

AMENDED IN ASSEMBLY JUNE 15, 2014
AMENDED IN SENATE JANUARY 15, 2014
AMENDED IN SENATE JANUARY 6, 2014

SENATE BILL

No. 636

Introduced by Senator Hill

February 22, 2013

An act to amend Section 1701.2 of the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 636, as amended, Hill. Public Utilities Commission: proceedings.

(1) Existing law establishes certain procedures that are applicable to adjudication, rulemaking, and ratesetting cases of the Public Utilities Commission.

This bill would prohibit an officer, employee, or agent of the commission that is personally involved in the prosecution or in the supervision of the prosecution of an adjudication case from participating in the decision of the case or in the decision of any factually related *adjudicatory* proceeding. The bill would permit an officer, employee, or agent of the commission that is personally involved in the prosecution or in the supervision of the prosecution of an adjudication case to participate in reaching a settlement of the case, but would prohibit the officer, employee, or agent from participating in the decision of the commission to accept or reject the settlement, except as a witness or counsel in an open hearing or a specified closed hearing.

(2) The California Constitution authorizes the commission to establish its own procedures, subject to statutory limitations or directions and

constitutional requirements of due process, and to establish rules for all public utilities.

This bill would correct certain statutory references from the commission adopting regulations to the commission adopting rules.

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 1701.2 of the Public Utilities Code is
 2 amended to read:
 3 1701.2. (a) If the commission pursuant to Section 1701.1 has
 4 determined that an adjudication case requires a hearing, the
 5 procedures prescribed by this section shall be applicable. The
 6 assigned commissioner or the assigned administrative law judge
 7 shall hear the case in the manner described in the scoping memo.
 8 The scoping memo shall designate whether the assigned
 9 commissioner or the assigned administrative law judge shall preside
 10 in the case. The commission shall provide by rule for peremptory
 11 challenges and challenges for cause of the administrative law judge.
 12 Challenges for cause shall include, but not be limited to, financial
 13 interests and prejudice. The rule shall provide that all parties are
 14 entitled to one peremptory challenge of the assignment of the
 15 administrative law judge in all cases. All parties are entitled to
 16 unlimited peremptory challenges in any case in which the
 17 administrative law judge has within the previous 12 months served
 18 in any capacity in an advocacy position at the commission, been
 19 employed by a regulated public utility, or has represented a party
 20 or has been a party of interest in the case. The assigned
 21 commissioner or the administrative law judge shall prepare and
 22 file a decision setting forth recommendations, findings, and
 23 conclusions. The decision shall be filed with the commission and
 24 served upon all parties to the action or proceeding without undue
 25 delay, not later than 60 days after the matter has been submitted
 26 for decision. The decision of the assigned commissioner or the
 27 administrative law judge shall become the decision of the
 28 commission if no further action is taken within 30 days. Any
 29 interested party may appeal the decision to the commission,
 30 provided that the appeal is made within 30 days of the issuance of
 31 the decision. The commission may itself initiate a review of the

1 proposed decision on any grounds. The commission decision shall
2 be based on the record developed by the assigned commissioner
3 or the administrative law judge. A decision different from that of
4 the assigned commissioner or the administrative law judge shall
5 be accompanied by a written explanation of each of the changes
6 made to the decision.

7 (b) Notwithstanding Section 307, an officer, employee, or agent
8 of the commission that is personally involved in the prosecution
9 or in the supervision of the prosecution of an adjudication case
10 before the commission shall not participate in the decision of the
11 case, or in the decision of any factually related *adjudicatory*
12 proceeding, including participation in or advising the commission
13 as to findings of fact, conclusions of law, or orders. An officer,
14 employee, or agent of the commission that is personally involved
15 in the prosecution or in the supervision of the prosecution of an
16 adjudication case may participate in reaching a settlement of the
17 case, but shall not participate in the decision of the commission to
18 accept or reject the settlement, except as a witness or counsel in
19 an open hearing or a hearing closed pursuant to subdivision (d).
20 The Legislature finds that the commission performs both
21 prosecutorial and adjudicatory functions in an adjudication case
22 and declares its intent that an officer, employee, or agent of the
23 commission, including its attorneys, may perform only one of
24 those functions in any adjudication case or factually related
25 *adjudicatory* proceeding.

26 (c) Ex parte communications shall be prohibited in adjudication
27 cases.

28 (d) Notwithstanding any other law, the commission may meet
29 in a closed hearing to consider the decision that is being appealed.
30 The vote on the appeal shall be in a public meeting and shall be
31 accompanied with an explanation of the appeal decision.

32 (e) Adjudication cases shall be resolved within 12 months of
33 initiation unless the commission makes findings why that deadline
34 cannot be met and issues an order extending that deadline. In the
35 event that a rehearing of an adjudication case is granted, the parties
36 shall have an opportunity for final oral argument.

37 (f) (1) The commission may determine that the respondent
38 lacks, or may lack, the ability to pay potential penalties or fines
39 or to pay restitution that may be ordered by the commission.

1 (2) If the commission determines that a respondent lacks, or
2 may lack, the ability to pay, the commission may order the
3 respondent to demonstrate, to the satisfaction of the commission,
4 sufficient ability to pay potential penalties, fines, or restitution that
5 may be ordered by the commission. The respondent shall
6 demonstrate the ability to pay, or make other financial
7 arrangements satisfactory to the commission, within seven days
8 of the commission commencing an adjudication case. The
9 commission may delegate to the attorney to the commission the
10 determination of whether a sufficient showing has been made by
11 the respondent of an ability to pay.

12 (3) Within seven days of the commission’s determination of the
13 respondent’s ability to pay potential penalties, fines, or restitution,
14 the respondent shall be entitled to an impartial review by an
15 administrative law judge of the sufficiency of the showing made
16 by the respondent of the respondent’s ability to pay. The review
17 by an administrative law judge of the ability of the respondent to
18 pay shall become part of the record of the adjudication and is
19 subject to the commission’s consideration in its order resolving
20 the adjudication case. The administrative law judge may enter
21 temporary orders modifying any financial requirement made of
22 the respondent pending the review by the administrative law judge.

23 (4) A respondent that is a public utility regulated under a rate
24 of return or rate of margin regulatory structure or that has gross
25 annual revenues of more than one hundred million dollars
26 (\$100,000,000) generated within California is presumed to be able
27 to pay potential penalties or fines or to pay restitution that may be
28 ordered by the commission, and, therefore, paragraphs (1) to (3),
29 inclusive, do not apply to that respondent.