

AMENDED IN SENATE JUNE 18, 2013

AMENDED IN SENATE JUNE 5, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 240

Introduced by Assembly Member Rendon

February 5, 2013

An act to add Sections 14304, 14305, ~~and 14306~~, *and 14307* to the Corporations Code, to amend Section 116755 of the Health and Safety Code, and to add Section 10531.5 to the Water Code, relating to mutual water companies.

LEGISLATIVE COUNSEL'S DIGEST

AB 240, as amended, Rendon. Mutual water companies.

Under existing law, a mutual water company is defined as a corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for irrigation or domestic purposes that provides in its articles or bylaws that the water shall be sold, distributed, supplied, or delivered only to owners of its shares, as specified.

(1) Existing law requires each board member of a mutual water company that operates a public water system to complete a training course regarding the duties of board members of mutual water companies, as specified.

This bill would require a board member to repeat this training course every 6 years.

(2) Existing law permits a mutual water company that is not a public utility to levy assessments upon its shares, unless otherwise provided in its articles or bylaws.

This bill would also permit the board of directors of a mutual water company, if authorized by its articles or bylaws, to record a notice of lien against a shareholder's property if the shareholder has not timely paid any rate, charge, or assessment arising from, or related to, water services provided by the mutual water company to the shareholder's property and if the shareholder was given at least 20 days' notice of the lien.

(3) Existing law, the California Public Records Act, provides that public records are open to inspection at all times during the office hours of the state or local agency that retains those records, and that every person has a right to inspect any public record, except as provided. The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate.

~~This bill would require a mutual water company that operates a public water system to comply with the Ralph M. Brown Act and the California Public Records Act, as specified. The~~ *This bill would enact the Mutual Water Company Open Meeting Act, which would apply to all mutual water companies, and would permit an eligible person to attend a meeting of a mutual water company, as those terms are defined, and to speak during the meeting, except as provided.*

The bill would also require the board of the mutual water company that operates a public water system to adopt, in an open meeting, an annual budget on or before the start of each fiscal year. The bill would require the board of a mutual water company that operates a public water system to contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the mutual water company, and would require the report to be filed, within 12 months of the end of the mutual water company's fiscal year under examination, as a public record with the mutual water company, and to be sent to the Controller and any person served by the mutual water company that submits a written request to the board, as specified.

The bill would also require the board of directors of a mutual water company that operates a public water system to make specified documents available to an eligible person, as defined, upon payment of fees covering the direct costs of duplication, as specified.

(4) Existing law declares that water is a valuable natural resource in California and should be managed to ensure the availability of sufficient supplies to meet the state's agricultural, domestic, industrial, and

environmental needs. Existing law declares that local agencies can realize efficiencies by coordinating and integrating their assets and seeking mutual solutions to water management issues.

This bill would declare the intent of the Legislature to encourage collaboration among mutual water companies that operate public water systems in the City of Maywood to create a public agency that can consolidate drinking water services for the people and business of that city.

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

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

1 SECTION 1. Section 14304 is added to the Corporations Code,
2 to read:

3 14304. If a shareholder of a mutual water company has not
4 timely paid any rate, charge, or assessment arising from, or related
5 to, water service provided by the mutual water company to the
6 shareholder's property, and if authorized by its articles or bylaws,
7 then after providing at least 20 days' written notice to the
8 shareholder, the board of directors of the mutual water company
9 may authorize the recording of a notice of lien against that
10 shareholder's property to secure the collection of the rates, charges,
11 and assessments owed to the mutual water company by the
12 shareholder.

13 SEC. 2. Section 14305 is added to the Corporations Code, to
14 read:

15 ~~14305. (a) A mutual water company that operates a public~~
16 ~~water system shall comply with the Ralph M. Brown Act (Chapter~~
17 ~~9 (commencing with Section 54950) of Part 1 of Division 2 of~~
18 ~~Title 5 of the Government Code) and the California Public Records~~
19 ~~Act (Chapter 3.5 (commencing with Section 6250) of Division 7~~
20 ~~of Title 1 of the Government Code).~~

21 ~~(b) The board of a mutual water corporation that operates a~~
22 ~~public water system shall contract with a certified public accountant~~
23 ~~or public accountant to make an annual audit of the accounts and~~
24 ~~records of the mutual water company. The audit shall conform to~~
25 ~~generally accepted auditing standards. A report of the audit shall~~
26 ~~be filed as a public record with the mutual water company and~~
27 ~~shall be sent to the Controller and any person served by the mutual~~

1 ~~water company that submits a written request to the board. The~~
2 ~~report shall be filed within 12 months of the end of the mutual~~
3 ~~water company's fiscal year under examination.~~

4 *14305. (a) This section shall be known and may be cited as*
5 *the Mutual Water Company Open Meeting Act.*

6 *(b) Any eligible person may attend meetings of the board of*
7 *directors of a mutual water company, except when the board*
8 *adjourns to, or meets solely in, executive session to consider*
9 *litigation, matters relating to the formation of contracts with third*
10 *parties, member or shareholder discipline, personnel matters, or*
11 *to meet with a member or shareholder, upon the member or*
12 *shareholder's request, regarding the member or shareholder's*
13 *payment of assessments, as specified in Section 14303. The board*
14 *of directors of the association shall meet in executive session, if*
15 *requested by a member or shareholder who may be subject to a*
16 *fine, penalty, or other form of discipline, and the member shall be*
17 *entitled to attend the executive session. As specified in paragraph*
18 *(3) of subdivision (m), an eligible person shall be entitled to attend*
19 *a teleconference meeting or the portion of a teleconference meeting*
20 *that is open to eligible persons, and that meeting or portion of the*
21 *meeting shall be audible to the eligible persons in a location*
22 *specified in the notice of the meeting.*

23 *(c) Any matter discussed in executive session shall be generally*
24 *noted in the minutes of the immediately following meeting that is*
25 *open to eligible persons.*

26 *(d) The minutes, minutes proposed for adoption that are marked*
27 *to indicate draft status, or a summary of the minutes, of any*
28 *meeting of the board of directors of a mutual water company, other*
29 *than an executive session, shall be available to eligible persons*
30 *within 30 days of the meeting. The minutes, proposed minutes, or*
31 *summary minutes shall be distributed to any eligible person upon*
32 *request and upon reimbursement of the mutual water company's*
33 *costs for making that distribution.*

34 *(e) Eligible persons shall be notified in writing, at the time that*
35 *the pro forma budget required in Section 14306 is distributed, of*
36 *their right to have copies of the minutes of meetings of the board*
37 *of directors, and how and where those minutes may be obtained.*

38 *(f) Unless the bylaws provide for a longer period of notice,*
39 *eligible persons shall be given notice of the time and place of a*
40 *meeting as defined in subdivision (m), except for an emergency*

1 meeting or a meeting that will be held solely in executive session,
2 at least four days prior to the meeting. Except for an emergency
3 meeting, eligible persons shall be given notice of the time and
4 place of a meeting that will be held solely in executive session at
5 least two days prior to the meeting. Notice shall be given by posting
6 the notice in a prominent, publicly accessible place or places within
7 the territory served by the mutual water company and by mail to
8 any eligible person who had requested notification of board
9 meetings by mail, at the address requested by the eligible person.
10 Notice may also be given by mail, by delivery of the notice to each
11 unit served by the mutual water company or, with the consent of
12 the eligible person, by electronic means. The notice shall contain
13 the agenda for the meeting.

14 (g) An emergency meeting of the board may be called by the
15 chief executive officer of the mutual water company, or by any two
16 members of the board of directors other than the chief executive
17 officer, if there are circumstances that could not have been
18 reasonably foreseen which require immediate attention and
19 possible action by the board, and which of necessity make it
20 impracticable to provide notice as required by this section.

21 (h) The board of directors of the mutual water company shall
22 permit any eligible person to speak at any meeting of the mutual
23 water company or the board of directors, except for meetings of
24 the board held in executive session. A reasonable time limit for
25 all eligible persons to speak to the board of directors or before a
26 meeting of the mutual water company shall be established by the
27 board of directors.

28 (i) (1) Except as described in paragraphs (2) to (4), inclusive,
29 the board of directors of the mutual water company may not discuss
30 or take action on any item at a nonemergency meeting unless the
31 item was placed on the agenda included in the notice that was
32 posted and distributed pursuant to subdivision (f). This subdivision
33 does not prohibit an eligible person who is not a member of the
34 board from speaking on issues not on the agenda.

35 (2) Notwithstanding paragraph (1), a member of the board of
36 directors, mutual water company officers, or a member of the staff
37 of the mutual water company, may do any of the following:

38 (A) Briefly respond to statements made or questions posed by
39 a person speaking at a meeting as described in subdivision (h).

1 (B) Ask a question for clarification, make a brief announcement,
2 or make a brief report on his or her own activities, whether in
3 response to questions posed by an eligible person or based upon
4 his or her own initiative.

5 (3) Notwithstanding paragraph (1), the board of directors or a
6 member of the board of directors, subject to rules or procedures
7 of the board of directors, may do any of the following:

8 (A) Provide a reference to, or provide other resources for factual
9 information to, the mutual water company's officers or staff.

10 (B) Request the mutual water company's officers or staff to
11 report back to the board of directors at a subsequent meeting
12 concerning any matter, or take action to direct the mutual water
13 company's officers or staff to place a matter of business on a future
14 agenda.

15 (C) Direct the mutual water companies officers or staff to
16 perform administrative tasks that are necessary to carry out this
17 subdivision.

18 (4) (A) Notwithstanding paragraph (1), the board of directors
19 may take action on any item of business not appearing on the
20 agenda posted and distributed pursuant to subdivision (f) under
21 any of the following conditions:

22 (i) Upon a determination made by a majority of the board of
23 directors present at the meeting that an emergency situation exists.
24 An emergency situation exists if there are circumstances that could
25 not have been reasonably foreseen by the board, that require
26 immediate attention and possible action by the board, and that,
27 of necessity, make it impracticable to provide notice.

28 (ii) Upon a determination made by the board by a vote of
29 two-thirds of the members present at the meeting, or, if less than
30 two-thirds of total membership of the board is present at the
31 meeting, by a unanimous vote of the members present, that there
32 is a need to take immediate action and that the need for action
33 came to the attention of the board after the agenda was posted
34 and distributed pursuant to subdivision (f).

35 (iii) The item appeared on an agenda that was posted and
36 distributed pursuant to subdivision (f) for a prior meeting of the
37 board of directors that occurred not more than 30 calendar days
38 before the date that action is taken on the item and, at the prior
39 meeting, action on the item was continued to the meeting at which
40 the action is taken.

1 (B) Before discussing any item pursuant to this paragraph, the
2 board of directors shall openly identify the item to the members
3 in attendance at the meeting.

4 (j) (1) The board of directors shall not take action on any item
5 of business outside of a meeting.

6 (2) (A) Notwithstanding any other provision of law, the board
7 of directors shall not conduct a meeting via a series of electronic
8 transmissions, including, but not limited to, electronic mail, except
9 as specified in subparagraph (B).

10 (B) Electronic transmissions may be used as a method of
11 conducting an emergency meeting if all members of the board,
12 individually or collectively, consent in writing to that action, and
13 if the written consent or consents are filed with the minutes of the
14 meeting of the board. These written consents may be transmitted
15 electronically.

16 (k) An eligible person may bring a civil action for declaratory
17 or equitable relief for a violation of this section by a mutual water
18 company for which he or she is defined as an eligible person,
19 including, but not limited to, injunctive relief, restitution, or a
20 combination thereof, within one year of the date the cause of action
21 accrues.

22 (l) An eligible person who prevails in a civil action to enforce
23 his or her rights pursuant to this section shall be entitled to
24 reasonable attorney's fees and court costs, and the court may
25 impose a civil penalty of up to five hundred dollars (\$500) for each
26 violation, except that each identical violation shall be subject to
27 only one penalty if the violation affects each member of the
28 association equally. A prevailing mutual water company shall not
29 recover any costs, unless the court finds the action to be frivolous,
30 unreasonable, or without foundation.

31 (m) As used in this section:

32 (1) "Eligible person" means a person who is any of the
33 following:

34 (A) A stockholder or member of the mutual water company.

35 (B) A person who is an occupant, pursuant to a lease or a rental
36 agreement, of commercial space or a dwelling unit to which the
37 mutual water company sells, distributes, supplies, or delivers
38 drinking water.

1 (C) *An elected official of a city or county who represents people*
2 *who receive drinking water directly from the mutual water*
3 *company on a retail basis.*

4 (D) *Any other person eligible to participate in the mutual water*
5 *company's meetings under provisions of the company's articles*
6 *or bylaws.*

7 (2) *"Item of business" means any action within the authority*
8 *of the board, except those actions that the board has validly*
9 *delegated to any other person or persons, officer of the mutual*
10 *water company, or committee of the board comprising less than*
11 *a majority of the directors.*

12 (3) *"Meeting" means either of the following:*

13 (A) *A congregation of a majority of the members of the board*
14 *at the same time and place to hear, discuss, or deliberate upon*
15 *any item of business that is within the authority of the board.*

16 (B) *A teleconference in which a majority of the members of the*
17 *board, in different locations, are connected by electronic means,*
18 *through audio or video or both. A teleconference meeting shall be*
19 *conducted in a manner that protects the rights of members of the*
20 *association and otherwise complies with the requirements of this*
21 *title. Except for a meeting that will be held solely in executive*
22 *session, the notice of the teleconference meeting shall identify at*
23 *least one physical location so that members of the association may*
24 *attend and at least one member of the board of directors or a*
25 *person designated by the board shall be present at that location.*
26 *Participation by board members in a teleconference meeting*
27 *constitutes presence at that meeting as long as all board members*
28 *participating in the meeting are able to hear one another and*
29 *members of the association speaking on matters before the board.*

30 (4) *"Mutual water company" means a mutual water company,*
31 *as defined in Section 14300, that operates a public water system,*
32 *as defined in Section 14300.5.*

33 SEC. 3. Section 14306 is added to the Corporations Code, to
34 read:

35 14306. (a) The board of a mutual water company that operates
36 a public water system shall adopt, in an open meeting, an annual
37 budget on or before the start of each fiscal year of the mutual water
38 company.

39 (b) *The board of a mutual water corporation that operates a*
40 *public water system shall contract with a certified public*

1 accountant or public accountant to make an annual audit of the
2 accounts and records of the mutual water company. The audit
3 shall conform to generally accepted auditing standards. A report
4 of the audit shall be filed with the mutual water company and shall
5 be sent to the Controller and any person served by the mutual
6 water company that submits a written request to the board. The
7 report shall be filed within 12 months of the end of the mutual
8 water company's fiscal year under examination.

9 *SEC. 4. Section 14307 is added to the Corporations Code, to*
10 *read:*

11 *14307. (a) Unless its governing documents impose more*
12 *stringent standards, a mutual water company that operates a public*
13 *water system shall make the following records promptly available*
14 *upon request to an eligible person upon payment of fees covering*
15 *direct costs of duplication:*

16 *(1) Agendas and minutes of board meetings.*

17 *(2) A copy of an annual budget adopted pursuant to subdivision*
18 *(a) of Section 14306.*

19 *(3) A copy of an audit report prepared pursuant to subdivision*
20 *(b) of Section 14306.*

21 *(4) A copy of any records reporting the results of a water quality*
22 *test.*

23 *(5) A copy of an annual report.*

24 *(b) For the purposes of this section, "eligible person" means*
25 *a person who is any of the following:*

26 *(1) A stockholder or member of the mutual water company.*

27 *(2) A person who is an occupant, pursuant to a lease or a rental*
28 *agreement, of commercial space or a dwelling unit to which the*
29 *mutual water company sells, distributes, supplies, or delivers*
30 *drinking water.*

31 *(3) An elected official of a city or county who represents people*
32 *who receive drinking water directly from the mutual water*
33 *company on a retail basis.*

34 *(4) Any other person eligible to obtain copies of the records*
35 *listed in subdivision (a) under provisions of the mutual water*
36 *company's articles or bylaws.*

37 ~~SEC. 4.~~

38 *SEC. 5. Section 116755 of the Health and Safety Code is*
39 *amended to read:*

1 116755. (a) Each board member of a mutual water company
2 that operates a public water system, as defined in Section 116275,
3 shall, within six months of taking office, or by December 31, 2012,
4 if that member was serving on the board on December 31, 2011,
5 complete a two-hour course offered by a qualified trainer regarding
6 the duties of board members of mutual water companies, including,
7 but not limited to, the duty of a corporate director to avoid
8 contractual conflicts of interest and fiduciary duties, the duties of
9 public water systems to provide clean drinking water that complies
10 with the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et
11 seq.) and this chapter, and long-term management of a public water
12 system. A board member of a mutual water company shall repeat
13 this training every six years. For the purposes of this subdivision,
14 a trainer may be qualified in any of the following ways:

15 (1) Membership in the California State Bar.

16 (2) Accreditation by the International Association of Continuing
17 Education and Training (IACET) ANSI/IACET 1-2007.

18 (3) Sponsorship by either the Rural Community Assistance
19 Corporation or the California Rural Water Association.

20 (b) A mutual water company formed pursuant to Part 7
21 (commencing with Section 14300) of Division 3 of Title 1 of the
22 Corporations Code shall be liable for the payment of any fines,
23 penalties, costs, expenses, and other amounts that may be imposed
24 upon the mutual water company pursuant to this chapter. The
25 mutual water company may levy an assessment, pursuant to Section
26 14303 of the Corporations Code, to pay these fines, penalties,
27 costs, expenses, and other amounts so imposed. If the amount of
28 outstanding fines, penalties, costs, expenses and other amounts
29 imposed pursuant to this chapter exceed 5 percent of the annual
30 budget of the mutual water company, then the mutual water
31 company shall levy an assessment, pursuant to Section 14303 of
32 the Corporations Code, to pay those fines, penalties, costs,
33 expenses, and other amounts so imposed.

34 ~~SEC. 5.~~

35 *SEC. 6.* Section 10531.5 is added to the Water Code, to read:

36 10531.5. It is the intent of the Legislature to encourage
37 collaboration among mutual water companies that operate public
38 water systems in the City of Maywood to create a public agency

- 1 that can consolidate drinking water services for the people and
- 2 businesses of that city.

O