

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: July 9, 2012

To: The Commission
(Meeting of July 12, 2012)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 1541 (Dickinson) – Public Utilities Commission: public records.
As amended May 24, 2012**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE UNLESS AMENDED

SUMMARY OF BILL

AB 1541 would amend Public Utilities Code § 315 to provide that any order or recommendation of the California Public Utilities Commission ('Commission'), and any accident report filed with the Commission pursuant to § 315, shall be subject to the California Public Records Act, except as provided in Government Code § 6254 and Public Utilities Code § 583. The bill would amend Public Utilities Code § 454.5 (g) to clarify that the Commission is still required to adopt appropriate procedures to protect market sensitive information submitted in or related to an electrical corporation's proposed or adopted procurement plans, notwithstanding the new § 583.

The bill would also repeal Public Utilities Code § 583 and replace it with a new § 583 that would state that all records of, and records filed with, the Commission, shall be made available to the public, upon request, pursuant to the California Public Records Act, unless exempted from disclosure pursuant to that act or if the records are any of the following: 1) security-related information; 2) proprietary business information, 3) market-sensitive information; 4) communication between a certified labor organization and public utility management personnel made in the context of labor negotiations, grievances, disputes, or communication of any other matter that is not directly related to health and safety concerns; and 5) personally identifiable information of employees or customers. The new § 583 also provides that documents that contain personally identifiable information of employees or customers that are not exempt from disclosure pursuant to paragraphs 1-4 shall be redacted to maintain the confidentiality of that personally identifiable information and made public in their redacted form.

The new § 583 makes it a misdemeanor for any present or former officer or employee of the Commission to divulge any information in paragraphs 1-5.

Finally, the bill would amend a provision of the Bagley-Keene Open Meeting Act, Government Code § 11125.1 (a), to eliminate writings exempt from public disclosure under Public Utilities Code § 583 from a list of writings that must be made available to the public if distributed all or a majority of members of a state body.

AB 1541 is similar to proposed SB 1000 (Yee) in that the stated intent is to increase public access to Commission records. As currently drafted, the bill would significantly reduce public access to Commission records by making it a crime for the Commission to disclose certain broad categories of records, and would seriously impair the ability of the Commission to conduct proceedings effectively.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION

AB 1541 should be opposed unless amended for the following reasons:

(1) The bill would reduce public access to Commission records

(a) The bill would make it a crime for the Commission to disclose several categories of records it currently has the authority to disclose.

Public Utilities Code § 583 currently imposes a procedural restriction on the disclosure of information furnished by utilities or their affiliates, by barring disclosure of such information unless the Public Utilities Code requires that the information be made public, or the Commission authorizes its disclosure. Unless the Commission has, in a broad or narrow decision, regulation, or ruling, authorized disclosure of a class of records or information, staff's ability to disclose information immediately may be limited. Existing § 583 does not, however, impose any substantive limits of the Commission's own ability to authorize disclosure.

AB 1541 would replace the procedural limits in § 583 with a substantive prohibition, backed by criminal sanctions, against the Commission's disclosure of specified, but largely un-defined, classes of records. The Commission could no longer legally disclose such records to anyone, regardless of the public's interest in disclosure. By making it a crime for any current or former Commission officer or employee to divulge such information, the bill guarantees that the Commission will, of necessity, take the most restrictive position regarding any disclosure that could arguably involve records it is prohibited from disclosing.

(b) The bill does not adequately define the classes of records that it would be a crime for the Commission to disclose; this absence of clarity will restrict the Commission's disclosure of records that might arguably fall in a proscribed class of records.

AB 1541 does not define "Security-related information," but makes it a crime for the Commission to divulge such information. The Public Records Act currently exempts from mandatory disclosure:

A document prepared by or for a state or local agency that assess its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session. (Government Code § 6454 (aa)).

Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Office of Homeland Security for use by that office, including the identity of the person who or entity that voluntarily submitted the information. As used in this subdivision, "voluntarily submitted" means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency. (Government Code § 6254(ab).)

Nothing in this chapter or any other provision of law shall require the disclosure of a risk assessment or railroad infrastructure protection program filed with the Public Utilities Commission, the Director of Homeland Security, and the California Emergency Management Agency pursuant to Article 7.3 (commencing with Section 7665) of Chapter 1 of Division 4 of the Public Utilities Code. (Government Code § 6254.23.)

Nothing in this chapter shall be construed to require the disclosure of an information security record of a public agency, if, on the facts of the particular case, disclosure of that records would reveal vulnerabilities to, or otherwise increase the potential for an attack on, an information technology system of a public agency. Nothing in this section shall be construed to limit public disclosure of records stored within an information technology system of a public agency that are not otherwise exempt from disclosure pursuant to this chapter or any other provision of law." (Government Code § 6254.19.)

If the author of AB 1541 wishes to make it a crime for the Commission to divulge other "security-related" information, it would be helpful to create a new specific exemption within the Public Records Act, with a specific definition of the records for the Commission to keep secret.

One of the circumstances underlying the recent push for more public access to Commission records was the San Bruno gas pipeline explosion – the public, and the media, wanted more information about the safety of pipeline facilities. Such information

includes specific infrastructure location information. Utilities may claim such information is “security-related” information.

The Commission has tried to balance the needs of the public for such safety related information against the possibility that excessive disclosure could provide information that could create new risks to utility infrastructure by, for example, generally redacting the numerical elements of the street addresses where pipeline incidents occurred before posting information on the internet site, etc. The Commission’s current effort to replace General Order 66-C contemplates further detailed discussions regarding the types of safety information that can and should be disclosed to the public, and the types of information that, if disclosed, might create security or safety risks. If the Legislature chose to engage in such a balancing of interests and establish clear guidelines, it would be helpful.

Without clear Legislative guidelines, beyond the simple listing of “security-related” information as a class of information it would be a crime to divulge, the Commission will almost certainly need to initiate a formal rulemaking to develop a definition adequate to allow proper implementation of the prohibition against disclosure, since it would want to adequately protect its officers and employees against the threat of criminal prosecution for inadvertent disclosure of information some might consider to be security-related.

Further, AB 1541, as drafted, would prohibit the Commission from divulging security-related information to anyone, including, presumably, fellow governmental agencies, and the utilities and other entities it regulates. The author might wish to reconsider whether or not he believes the Commission should be able to share security-related information with other governmental agencies and regulated entities.

AB 1541 similarly fails to adequately define “proprietary business information” and “market sensitive information. While the Commission has in a series of decisions identified certain information it considers market sensitive information, particularly with regard to energy procurement related information, the Commission believes the term “market-sensitive” is subject to a range of interpretations, and that, if AB 1541 is enacted, utilities and others will identify a wide range of additional classes of non-procurement as “market sensitive” as well. Again, clear statutory definitions of “proprietary business information” and “market-sensitive information” may make it easier for the Commission to implement AB 1541. Given the threat of criminal sanctions, the Commission will probably need to develop definitions for these terms in the rulemaking initiated with regard to security-related information.

(2) By prohibiting disclosure of employee and customer names, the bill will seriously impair the ability of the Commission to function effectively, reduce the public’s ability to understand the Commission’s actions, substantially increase the Commission’s expenses by requiring redaction of many thousands of documents that are currently available to the public, and conflict with the provisions of the Information Practices Act.

AB 1541 would make it a crime for the Commission to divulge any personally identifiable information of any employee or customer.

The intent of this provision of the bill is unclear. If the protection of personal privacy interests is the author's intent, there are far less drastic ways to protect such information – ways that the Commission currently utilizes when responding to records requests or discovery.

The scope of this provision is also unclear. The word employee would apply to anyone who worked for anyone for compensation. This would include employees of utilities, utility affiliates, the Commission, other governmental entities, other regulated entities, such as the many thousands of transportation entities the Commission regulates in some fashion, anyone who works for someone else and interacts with the Commission in some manner. This provision of AB 1541 should, at a minimum, be amended to inform the Commission as to whose employee names must be kept from the public's view.

Under current Commission practice, documents in formal Commission proceedings are available to the public except to the extent a party has requested and obtained permission to file documents under seal. Most formal proceeding documents are immediately available to the public on the Commission's internet site, to the extent that the documents were electronically filed or issued, with the remainder being available in our Central Files Office. Formal proceeding documents include the names, addresses, and contact information of utility and Commission employees, the names and addresses of customers who filed formal complaints with the Commission, and the names and contact information of witnesses who present testimony in Commission proceedings.

If the public can only see documents from which all employee and customer names have been redacted, the Commission's ability to conduct formal proceedings in an effective and efficient manner will be seriously impaired. People rely on the use of personal identifiers, such as names, to understand who said what, who acted, or failed to act, who attested to the truth of a statement or document, who is responsible for something, who can be contacted to obtain information or documents. The Commission, its staff, parties in Commission proceedings, and the public also often rely on the use of names as search terms when seeking documents. If employee and customer names are redacted from documents the Commission makes public, people will have a harder time locating and understanding Commission proceeding records.

Excessive redaction of personal identifiers makes records less useful to those outside the Commission in other ways as well. In the safety-related records context, for example, safety audit records sometimes show that a utility has been using specific employees for safety work for which they do not have the proper training or certification. When a particular employee's name crops up in several sequential reports, it is possible to determine how long such practices have gone on, and when, or if, the utility has taken corrective measures. If the employee names are all redacted and kept from the

public and other governmental agencies, only Commission staff would be in the position to identify such trends. Sometimes a second set of eyes is useful.

If AB 1541 is enacted as is, the Commission will need to revise its current Rules of Practice and Procedure, Central Files Office public access policies, and internet posting practices, to eliminate from formal proceeding files any information it would be a crime to disclose. The Commission would also need to maintain two sets of records in a multitude of contexts, with one redacted set being available to those outside the Commission, and another unredacted set being available only to Commission employees.

These changes will require substantial staff and information technology resources. The Commission would need to devote several staff exclusively to the task of reviewing and redacting documents filed with the Commission, and ensuring that no forbidden information was divulged outside the Commission. The redaction process, whether done by hand, or electronically, is a time consuming process that involves close attention to details.

During the past year or so, the Commission has generally accommodated PG&E's request that the identities and contact information of its non-managerial employees with safety responsibilities be redacted from the documents the Commission posted on its internet site, and that the contact information of its higher level staff be redacted as well, to shield them from unwanted contacts from the public. Staff's experience with this process revealed how burdensome this effort is. Beyond this simple need to read and individually redact each page of each document, the Commission often found it impossible to efficiently determine who was a management employee and who was not. The Commission does not maintain organizational charts of utilities, and, even if it did, the structure of a utility's organization changes from time to time, as do the positions of individuals within the organization. Unless an individual's name is directly accompanied by information showing their status as a director or officer of the company, the Commission cannot be certain where the individual stands in the corporate world. Many safety-related letters include a long list of ccs, with no status identification. By making it illegal to divulge any employee names, AB 1541 would simply the redaction process since there would be no need to determine where someone fell in the corporate hierarchy. But the extensive redactions would still degrade substantially the usefulness of the records to the public.

The AB 1541 provisions regarding the secrecy of employee and customer names may be aimed at addressing a problem that does not really exist. The Public Records act currently provides options for protecting personal information, where disclosure would constitute an unwarranted invasion of personal privacy. (E.g., Government Code § 6254(c).) The Commission often references this exemption when refraining from providing records requesters with personally identifiable information regarding customers who have filed informal complaints with the Commission, and similar information in other documents not associated with formal Commission proceedings.

If the author wished to include a statutory prohibition against disclosure of customer information, he might consider modifying an existing exemption in the Public Records Act, Government Code § 6254.16, which currently only applies to utility customers of local agencies, or adopting a somewhat similar version for customers of privately owned public utilities. Section 6254.16 states that: “Nothing in this chapter shall be construed to require the disclosure of the name, credit history, utility usage data, home address, or telephone number of utility customers of local agencies, except that disclosure of name, utility usage data, and the home address of utility customers of local agencies shall be made available upon request as follows:” “Utility customers of local agencies” would be customers of municipal utilities, which are governmental rather than privately owned entities. If this approach is adopted, the customers of Commission regulated utilities could be subject to the same disclosure rules as customers of municipal utilities, although some provision should be made to ensure that customers who voluntarily disclose such data as part of a formal proceeding filing are not prohibited from continuing to do so.

Currently, when the Commission receives records requests seeking informal complaint records, the Commission redacts from those records personal information regarding the customer(s) involved in the complaints, including the customer’s name, address, telephone number, email address, utility account number, etc. unless the request is from a customer seeking records regarding his or her own complaint. If a customer seeks records regarding his or her own complaint, we provide the full complaint file.

The Information Practices Act (Civil Code § 1798, *et seq.*) requires that agencies respond to inquiries from individuals who inquire as to whether the agency maintains a record about the individual, and permit such individuals to inspect the personal information in such records. (Civil Code § 1798.32 and 1798.34.) If the Commission is prohibited by law from divulging “personally identifiable information” even to the person to whom it pertains, the Commission may not be able to comply with this Information Practices Act directive.

Once it is clear that the Commission’s Consumer Affairs Branch cannot resolve a dispute through the informal complaint process, the customer is invited to file a formal complaint with the Commission. The formal complaint form informs the customer that the formal complaint records are available to the public, and such formal complaint files are treated like other formal proceeding records and made available to the public both on the Commission’s internet site, and through its Central Files Office. AB 1541 would require a re-working of this process.

(3) The bill would eliminate the threat of criminal sanctions for the Commission’s staff’s public disclosure of information furnished by utilities, their subsidiaries and their affiliates, that did not fall within a class of records subject to AB 1541’s new prohibitions on access to records, but would add a more direct threat of criminal sanctions for the Commission’s divulgement of information it is currently permitted to disclose.

Current Public Utilities Code § 583 makes it a misdemeanor to disclose information provided by utilities or their affiliates unless the Public Utilities Code specifically requires the information to be public, or disclosure has been authorized by an order of the Commission, or by the Commission or a commissioner in the course of a hearing or proceeding. Under current law, Commission staff's authority to disclose immediately certain information may be limited unless and until the Commission authorizes disclosure in a broad or narrow decision, order, or ruling authorizing disclosure, without fearing misdemeanor prosecution. AB 1541 would remove staff's misdemeanor fears regarding disclosure of certain information furnished by utilities, but would impose on Commissioners and staff new misdemeanor fears regarding the divulgement of other specified classes of records.

SUMMARY OF SUGGESTED AMENDMENTS

An 'Oppose Unless Amended' position is recommended, because while admirable in intent, the current bill language would seriously interfere with the ability of the Commission to function effectively. A number of amendments would improve the bill substantially.

First, AB 1541 should be amended to replace the new substantive prohibition against the Commission's disclosure of the several classes of records listed in the bill with a less drastic prohibition against the disclosure of that information in the absence of Commission approval. If, for example, the current restrictive language in § 583 could be retained for the classes of records listed as confidential in AB 1541 – with the exception of personally identifiable information concerning employees and customers – in order to retain current limitations on the disclosure of such information, without creating an entirely new substantive prohibition on the divulgement of such information to anyone. This amendment would help better ensure that AB 1541 serves its evident purpose of streamlining public access to Commission records, rather than serves as a brand new, and more substantial, barrier to public access.

Second, AB 1541's proposed § 583 should be amended to direct the Commission clarify the definitions of the classes of records it would be a crime for the Commission to divulge. The terms: "security-related information," "proprietary business information," and "market sensitive information" are not clear enough on their own to permit the Commission to implement the disclosure prohibitions without first undertaking a rulemaking proceeding to establish the meaning of these terms with sufficient specificity to permit the Commission to divulge information without substantial fear of being found in violation of the criminal sanction in the new § 583.

Third, AB 1541 should be amended to clarify whose employees and customers are subject to the prohibition on the divulgement of "personally identifiable information." Such clarification should not prohibit the disclosure of Commission employee names and contact information. Disclosure of such information is necessary to allow the public and others to communicate with Commission employees, and Commission employees

do not have an objectively reasonable expectation in the privacy of such information to the extent it is associated with their work for the Commission.

Fourth, AB 1541 should be amended to eliminate the proscription on the disclosure of employee and customer names. The imposition of criminal sanctions for the use of employee and customer names in formal proceeding documents and other Commission records available to the public would prevent the Commission from functioning effectively, since the use of names and other personally identifiable information in publicly available documents is essential to the ability of the Commission and the public to be able to understand the activities of the Commission and to identify and communicate with individuals involved in Commission proceedings. At the very least, the bill should be amended to permit the Commission to divulge employee and customer information to other governmental agencies where such divulgement is necessary for the Commission and/or the other agencies to carry out their regulatory and law enforcement responsibilities.

Fifth, AB 1541 should be amended to replace in the provision amending Public Utilities Code § 454.5 (g) the reference to the Commission's "Office" of Ratepayer Advocates with a reference to the Commission's "Division" of Ratepayer Advocates."

Only if these amendments are made should the Commission consider removing its opposition.

PROGRAM BACKGROUND

General Order 66-C currently provides that records of Commission audits or investigations not be disclosed except to the extent disclosed in a hearing or by formal Commission 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 Commission authorizes disclosure. This process requires circulation of a draft Commission resolution authorizing disclosure at least 30 days before the Commission takes action, thus ensuring that most accident reports and investigation records are not disclosed for at least a month or two. Further, the Commission's current practice is to refrain from providing records until the Commission 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 Commission records but was subsequently amended to simply require that the Commission consider its disclosure practices. In response to SB 1488, the Commission 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 Commission stopped short of replacing or amending General Order 66-C after reviewing party comments regarding certain exemptions in the General Order.

Another proposed bill from the 2011-12 legislative session, SB 1000 (Yee), also addresses the issue of public access to Commission records. SB 1000 failed to secure an adequate number of votes for passage in the Assembly Utilities and Commerce Committee on June 25, 2012.

FISCAL IMPACT

As written, implementing the provisions of AB 1541 using the procedural vehicle of a hearing would result in a temporary addition of 1 PY for the work of an ALJ II. The hearing would be necessary to precisely define the types of information considered to be “security-related information,” “proprietary business information,” and “market-sensitive information,” since the Commission would be prohibited from divulging any such information under threat of misdemeanor sanctions. The bill’s requirement that the Commission redact its records to ensure that no personally identifiable information regarding employees or customers is divulged, and that redacted records containing such information be posted on the Commission’s internet site, would require the dedication, on a permanent basis, of several well-trained clerical or legal employees. An estimated 3 PYs at the Legal Assistant level would be required.

STATUS

AB 1541 is pending hearing in the Senate Appropriations Committee.

SUPPORT/OPPOSITION

Support:

AT&T
CTIA, the Wireless Association
CalCom
California Association of Competitive Telecommunications Companies
California Cable and Telecommunications Association
California's Independent Telecommunications Companies
California State Pipe Trades Council
California State Association of Electrical Workers
Charter Communications
Coalition of California Utility Employees
Comcast
Frontier Communications
San Diego Gas & Electric Company
Sempra Energy Utilities
Southern California Gas Company
Verizon

Utility Workers Union of America

Opposition:

California Newspaper Publishers Association
California Public Utilities Commission
Southern California Edison
The Utility Reform Network

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BILL LANGUAGE

BILL NUMBER: AB 1541 AMENDED
BILL TEXT

AMENDED IN SENATE MAY 24, 2012
AMENDED IN ASSEMBLY APRIL 16, 2012

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:

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.

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 information submitted pursuant to, 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 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 or Section 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 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 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 rules the commission prescribes, a report of each accident so occurring of 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 or Section 583.

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

- (1) Security-related information.
- (2) Proprietary business information.
- (3) Market-sensitive information.

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

~~—(4)~~

(5) Personally identifiable information of employees or customers. Documents containing personally identifiable information of employees or customers that are not exempt from public disclosure pursuant to ~~paragraph (1), (2), or (3)~~

paragraphs (1) to (4), inclusive, shall be redacted to maintain the confidentiality of the personally identifiable information of employees or customers, and shall be made public in their redacted form.

(b) Any present or former officer or employee of the commission who divulges any information in paragraphs (1) to ~~(4)~~

(5), inclusive, of subdivision (a) shall be guilty of a misdemeanor.

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