

AMENDED IN ASSEMBLY AUGUST 6, 2013

AMENDED IN ASSEMBLY JUNE 14, 2013

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE MAY 8, 2013

AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 611

Introduced by Senator Hill

February 22, 2013

An act to amend Sections 309.5, 1731, 1756, and 5900 of the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 611, as amended, Hill. Public Utilities Commission: Division of Ratepayer Advocates.

The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities, as defined. Existing law establishes the Division of Ratepayer Advocates within the commission to represent the interests of public utility customers and subscribers, with the goal of obtaining the lowest possible rate for service consistent with reliable and safe service levels. *Existing law requires the division to annually submit specified information to the Legislature, as prescribed.* Existing law requires the Director of the Division of Ratepayer Advocates to submit an annual budget to the commission for final approval. Existing law authorizes the director of the division to appoint a lead attorney to represent the division and requires all attorneys assigned by the Public Utilities Commission to

perform services for the division to report to and be directed by the lead attorney for the division.

This bill would rename the Division of Ratepayer Advocates the Office of Ratepayer Advocates, would authorize the office to seek rehearings and judicial review of commission decisions, and *would require the office to include information about petitions for writs of review filed by the office under this authority in the annual report to the Legislature.* The bill would require that the director of the office develop a budget for the office that would be submitted to the Department of Finance for final approval. The bill would require the lead attorney to obtain adequate legal personnel for the work to be conducted by the office from the Public Utilities Commission's attorney and requires the Public Utilities Commission's attorney to timely and appropriately fulfill all requests for legal personnel made by the lead attorney for the office, provided the office has sufficient moneys and positions in its budget for the services requested. The bill would make other conforming changes.

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 309.5 of the Public Utilities Code is
2 amended to read:
3 309.5. (a) There is within the commission an independent
4 Office of Ratepayer Advocates to represent and advocate on behalf
5 of the interests of public utility customers and subscribers within
6 the jurisdiction of the commission. The goal of the office shall be
7 to obtain the lowest possible rate for service consistent with reliable
8 and safe service levels. For revenue allocation and rate design
9 matters, the office shall primarily consider the interests of
10 residential and small commercial customers. The office may seek
11 rehearing and judicial review of commission decisions pursuant
12 to Article 2 (commencing with Section 1731) and Article 3
13 (commencing with Section 1756) of Chapter 9.
14 (b) The director of the office shall be appointed by, and serve
15 at the pleasure of, the Governor, subject to confirmation by the
16 Senate.

1 The director shall annually appear before the appropriate policy
2 committees of the Assembly and the Senate to report on the
3 activities of the office.

4 (c) The director shall develop a budget for the office that shall
5 be subject to final approval of the Department of Finance. As
6 authorized in the approved budget, the office shall employ
7 personnel and resources, including attorneys and other legal support
8 staff, at a level sufficient to ensure that customer and subscriber
9 interests are effectively represented in all significant proceedings.
10 The office may employ experts necessary to carry out its functions.
11 The director may appoint a lead attorney who shall represent the
12 office, and shall report to and serve at the pleasure of the director.
13 The lead attorney for the office shall obtain adequate legal
14 personnel for the work to be conducted by the office from the
15 commission's attorney appointed pursuant to Section 307. The
16 commission's attorney shall timely and appropriately fulfill all
17 requests for legal personnel made by the lead attorney for the
18 office, provided the office has sufficient moneys and positions in
19 its budget for the services requested.

20 (d) The commission shall develop appropriate procedures to
21 ensure that the existence of the office does not create a conflict of
22 roles for any employee. The procedures shall include, but shall
23 not be limited to, the development of a code of conduct and
24 procedures for ensuring that advocates and their representatives
25 on a particular case or proceeding are not advising decisionmakers
26 on the same case or proceeding.

27 (e) The office may compel the production or disclosure of any
28 information it deems necessary to perform its duties from any
29 entity regulated by the commission, provided that any objections
30 to any request for information shall be decided in writing by the
31 assigned commissioner or by the president of the commission, if
32 there is no assigned commissioner.

33 (f) There is hereby created the Public Utilities Commission
34 Ratepayer Advocate Account in the General Fund. Moneys from
35 the Public Utilities Commission Utilities Reimbursement Account
36 in the General Fund shall be transferred in the annual Budget Act
37 to the Public Utilities Commission Ratepayer Advocate Account.
38 The funds in the Public Utilities Commission Ratepayer Advocate
39 Account shall be a budgetary program fund administered and
40 utilized exclusively by the office in the performance of its duties

1 as determined by the director. The director shall annually submit
2 a staffing report containing a comparison of the staffing levels for
3 each five-year period.

4 (g) On or before January 10 of each year, the office shall provide
5 to the chairperson of the fiscal committee of each house of the
6 Legislature and to the Joint Legislative Budget Committee all of
7 the following information:

8 (1) The number of personnel years utilized during the prior year
9 by the Office of Ratepayer Advocates.

10 (2) The total dollars expended by the Office of Ratepayer
11 Advocates in the prior year, the estimated total dollars expended
12 in the current year, and the total dollars proposed for appropriation
13 in the following budget year.

14 (3) Workload standards and measures for the Office of
15 Ratepayer Advocates.

16 (h) The office shall meet and confer in an informal setting with
17 a regulated entity prior to issuing a report or pleading to the
18 commission regarding alleged misconduct, or a violation of a law
19 or a commission rule or order, raised by the office in a complaint.
20 The meet and confer process shall be utilized in good faith to reach
21 agreement on issues raised by the office regarding any regulated
22 entity in the complaint proceeding.

23 SEC. 2. Section 1731 of the Public Utilities Code is amended
24 to read:

25 1731. (a) The commission shall set an effective date when
26 issuing an order or decision. The commission may set the effective
27 date of an order or decision prior to the date of issuance of the
28 order or decision.

29 (b) (1) After any order or decision has been made by the
30 commission, any party to the action or proceeding, including the
31 Office of Ratepayer Advocates, or any stockholder or bondholder
32 or other party pecuniarily interested in the public utility affected,
33 may apply for a rehearing in respect to any matters determined in
34 the action or proceeding and specified in the application for
35 rehearing. The commission may grant and hold a rehearing on
36 those matters, if in its judgment sufficient reason is made to appear.
37 No cause of action arising out of any order or decision of the
38 commission shall accrue in any court to any corporation or person
39 unless the corporation or person has filed an application to the
40 commission for a rehearing within 30 days after the date of

1 issuance or within 10 days after the date of issuance in the case of
2 an order issued pursuant to either Article 5 (commencing with
3 Section 816) or Article 6 (commencing with Section 851) of
4 Chapter 4 relating to security transactions and the transfer or
5 encumbrance of utility property.

6 (2) The commission shall notify the parties of the issuance of
7 an order or decision by either mail or electronic transmission.
8 Notification of the parties may be accomplished by one of the
9 following methods:

10 (A) Mailing the order or decision to the parties to the action or
11 proceeding.

12 (B) If a party to an action or proceeding consents in advance to
13 receive notice of any order or decision related to the action or
14 proceeding by electronic mail address, notification of the party
15 may be accomplished by transmitting an electronic copy of the
16 official version of the order or decision to the party if the party
17 has provided an electronic mail address to the commission.

18 (C) If a party to an action or proceeding consents in advance to
19 receive notice of any order or decision related to the action or
20 proceeding by electronic mail address, notification of the party
21 may be accomplished by transmitting a link to an Internet Web
22 site where the official version of the order or decision is readily
23 available to the party if the party has provided an electronic mail
24 address to the commission.

25 (3) For the purposes of this article, “date of issuance” means
26 the mailing or electronic transmission date that is stamped on the
27 official version of the order or decision.

28 (c) No cause of action arising out of any order or decision of
29 the commission construing, applying, or implementing the
30 provisions of Chapter 4 of the Statutes of the 2001–02 First
31 Extraordinary Session that (1) relates to the determination or
32 implementation of the department’s revenue requirements, or the
33 establishment or implementation of bond or power charges
34 necessary to recover those revenue requirements, or (2) in the sole
35 determination of the Department of Water Resources, the expedited
36 review of order or decision of the commission is necessary or
37 desirable, for the maintenance of any credit ratings on any bonds
38 or notes of the department issued pursuant to Division 27
39 (commencing with Section 80000) of the Water Code or for the
40 department to meet its obligations with respect to any bonds or

1 notes pursuant to that division, shall accrue in any court to any
2 corporation or person unless the corporation or person has filed
3 an application with the commission for a rehearing within 10 days
4 after the date of issuance of the order or decision. The Department
5 of Water Resources shall notify the commission of any
6 determination pursuant to paragraph (2) of this subdivision prior
7 to the issuance by the commission of any order or decision
8 construing, applying, or implementing the provisions of Chapter
9 4 of the Statutes of the 2001–02 First Extraordinary Session. The
10 commission shall issue its decision and order on rehearing within
11 20 days after the filing of the application.

12 SEC. 3. Section 1756 of the Public Utilities Code is amended
13 to read:

14 1756. (a) Within 30 days after the commission issues its
15 decision denying the application for a rehearing, or, if the
16 application was granted, then within 30 days after the commission
17 issues its decision on rehearing, or at least 120 days after the
18 application is granted if no decision on rehearing has been issued,
19 any aggrieved party, including the Office of Ratepayer Advocates,
20 may petition for a writ of review in the court of appeal or the
21 Supreme Court for the purpose of having the lawfulness of the
22 original order or decision or of the order or decision on rehearing
23 inquired into and determined. If the writ issues, it shall be made
24 returnable at a time and place specified by court order and shall
25 direct the commission to certify its record in the case to the court
26 within the time specified.

27 (b) The petition for review shall be served upon the executive
28 director and the general counsel of the commission either
29 personally or by service at the office of the commission.

30 (c) *With regard to petitions for a writ of review filed pursuant*
31 *to subdivision (a) by the Office of Ratepayer Advocates, the office*
32 *shall include in its annual written report to the chairperson of the*
33 *fiscal committee of each house of the Legislature and to the Joint*
34 *Legislative Budget Committee, required by subdivision (g) of*
35 *Section 309.5, all of the following information:*

36 (1) *The number of petitions for writs of review the office filed.*

37 (2) *The office's rationale for seeking each writ of review.*

38 (3) *The amount of ratepayer dollars the office expended on*
39 *petitions.*

40 (e)

1 (d) For purposes of this section, the issuance of a decision or
2 the granting of an application shall be construed to have occurred
3 on the date of issuance, as defined in paragraph (3) of subdivision
4 (b) of Section 1731.

5 ~~(d)~~

6 (e) The venue of a petition filed in the court of appeal pursuant
7 to this section shall be in the judicial district in which the petitioner
8 resides. If the petitioner is a business, venue shall be in the judicial
9 district in which the petitioner has its principal place of business
10 in California.

11 ~~(e)~~

12 (f) Any party may seek from the Supreme Court, pursuant to
13 California Rules of Court, an order transferring related actions to
14 a single appellate district.

15 ~~(f)~~

16 (g) For purposes of this section, review of decisions pertaining
17 solely to water corporations shall only be by petition for writ of
18 review in the Supreme Court, except that review of complaint or
19 enforcement proceedings may be in the court of appeal or the
20 Supreme Court.

21 ~~(g)~~

22 (h) No order or decision arising out of a commission proceeding
23 under Section 854 shall be reviewable in the court of appeal
24 pursuant to subdivision (a) if the application for commission
25 authority to complete the merger or acquisition was filed on or
26 before December 31, 1998, by two telecommunications-related
27 corporations including at least one which provides local
28 telecommunications service to over one million California
29 customers. These orders or decisions shall be reviewed pursuant
30 to the Public Utilities Code in existence on December 31, 1998.

31 SEC. 4. Section 5900 of the Public Utilities Code is amended
32 to read:

33 5900. (a) The holder of a state franchise shall comply with
34 the provisions of Sections 53055, 53055.1, 53055.2, and 53088.2
35 of the Government Code, and any other customer service standards
36 pertaining to the provision of video service established by federal
37 law or regulation or adopted by subsequent enactment of the
38 Legislature. All customer service and consumer protection
39 standards under this section shall be interpreted and applied to

1 accommodate newer or different technologies while meeting or
2 exceeding the goals of the standards.

3 (b) The holder of a state franchise shall comply with provisions
4 of Section 637.5 of the Penal Code and the privacy standards
5 contained in Section 551 et seq. of Title 47 of the United States
6 Code.

7 (c) The local entity shall enforce all of the customer service and
8 protection standards of this section with respect to complaints
9 received from residents within the local entity's jurisdiction, but
10 it may not adopt or seek to enforce any additional or different
11 customer service or other performance standards under Section
12 53055.3 or subdivision (q), (r), or (s) of Section 53088.2 of the
13 Government Code, or any other authority or provision of law.

14 (d) The local entity shall, by ordinance or resolution, provide a
15 schedule of penalties for any material breach by a holder of a state
16 franchise of this section. No monetary penalties shall be assessed
17 for a material breach if it is out of the reasonable control of the
18 holder. Further, no monetary penalties may be imposed prior to
19 January 1, 2007. Any schedule of monetary penalties adopted
20 pursuant to this section shall in no event exceed five hundred
21 dollars (\$500) for each day of each material breach, not to exceed
22 one thousand five hundred dollars (\$1,500) for each occurrence
23 of a material breach. However, if a material breach of this section
24 has occurred, and the local entity has provided notice and a fine
25 or penalty has been assessed, and if a subsequent material breach
26 of the same nature occurs within 12 months, the penalties may be
27 increased by the local entity to a maximum of one thousand dollars
28 (\$1,000) for each day of each material breach, not to exceed three
29 thousand dollars (\$3,000) for each occurrence of the material
30 breach. If a third or further material breach of the same nature
31 occurs within those same 12 months, and the local entity has
32 provided notice and a fine or penalty has been assessed, the
33 penalties may be increased to a maximum of two thousand five
34 hundred dollars (\$2,500) for each day of each material breach, not
35 to exceed seven thousand five hundred dollars (\$7,500) for each
36 occurrence of the material breach. With respect to video providers
37 subject to a franchise or license, any monetary penalties assessed
38 under this section shall be reduced dollar-for-dollar to the extent
39 any liquidated damage or penalty provision of a current cable
40 television ordinance, franchise contract, or license agreement

1 imposes a monetary obligation upon a video provider for the same
2 customer service failures, and no other monetary damages may be
3 assessed.

4 (e) The local entity shall give the video service provider written
5 notice of any alleged material breach of the customer service
6 standards of this division and allow the video provider at least 30
7 days from receipt of the notice to remedy the specified material
8 breach.

9 (f) A material breach for the purposes of assessing penalties
10 shall be deemed to have occurred for each day within the
11 jurisdiction of each local entity, following the expiration of the
12 period specified in subdivision (e), that any material breach has
13 not been remedied by the video service provider, irrespective of
14 the number of customers or subscribers affected.

15 (g) Any penalty assessed pursuant to this section shall be
16 remitted to the local entity, which shall submit one-half of the
17 penalty to the Digital Divide Account established in Section 280.5.

18 (h) Any interested person may seek judicial review of a decision
19 of the local entity in a court of appropriate jurisdiction. For this
20 purpose, a court of law shall conduct a de novo review of any
21 issues presented.

22 (i) This section shall not preclude a party affected by this section
23 from utilizing any judicial remedy available to that party without
24 regard to this section. Actions taken by a local legislative body,
25 including a local franchising entity, pursuant to this section shall
26 not be binding upon a court of law. For this purpose, a court of
27 law shall conduct de novo review of any issues presented.

28 (j) For purposes of this section, “material breach” means any
29 substantial and repeated failure of a video service provider to
30 comply with service quality and other standards specified in
31 subdivision (a).

32 (k) The Office of Ratepayer Advocates shall have authority to
33 advocate on behalf of video subscribers regarding renewal of a
34 state-issued franchise and enforcement of this section, and Sections
35 5890 and 5950. For this purpose, the office shall have access to
36 any information in the possession of the commission subject to all
37 restrictions on disclosure of that information that are applicable
38 to the commission.

O