

AMENDED IN ASSEMBLY SEPTEMBER 6, 2013

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

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, ~~1759~~, 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: judicial review of commission decisions.

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.

~~Existing law generally authorizes an aggrieved party to petition the Supreme Court or a court of appeal for a writ of review of an order or decision of the Public Utilities Commission within 30 days after the commission issues its decision denying an application for a rehearing, or, if the commission grants the application, within 30 days after the commission issues its decision on rehearing. Existing law provides that no court of the state, except the Supreme Court and the court of appeal, has jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties. Existing law provides that a writ of mandamus lies from the Supreme Court and from the court of appeal to the commission in all proper cases, as prescribed by a specified section in the Code of Civil Procedure.~~

~~This bill would instead provide that a writ of mandamus lies from the Supreme Court and from the court of appeal to the commission in all proper cases.~~

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.

17 The director shall annually appear before the appropriate policy
18 committees of the Assembly and the Senate to report on the
19 activities of the office.

20 (c) The director shall develop a budget for the office that shall
21 be subject to final approval of the Department of Finance. As
22 authorized in the approved budget, the office shall employ
23 personnel and resources, including attorneys and other legal support
24 staff, at a level sufficient to ensure that customer and subscriber
25 interests are effectively represented in all significant proceedings.
26 The office may employ experts necessary to carry out its functions.
27 The director may appoint a lead attorney who shall represent the
28 office, and shall report to and serve at the pleasure of the director.
29 The lead attorney for the office shall obtain adequate legal
30 personnel for the work to be conducted by the office from the
31 commission's attorney appointed pursuant to Section 307. The
32 commission's attorney shall timely and appropriately fulfill all
33 requests for legal personnel made by the lead attorney for the
34 office, provided the office has sufficient moneys and positions in
35 its budget for the services requested.

36 (d) The commission shall develop appropriate procedures to
37 ensure that the existence of the office does not create a conflict of
38 roles for any employee. The procedures shall include, but shall

1 not be limited to, the development of a code of conduct and
2 procedures for ensuring that advocates and their representatives
3 on a particular case or proceeding are not advising decisionmakers
4 on the same case or proceeding.

5 (e) The office may compel the production or disclosure of any
6 information it deems necessary to perform its duties from any
7 entity regulated by the commission, provided that any objections
8 to any request for information shall be decided in writing by the
9 assigned commissioner or by the president of the commission, if
10 there is no assigned commissioner.

11 (f) There is hereby created the Public Utilities Commission
12 Ratepayer Advocate Account in the General Fund. Moneys from
13 the Public Utilities Commission Utilities Reimbursement Account
14 in the General Fund shall be transferred in the annual Budget Act
15 to the Public Utilities Commission Ratepayer Advocate Account.
16 The funds in the Public Utilities Commission Ratepayer Advocate
17 Account shall be a budgetary program fund administered and
18 utilized exclusively by the office in the performance of its duties
19 as determined by the director. The director shall annually submit
20 a staffing report containing a comparison of the staffing levels for
21 each five-year period.

22 (g) On or before January 10 of each year, the office shall provide
23 to the chairperson of the fiscal committee of each house of the
24 Legislature and to the Joint Legislative Budget Committee all of
25 the following information:

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

28 (2) The total dollars expended by the Office of Ratepayer
29 Advocates in the prior year, the estimated total dollars expended
30 in the current year, and the total dollars proposed for appropriation
31 in the following budget year.

32 (3) Workload standards and measures for the Office of
33 Ratepayer Advocates.

34 (h) The office shall meet and confer in an informal setting with
35 a regulated entity prior to issuing a report or pleading to the
36 commission regarding alleged misconduct, or a violation of a law
37 or a commission rule or order, raised by the office in a complaint.
38 The meet and confer process shall be utilized in good faith to reach
39 agreement on issues raised by the office regarding any regulated
40 entity in the complaint proceeding.

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

3 1731. (a) The commission shall set an effective date when
4 issuing an order or decision. The commission may set the effective
5 date of an order or decision prior to the date of issuance of the
6 order or decision.

7 (b) (1) After any order or decision has been made by the
8 commission, any party to the action or proceeding, including the
9 Office of Ratepayer Advocates, or any stockholder or bondholder
10 or other party pecuniarily interested in the public utility affected,
11 may apply for a rehearing in respect to any matters determined in
12 the action or proceeding and specified in the application for
13 rehearing. The commission may grant and hold a rehearing on
14 those matters, if in its judgment sufficient reason is made to appear.
15 No cause of action arising out of any order or decision of the
16 commission shall accrue in any court to any corporation or person
17 unless the corporation or person has filed an application to the
18 commission for a rehearing within 30 days after the date of
19 issuance or within 10 days after the date of issuance in the case of
20 an order issued pursuant to either Article 5 (commencing with
21 Section 816) or Article 6 (commencing with Section 851) of
22 Chapter 4 relating to security transactions and the transfer or
23 encumbrance of utility property.

24 (2) The commission shall notify the parties of the issuance of
25 an order or decision by either mail or electronic transmission.
26 Notification of the parties may be accomplished by one of the
27 following methods:

28 (A) Mailing the order or decision to the parties to the action or
29 proceeding.

30 (B) If a party to an action or proceeding consents in advance to
31 receive notice of any order or decision related to the action or
32 proceeding by electronic mail address, notification of the party
33 may be accomplished by transmitting an electronic copy of the
34 official version of the order or decision to the party if the party
35 has provided an electronic mail address to the commission.

36 (C) If a party to an action or proceeding consents in advance to
37 receive notice of any order or decision related to the action or
38 proceeding by electronic mail address, notification of the party
39 may be accomplished by transmitting a link to an Internet Web
40 site where the official version of the order or decision is readily

1 available to the party if the party has provided an electronic mail
2 address to the commission.

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

6 (c) No cause of action arising out of any order or decision of
7 the commission construing, applying, or implementing the
8 provisions of Chapter 4 of the Statutes of the 2001–02 First
9 Extraordinary Session that (1) relates to the determination or
10 implementation of the department’s revenue requirements, or the
11 establishment or implementation of bond or power charges
12 necessary to recover those revenue requirements, or (2) in the sole
13 determination of the Department of Water Resources, the expedited
14 review of order or decision of the commission is necessary or
15 desirable, for the maintenance of any credit ratings on any bonds
16 or notes of the department issued pursuant to Division 27
17 (commencing with Section 80000) of the Water Code or for the
18 department to meet its obligations with respect to any bonds or
19 notes pursuant to that division, shall accrue in any court to any
20 corporation or person unless the corporation or person has filed
21 an application with the commission for a rehearing within 10 days
22 after the date of issuance of the order or decision. The Department
23 of Water Resources shall notify the commission of any
24 determination pursuant to paragraph (2) of this subdivision prior
25 to the issuance by the commission of any order or decision
26 construing, applying, or implementing the provisions of Chapter
27 4 of the Statutes of the 2001–02 First Extraordinary Session. The
28 commission shall issue its decision and order on rehearing within
29 20 days after the filing of the application.

30 SEC. 3. Section 1756 of the Public Utilities Code is amended
31 to read:

32 1756. (a) Within 30 days after the commission issues its
33 decision denying the application for a rehearing, or, if the
34 application was granted, then within 30 days after the commission
35 issues its decision on rehearing, or at least 120 days after the
36 application is granted if no decision on rehearing has been issued,
37 any aggrieved party, including the Office of Ratepayer Advocates,
38 may petition for a writ of review in the court of appeal or the
39 Supreme Court for the purpose of having the lawfulness of the
40 original order or decision or of the order or decision on rehearing

1 inquired into and determined. If the writ issues, it shall be made
2 returnable at a time and place specified by court order and shall
3 direct the commission to certify its record in the case to the court
4 within the time specified.

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

8 (c) With regard to petitions for a writ of review filed pursuant
9 to subdivision (a) by the Office of Ratepayer Advocates, the office
10 shall include in its annual written report to the chairperson of the
11 fiscal committee of each house of the Legislature and to the Joint
12 Legislative Budget Committee, required by subdivision (g) of
13 Section 309.5, all of the following information:

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

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

16 (3) The amount of ratepayer dollars the office expended on
17 petitions.

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

22 (e) The venue of a petition filed in the court of appeal pursuant
23 to this section shall be in the judicial district in which the petitioner
24 resides. If the petitioner is a business, venue shall be in the judicial
25 district in which the petitioner has its principal place of business
26 in California.

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

30 (g) For purposes of this section, review of decisions pertaining
31 solely to water corporations shall only be by petition for writ of
32 review in the Supreme Court, except that review of complaint or
33 enforcement proceedings may be in the court of appeal or the
34 Supreme Court.

35 (h) No order or decision arising out of a commission proceeding
36 under Section 854 shall be reviewable in the court of appeal
37 pursuant to subdivision (a) if the application for commission
38 authority to complete the merger or acquisition was filed on or
39 before December 31, 1998, by two telecommunications-related
40 corporations including at least one which provides local

1 telecommunications service to over one million California
2 customers. These orders or decisions shall be reviewed pursuant
3 to the Public Utilities Code in existence on December 31, 1998.

4 ~~SEC. 4. Section 1759 of the Public Utilities Code is amended~~
5 ~~to read:~~

6 ~~1759. (a) No court of this state, except the Supreme Court and~~
7 ~~the court of appeal, to the extent specified in this article, shall have~~
8 ~~jurisdiction to review, reverse, correct, or annul any order or~~
9 ~~decision of the commission or to suspend or delay the execution~~
10 ~~or operation thereof, or to enjoin, restrain, or interfere with the~~
11 ~~commission in the performance of its official duties, as provided~~
12 ~~by law and the rules of court.~~

13 ~~(b) The writ of mandamus shall lie from the Supreme Court and~~
14 ~~from the court of appeal to the commission in all proper cases.~~

15 ~~SEC. 5.~~

16 ~~SEC. 4. Section 5900 of the Public Utilities Code is amended~~
17 ~~to read:~~

18 5900. (a) The holder of a state franchise shall comply with the
19 provisions of Sections 53055, 53055.1, 53055.2, and 53088.2 of
20 the Government Code, and any other customer service standards
21 pertaining to the provision of video service established by federal
22 law or regulation or adopted by subsequent enactment of the
23 Legislature. All customer service and consumer protection
24 standards under this section shall be interpreted and applied to
25 accommodate newer or different technologies while meeting or
26 exceeding the goals of the standards.

27 (b) The holder of a state franchise shall comply with provisions
28 of Section 637.5 of the Penal Code and the privacy standards
29 contained in Section 551 et seq. of Title 47 of the United States
30 Code.

31 (c) The local entity shall enforce all of the customer service and
32 protection standards of this section with respect to complaints
33 received from residents within the local entity's jurisdiction, but
34 it may not adopt or seek to enforce any additional or different
35 customer service or other performance standards under Section
36 53055.3 or subdivision (q), (r), or (s) of Section 53088.2 of the
37 Government Code, or any other authority or provision of law.

38 (d) The local entity shall, by ordinance or resolution, provide a
39 schedule of penalties for any material breach by a holder of a state
40 franchise of this section. No monetary penalties shall be assessed

1 for a material breach if it is out of the reasonable control of the
2 holder. Further, no monetary penalties may be imposed prior to
3 January 1, 2007. Any schedule of monetary penalties adopted
4 pursuant to this section shall in no event exceed five hundred
5 dollars (\$500) for each day of each material breach, not to exceed
6 one thousand five hundred dollars (\$1,500) for each occurrence
7 of a material breach. However, if a material breach of this section
8 has occurred, and the local entity has provided notice and a fine
9 or penalty has been assessed, and if a subsequent material breach
10 of the same nature occurs within 12 months, the penalties may be
11 increased by the local entity to a maximum of one thousand dollars
12 (\$1,000) for each day of each material breach, not to exceed three
13 thousand dollars (\$3,000) for each occurrence of the material
14 breach. If a third or further material breach of the same nature
15 occurs within those same 12 months, and the local entity has
16 provided notice and a fine or penalty has been assessed, the
17 penalties may be increased to a maximum of two thousand five
18 hundred dollars (\$2,500) for each day of each material breach, not
19 to exceed seven thousand five hundred dollars (\$7,500) for each
20 occurrence of the material breach. With respect to video providers
21 subject to a franchise or license, any monetary penalties assessed
22 under this section shall be reduced dollar-for-dollar to the extent
23 any liquidated damage or penalty provision of a current cable
24 television ordinance, franchise contract, or license agreement
25 imposes a monetary obligation upon a video provider for the same
26 customer service failures, and no other monetary damages may be
27 assessed.

28 (e) The local entity shall give the video service provider written
29 notice of any alleged material breach of the customer service
30 standards of this division and allow the video provider at least 30
31 days from receipt of the notice to remedy the specified material
32 breach.

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

- 1 (g) Any penalty assessed pursuant to this section shall be
2 remitted to the local entity, which shall submit one-half of the
3 penalty to the Digital Divide Account established in Section 280.5.
4 (h) Any interested person may seek judicial review of a decision
5 of the local entity in a court of appropriate jurisdiction. For this
6 purpose, a court of law shall conduct a de novo review of any
7 issues presented.
8 (i) This section shall not preclude a party affected by this section
9 from utilizing any judicial remedy available to that party without
10 regard to this section. Actions taken by a local legislative body,
11 including a local franchising entity, pursuant to this section shall
12 not be binding upon a court of law. For this purpose, a court of
13 law shall conduct de novo review of any issues presented.
14 (j) For purposes of this section, “material breach” means any
15 substantial and repeated failure of a video service provider to
16 comply with service quality and other standards specified in
17 subdivision (a).
18 (k) The Office of Ratepayer Advocates shall have authority to
19 advocate on behalf of video subscribers regarding renewal of a
20 state-issued franchise and enforcement of this section, and Sections
21 5890 and 5950. For this purpose, the office shall have access to
22 any information in the possession of the commission subject to all
23 restrictions on disclosure of that information that are applicable
24 to the commission.