

AMENDED IN SENATE AUGUST 6, 2012

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~~ *Section* 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 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~~ *unless exempted from disclosure by that act*. The bill would provide that any present or former officer or employee of the commission who divulges any information ~~that is exempt from disclosure~~ *the disclosure of which is exempted or prohibited pursuant to federal or state law* 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.~~

1 ~~Pregnant women, confidentiality of blood tests, Section 125105,~~
2 ~~Health and Safety Code.~~
3 ~~Prehospital emergency medical care, release of information,~~
4 ~~Sections 1797.188 and 1797.189, Health and Safety Code.~~
5 ~~Prenatal syphilis tests, confidentiality of, Section 120705, Health~~
6 ~~and Safety Code.~~
7 ~~Prescription drug discounts, confidentiality of corporate~~
8 ~~proprietary information, Section 130506, Health and Safety Code.~~
9 ~~Prisoners, behavioral research on, confidential personal~~
10 ~~information, Section 3515, Penal Code.~~
11 ~~Prisoners, confidentiality of blood tests, Section 7530, Penal~~
12 ~~Code.~~
13 ~~Prisoners, medical testing, confidentiality of records, Sections~~
14 ~~7517 and 7540, Penal Code.~~
15 ~~Prisoners, transfer from county facility for mental treatment and~~
16 ~~evaluation, confidentiality of written reasons, Section 4011.6,~~
17 ~~Penal Code.~~
18 ~~Private industry wage data collected by public entity,~~
19 ~~confidentiality of, Section 6254.6.~~
20 ~~Private railroad car tax, confidentiality of information, Section~~
21 ~~11655, Revenue and Taxation Code.~~
22 ~~Probate referee, disclosure of materials, Section 8908, Probate~~
23 ~~Code.~~
24 ~~Probation officer reports, inspection of, Section 1203.05, Penal~~
25 ~~Code.~~
26 ~~Produce dealer, confidentiality of financial statements, Section~~
27 ~~56254, Food and Agricultural Code.~~
28 ~~Products liability insurers, transmission of information, Section~~
29 ~~1857.9, Insurance Code.~~
30 ~~Professional corporations, financial statements, confidentiality~~
31 ~~of, Section 13406, Corporations Code.~~
32 ~~Property on loan to museum, notice of intent to preserve an~~
33 ~~interest in, not subject to disclosure, Section 1899.5, Civil Code.~~
34 ~~Property taxation, confidentiality of change of ownership, Section~~
35 ~~481, Revenue and Taxation Code.~~
36 ~~Property taxation, confidentiality of exemption claims, Sections~~
37 ~~63.1, 69.5, and 408.2, Revenue and Taxation Code.~~
38 ~~Property taxation, confidentiality of property information,~~
39 ~~Section 15641, Government Code and Section 833, Revenue and~~
40 ~~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.

20 SECTION 1. Section 11125.1 of the Government Code is
21 amended to read:

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

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

1 of 1990 (42 U.S.C. Sec. 12132), and the federal rules and
2 regulations adopted in implementation thereof, upon request by a
3 person with a disability.

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

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

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

13 (3) Made available on the Internet.

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

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

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

23 (3) Made available on the Internet.

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

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

3 ~~SEC. 3.~~

4 SEC. 2. Section 315 of the Public Utilities Code is amended
5 to read:

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

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

28 ~~SEC. 4.~~

29 SEC. 3. Section 454.5 of the Public Utilities Code is amended
30 to read:

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

1 procurement of electricity for its retail customers, consistent with
2 its obligation to serve. After the commission's adoption of a
3 procurement plan, the commission shall allow not less than 60
4 days before the electrical corporation resumes procurement
5 pursuant to this section.

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

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

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

19 (3) The duration of the plan.

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

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

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

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

38 (8) Procedures for updating the procurement plan.

39 (9) A showing that the procurement plan will achieve the
40 following:

1 (A) The electrical corporation, in order to fulfill its unmet
2 resource needs, shall procure resources from eligible renewable
3 energy resources in an amount sufficient to meet its procurement
4 requirements pursuant to the California Renewables Portfolio
5 Standard Program (Article 16 (commencing with Section 399.11)
6 of Chapter 2.3).

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

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

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

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

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

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

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

1 in compliance with the commission-authorized process shall be
2 recovered in the generation component of rates.

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

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

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

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

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

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

1 costs incurred pursuant to an approved procurement plan. The
2 commission shall review the power procurement balancing
3 accounts, not less than semiannually, and shall adjust rates or order
4 refunds, as necessary, to promptly amortize a balancing account,
5 according to a schedule determined by the commission. Until
6 January 1, 2006, the commission shall ensure that any
7 overcollection or undercollection in the power procurement
8 balancing account does not exceed 5 percent of the electrical
9 corporation's actual recorded generation revenues for the prior
10 calendar year excluding revenues collected for the Department of
11 Water Resources. The commission shall determine the schedule
12 for amortizing the overcollection or undercollection in the
13 balancing account to ensure that the 5-percent threshold is not
14 exceeded. After January 1, 2006, this adjustment shall occur when
15 deemed appropriate by the commission consistent with the
16 objectives of this section.

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

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

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

27 (f) The commission may engage an independent consultant or
28 advisory service to evaluate risk management and strategy. The
29 reasonable costs of any consultant or advisory service is a
30 reimbursable expense and eligible for funding pursuant to Section
31 631.

32 (g) Notwithstanding Section 583, the commission shall adopt
33 appropriate procedures to ensure the confidentiality of any market
34 sensitive information submitted in an electrical corporation's
35 proposed procurement plan or resulting from or related to its
36 approved procurement plan, including, but not limited to, proposed
37 or executed power purchase agreements, data request responses,
38 or consultant reports, or any combination, provided that the Office
39 of Ratepayer Advocates and other consumer groups that are

1 nonmarket participants shall be provided access to this information
2 under confidentiality procedures authorized by the commission.

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

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

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

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

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

34 ~~SEC. 5.~~

35 *SEC. 4.* Section 583 of the Public Utilities Code is repealed.

36 ~~SEC. 6.~~

37 *SEC. 5.* Section 583 is added to the Public Utilities Code, to
38 read:

39 583. (a) All records of, or information furnished to, the
40 commission are public records that shall be made available to the

1 public, upon request, pursuant to the California Public Records
2 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
3 of Title 1 of the Government Code), unless exempted from
4 disclosure pursuant to that act or if the records are any of the
5 following: *act*.

6 ~~(1) Security-related information.~~

7 ~~(2) Proprietary business information.~~

8 ~~(3) Market-sensitive information.~~

9 ~~(4) Communication between a certified labor organization and
10 public utility management personnel made in the context of labor
11 negotiations, grievances, disputes, or communication of any other
12 matter that is not directly related to health and safety concerns.~~

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

20 (b) Any present or former officer or employee of the commission
21 who divulges any information in paragraphs (1) to (5), inclusive,
22 ~~of subdivision (a) the disclosure of which is exempted or prohibited~~
23 ~~pursuant to federal or state law shall be guilty of a misdemeanor.~~

24 ~~SEC. 7.~~

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