

Senate Bill No. 965

CHAPTER 551

An act to amend Section 11125.7 of the Government Code and to amend Section 13228.14 of, to add Section 13167.6 to, and to add Chapter 4.1 (commencing with Section 13287) to Division 7 of, the Water Code, relating to state and local government.

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LEGISLATIVE COUNSEL'S DIGEST

SB 965, Wright. State and local government.

(1) 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 the regional boards to hold hearings necessary for carrying out their duties, as specified.

Existing law, 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. While an adjudication is pending, the act prohibits, as an ex parte communication, 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. The bill would define an ex parte communication for these purposes as an oral or written communication with one or more board members regarding those specified state board or regional board proceedings. This bill would specify the instances in which an ex parte communication involving those specified proceedings is permissible.

The bill would authorize a board to prohibit ex parte communications for a period beginning not more than 14 days before the day of a board meeting at which the decision in the proceeding is scheduled for board action.

The bill would require all ex parte communications to be reported, as specified, by the interested person, regardless of whether the communication was initiated by the interested person.

The bill would authorize the state board or a regional board, in the event that an interested person fails to provide any required notice in the manner required by the bill, to use the remedies available under the administrative adjudication provisions of the Administrative Procedure Act.

(2) Existing law, the Bagley-Keene Open Meeting Act, generally requires that all meetings of a state body be open and public. The act requires that notice of public meetings and those held in closed session of a state body be given to any person who requests that notice in writing and that the agenda for those meetings be made available upon request without delay.

This bill would require the state board or a regional board to make each meeting agenda notice that the state board or a regional board provides available in both English and Spanish and would permit the state board or a regional board to make the agenda notice available in any other language.

Under existing law, the act requires that the agenda for meetings provide an opportunity for members of the public to directly address the body on any item of interest to the public that is within the subject matter jurisdiction of the body. The act permits the adoption of reasonable regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

This bill would require a state body subject to the act that limits time for public testimony to provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the body, with a specified exception.

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

SECTION 1. Section 11125.7 of the Government Code is amended to read:

11125.7. (a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the state body at a public meeting where interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the state body. Every notice for a special meeting at which action is proposed to be taken on an item shall provide an

opportunity for members of the public to directly address the state body concerning that item prior to action on the item. In addition, the notice requirement of Section 11125 shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public if no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

(b) The state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

(c) (1) Notwithstanding subdivision (b), when a state body limits time for public comment the state body shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the state body.

(2) Paragraph (1) shall not apply if the state body utilizes simultaneous translation equipment in a manner that allows the state body to hear the translated public testimony simultaneously.

(d) The state body shall not prohibit public criticism of the policies, programs, or services of the state body, or of the acts or omissions of the state body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

(e) This section is not applicable to closed sessions held pursuant to Section 11126.

(f) This section is not applicable to decisions regarding proceedings held pursuant to Chapter 5 (commencing with Section 11500), relating to administrative adjudication, or to the conduct of those proceedings.

(g) This section is not applicable to hearings conducted by the California Victim Compensation and Government Claims Board pursuant to Sections 13963 and 13963.1.

(h) This section is not applicable to agenda items that involve decisions of the Public Utilities Commission regarding adjudicatory hearings held pursuant to Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code. For all other agenda items, the commission shall provide members of the public, other than those who have already participated in the proceedings underlying the agenda item, an opportunity to directly address the commission before or during the commission's consideration of the item.

SEC. 2. Section 13167.6 is added to the Water Code, to read:

13167.6. For each meeting agenda notice that the state board provides pursuant to subdivision (b) of Section 11125 of the Government Code, the state board shall make the agenda notice available in both English and Spanish and may make the agenda notice available in any other language.

SEC. 3. Section 13228.14 of the Water Code is amended to read:

13228.14. (a) Any hearing or investigation by a regional board relating to investigating the quality of waters of the state, prescribing waste discharge requirements, issuing cease and desist orders, requiring the cleanup or

abatement of waste, or imposing administrative civil liabilities or penalties may be conducted by a panel of three or more members of the regional board, but any final action in the matter shall be taken by the regional board. Due notice of any hearing shall be given to all affected persons. After a hearing, the panel shall report its proposed decision and order to the regional board and shall supply a copy to all parties who appeared at the hearing and requested a copy.

(b) No party who appears before the panel is precluded from appearing before the regional board at any subsequent hearing relating to the matter. Members of the panel are not disqualified from sitting as members of the regional board in deciding the matter.

(c) The regional board, after making an independent review of the record and taking additional evidence as may be necessary, may adopt, with or without revision, or reject, the proposed decision and order of the panel.

(d) For each meeting agenda notice that a regional board provides pursuant to subdivision (b) of Section 11125 of the Government Code, a regional board shall make the agenda notice available in both English and Spanish and may make the agenda notice available in any other language.

SEC. 4. Chapter 4.1 (commencing with Section 13287) is added to Division 7 of the Water Code, to read:

CHAPTER 4.1. EX PARTE COMMUNICATIONS

13287. (a) For the purposes of this section:

(1) "Board" means the state board or a regional board.

(2) "Ex parte communication" means an oral or written communication with one or more board members concerning matters, other than a matter of procedure or practice that is not in controversy, under the jurisdiction of a board, regarding a pending action of the board that satisfies both of the following:

(A) The action does not identify specific persons as dischargers, but instead allows persons to enroll or file an authorization to discharge under the action.

(B) The action is for adoption, modification, or rescission of one or more of the following:

(i) Waste discharge requirements pursuant to Section 13263 or 13377.

(ii) Conditions of water quality certification pursuant to Section 13160.

(iii) Conditional waiver of waste discharge requirements pursuant to Section 13269.

(3) "Interested person" means any of the following:

(A) Any person who will be required to enroll or file authorization to discharge pursuant to the action at issue before the board or that person's agents or employees, including persons receiving consideration to represent that person.

(B) Any person with a financial interest, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the Government

Code, in a matter at issue before a board, or that person's agents or employees, including persons receiving consideration to represent that person.

(C) A representative acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association who intends to influence the decision of a board member on a matter before the board.

(b) Notwithstanding Section 11425.10 of the Government Code, the ex parte communications provisions of the Administrative Procedure Act (Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code) do not apply to a board action identified in paragraph (2) of subdivision (a). This section only applies to those actions.

(c) For the purposes of this section, and except as limited by subdivision (d), ex parte communications regarding a board action identified in paragraph (2) of subdivision (a) may be permitted as follows:

(1) All ex parte communications shall be reported by the interested person, regardless of whether the communication was initiated by the interested person.

(2) A notice of ex parte communication shall be filed with the board within seven working days of the communication. The notice may address multiple ex parte communications in the same proceeding, provided that notice of each communication identified therein is timely. The notice shall include all of the following information:

(A) The date, time, and location of the communication, and whether it was oral or written, or both.

(B) The identities of each board member involved, the person initiating the communication, and any persons present during the communication.

(C) A description of the interested person's communication and the content of this communication. A copy of any written, audiovisual, or other material used for or during the communication shall be attached to this description.

(3) Board staff shall promptly post any notices provided pursuant to paragraph (2) on the board's Internet Web site and distribute the notice on any available electronic distribution list concerning the action.

(d) A board may prohibit ex parte communications for a period beginning not more than 14 days before the day of a board meeting at which the decision in the proceeding is scheduled for board action. If a board continues the decision, it may permit ex parte communications during the interval between the originally scheduled date and the date that the decision is calendared for final decision, and may prohibit ex parte communications for 14 days before the day of the board meeting to which the decision is continued.

(e) If an interested person fails to provide any required notice in the manner required by this section, the board may use any of the remedies available pursuant to the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section

11400) of Part 1 of Division 3 of Title 2 of the Government Code), including the issuance of an enforcement order, or sanctions pursuant to Article 12 (commencing with Section 11455.10) of Chapter 4 of Part 1 of Division 3 of Title 2 of the Government Code.

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