

AMENDED IN SENATE MAY 24, 2012

AMENDED IN ASSEMBLY APRIL 16, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

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 and 454.5 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 amended, Dickinson. Public Utilities Commission: public records.

(1) 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 to the California Public Records Act, except as specified, an order or recommendation made by the commission and any accident report filed with the commission pursuant to these requirements.

(2) The ~~public~~ *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 information furnished to, the commission are public records that shall be subject to the California Public Records Act, except as specified. The bill would provide that any present or former officer or employee of the commission who divulges any information that is exempt from disclosure is guilty of a misdemeanor. The bill would make conforming changes to the California Public Records Act. By expanding the scope of a crime, the bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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.

1 Prehospital emergency medical care, release of information,
2 Sections 1797.188 and 1797.189, Health and Safety Code.
3 Prenatal syphilis tests, confidentiality of, Section 120705, Health
4 and Safety Code.
5 Prescription drug discounts, confidentiality of corporate
6 proprietary information, Section 130506, Health and Safety Code.
7 Prisoners, behavioral research on, confidential personal
8 information, Section 3515, Penal Code.
9 Prisoners, confidentiality of blood tests, Section 7530, Penal
10 Code.
11 Prisoners, medical testing, confidentiality of records, Sections
12 7517 and 7540, Penal Code.
13 Prisoners, transfer from county facility for mental treatment and
14 evaluation, confidentiality of written reasons, Section 4011.6,
15 Penal Code.
16 Private industry wage data collected by public entity,
17 confidentiality of, Section 6254.6.
18 Private railroad car tax, confidentiality of information, Section
19 11655, Revenue and Taxation Code.
20 Probate referee, disclosure of materials, Section 8908, Probate
21 Code.
22 Probation officer reports, inspection of, Section 1203.05, Penal
23 Code.
24 Produce dealer, confidentiality of financial statements, Section
25 56254, Food and Agricultural Code.
26 Products liability insurers, transmission of information, Section
27 1857.9, Insurance Code.
28 Professional corporations, financial statements, confidentiality
29 of, Section 13406, Corporations Code.
30 Property on loan to museum, notice of intent to preserve an
31 interest in, not subject to disclosure, Section 1899.5, Civil Code.
32 Property taxation, confidentiality of change of ownership, Section
33 481, Revenue and Taxation Code.
34 Property taxation, confidentiality of exemption claims, Sections
35 63.1, 69.5, and 408.2, Revenue and Taxation Code.
36 Property taxation, confidentiality of property information,
37 Section 15641, Government Code and Section 833, Revenue and
38 Taxation Code.

1 Proprietary information, availability only to the director and
2 other persons authorized by the operator and the owner, Section
3 2778, Public Resources Code.
4 Psychologist and client, confidential relations and
5 communications, Section 2918, Business and Professions Code.
6 Psychotherapist-patient confidential communication, Sections
7 1012 and 1014, Evidence Code.
8 Public employees' home addresses and telephone numbers,
9 confidentiality of, Section 6254.3.
10 Public Employees' Medical and Hospital Care Act,
11 confidentiality of data relating to health care services rendered by
12 participating hospitals to members and annuitants, Section 22854.5.
13 Public Employees' Retirement System, confidentiality of data
14 filed by member or beneficiary with board of administration,
15 Section 20134.
16 Public investment funds, exemption from disclosure for records
17 regarding alternative investments, Section 6254.26.
18 Public school employees organization, confidentiality of proof
19 of majority support submitted to Public Employment Relations
20 Board, Sections 3544, 3544.1, and 3544.5.
21 Public social services, confidentiality of digest of decisions,
22 Section 10964, Welfare and Institutions Code.
23 Public social services, confidentiality of information regarding
24 child abuse or elder or dependent persons abuse, Section 10850.1,
25 Welfare and Institutions Code.
26 Public social services, confidentiality of information regarding
27 eligibility, Section 10850.2, Welfare and Institutions Code.
28 Public social services, confidentiality of records, Section 10850,
29 Welfare and Institutions Code.
30 Public social services, disclosure of information to law
31 enforcement agencies, Section 10850.3, Welfare and Institutions
32 Code.
33 Public social services, disclosure of information to law
34 enforcement agencies regarding deceased applicant or recipient,
35 Section 10850.7, Welfare and Institutions Code.
36 Public utilities, confidentiality of information, Section 583,
37 Public Utilities Code.
38 Public utilities, confidentiality of market sensitive information,
39 Section 454.5, Public Utilities Code.

1 Public utilities, confidentiality of information submitted pursuant
2 to, Section 5960, Public Utilities Code.

3 Pupil, confidentiality of personal information, Section 45345,
4 Education Code.

5 Pupil drug and alcohol use questionnaires, confidentiality of,
6 Section 11605, Health and Safety Code.

7 Pupil, expulsion hearing, disclosure of testimony of witness and
8 closed session of district board, Section 48918, Education Code.

9 Pupil, personal information disclosed to school counselor,
10 confidentiality of, Section 49602, Education Code.

11 Pupil record contents, records of administrative hearing to change
12 contents, confidentiality of, Section 49070, Education Code.

13 Pupil records, access authorized for specified parties, Section
14 49076, Education Code.

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

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

19 SEC. 2. Section 11125.1 of the Government Code is amended
20 to read:

21 11125.1. (a) Notwithstanding Section 6255 or any other law,
22 agendas of public meetings and other writings, when distributed
23 to all, or a majority of all, of the members of a state body by any
24 person in connection with a matter subject to discussion or
25 consideration at a public meeting of the body, are disclosable public
26 records under the California Public Records Act (Chapter 3.5
27 (commencing with Section 6250) of Division 7 of Title 1), and
28 shall be made available upon request without delay. However, this
29 section shall not include any writing exempt from public disclosure
30 under Section 6253.5, 6254, or 6254.7 or Section 583 of the Public
31 Utilities Code.

32 (b) Writings that are public records under subdivision (a) and
33 that are distributed to members of the state body prior to or during
34 a meeting, pertaining to any item to be considered during the
35 meeting, shall be made available for public inspection at the
36 meeting if prepared by the state body or a member of the state
37 body, or after the meeting if prepared by some other person. These
38 writings shall be made available in appropriate alternative formats,
39 as required by Section 202 of the Americans with Disabilities Act
40 of 1990 (42 U.S.C. Sec. 12132), and the federal rules and

1 regulations adopted in implementation thereof, upon request by a
2 person with a disability.

3 (c) In the case of the Franchise Tax Board, prior to that state
4 body taking final action on any item, writings pertaining to that
5 item that are public records under subdivision (a) that are prepared
6 and distributed by the Franchise Tax Board staff or individual
7 members to members of the state body prior to or during a meeting
8 shall be:

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

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

12 (3) Made available on the Internet.

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

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

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

22 (3) Made available on the Internet.

23 (e) Nothing in this section shall be construed to prevent a state
24 body from charging a fee or deposit for a copy of a public record
25 pursuant to Section 6253, except that no surcharge shall be imposed
26 on persons with disabilities in violation of Section 202 of the
27 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132),
28 and the federal rules and regulations adopted in implementation
29 thereof. The writings described in subdivision (b) are subject to
30 the requirements of the California Public Records Act (Chapter
31 3.5 (commencing with Section 6250) of Division 7 of Title 1), and
32 shall not be construed to limit or delay the public's right to inspect
33 any record required to be disclosed by that act, or to limit the
34 public's right to inspect any record covered by that act. This section
35 shall not be construed to be applicable to any writings solely
36 because they are properly discussed in a closed session of a state
37 body. Nothing in this article shall be construed to require a state
38 body to place any paid advertisement or any other paid notice in
39 any publication.

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

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

5 315. (a) The commission shall investigate the cause of all
6 accidents occurring within this state upon the property of any
7 public utility or directly or indirectly arising from or connected
8 with its maintenance or operation, resulting in loss of life or injury
9 to person or property and requiring, in the judgment of the
10 commission, investigation by it, and may make any order or
11 recommendation with respect thereto as in its judgment seems just
12 and reasonable. Neither the order or recommendation of the
13 commission nor any accident report filed with the commission
14 shall be admitted as evidence in any action for damages based on
15 or arising out of such loss of life, or injury to person or property.
16 Every public utility shall file with the commission, under rules the
17 commission prescribes, a report of each accident so occurring of
18 the kinds or classes as the commission from time to time
19 designates.

20 (b) Any order or recommendation made by the commission
21 pursuant to this section, and any accident report filed with the
22 commission pursuant to this section, shall be subject to the
23 California Public Records Act (Chapter 3.5 (commencing with
24 Section 6250) of Division 7 of Title 1 of the Government Code),
25 except as provided in Section 6254 of the Government Code or
26 Section 583.

27 SEC. 4. Section 454.5 of the Public Utilities Code is amended
28 to read:

29 454.5. (a) The commission shall specify the allocation of
30 electricity, including quantity, characteristics, and duration of
31 electricity delivery, that the Department of Water Resources shall
32 provide under its power purchase agreements to the customers of
33 each electrical corporation, which shall be reflected in the electrical
34 corporation's proposed procurement plan. Each electrical
35 corporation shall file a proposed procurement plan with the
36 commission not later than 60 days after the commission specifies
37 the allocation of electricity. The proposed procurement plan shall
38 specify the date that the electrical corporation intends to resume
39 procurement of electricity for its retail customers, consistent with
40 its obligation to serve. After the commission's adoption of a

1 procurement plan, the commission shall allow not less than 60
2 days before the electrical corporation resumes procurement
3 pursuant to this section.

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

6 (1) An assessment of the price risk associated with the electrical
7 corporation's portfolio, including any utility-retained generation,
8 existing power purchase and exchange contracts, and proposed
9 contracts or purchases under which an electrical corporation will
10 procure electricity, electricity demand reductions, and
11 electricity-related products and the remaining open position to be
12 served by spot market transactions.

13 (2) A definition of each electricity product, electricity-related
14 product, and procurement related financial product, including
15 support and justification for the product type and amount to be
16 procured under the plan.

17 (3) The duration of the plan.

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

20 (5) A competitive procurement process under which the
21 electrical corporation may request bids for procurement-related
22 services, including the format and criteria of that procurement
23 process.

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

28 (7) The upfront standards and criteria by which the acceptability
29 and eligibility for rate recovery of a proposed procurement
30 transaction will be known by the electrical corporation prior to
31 execution of the transaction. This shall include an expedited
32 approval process for the commission's review of proposed contracts
33 and subsequent approval or rejection thereof. The electrical
34 corporation shall propose alternative procurement choices in the
35 event a contract is rejected.

36 (8) Procedures for updating the procurement plan.

37 (9) A showing that the procurement plan will achieve the
38 following:

39 (A) The electrical corporation, in order to fulfill its unmet
40 resource needs, shall procure resources from eligible renewable

1 energy resources in an amount sufficient to meet its procurement
2 requirements pursuant to the California Renewables Portfolio
3 Standard Program (Article 16 (commencing with Section 399.11)
4 of Chapter 2.3).

5 (B) The electrical corporation shall create or maintain a
6 diversified procurement portfolio consisting of both short-term
7 and long-term electricity and electricity-related and demand
8 reduction products.

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

12 (10) The electrical corporation's risk management policy,
13 strategy, and practices, including specific measures of price
14 stability.

15 (11) A plan to achieve appropriate increases in diversity of
16 ownership and diversity of fuel supply of nonutility electrical
17 generation.

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

20 (c) The commission shall review and accept, modify, or reject
21 each electrical corporation's procurement plan. The commission's
22 review shall consider each electrical corporation's individual
23 procurement situation, and shall give strong consideration to that
24 situation in determining which one or more of the features set forth
25 in this subdivision shall apply to that electrical corporation. A
26 procurement plan approved by the commission shall contain one
27 or more of the following features, provided that the commission
28 may not approve a feature or mechanism for an electrical
29 corporation if it finds that the feature or mechanism would impair
30 the restoration of an electrical corporation's creditworthiness or
31 would lead to a deterioration of an electrical corporation's
32 creditworthiness:

33 (1) A competitive procurement process under which the
34 electrical corporation may request bids for procurement-related
35 services. The commission shall specify the format of that
36 procurement process, as well as criteria to ensure that the auction
37 process is open and adequately subscribed. Any purchases made
38 in compliance with the commission-authorized process shall be
39 recovered in the generation component of rates.

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

(3) Upfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to the execution of the bilateral contract for the transaction. The commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan. To the extent the commission rejects a proposed contract pursuant to this criteria, the commission shall designate alternative procurement choices obtained in the procurement plan that will be recoverable for ratemaking purposes.

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

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

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

(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing

accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of Water Resources. The commission shall determine the schedule for amortizing the overcollection or undercollection in the balancing account to ensure that the 5-percent threshold is not exceeded. After January 1, 2006, this adjustment shall occur when deemed appropriate by the commission consistent with the objectives of this section.

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

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

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

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

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

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

(i) An electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a request for exemption from this section, which the commission 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.

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

583. (a) All records of, or information furnished to, the commission are public records that shall be made available to the public, upon request, pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), unless exempted from

1 disclosure pursuant to that act or if the records are any of the
2 following:

- 3 (1) Security-related information.
- 4 (2) Proprietary business information.
- 5 (3) Market-sensitive information.
- 6 (4) *Communication between a certified labor organization and*
7 *public utility management personnel made in the context of labor*
8 *negotiations, grievances, disputes, or communication of any other*
9 *matter that is not directly related to health and safety concerns.*

10 ~~(4)~~
11 (5) Personally identifiable information of employees or
12 customers. Documents containing personally identifiable
13 information of employees or customers that are not exempt from
14 public disclosure pursuant to ~~paragraph (1), (2), or (3)~~ *paragraphs*
15 *(1) to (4), inclusive*, shall be redacted to maintain the confidentiality
16 of the personally identifiable information of employees or
17 customers, and shall be made public in their redacted form.

18 (b) Any present or former officer or employee of the commission
19 who divulges any information in paragraphs (1) to ~~(4)~~ (5),
20 inclusive, of subdivision (a) shall be guilty of a misdemeanor.

21 SEC. 7. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.