

ASSEMBLY BILL

No. 1541

Introduced by Assembly Member Dickinson

January 24, 2012

An act to amend Sections 6276.36 and 11125.1 of the Government Code, and to amend Sections 315, 454.5, and 5960 of, and to repeal and add Section 583 of, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

AB 1541, as introduced, Dickinson. Public Utilities Commission: public records.

Existing law, the California Public Records Act, requires any public record of a state or local agency to be open to inspection at all times during office hours of the agency and, upon request, a copy shall be made promptly available to any person upon payment of copying costs. The act makes certain records exempt from disclosure.

Existing law provides the Public Utilities Commission with regulatory authority over public utilities and authorizes it to establish its own procedures, subject to statutory limitations and constitutional requirements of due process. The Public Utilities Act requires the commission to investigate the cause of all accidents occurring upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the commission, investigation by it, and authorizes the commission to make any order or recommendation with respect to the investigation that it determines to be just and reasonable.

This bill would subject an order or recommendation made by the commission and any accident report filed with the commission pursuant to these requirements to the California Public Records Act, except as specified.

The Public Utilities Act prohibits the commission or an officer or employee of the commission from disclosing any information furnished to the commission by a public utility, a subsidiary, an affiliate, or corporation holding a controlling interest in a public utility, unless the information is specifically required to be open to public inspection under the act, except on order of the commission or a commissioner in the course of a hearing or proceeding. A violation of that provision is a crime.

This bill would repeal that provision and instead provide that all records of, or filed with, the commission are public records that shall be subject to the California Public Records Act, except as specified. The bill would make conforming changes to the California Public Records Act.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6276.36 of the Government Code is
2 amended to read:
3 6276.36. Pregnancy tests by local public health agencies,
4 confidentiality of, Section 123380, Health and Safety Code.
5 Pregnant women, confidentiality of blood tests, Section 125105,
6 Health and Safety Code.
7 Prehospital emergency medical care, release of information,
8 Sections 1797.188 and 1797.189, Health and Safety Code.
9 Prenatal syphilis tests, confidentiality of, Section 120705, Health
10 and Safety Code.
11 Prescription drug discounts, confidentiality of corporate
12 proprietary information, Section 130506, Health and Safety Code.
13 Prisoners, behavioral research on, confidential personal
14 information, Section 3515, Penal Code.
15 Prisoners, confidentiality of blood tests, Section 7530, Penal
16 Code.
17 Prisoners, medical testing, confidentiality of records, Sections
18 7517 and 7540, Penal Code.

1 Prisoners, transfer from county facility for mental treatment and
2 evaluation, confidentiality of written reasons, Section 4011.6,
3 Penal Code.

4 Private industry wage data collected by public entity,
5 confidentiality of, Section 6254.6.

6 Private railroad car tax, confidentiality of information, Section
7 11655, Revenue and Taxation Code.

8 Probate referee, disclosure of materials, Section 8908, Probate
9 Code.

10 Probation officer reports, inspection of, Section 1203.05, Penal
11 Code.

12 Produce dealer, confidentiality of financial statements, Section
13 56254, Food and Agricultural Code.

14 Products liability insurers, transmission of information, Section
15 1857.9, Insurance Code.

16 Professional corporations, financial statements, confidentiality
17 of, Section 13406, Corporations Code.

18 Property on loan to museum, notice of intent to preserve an
19 interest in, not subject to disclosure, Section 1899.5, Civil Code.

20 Property taxation, confidentiality of change of ownership, Section
21 481, Revenue and Taxation Code.

22 Property taxation, confidentiality of exemption claims, Sections
23 63.1, 69.5, and 408.2, Revenue and Taxation Code.

24 Property taxation, confidentiality of property information,
25 Section 15641, Government Code and Section 833, Revenue and
26 Taxation Code.

27 Proprietary information, availability only to the director and
28 other persons authorized by the operator and the owner, Section
29 2778, Public Resources Code.

30 Psychologist and client, confidential relations and
31 communications, Section 2918, Business and Professions Code.

32 Psychotherapist-patient confidential communication, Sections
33 1012 and 1014, Evidence Code.

34 Public employees' home addresses and telephone numbers,
35 confidentiality of, Section 6254.3.

36 Public Employees' Medical and Hospital Care Act,
37 confidentiality of data relating to health care services rendered by
38 participating hospitals to members and annuitants, Section 22854.5.

1 Public Employees' Retirement System, confidentiality of data
2 filed by member or beneficiary with board of administration,
3 Section 20134.
4 Public investment funds, exemption from disclosure for records
5 regarding alternative investments, Section 6254.26.
6 Public school employees organization, confidentiality of proof
7 of majority support submitted to Public Employment Relations
8 Board, Sections 3544, 3544.1, and 3544.5.
9 Public social services, confidentiality of digest of decisions,
10 Section 10964, Welfare and Institutions Code.
11 Public social services, confidentiality of information regarding
12 child abuse or elder or dependent persons abuse, Section 10850.1,
13 Welfare and Institutions Code.
14 Public social services, confidentiality of information regarding
15 eligibility, Section 10850.2, Welfare and Institutions Code.
16 Public social services, confidentiality of records, Section 10850,
17 Welfare and Institutions Code.
18 Public social services, disclosure of information to law
19 enforcement agencies, Section 10850.3, Welfare and Institutions
20 Code.
21 Public social services, disclosure of information to law
22 enforcement agencies regarding deceased applicant or recipient,
23 Section 10850.7, Welfare and Institutions Code.
24 ~~Public utilities, confidentiality of information, Section 583,~~
25 ~~Public Utilities Code.~~
26 *Public utilities, confidentiality of market sensitive information,*
27 *Section 454.5, Public Utilities Code.*
28 *Public utilities, confidentiality of individually identifiable*
29 *customer or subscriber information, Section 5960, Public Utilities*
30 *Code.*
31 Pupil, confidentiality of personal information, Section 45345,
32 Education Code.
33 Pupil drug and alcohol use questionnaires, confidentiality of,
34 Section 11605, Health and Safety Code.
35 Pupil, expulsion hearing, disclosure of testimony of witness and
36 closed session of district board, Section 48918, Education Code.
37 Pupil, personal information disclosed to school counselor,
38 confidentiality of, Section 49602, Education Code.
39 Pupil record contents, records of administrative hearing to change
40 contents, confidentiality of, Section 49070, Education Code.

1 Pupil records, access authorized for specified parties, Section
2 49076, Education Code.

3 Pupil records, disclosure in hearing to dismiss or suspend school
4 employee, Section 44944.1, Education Code.

5 Pupil records, release of directory information to private entities,
6 Sections 49073 and 49073.5, Education Code.

7 SEC. 2. Section 11125.1 of the Government Code is amended
8 to read:

9 11125.1. (a) Notwithstanding Section 6255 or any other
10 ~~provisions of law~~, agendas of public meetings and other writings,
11 when distributed to all, or a majority of all, of the members of a
12 state body by any person in connection with a matter subject to
13 discussion or consideration at a public meeting of the body, are
14 disclosable public records under the California Public Records Act
15 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
16 Title 1), and shall be made available upon request without delay.
17 However, this section shall not include any writing exempt from
18 public disclosure under Section 6253.5, 6254, or 6254.7 ~~of this~~
19 ~~code, or Section 489.1 or 583 of the Public Utilities Code.~~

20 (b) Writings that are public records under subdivision (a) and
21 that are distributed to members of the state body prior to or during
22 a meeting, pertaining to any item to be considered during the
23 meeting, shall be made available for public inspection at the
24 meeting if prepared by the state body or a member of the state
25 body, or after the meeting if prepared by some other person. These
26 writings shall be made available in appropriate alternative formats,
27 as required by Section 202 of the Americans with Disabilities Act
28 of 1990 (42 U.S.C. Sec. 12132), and the federal rules and
29 regulations adopted in implementation thereof, upon request by a
30 person with a disability.

31 (c) In the case of the Franchise Tax Board, prior to that state
32 body taking final action on any item, writings pertaining to that
33 item that are public records under subdivision (a) that are prepared
34 and distributed by the Franchise Tax Board staff or individual
35 members to members of the state body prior to or during a meeting
36 shall be:

37 (1) Made available for public inspection at that meeting.

38 (2) Distributed to all persons who request notice in writing
39 pursuant to subdivision (a) of Section 11125.

40 (3) Made available on the Internet.

(d) Prior to the State Board of Equalization taking final action on any item that does not involve a named tax or fee payer, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request or have requested copies of these writings.

(3) Made available on the Internet.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The writings described in subdivision (b) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

SEC. 3. Section 315 of the Public Utilities Code is amended to read:

315. (a) The commission shall investigate the cause of all accidents occurring within this ~~State~~ *state* upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the commission, investigation by it, and may make ~~such~~ *any* order or recommendation with respect thereto as in its judgment seems just and reasonable. Neither the order or recommendation of the commission nor any accident report filed with the commission

1 shall be admitted as evidence in any action for damages based on
2 or arising out of such loss of life, or injury to person or property.
3 Every public utility shall file with the commission, under ~~such~~
4 rules ~~as~~ the commission prescribes, a report of each accident so
5 ~~occurring~~ occurring of ~~such~~ the kinds or classes as the commission
6 from time to time designates.

7 *(b) Any order or recommendation made by the commission*
8 *pursuant to this section, and any accident report filed with the*
9 *commission pursuant to this section, shall be subject to the*
10 *California Public Records Act (Chapter 3.5 (commencing with*
11 *Section 6250) of Division 7 of Title 1 of the Government Code),*
12 *except as provided in Section 6254 of the Government Code.*

13 SEC. 4. Section 454.5 of the Public Utilities Code is amended
14 to read:

15 454.5. (a) The commission shall specify the allocation of
16 electricity, including quantity, characteristics, and duration of
17 electricity delivery, that the Department of Water Resources shall
18 provide under its power purchase agreements to the customers of
19 each electrical corporation, which shall be reflected in the electrical
20 corporation's proposed procurement plan. Each electrical
21 corporation shall file a proposed procurement plan with the
22 commission not later than 60 days after the commission specifies
23 the allocation of electricity. The proposed procurement plan shall
24 specify the date that the electrical corporation intends to resume
25 procurement of electricity for its retail customers, consistent with
26 its obligation to serve. After the commission's adoption of a
27 procurement plan, the commission shall allow not less than 60
28 days before the electrical corporation resumes procurement
29 pursuant to this section.

30 (b) An electrical corporation's proposed procurement plan shall
31 include, but not be limited to, all of the following:

32 (1) An assessment of the price risk associated with the electrical
33 corporation's portfolio, including any utility-retained generation,
34 existing power purchase and exchange contracts, and proposed
35 contracts or purchases under which an electrical corporation will
36 procure electricity, electricity demand reductions, and
37 electricity-related products and the remaining open position to be
38 served by spot market transactions.

39 (2) A definition of each electricity product, electricity-related
40 product, and procurement related financial product, including

1 support and justification for the product type and amount to be
2 procured under the plan.

3 (3) The duration of the plan.

4 (4) The duration, timing, and range of quantities of each product
5 to be procured.

6 (5) A competitive procurement process under which the
7 electrical corporation may request bids for procurement-related
8 services, including the format and criteria of that procurement
9 process.

10 (6) An incentive mechanism, if any incentive mechanism is
11 proposed, including the type of transactions to be covered by that
12 mechanism, their respective procurement benchmarks, and other
13 parameters needed to determine the sharing of risks and benefits.

14 (7) The upfront standards and criteria by which the acceptability
15 and eligibility for rate recovery of a proposed procurement
16 transaction will be known by the electrical corporation prior to
17 execution of the transaction. This shall include an expedited
18 approval process for the commission's review of proposed contracts
19 and subsequent approval or rejection thereof. The electrical
20 corporation shall propose alternative procurement choices in the
21 event a contract is rejected.

22 (8) Procedures for updating the procurement plan.

23 (9) A showing that the procurement plan will achieve the
24 following:

25 (A) The electrical corporation, in order to fulfill its unmet
26 resource needs, shall procure resources from eligible renewable
27 energy resources in an amount sufficient to meet its procurement
28 requirements pursuant to the California Renewables Portfolio
29 Standard Program (Article 16 (commencing with Section 399.11)
30 of Chapter 2.3).

31 (B) The electrical corporation shall create or maintain a
32 diversified procurement portfolio consisting of both short-term
33 and long-term electricity and electricity-related and demand
34 reduction products.

35 (C) The electrical corporation shall first meet its unmet resource
36 needs through all available energy efficiency and demand reduction
37 resources that are cost effective, reliable, and feasible.

38 (10) The electrical corporation's risk management policy,
39 strategy, and practices, including specific measures of price
40 stability.

1 (11) A plan to achieve appropriate increases in diversity of
2 ownership and diversity of fuel supply of nonutility electrical
3 generation.

4 (12) A mechanism for recovery of reasonable administrative
5 costs related to procurement in the generation component of rates.

6 (c) The commission shall review and accept, modify, or reject
7 each electrical corporation's procurement plan. The commission's
8 review shall consider each electrical corporation's individual
9 procurement situation, and shall give strong consideration to that
10 situation in determining which one or more of the features set forth
11 in this subdivision shall apply to that electrical corporation. A
12 procurement plan approved by the commission shall contain one
13 or more of the following features, provided that the commission
14 may not approve a feature or mechanism for an electrical
15 corporation if it finds that the feature or mechanism would impair
16 the restoration of an electrical corporation's creditworthiness or
17 would lead to a deterioration of an electrical corporation's
18 creditworthiness:

19 (1) A competitive procurement process under which the
20 electrical corporation may request bids for procurement-related
21 services. The commission shall specify the format of that
22 procurement process, as well as criteria to ensure that the auction
23 process is open and adequately subscribed. Any purchases made
24 in compliance with the commission-authorized process shall be
25 recovered in the generation component of rates.

26 (2) An incentive mechanism that establishes a procurement
27 benchmark or benchmarks and authorizes the electrical corporation
28 to procure from the market, subject to comparing the electrical
29 corporation's performance to the commission-authorized
30 benchmark or benchmarks. The incentive mechanism shall be
31 clear, achievable, and contain quantifiable objectives and standards.
32 The incentive mechanism shall contain balanced risk and reward
33 incentives that limit the risk and reward of an electrical corporation.

34 (3) Upfront achievable standards and criteria by which the
35 acceptability and eligibility for rate recovery of a proposed
36 procurement transaction will be known by the electrical corporation
37 prior to the execution of the bilateral contract for the transaction.
38 The commission shall provide for expedited review and either
39 approve or reject the individual contracts submitted by the electrical
40 corporation to ensure compliance with its procurement plan. To

1 the extent the commission rejects a proposed contract pursuant to
2 this criteria, the commission shall designate alternative procurement
3 choices obtained in the procurement plan that will be recoverable
4 for ratemaking purposes.

5 (d) A procurement plan approved by the commission shall
6 accomplish each of the following objectives:

7 (1) Enable the electrical corporation to fulfill its obligation to
8 serve its customers at just and reasonable rates.

9 (2) Eliminate the need for after-the-fact reasonableness reviews
10 of an electrical corporation's actions in compliance with an
11 approved procurement plan, including resulting electricity
12 procurement contracts, practices, and related expenses. However,
13 the commission may establish a regulatory process to verify and
14 ensure that each contract was administered in accordance with the
15 terms of the contract, and contract disputes that may arise are
16 reasonably resolved.

17 (3) Ensure timely recovery of prospective procurement costs
18 incurred pursuant to an approved procurement plan. The
19 commission shall establish rates based on forecasts of procurement
20 costs adopted by the commission, actual procurement costs
21 incurred, or combination thereof, as determined by the commission.
22 The commission shall establish power procurement balancing
23 accounts to track the differences between recorded revenues and
24 costs incurred pursuant to an approved procurement plan. The
25 commission shall review the power procurement balancing
26 accounts, not less than semiannually, and shall adjust rates or order
27 refunds, as necessary, to promptly amortize a balancing account,
28 according to a schedule determined by the commission. Until
29 January 1, 2006, the commission shall ensure that any
30 overcollection or undercollection in the power procurement
31 balancing account does not exceed 5 percent of the electrical
32 corporation's actual recorded generation revenues for the prior
33 calendar year excluding revenues collected for the Department of
34 Water Resources. The commission shall determine the schedule
35 for amortizing the overcollection or undercollection in the
36 balancing account to ensure that the 5 percent threshold is not
37 exceeded. After January 1, 2006, this adjustment shall occur when
38 deemed appropriate by the commission consistent with the
39 objectives of this section.

1 (4) Moderate the price risk associated with serving its retail
2 customers, including the price risk embedded in its long-term
3 supply contracts, by authorizing an electrical corporation to enter
4 into financial and other electricity-related product contracts.

5 (5) Provide for just and reasonable rates, with an appropriate
6 balancing of price stability and price level in the electrical
7 corporation's procurement plan.

8 (e) The commission shall provide for the periodic review and
9 prospective modification of an electrical corporation's procurement
10 plan.

11 (f) The commission may engage an independent consultant or
12 advisory service to evaluate risk management and strategy. The
13 reasonable costs of any consultant or advisory service is a
14 reimbursable expense and eligible for funding pursuant to Section
15 631.

16 (g) ~~The~~ *Notwithstanding Section 583, the* commission shall
17 adopt appropriate procedures to ensure the confidentiality of any
18 market sensitive information submitted in an electrical
19 corporation's proposed procurement plan or resulting from or
20 related to its approved procurement plan, including, but not limited
21 to, proposed or executed power purchase agreements, data request
22 responses, or consultant reports, or any combination, provided that
23 the Office of Ratepayer Advocates and other consumer groups that
24 are nonmarket participants shall be provided access to this
25 information under confidentiality procedures authorized by the
26 commission.

27 (h) Nothing in this section alters, modifies, or amends the
28 commission's oversight of affiliate transactions under its rules and
29 decisions or the commission's existing authority to investigate and
30 penalize an electrical corporation's alleged fraudulent activities,
31 or to disallow costs incurred as a result of gross incompetence,
32 fraud, abuse, or similar grounds. Nothing in this section expands,
33 modifies, or limits the State Energy Resources Conservation and
34 Development Commission's existing authority and responsibilities
35 as set forth in Sections 25216, 25216.5, and 25323 of the Public
36 Resources Code.

37 (i) An electrical corporation that serves less than 500,000 electric
38 retail customers within the state may file with the commission a
39 request for exemption from this section, which the commission
40 shall grant upon a showing of good cause.

(j) (1) Prior to its approval pursuant to Section 851 of any divestiture of generation assets owned by an electrical corporation on or after the date of enactment of the act adding this section, the commission shall determine the impact of the proposed divestiture on the electrical corporation's procurement rates and shall approve a divestiture only to the extent it finds, taking into account the effect of the divestiture on procurement rates, that the divestiture is in the public interest and will result in net ratepayer benefits.

(2) Any electrical corporation's procurement necessitated as a result of the divestiture of generation assets on or after the effective date of the act adding this subdivision shall be subject to the mechanisms and procedures set forth in this section only if its actual cost is less than the recent historical cost of the divested generation assets.

(3) Notwithstanding paragraph (2), the commission may deem proposed procurement eligible to use the procedures in this section upon its approval of asset divestiture pursuant to Section 851.

SEC. 5. Section 583 of the Public Utilities Code is repealed.

~~583. No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor.~~

SEC. 6. Section 583 is added to the Public Utilities Code, to read:

583. All records of, or filed with, the commission are public records that shall be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except as provided in Section 6254 of the Government Code.

SEC. 7. Section 5960 of the Public Utilities Code is amended to read:

5960. (a) For purposes of this section, "census tract" has the same meaning as used by the United States Census Bureau, and "household" has the same meaning as specified in Section 5890.

(b) Every holder, no later than April 1, 2008, and annually no later than April 1 thereafter, shall report to the commission on a census tract basis the following information:

(1) Broadband information:

(A) The number of households to which the holder makes broadband available in this state. If the holder does not maintain this information on a census tract basis in its normal course of business, the holder may reasonably approximate the number of households based on information it keeps in the normal course of business.

(B) The number of households that subscribe to broadband that the holder makes available in this state.

(C) Whether the broadband provided by the holder utilizes wireline-based facilities or another technology.

(2) Video information:

(A) If the holder is a telephone corporation:

(i) The number of households in the holder's telephone service area.

(ii) The number of households in the holder's telephone service area that are offered video service by the holder.

(B) If the holder is not a telephone corporation:

(i) The number of households in the holder's video service area.

(ii) The number of households in the holder's video service area that are offered video service by the holder.

(3) Low-income household information:

(i) The number of low-income households in the holder's video service area.

(ii) The number of low-income households in the holder's video service area that are offered video service by the holder.

(c) The commission, no later than July 1, 2008, and annually no later than July 1 thereafter, shall submit to the Governor and the Legislature a report that includes based on year-end data, on an aggregated basis, the information submitted by holders pursuant to subdivision (b).

(d) All information submitted to the commission and reported by the commission pursuant to this section shall be disclosed to the public ~~only~~ as provided for pursuant to Section 583. ~~No~~

- 1 *Notwithstanding Section 583*, individually identifiable customer
- 2 or subscriber information shall *not* be subject to public disclosure.

O