  
4-7 transaction, and the method of financing for those costs; and  
4-8 (5) a description of the anticipated effect the  
4-9 transaction will have on the electric cooperative's electric energy  
4-10 rates or prices.

4-11 SECTION 3. (a) The changes in law made by Section  
4-12 161.0721, Utilities Code, as added by this Act, apply only to a  
4-13 director election held on or after the effective date of this Act.  
4-14 A director election held before the effective date of this Act is  
4-15 subject to the law in effect on the date the election is held, and  
4-16 that law is continued in effect for that purpose.

4-17 (b) The changes in law made by Sections 161.0751 and  
4-18 161.0752, Utilities Code, as added by this Act, apply only to a  
4-19 meeting convened on or after the effective date of this Act. A  
4-20 meeting convened before the effective date of this Act is subject to  
4-21 the law in effect on the date the meeting is held, and that law is  
4-22 continued in effect for that purpose.

4-23 (c) The changes in law made by Section 161.080, Utilities  
4-24 Code, as added by this Act, apply only to a request to inspect  
4-25 records submitted on or after the effective date of this Act. A  
4-26 request submitted before the effective date of this Act is subject  
4-27 to the law in effect on the date of the request, and that law is  
4-28 continued in effect for that purpose.

4-29 (d) The changes in law made by Section 161.127, Utilities  
4-30 Code, as added by this Act, apply only to a transaction that is  
4-31 completed on or after the effective date of this Act. A transaction  
4-32 that is completed before the effective date of this Act is subject  
4-33 to the law in effect on the date the transaction is completed, and  
4-34 that law is continued in effect for that purpose.

4-35 SECTION 4. This Act takes effect September 1, 2011.

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