

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2063

Introduced by Assembly Member Alejo

February 23, 2012

An act to add Sections 13293 and 13294 to the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 2063, as amended, Alejo. ~~Regional water quality control boards.~~
Ex parte communications.

Under existing law, the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the 9 California regional water quality control boards are the principal state agencies with responsibility for the coordination and control of water quality in the state. The act requires the state board to formulate and adopt state policies for water quality control, and *authorizes the state board to hold any hearings and conduct any investigations in any part of the state necessary to carry out the powers vested in the state board, as specified.* The act also requires the regional boards to adopt regional water quality control plans in compliance with the state policies. Existing law requires each regional board to conduct certain proceedings, including, but not limited to, holding at least 6 regular meetings each calendar year.

Existing law, the Administrative Procedure Act, provides for the conduct of administrative adjudication proceedings of state agencies. Existing law generally prohibits *ex parte communication including communication during a pending proceeding, regarding any issue in the proceeding, to the presiding officer by an employee or representative*

of an agency that is a party to the proceeding without notice and opportunity for all parties to participate, except as specified.

~~This bill would state the intent of the Legislature to enact legislation to permit the interaction and communication between board members of a regional board and interested parties that are members of the community so that the regional board conducts its affairs in an open objective manner with public awareness and participation.~~

This bill would provide that the ex parte communications provisions of the Administrative Procedure Act do not apply to state or regional board proceedings regarding water quality. This bill would prohibit a board member, or any interested person, as defined, from engaging in an ex parte communication, as defined, unless the board member fully discloses and makes public the ex parte communication by providing a full report of the communication to the board on the record of the proceeding at the first hearing that occurs after ex parte communication occurs.

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

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

- 1 SECTION 1. Section 13293 is added to the Water Code, to
- 2 read:
- 3 13293. (a) For the purposes of Section 13294, the following
- 4 terms shall have the following meanings:
- 5 (1) “A matter within a board’s jurisdiction” means a
- 6 quasi-judicial matter requiring board action, pursuant to this
- 7 division.
- 8 (2) “Board” means the State Water Resources Control Board
- 9 or a regional water quality control board.
- 10 (3) “Ex parte communication” is an oral or written
- 11 communication between a member of a board and an interested
- 12 person, about a matter within the board’s jurisdiction, which does
- 13 not occur in a public hearing, workshop, or other official
- 14 proceeding, or on the official record of the proceeding on the
- 15 matter. The following communications are not ex parte
- 16 communications:
- 17 (A) A communication between a staff member acting in his or
- 18 her official capacity and a board member or an interested person.

1 (B) A communication limited entirely to procedural issues,
2 including, but not limited to, the hearing schedule, location, format,
3 or filing date.

4 (C) A communication which takes place on the record during
5 an official proceeding of a state, regional, or local agency that
6 involves a member of a board who also serves as an official of
7 that agency.

8 (D) A communication between a member of a board, with regard
9 to an action of another state agency or of a regional or local
10 agency of which the member is an official, and any other official
11 or employee of that agency, including any person who is acting
12 as an attorney for the agency.

13 (E) A communication between a nonvoting board member and
14 a staff member of a state agency where both the board member
15 and the staff member are acting in an official capacity.

16 (F) A communication to a nonvoting board member relating to
17 an action pending before a board, where the nonvoting board
18 member does not participate in that action, either through written
19 or verbal communication, on or off the record, with other members
20 of the board.

21 (4) “Interested person” means:

22 (A) A participant in the proceeding regarding a matter before
23 a board, or an agent, employee, or a person receiving
24 consideration for representing that participant.

25 (B) A person with a financial interest, as described in Article 1
26 (commencing with Section 87100) of Chapter 7 of Title 9 of the
27 Government Code, in a matter before a board, or an agent or
28 employee of the person with a financial interest, or a person
29 receiving consideration for representing the person with a financial
30 interest.

31 (C) A representative acting on behalf of a civic, environmental,
32 neighborhood, business, labor, trade, or similar organization who
33 intends to influence the decision of a board member on a matter
34 before the board.

35 SEC. 2. Section 13294 is added to the Water Code, to read:

36 13294. (a) A board member, or any interested person, shall
37 not engage in an ex parte communication unless the board member
38 fully discloses and makes public the ex parte communication by
39 providing a full report of the communication to the board on the

1 *record of the proceeding at the first hearing that occurs after ex*
2 *parte communication occurs.*

3 *(b) (1) The state board shall adopt, and provide to the regional*
4 *board for adoption, standard disclosure forms for reporting ex*
5 *parte communications which shall include, but not be limited to,*
6 *all of the following information:*

7 *(A) The date, time, and location of the communication.*

8 *(B) The identity of the person or persons initiating, and the*
9 *person or persons receiving, the communication.*

10 *(C) A complete description of the content of the communication,*
11 *including the complete text of any written material that was a part*
12 *of the communication.*

13 *(2) A board shall place in the public record any report of an ex*
14 *parte communication involving a member of that board.*

15 *(c) Communications shall not be prohibited ex parte*
16 *communications when fully disclosed and placed in a board's*
17 *official record.*

18 *(d) Nothing in this section prohibits any person or any interested*
19 *person from testifying at a board hearing, workshop, or other*
20 *official proceeding, or from submitting written comments for the*
21 *record on a matter before a board. Written comments shall be*
22 *submitted by mail or delivered to a board office, or may be*
23 *delivered to the board at the time and place of a scheduled hearing.*

24 *(e) Notwithstanding Section 11425.10 of the Government Code,*
25 *the ex parte communications provisions of the Administrative*
26 *Procedure Act (Article 7 (commencing with Section 11430.10) of*
27 *Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government*
28 *Code) do not apply to proceedings of a board authorized under*
29 *this division.*

30 ~~SECTION 1. It is the intent of the Legislature to enact~~
31 ~~legislation to permit the interaction and communication between~~
32 ~~board members of a regional water quality control board and~~
33 ~~interested parties that are members of the community so that the~~
34 ~~regional board conducts its affairs in an open objective manner~~
35 ~~with public awareness and participation.~~