

AMENDED IN SENATE MARCH 28, 2012

AMENDED IN SENATE MARCH 8, 2012

SENATE BILL

No. 965

**Introduced by Senator Wright
(Coauthor: Senator Blakeslee)**

January 11, 2012

An act to add Section 13293 to the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 965, as amended, Wright. State Water Resources Control Board and California regional water quality control boards: ex parte communications.

Under existing law, the State Water Resources Control Board (state board) and the California regional water quality control boards (regional boards) implement the Federal Water Pollution Control Act and the Porter-Cologne Water Quality Control Act by prescribing waste discharge requirements for discharges to the waters of the state, as specified. Existing law authorizes the state board and regional boards to hold hearings necessary for carrying out their duties, as specified.

The Administrative Procedure Act establishes the conduct of administrative adjudicative proceedings, which are defined as evidentiary hearings for determination of facts pursuant to which a state agency formulates and issues a decision. Existing law defines a decision as an agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person. The act prohibits, as an ex parte communication, while an adjudication is pending, any communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer, as

defined, from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication. The act provides that if the above prohibition is violated, the presiding officer shall promptly disclose the content of the communication on record and give all parties an opportunity to address the communication, as specified. The act also provides that a violation of that prohibition may be grounds for disqualification of the officer who engaged in the ex parte communication.

This bill would provide that the ex parte communications provisions of the Administrative Procedure Act do not apply to specified proceedings of the state board or a regional board. This bill would instead, prohibit a state board, regional board member, or a person, other than a board staff member acting in his or her official capacity, who intends to influence the decision of a board member on a matter before the board, from conducting an ex parte communication, as defined. This bill would provide that if an ex parte communication occurs, the board member shall notify the interested party that a full disclosure of the ex parte communication shall be entered in the board's record. This bill would also provide, however, that a communication is not a prohibited ex parte communication if the communication is fully disclosed and a request is made that the communication be placed in the board's official record of the proceeding, as specified.

~~Existing law establishes the State Water Resources Control Board and the California regional water quality control boards and authorizes them to adopt regulations to carry out their powers and duties and to conduct administrative adjudicative proceedings. The Administrative Procedure Act establishes the conduct of administrative adjudicative proceedings, which are defined as evidentiary hearings for determination of facts pursuant to which a state agency formulates and issues a decision. Existing law defines a decision as an agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person.~~

~~This bill would prohibit a state board, regional board member, or a person, other than a board staff member acting in his or her official capacity, who intends to influence the decision of a board member on a matter before the board, from conducting an ex parte communication, as defined. This bill would provide that if an ex parte communication occurs, the board member shall notify the interested party that a full disclosure of the ex parte communication shall be entered in the board's~~

record. This bill would also provide that certain communications cease to be ex parte communications, as specified.

Vote: majority. Appropriation: no. Fiscal committee: 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 this section:

4 (1) “Ex parte communication” means an oral or written
5 communication concerning matters, other than purely procedural
6 matters, under the jurisdiction of the state board or a regional board,
7 pursuant to Article 4 (commencing with Section 13260) or Chapter
8 5.5 (commencing with Section 13370).

9 (2) “Board” refers to both the State Water Resources Control
10 Board and the ~~Regional Quality Control Boards~~ *regional water*
11 *quality control boards*.

12 (b) A board member, or a person, other than a board staff
13 member acting in his or her official capacity, who intends to
14 influence the decision of a board member on a matter before the
15 board, shall not conduct an ex parte communication, except as
16 follows:

17 (1) If an ex parte communication occurs, the board member
18 shall notify the interested party that a full disclosure of the ex parte
19 communication shall be entered in the board’s record.

20 (2) Communications cease to be ex parte communications when
21 either of the following occurs:

22 (A) The board member or the person who engaged in the
23 communication with the board member fully discloses the
24 communication and requests in writing that the communication
25 be placed in the board’s official record of the proceeding.

26 (B) Two or more board members receive substantially the same
27 written communication, or are party to the same oral
28 communication, from the same party on the same matter, and a
29 single board member fully discloses the communication on behalf
30 of the other board member or members who received the
31 communication and requests in writing that it be placed in the
32 board’s official record of the proceeding.

1 (c) Notwithstanding Section 11425.10 of the Government Code,
2 the ex parte communications provisions of the Administrative
3 Procedure Act (Article 7 (commencing with Section 11430.10) of
4 Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government
5 Code) do not apply to proceedings of the state board or a regional
6 water quality control board to which this section applies.

O