

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: February 14, 2012

To: The Commission
(Meeting of February 16, 2012)

From: Office of Governmental Affairs (OGA) – Sacramento

Subject: **AB 1541 (Dickinson) – Public Utilities Commission:
public records.
As introduced: January 19, 2012**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT IF AMENDED

SUMMARY OF BILL:

AB 1541 would amend Public Utilities Code § 315 to require the California Public Utilities Commission (CPUC) to make available to the public any accident report filed with the CPUC pursuant to CPUC requirements, as well as any order or recommendation made by the CPUC pursuant to its investigation of an accident, except as provided in Government Code § 6254. The bill would also repeal Public Utilities Code § 583 and replace it with a new Public Utilities Code § 583 that would provide that the California Public Records Act (Government Code § 6250 et seq.) shall apply to all records of, and records filed with, the CPUC, except as provided in Government Code § 6254.

AB 1541 would further make several smaller changes. The bill would amend a California Public Records Act provision, Government Code § 6276.36, which lists a number of statutes relating to confidentiality, by replacing a reference to Public Utilities Code § 583 with references to Public Utilities Code § 454.5 (pertaining to market sensitive information) and Public Utilities Code § 5960 (pertaining to individually identifiable customer or subscriber information); the bill would amend a Bagley-Keene Open Meetings Act provision, Government Code § 11125.1 (a), to eliminate writings exempt from public disclosure under Public Utilities Code § 489.1 and Public Utilities Code § 583, when distributed to all, or a majority of all, of the members of a state body; the bill would amend Public Utilities Code § 454.5 (g) to clarify that, notwithstanding the new Public Utilities Code § 583 proposed in the bill, the CPUC shall adopt appropriate procedures to protect market sensitive information; finally, the bill would amend Public Utilities Code § 5960 (d) to require that information submitted to the CPUC by holders of state franchises to provide video service, and reported by the CPUC pursuant to this section, be disclosed to the public as provided for pursuant to the new § 583 (i.e. in

accord with the California Public Records Act), with the exception of individually identifiable customer or subscriber information.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

AB 1541 should be supported if amended for the following reasons:

- 1) The bill would provide the public with more immediate access to accident reports filed with the CPUC and records of the CPUC's investigation of such accidents. Current rules and practices dictate that the CPUC prepare, circulate for public comment and then act on routine draft resolutions authorizing staff to disclose records of completed CPUC accident investigations. These rules and practices represent an unnecessary procedural barrier to the prompt disclosure of records to the public. Under AB 1541, those barriers would be removed while the CPUC's authority to protect from disclosure records subject to codified exemptions would be preserved.
- 2) The bill would eliminate the threat of criminal sanctions for the CPUC's public disclosure of information furnished by utilities, their subsidiaries and their affiliates. Current Public Utilities Code § 583 makes it a misdemeanor to disclose information provided by utilities unless the Public Utilities Code specifically requires the information to be public, or disclosure has been authorized by an order of the CPUC, or by the CPUC or a commissioner in the course of a hearing or proceeding. Under current law, in many cases the only way to remove the threat of criminal prosecution against CPUC employees is for the CPUC itself, or in some instances an individual commissioner, to issue an order authorizing public disclosure. The threat of criminal charges is an impediment to public disclosure. Under AB 1541, the misdemeanor provision in Public Utilities Code § 583 would be removed.

SUMMARY OF SUGGESTED AMENDMENTS:

A 'Support if Amended' position, rather than a straight 'Support' position, is recommended for two reasons. First, the proposed amendments to Public Utilities Code § 315 should be revised to clarify certain disclosure ambiguities and mandate the disclosure of additional safety records, and to reflect the fact that orders and recommendations made by the CPUC pursuant to its investigation of utility accidents, and accident reports filed with the CPUC pursuant to § 315, are currently subject to the California Public Records Act, including the specific California Public Records Act exemptions set forth in Government Code § 6254. Second, the new Public Utilities Code § 583 should be revised to be less redundant with current California Public Records Act requirements, and to permit the CPUC to assert California Public Records Act exemptions, and to utilize options for sharing confidential information with other governmental agencies, other than those provided in Government Code § 6254.

- 1) The proposed amendments to Public Utilities Code § 315 should be revised to clarify certain disclosure ambiguities and mandate the disclosure of additional safety records.

As drafted, the amended Public Utilities Code § 315 would require that accident reports etc. be subject to a law they are already subject to, and would restrict the CPUC's ability to assert the range of exemptions, and options for sharing confidential information with other agencies, provided in the California Public Records Act. The amended Public Utilities Code § 315 should, at a minimum, be revised to avoid the possibility that the language could be viewed as allowing the CPUC to assert only those California Public Records Act exemptions found in Government Code § 6254, and not the exemptions provided in other provisions of the Public Records Act, including, for example, the Government Code § 6254.23 exemption for risk assessment or railroad infrastructure protection program records.

If the amended Public Utilities Code § 315 were further amended to include affirmative disclosure obligations such as those proposed in the CPUC's analysis of SB 1000 (Yee), disclosure would be further streamlined.

The language should provide clear guidance, and thus greater practical public access, to CPUC safety investigation reports that do not result in "orders or recommendations", as well as to other safety records of interest to the public, with any specific redaction or infrastructure confidentiality issues being resolved in the legislation itself, rather than through a series of CPUC decisions, orders, resolutions or rulings.

Language should be included specifying that safety-related records be made available to the public either by directly posting the records on the CPUC's website, or by posting links to the websites of other governmental agencies that receive and maintain such records. However, an exception should clarify that the CPUC may redact records, or portions of records, that it determines are exempt or prohibited from disclosure pursuant to the California Public Records Act or other applicable law, where the exemption or prohibition is mandatory and/or where the CPUC has carefully weighed the arguments for and against disclosure and determined that the public's interest in nondisclosure clearly outweighs its interest in disclosure.

Safety records of interest should include the following:

- All natural gas pipeline safety reports filed by gas utilities pursuant to federal law or regulations, where copies of such filings are also provided to the CPUC and the filings are not designated as confidential by federal statute or regulation. Such documents include, but are not limited to, documents filed with the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration.

- All natural gas pipeline safety reports filed by gas utilities with the CPUC pursuant to state law, regulation or CPUC decision, regulation, order or ruling, where the state law, regulation or CPUC decision, regulation, order or ruling, does not expressly designate the records, or limited portions of such records, as confidential. Such documents include, but are not limited to documents filed with the CPUC pursuant to General Order 112-E.
 - All electric utility safety-related reports filed by electric utilities with the CPUC pursuant to state law, regulation or CPUC decision, regulation, order or ruling, where the state law, regulation or CPUC decision, regulation, order or ruling, does not expressly designate the records, or limited portions of such records, as confidential.
 - All railroad safety-related reports filed by railroads pursuant to federal or state laws or regulations, or CPUC decisions, regulations, orders or rulings, where the federal or state law, regulation or CPUC decision, regulation, order or ruling, does not expressly designate the records, or limited portions of such records, as confidential.
 - All CPUC-generated reports regarding gas and electric safety conducted by the CPUC, and related correspondence between the CPUC and the audited entity, with the exception of any portions of such reports or correspondence that may be subject to a California Public Records Act exemption and/or CPUC-held privilege prohibiting or limiting disclosure.
 - All CPUC-generated reports regarding electric and gas incident investigations completed by the CPUC, and related correspondence between the CPUC and any regulated entity directly or indirectly involved in the incident, with the exception of any portions of such reports or correspondence that may be subject to a California Public Records Act exemption and/or CPUC-held privilege prohibiting or limiting disclosure.
- 2) The proposed amendment to Public Utilities Code § 454.5(g) appears to reflect a belief that the new version of Public Utilities Code § 583, which states that records of, or filed with, the CPUC are subject to the California Public Records Act, could result in disclosure of market sensitive procurement information in the absence of specific statutory language reminding the Commission that it has an obligation to adopt procedures to ensure the confidentiality of such information, notwithstanding the CPUC's obligations under the California Public Records Act. Since the CPUC is already subject to the California Public Records Act, and to the obligation to adopt procedures to maintain the confidentiality of market sensitive procurement information, the proposed amendment adds no new obligation. However, the amendment could also be viewed as usefully emphasizing the fact that the CPUC's statutory duty to protect market sensitive procurement information provides a basis for asserting that such market sensitive procurement information is exempt from

disclosure in response to California Public Records Act requests. The CPUC may wish to recommend that the amendment also replace the reference to the “Office” of ratepayer Advocates with a reference to the “Division” of Ratepayer Advocates.

The new Public Utilities Code § 583 should be revised to be less redundant with current California Public Records Act requirements. While the repeal of current Public Utilities Code § 583 will almost certainly improve the public’s opportunities for reviewing CPUC records, the new Public Utilities Code § 583 erroneously assumes that the California Public Records Act does not currently apply to all records of, and records filed with, the CPUC. In fact, the California Public Records Act already requires the CPUC to disclose records to the public unless the CPUC can justify withholding the records “by demonstrating that the record in question is exempt under express provisions of this chapter (the California Public Records Act) or that on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Government Code § 6255.)

Language should be included to make Public Utilities Code § 583 less redundant with current California Public Records Act requirements by adding language that specifies the following:

- The California Public Records Act (CPRA) (Chapter 3.5 (commencing with § 6250) of Division 7 of Title 1 of the Government Code) applies to all records of, and filed with, the CPUC.
- In accord with the CPRA, the CPUC must justify withholding any record by demonstrating that the record in question is exempt under express provisions of the CPRA or that, on the facts of a particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record (Government Code § 6255).
- In accord with Article 1, § 3(b) of the California Constitution, statutes, court rules, and other authority must be broadly construed if they further the people’s right of access to government records, and narrowly construed if they limit the right of access.
- In applying these laws and principles, the CPUC shall refrain from making public records and information subject to statutory or other prohibitions against disclosure, shall ensure public access to records and information where disclosure is required by statute or other provision of law, and to carefully balance the public’s interests for and against disclosure in contexts where disclosure is neither expressly prohibited, or expressly mandated, by statute or other provision of law.

Furthermore, the subsection of the new Public Utilities Code § 583 should, at a minimum, be revised to avoid the possibility that the language could be viewed as allowing the CPUC to assert only those California Public Records Act exemptions found in Government Code § 6254, and not the exemptions provided in other provisions of the Public Records Act, including, for example, the Government Code § 6254.23 exemption for risk assessment or railroad infrastructure protection program records.

Language could be included to require the CPUC to develop new regulations for posting on its website an index of the classes of records it receives and maintains, the records retention policies associated with each class of records, a list of the classes of records generally available to the public, a list of the records generally not available to the public with a description of the justification for such confidential treatment, a standard form to be used by anyone intending to request that records be filed under seal, or otherwise accorded confidential treatment, and so on.

DIVISION ANALYSIS (Legal Division):

AB 1541 would impact CPUC programs, practice and policy in the following ways:

- 1) Public Utilities Code § 315 currently: 1) requires the CPUC to investigate the cause of accidents in California that take place on utility property or involve the maintenance or operation of the utility, and involve loss of life or injury to persons or property, when the CPUC judges that such an investigation is required; 2) authorizes the CPUC to make such order or recommendations regarding the investigations as in its judgment seem just and reasonable; 3) requires every public utility to file with the CPUC a report of each accident under rules prescribed by the CPUC; and 4) provides that “Neither the order or recommendation of the commission nor any accident report filed with the commission shall be admissible as evidence in any action for damages based on or arising out of the loss of life or injury to person or property.”

AB 1541 would amend Public Utilities Code § 315 to make a number of minor editorial changes, and add the following new requirement that:

“Any order or recommendation made by the commission pursuant to this section, and any accident report filed with the commission pursuant to this section, shall be subject to the California Public Records Act (chapter 3.5) commencing with Section 2650 of Division 7 of Title 1 of the Government Code), except as provided in Section 6254 of the Government Code.”

The amended Public Utilities Code § 315 could reduce or eliminate the need for individual CPUC resolutions authorizing disclosure. By requiring that accident reports filed with the CPUC, and orders and recommendations of the CPUC, be made available to the public in compliance with the California Public Records Act, with specifying that disclosure will be delayed until the CPUC’s investigation is complete, AB 1541 would ensure that accident reports are made available to the

public within a reasonable time frame, even while the CPUC's investigation remains pending.

Although the California Public Records Act does not include a specific exemption for utility accident reports, it does include enough exemptions to permit the CPUC to redact from accident reports any truly confidential or sensitive information. Thus, AB 1541 would not eliminate the CPUC's ability to assert appropriate exemptions regarding limited portions of accident reports, if it is amended to clarify that the CPUC may assert Public Records Act exemptions other than only those included in Government Code § 6254.

- 2) Existing law (current Public Utilities Code § 583) makes it a misdemeanor for a present or former officer or employee of the CPUC to disclose information by a public utility or its subsidiaries and affiliates, unless disclosure is specifically required by Part 1 of the Public Utilities Code, or disclosure is authorized by an order of the CPUC, or by the CPUC or a commissioner during the course of a hearing or proceeding. Although Section 583 does not in itself actually limit the CPUC's authority to disclose record, the misdemeanor language has a distinct chilling effect on the willingness of CPUC staff, and often commissioners, to consider questioning utility assertions of confidentiality.

As a practical matter, the misdemeanor language, coupled with the procedural delays associated with the public comment period required before the CPUC takes action on a draft decision or resolution addressing a specific confidentiality issues, results in the CPUC staff's initial denial of public access to any information even arguably subject to the Public Utilities Code § 583 misdemeanor warning.

Elimination of this intimidating language would create an atmosphere more conducive to a rigorous and sensible analysis of the reasonableness of a utility's confidential assertions, and thus result in greater and more immediate public access to CPUC records that are not clearly exempt under the California Public Records Act.

- 3) The California Public Records Act requires state agencies to disclose records to any member who requests the records unless those agencies can justify withholding the records "by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Government Code § 6255.)
- 4) Current CPUC rules are to an extent inconsistent with the California Public Records Act and result in utility assertions of confidentiality for records that may not easily fall within one or more California Public Records Act exemptions. The frequent absence of a clear match between regulated entity assertions of the existence of an applicable California Public Records Act exemption and/or the public's interest in not having access to certain information, and any actual California Public Records Act

exemption, has two negative results. First, CPUC rulings on such confidentiality issues may be difficult to justify if reviewed carefully. Second, the varying contexts in which confidentiality is asserted or requested, the varying quality and specificity of such assertions or requests and the absence of uniform CPUC-wide approach for analyzing and processing such requests tend to confuse staff and the public and impede the ability of the CPUC to confidently make confidentiality determinations and provide prompt access to records disclosable under the California Public Records Act. Clear legislative guidance and CPUC-specific disclosure mandates could help alleviate some of the existing confusion regarding common disclosure issues and thus improve public access.

PROGRAM BACKGROUND:

General Order 66-C currently provides that records of CPUC audits or investigations not be disclosed except to the extent disclosed in a hearing or by formal CPUC action. As a result, most requests for accident reports and investigation records are initially denied, with the denial letter indicating that the staff has initiated the process through which the CPUC authorizes disclosure. This process requires circulation of a draft CPUC resolution authorizing disclosure at least 30 days before the CPUC takes action, thus ensuring that most accident reports and investigation records are not disclosed for at least a month or two. Further, the CPUC's current practice is to refrain from providing records until the CPUC has completed its investigation, a process which has in some cases taken several years.

LEGISLATIVE HISTORY:

AB 1541 is similar to a prior bill, SB 1488 (Bowen), which was introduced in 2004 as a similar attempt to modify Public Utilities Code § 583 to increase public access to CPUC records but was subsequently amended to simply require that the CPUC consider its disclosure practices. In response to SB 1488, the CPUC in D.06-06-066 considered a number of its disclosure practices and adopted a matrix establishing categories of mainly energy procurement-related information available to the public and categories of information to remain confidential for specified periods of time. The CPUC stopped short of replacing or amending General Order 66-C after reviewing party comments regarding certain exemptions in the General Order. The CPUC's history associated with this prior legislative effort suggests the potential benefits of further direct legislative mandates regarding a variety of disclosure issues.

Another proposed bill from the 2011-12 legislative session, SB 1000 (Yee), also addresses the issue of public access to CPUC records.

FISCAL IMPACT:

None.

STATUS:

AB 1541 has been double referred to the Assembly Utilities and Commerce Committee and the Assembly Governmental Organization Committee.

SUPPORT/OPPOSITION:

None on file.

STAFF CONTACTS:

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BILL LANGUAGE:

BILL NUMBER: AB 1541 INTRODUCED
BILL TEXT

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:

SECTION 1. Section 6276.36 of the Government Code is amended to read:

6276.36. Pregnancy tests by local public health agencies, confidentiality of, Section 123380, Health and Safety Code.

Pregnant women, confidentiality of blood tests, Section 125105, Health and Safety Code.

Prehospital emergency medical care, release of information, Sections 1797.188 and 1797.189, Health and Safety Code.

Prenatal syphilis tests, confidentiality of, Section 120705, Health and Safety Code.

Prescription drug discounts, confidentiality of corporate proprietary information, Section 130506, Health and Safety Code.

Prisoners, behavioral research on, confidential personal information, Section 3515, Penal Code.

Prisoners, confidentiality of blood tests, Section 7530, Penal Code.

Prisoners, medical testing, confidentiality of records, Sections 7517 and 7540, Penal Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Public Employees' Retirement System, confidentiality of data filed by member or beneficiary with board of administration, Section 20134.

Public investment funds, exemption from disclosure for records regarding alternative investments, Section 6254.26.

Public school employees organization, confidentiality of proof of majority support submitted to Public Employment Relations Board, Sections 3544, 3544.1, and 3544.5.

Public social services, confidentiality of digest of decisions, Section 10964, Welfare and Institutions Code.

Public social services, confidentiality of information regarding child abuse or elder or dependent persons abuse, Section 10850.1, Welfare and Institutions Code.

Public social services, confidentiality of information regarding eligibility, Section 10850.2, Welfare and Institutions Code.

Public social services, confidentiality of records, Section 10850, Welfare and Institutions Code.

Public social services, disclosure of information to law enforcement agencies, Section 10850.3, Welfare and Institutions Code.

Public social services, disclosure of information to law enforcement agencies regarding deceased applicant or recipient, Section 10850.7, Welfare and Institutions Code.

~~Public utilities, confidentiality of information, Section 583, Public Utilities Code.~~

Public utilities, confidentiality of market sensitive information, Section 454.5, Public Utilities Code.

Public utilities, confidentiality of individually identifiable customer or subscriber information, Section 5960, Public Utilities Code.

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

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

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

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

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

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

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

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

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

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

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by 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, upon request by a person with a disability.

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by the Franchise Tax 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 notice in writing pursuant to subdivision (a) of Section 11125.

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

(b) Any order or recommendation made by the commission pursuant to this section, and any accident report filed with the commission pursuant to this section, 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. 4. Section 454.5 of the Public Utilities Code is amended to read:

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

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

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

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

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

(3) The duration of the plan.

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

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

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

(7) The upfront 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 execution of the transaction. This shall include an expedited approval process for the commission's review of proposed contracts and subsequent approval or rejection thereof. The electrical corporation shall propose alternative procurement choices in the event a contract is rejected.

(8) Procedures for updating the procurement plan.

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

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

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

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

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

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

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

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

(1) A competitive procurement process under which the electrical corporation may request bids for procurement-related services. The commission shall specify the format of that procurement process, as well as criteria to ensure that the auction process is open and adequately subscribed. Any purchases made in compliance with the commission-authorized process shall be 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) ~~The~~ *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.

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