

By: Rose

H.B. No. 1390

A BILL TO BE ENTITLED

1 AN ACT
2 relating to access by the members of electric cooperatives to
3 meetings of the boards of directors and certain information of the
4 electric 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. Section 161.064(b), Utilities Code, is amended
21 to read as follows:

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

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

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

5 (d) A board committee of a cooperative with more than
6 210,000 members may not cast a member's proxy vote in a director
7 election.

8 (e) A director who is standing for reelection to the board
9 of a cooperative with not more than 210,000 members may not serve on
10 a committee established under the bylaws for the purpose of
11 casting, or being authorized to cast, the proxy vote of a member in
12 a director election.

13 (f) A member's proxy vote may be cast in a director election
14 only if:

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

18 (2) the proxy form designates each candidate who is an
19 incumbent director;

20 (3) an exact copy of the proxy form is posted on the
21 cooperative's Internet website, if the cooperative maintains a
22 website;

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

25 (A) the name of each member of the committee, if
26 any, established under the bylaws for the purpose of casting proxy
27 votes in a director election;

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

3 (C) the districts represented by each committee
4 member, if applicable; and

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

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

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

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

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

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

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

25 (j) A cooperative with more than 210,000 members may elect
26 directors only by district. A member may vote for a director to
27 represent a district only if the member resides in that district.

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

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

6 (2) specify a period within which a petition
7 nominating a candidate must be submitted to the cooperative; and

8 (3) specify that only members residing in a district
9 may sign a petition for the nomination of a candidate to represent
10 that district.

11 (l) If the bylaws of a cooperative with not more than
12 210,000 members allow a committee of members to nominate qualified
13 members as candidates in a director election, the bylaws must also:

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

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

18 (3) specify a period within which a petition
19 nominating a candidate must be submitted to the cooperative.

20 (m) A petition submitted under Subsection (l) must provide
21 on the petition the name and address of the member seeking
22 nomination and, if the cooperative nominates or elects directors by
23 district, the district the member seeks to represent.

24 SECTION 4. Section 161.075, Utilities Code, is amended to
25 read as follows:

26 Sec. 161.075. BOARD MEETINGS. (a) The board shall hold a
27 regular or special board meeting at the place and on [~~the~~] notice as

1 provided by Section 161.0751 and [~~prescribed by~~] the bylaws.
2 Except as provided by Section 161.0752, each member of the electric
3 cooperative is entitled to attend a regular or special board
4 meeting.

5 (b) The attendance of a director at a board meeting
6 constitutes a waiver of notice to the director of the meeting unless
7 the director attends the meeting for the express purpose of
8 objecting to the transaction of business at the meeting because the
9 meeting is not lawfully called or convened.

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

13 (d) The board shall keep a record of each regular or special
14 board meeting, in the form of written minutes or a taped recording
15 of the meeting. A record of a meeting must state the subject of each
16 deliberation and indicate each vote, order, decision, or other
17 action taken by the board. The board shall make meeting records
18 available to a member for inspection and copying on the member's
19 written request to the board secretary or to a person the secretary
20 designates.

21 (e) A member attending a regular or special board meeting
22 may record all or part of the meeting by any means of audio or visual
23 reproduction, including a tape recorder or video camera.

24 (f) The board may adopt reasonable rules to maintain order
25 at a regular or special board meeting, including rules relating to
26 the location of recording equipment and the manner in which
27 recording may be conducted. A rule adopted by the board under this

1 section may not prevent or unreasonably impair a member from
2 exercising a right granted by this section.

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

6 Sec. 161.0751. NOTICE OF BOARD MEETINGS. (a) The board
7 shall give members and the media written notice of the date, hour,
8 place, and subject of a regular or special board meeting. Notice of
9 a board meeting must be given at least 72 hours before the scheduled
10 time of the meeting by:

11 (1) posting a notice on a bulletin board in a place
12 convenient to members, at the electric cooperative's headquarters
13 and at each district office;

14 (2) posting a notice on the cooperative's Internet
15 website, if the cooperative maintains a website; and

16 (3) sending a notice by electronic mail to members of
17 the media who, before the time notice is required by this section,
18 requested notification of meetings.

19 (b) If the board recesses a regular or special board meeting
20 to continue the following regular business day, the board is not
21 required to post notice of the continued meeting if the recess is
22 taken in good faith and not to circumvent this section and Section
23 161.075. If a regular or special board meeting is continued to the
24 following regular business day, and on that following day the board
25 continues the meeting to another day, the board shall give written
26 notice as required by this section of the meeting continued to that
27 other day.

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

6 (1) call an emergency board meeting; or

7 (2) add a subject to the agenda of a previously
8 scheduled board meeting.

9 (d) Notice under Subsection (c) shall clearly identify the
10 emergency or urgent necessity for which the notice is given. If the
11 board adds a subject to the agenda of a previously scheduled regular
12 or special board meeting, the board secretary or person the
13 secretary designates shall post a copy of the revised agenda on the
14 electric cooperative's Internet website, if the cooperative
15 maintains a website, and physically at the cooperative's
16 headquarters and each district office, not less than two hours
17 before the meeting convenes.

18 (e) If, at a regular or special board meeting, a member
19 makes an inquiry regarding a subject for which notice has not been
20 given as required by this section, the notice provisions of this
21 section do not apply to:

22 (1) a statement by the board of specific factual
23 information given in response to the inquiry; or

24 (2) a recitation of existing policy in response to the
25 inquiry.

26 (f) Any deliberation of or decision relating to the subject
27 of an inquiry made under Subsection (e) shall be limited to a

1 proposal to place the subject on the agenda for a subsequent board
2 meeting.

3 Sec. 161.0752. EXECUTIVE SESSIONS. (a) Before the board
4 calls an executive session, the board shall convene in a regular or
5 special board meeting for which notice has been given as provided by
6 Section 161.0751. During that board meeting, the presiding director
7 may call an executive session by announcing that an executive
8 session will be held to deliberate a matter described by Subsection
9 (d) and identifying the specific subdivision of Subsection (d)
10 under which the executive session will be held.

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

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

17 (d) The board may hold an executive session to which the
18 members do not have access to deliberate:

19 (1) anticipated or pending litigation, settlement
20 offers, or interpretations of the law with the electric
21 cooperative's legal counsel and with any other person the board
22 considers necessary;

23 (2) the purchase, exchange, lease, or value of real
24 property, if the board determines in good faith that deliberation
25 in an open board meeting may have a detrimental effect on the
26 electric cooperative;

27 (3) business and financial issues relating to the

1 negotiation of a contract, if the board determines in good faith
2 that deliberation in an open board meeting may have a detrimental
3 effect on the position of the electric cooperative;

4 (4) personnel issues, and complaints or charges
5 against a director or electric cooperative employee or consultant,
6 unless the director or employee who is the subject of the
7 deliberation requests a public hearing;

8 (5) utility-related matters and commercial
9 information that the board determines in good faith are related to
10 the electric cooperative's competitive activity but only to the
11 extent the board specifically determines that disclosure of the
12 information could give an advantage to competitors or potential
13 competitors; or

14 (6) issues related to security of the electric
15 cooperative, including security personnel, security devices, and
16 security audits.

17 (e) The board secretary or a person the secretary designates
18 shall make and keep a written or audio record of each executive
19 session. The secretary shall preserve the record for at least two
20 years following the session. The record must include:

21 (1) a statement of the subject matter of each
22 deliberation;

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

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

26 SECTION 6. Section 161.077, Utilities Code, is amended by
27 adding Subsection (d) to read as follows:

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

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

6 Sec. 161.080. MEMBER'S RIGHT OF ACCESS TO RECORDS. (a)
7 Except as provided by Subsection (c), a member of an electric
8 cooperative may, at any reasonable time and on written request that
9 states the purpose of the request:

10 (1) inspect books and records of the cooperative
11 relevant to that purpose; and

12 (2) at the member's own expense, copy records the
13 member is entitled to inspect under this section.

14 (b) An electric cooperative may charge a reasonable fee to
15 the member if fulfilling the member's request will require a large
16 amount of employee time.

17 (c) An electric cooperative may reject or limit a member's
18 request to inspect its books and records if:

19 (1) the member refuses to warrant and furnish to the
20 electric cooperative, on the electric cooperative's request, an
21 affidavit that:

22 (A) the inspection is desired for a purpose
23 reasonably related to the business of the cooperative; or

24 (B) the member does not intend to sell or offer to
25 sell any list of members of the cooperative or assist another person
26 in obtaining a list of members for that purpose;

27 (2) the release of the information sought by the

1 member, such as individual member information or personnel
2 information, would unduly infringe on or invade the privacy of a
3 person;

4 (3) the inspection is sought for a dishonest purpose;
5 or

6 (4) the records sought to be inspected pertain to
7 trade secrets or information that is privileged, confidential, or
8 proprietary.

9 Sec. 161.081. POLICIES AND AUDITS. (a) The board shall
10 adopt written policies relating to:

11 (1) travel expenditures for board members, officers,
12 and employees;

13 (2) reimbursement of expenses for board members,
14 officers, and employees;

15 (3) conflicts of interest for board members, officers,
16 and employees;

17 (4) whistleblower protections;

18 (5) criteria and procedures for the selection,
19 monitoring, review, and evaluation of outside vendors or contracted
20 professional services;

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

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

25 (b) A cooperative shall provide for an independent
26 financial audit, to be performed annually by an unaffiliated entity
27 that is professionally qualified to perform such an audit.

1 (c) The state auditor may audit the financial transactions
2 and operations of a cooperative, at the cooperative's expense.

3 Sec. 161.082. COMPLAINTS BY MEMBERS. (a) In this section,
4 "commission" means the Public Utility Commission of Texas.

5 (b) A member may file a written complaint with the general
6 manager of the cooperative if the member is aggrieved by an action
7 of the board or by an employee of the board or of the cooperative
8 that the member alleges infringes on a right of the member under
9 this chapter.

10 (c) Not later than the 20th day after the date the general
11 manager receives a complaint under Subsection (b), the general
12 manager shall take corrective action regarding the complaint, if
13 the general manager determines that the action complained of
14 infringed on the member's rights under this chapter.

15 (d) If the general manager determines that the action
16 complained of did not infringe on the member's rights under this
17 chapter, or if the general manager otherwise fails to resolve the
18 member's complaint to the member's satisfaction before the 21st day
19 after the general manager receives the member's complaint, the
20 member may file a written complaint with the commission. A
21 complaint filed with the commission under this subsection must:

22 (1) identify the electric cooperative by name and
23 address;

24 (2) describe in detail the nature of the member's
25 complaint; and

26 (3) include copies of documents relevant to the
27 member's complaint, including:

1 (A) any relevant written request made by the
2 member to the cooperative;

3 (B) the written complaint made by the member to
4 the general manager under Subsection (b); and

5 (C) any relevant response from the cooperative
6 regarding a request or complaint.

7 (e) In reviewing a member's complaint under this section,
8 the commission may request that the cooperative provide to the
9 commission any information relevant to the complaint. The
10 commission must give a cooperative a reasonable opportunity to
11 inspect and copy the requested information before providing the
12 information to the commission. The commission shall designate an
13 employee of the commission to be the person responsible for
14 receiving, inspecting, or copying information received under this
15 subsection.

16 (f) An electric cooperative shall cooperate with a request
17 for information under Subsection (e) and promptly provide the
18 requested information to the commission's designated employee. The
19 commission may not disclose to any person information provided by a
20 cooperative in response to the request unless:

21 (1) the commission is required by a court to provide
22 the information to the person;

23 (2) the person is an authorized employee of the
24 commission; or

25 (3) the cooperative that provided the information
26 consents to the disclosure.

27 (g) The commission shall give a cooperative notice before

1 using information provided in response to a request under
2 Subsection (e) in a contested case hearing. On objection by the
3 cooperative that the information is confidential or sensitive, the
4 administrative judge presiding over the contested case hearing
5 shall determine whether the information is admissible in the
6 hearing.

7 (h) The commission shall return to a cooperative any
8 information provided under this section that is confidential or
9 sensitive to the cooperative.

10 Sec. 161.083. ALTERNATIVE DISPUTE RESOLUTION. The Public
11 Utility Commission of Texas may refer a complaint made under
12 Section 161.082(d) to the State Office of Administrative Hearings
13 as provided by Section 14.0025 for alternative dispute resolution
14 if the commission determines a referral is in the public interest.

15 SECTION 8. Subchapter C, Chapter 161, Utilities Code, is
16 amended by adding Sections 161.126 and 161.127 to read as follows:

17 Sec. 161.126. PROHIBITION ON ACQUISITION OF GENERATOR
18 CAPACITY BY CERTAIN ELECTRIC COOPERATIVES. An electric cooperative
19 with more than 210,000 members that provides retail electric
20 service may not acquire equipment capable of generating electricity
21 for sale unless the Public Utility Commission of Texas first
22 approves of the acquisition. The commission by rule shall
23 establish the standards and procedures by which it will approve an
24 electric cooperative's acquisition of electric generation
25 capacity.

26 Sec. 161.127. NOTIFICATION OF CERTAIN INVESTMENTS. Not
27 later than the 30th day following the completion of a transaction

1 that results in a cooperative or an affiliate of the cooperative
2 creating, acquiring, or receiving an interest in an entity that
3 does not generate, transmit, or distribute electricity, the
4 cooperative shall provide a notice to members that contains:

5 (1) the name of the entity;

6 (2) a description of the entity;

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

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

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

14 SECTION 9. (a) The changes in law made to Section 161.072,
15 Utilities Code, as amended by this Act, apply only to a director
16 election held on or after the effective date of this Act. A director
17 election held before the effective date of this Act is subject to
18 the law in effect on the date the election is held, and that law is
19 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 by Sections 161.0751 and 161.0752,
22 Utilities Code, as added by this Act, apply only to a meeting
23 convened on or after the effective date of this Act. A meeting
24 convened before the effective date of this Act is subject to the law
25 in effect on the date the meeting is held, and that law is continued
26 in effect for that purpose.

27 (c) The changes in law made by Sections 161.080, 161.082,

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

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