

AMENDED IN ASSEMBLY APRIL 28, 2015

AMENDED IN ASSEMBLY APRIL 7, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1077**

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**Introduced by Assembly Member Holden**

February 27, 2015

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An act to amend Section 14305 of the Corporations Code, relating to mutual water companies.

LEGISLATIVE COUNSEL'S DIGEST

AB 1077, as amended, Holden. Mutual water companies: open meetings.

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.

A mutual water company may be organized under the General Corporation Law or the Nonprofit Mutual Benefit Corporation Law. The Mutual Water Company Open Meeting Act authorizes an eligible person, upon 24 hours advance written notice, to attend meetings of the board of directors of a mutual water company that operates a public water system, except when the board adjourns to, or meets solely in, executive session.

This bill would prohibit a mutual water company from meeting solely in an executive session without holding a meeting. The bill would require notice of a meeting to be given to an eligible person at least 5

business 4 days prior to the meetings. The bill would require a board of directors of a mutual water company to allow an eligible person to personally attend a meeting of the board, if the eligible person gave the board at least 24 hours advance written notice of his or her intent to personally attend the meeting. The bill would require the board to allow an eligible person who was denied attendance at a meeting for failure to provide this notice, or because the number of eligible persons having already provided notice of attendance exceeds the room capacity of the place of the meeting, ~~to be able to attend the meeting by technology that allows the eligible person to hear the meeting and verbally interact with the board,~~ *teleconference*, and would further require the board to provide to an eligible person attending a meeting by ~~technology~~ *teleconference* a copy of the documents to be discussed at the meeting, as specified.

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. The Legislature finds and declares all of the*
- 2     *following:*
- 3     *(a) Mutual water companies are nonprofit entities that seek to*
- 4     *provide quality water service to their residential, commercial,*
- 5     *municipal and agricultural shareholders or members, many*
- 6     *through small water systems and in disadvantaged communities*
- 7     *throughout the state.*
- 8     *(b) Since 2013, mutual water companies have made great*
- 9     *improvements to water quality and service reliability across*
- 10    *California, as well as to the transparency of their operations and*
- 11    *finances.*
- 12    *(c) Mutual water companies have been leaders in promoting*
- 13    *water conservation and efficiency since the drought emergency in*
- 14    *California began.*
- 15    *(d) Mutual water companies serve as the sole water provider*
- 16    *in their service territories and act in many ways like public*
- 17    *agencies, and they therefore should take reasonable steps to ensure*
- 18    *their shareholders and customers have a voice in the operations*
- 19    *of the company.*
- 20    *(e) Many mutual water companies have small or no meeting*
- 21    *facilities, some of which meet in board members' residences, that*

1 *can safely hold only a limited number of people, and are located*  
2 *in remote parts of California that are difficult to access by some*  
3 *shareholders and customers of the mutual water company.*

4 *(f) Many small mutual water companies have limited financial*  
5 *means and it is important that their financial resources be put to*  
6 *efficient use in fulfilling their duty to provide safe and affordable*  
7 *water to their shareholders and members.*

8 *(g) Mutual water companies are unique, and unlike large public*  
9 *agencies or for-profit utilities, these nonprofit organizations are*  
10 *solely responsible to their shareholders and customers and not*  
11 *the broader public outside of their service area.*

12 *(h) Given the distinctive operational constraints faced by mutual*  
13 *water companies, the Legislature believes that mutual water*  
14 *companies should, where economically and technologically*  
15 *feasible, have means to provide the greatest shareholder and*  
16 *customer access to meetings within these constraints.*

17 **SECTION 1.**

18 **SEC. 2.** Section 14305 of the Corporations Code is amended  
19 to read:

20 14305. (a) (1) This section shall be known and may be cited  
21 as the Mutual Water Company Open Meeting Act.

22 (2) This section shall only apply to a mutual water company  
23 that operates a public water system.

24 (b) (1) (A) A board of directors of a mutual water company  
25 shall allow an eligible person to personally attend a meeting of the  
26 board, if the eligible person gave the board at least 24 hours  
27 advance written notice of his or her intent to personally attend the  
28 meeting. ~~And~~ *Notwithstanding any other law, the board of directors*  
29 *may use teleconferencing for the benefit of any eligible person*  
30 *denied attendance at a meeting of the board for failure to provide*  
31 *this notice, or because the number of eligible persons having*  
32 *already provided notice of attendance exceeds the room capacity*  
33 *of the place of the meeting described in the notice issued pursuant*  
34 *to subdivision (f), shall be able to attend the meeting by technology*  
35 *that allows the eligible person to hear the meeting and verbally*  
36 *interact with the board, including, but not limited to, a telephone*  
37 *or computer. The board (f). The teleconferenced meeting or*  
38 *proceeding shall comply with this section and all other applicable*  
39 *provisions of law relating to a specific type of meeting or*  
40 *proceeding conducted by a mutual water company. If the board*

1 *uses teleconferencing, the board shall provide to an eligible person*  
2 *attending a meeting by ~~technology~~, teleconference, before the*  
3 *meeting begins, a an electronic copy or photocopy of all documents*  
4 *not related to an executive session to be discussed at the meeting,*  
5 *or within 24 hours after the conclusion of the meeting if it is not*  
6 *feasible for the board of directors to provide photocopied or*  
7 *electronically scanned copies before the meeting begins. A board*  
8 *of directors of a mutual water company shall not prohibit an*  
9 *eligible person from attending a meeting of the board either in*  
10 *person or by technology in compliance with this paragraph.*

11 *(B) Any eligible person who attends a meeting by teleconference*  
12 *as provided in this subdivision shall identify themselves and any*  
13 *other persons present with them who are able to hear the board*  
14 *meeting as soon as practicable after they have joined the meeting.*  
15 *Any eligible person attending a meeting by teleconference shall*  
16 *ensure that no one who is not an eligible person is able to hear or*  
17 *participate in that meeting, and shall comply with any time limits*  
18 *for speaking established pursuant to subdivision (h). If it is*  
19 *subsequently discovered that someone who is not an eligible person*  
20 *listened to the board meeting with the knowledge of the eligible*  
21 *person, that eligible person shall forfeit his or her right to*  
22 *participate in future board meetings by teleconference upon the*  
23 *board finding a violation following a disciplinary hearing.*

24 *(C) For purposes of this subdivision, the term “teleconference”*  
25 *means, to the extent it is technologically feasible, any electronic*  
26 *means, that includes either audio or video or both, that allows an*  
27 *eligible person to hear a meeting and verbally interact with the*  
28 *board, including, but not limited to, a telephone, cellular telephone*  
29 *with speaker phone technology, or computer, or a device using*  
30 *internet-based video or audio conference technology.*

31 *(2) A board of directors of a mutual water company shall only*  
32 *meet in executive session during a meeting. A board may prohibit*  
33 *an eligible person from attending an executive session to consider*  
34 *pending or potential litigation, matters relating to the formation*  
35 *of contracts with third parties, including matters relating to the*  
36 *potential acquisition of real property or water rights, member or*  
37 *shareholder discipline, personnel matters, or to meet with a member*  
38 *or shareholder, upon the member or shareholder’s request,*  
39 *regarding the member or shareholder’s payment of assessments,*  
40 *as specified in Section 14303.*

1 (3) The board of directors of a mutual water company shall meet  
2 in executive session, if requested by a member or shareholder who  
3 may be subject to a fine, penalty, or other form of discipline, and  
4 the member shall be entitled to attend the executive session.

5 (4) An eligible person shall be allowed to attend a teleconference  
6 meeting, as specified in paragraph (3) of subdivision (o), or the  
7 portion of the teleconference meeting that is open to eligible  
8 persons, without fulfilling the notice requirement in paragraph (1).  
9 The teleconference meeting or portion of the meeting that is open  
10 to eligible persons shall be audible to the eligible person in a  
11 location specified in the notice of the meeting.

12 (c) Any matter discussed in executive session shall be generally  
13 noted in the minutes of the ~~immediately following meeting~~ *meeting*  
14 *at which the executive session occurred.*

15 (d) The minutes, minutes proposed for adoption that are marked  
16 to indicate draft status, or a summary of the minutes, of any  
17 meeting of the board of directors of a mutual water company,  
18 conducted on or after January 1, 2014, other than an executive  
19 session, shall be available to eligible persons within 30 days of the  
20 meeting. The minutes, proposed minutes, or summary minutes  
21 shall be provided to any eligible person upon request and upon  
22 reimbursement of the mutual water company's costs for providing  
23 the minutes.

24 (e) The pro forma budget required in Section 14306 shall be  
25 available to eligible persons within 30 days of the meeting at which  
26 the budget was adopted. The budget shall be provided to any  
27 eligible person upon request and upon reimbursement of the mutual  
28 water company's costs.

29 (f) Unless the bylaws provide for a longer period of notice,  
30 eligible persons shall be given notice of the time and place of a  
31 meeting as defined in subdivision (o), except for an emergency  
32 ~~meeting~~, *meeting* at least ~~five business~~ *four* days prior to the  
33 meeting. Notice shall be given by posting the notice in a prominent,  
34 publicly accessible place or places within the territory served by  
35 the mutual water company and by mail to any eligible person who  
36 had requested notification of board meetings by mail, at the address  
37 requested by the eligible person. Eligible persons requesting notice  
38 by mail shall pay the costs of reproduction and mailing of the  
39 notice in advance. Notice may also be given by mail, by delivery  
40 of the notice to each unit served by the mutual water company or,

1 with the consent of the eligible person, by electronic means. The  
2 notice shall contain the agenda for the meeting.

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

10 (h) The board of directors of a mutual water company shall  
11 permit any eligible person to speak at any meeting of the mutual  
12 water company or the board of directors, except for ~~an~~ *any portion*  
13 *of a meeting that is held in* executive session outside the presence  
14 of eligible persons. A reasonable time limit for all eligible persons  
15 to speak to the board of directors or before a meeting of the mutual  
16 water company shall be established by the board of directors.

17 (i) (1) Except as described in paragraphs (2) to (4), inclusive,  
18 the board of directors of the mutual water company shall not  
19 discuss or take action on any item at a nonemergency meeting  
20 unless the item was placed on the agenda included in the notice  
21 that was posted and distributed pursuant to subdivision (f). This  
22 subdivision does not prohibit an eligible person who is not a  
23 member of the board from speaking on issues not on the agenda.

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

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

29 (B) Ask a question for clarification, make ~~a~~ *brief an*  
30 announcement, or make a brief report on his or her own activities,  
31 whether in response to questions posed by an eligible person or  
32 based upon his or her own initiative.

33 (3) Notwithstanding paragraph (1), the board of directors or a  
34 member of the board of directors, subject to rules or procedures  
35 of the board of directors, may do any of the following:

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

38 (B) Request the mutual water company's officers or staff to  
39 report back to the board of directors at a subsequent meeting  
40 concerning any matter, or take action to direct the mutual water

1 company's officers or staff to place a matter of business on a future  
2 agenda.

3 (C) Direct the mutual water company's officers or staff to  
4 perform administrative tasks that are necessary to carry out this  
5 subdivision.

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

10 (i) Upon a determination made by a majority of the board of  
11 directors present at the meeting that an emergency situation exists.  
12 An emergency situation exists if there are circumstances that could  
13 not have been reasonably foreseen by the board, that require  
14 immediate attention and possible action by the board, and that, of  
15 necessity, make it impracticable to provide notice.

16 (ii) Upon a determination made by the board by a vote of  
17 two-thirds of the members present at the meeting, or, if less than  
18 two-thirds of total membership of the board is present at the  
19 meeting, by a unanimous vote of the members present, that there  
20 is a need to take immediate action and that the need for action  
21 came to the attention of the board after the agenda was posted and  
22 distributed pursuant to subdivision (f).

23 (iii) The item appeared on an agenda that was posted and  
24 distributed pursuant to subdivision (f) for a prior meeting of the  
25 board of directors that occurred not more than 30 calendar days  
26 before the date that action is taken on the item and, at the prior  
27 meeting, action on the item was continued to the meeting at which  
28 the action is taken.

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

32 (j) (1) Notwithstanding any other law, the board of directors  
33 shall not take action on any item of business outside of a meeting.

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

38 (B) Electronic transmissions may be used as a method of  
39 conducting an emergency meeting if all members of the board,  
40 individually or collectively, consent in writing to that action, and

1 if the written consent or consents are filed with the minutes of the  
2 meeting of the board. These written consents may be transmitted  
3 electronically.

4 (k) (1) An eligible person may bring a civil action for  
5 declaratory or equitable relief for a violation of this section by a  
6 mutual water company for which he or she is defined as an eligible  
7 person for a judicial determination that an action taken by the board  
8 is null and void under this section.

9 (2) Prior to the commencement of an action pursuant to  
10 paragraph (1), the eligible person shall make a demand on the  
11 board to cure or correct the action alleged to be taken in violation  
12 of this section. The demand shall be in writing, and submitted  
13 within 90 days from the date the action was taken. The demand  
14 shall state the challenged action of the board and the nature of the  
15 alleged violation.

16 (3) Within 30 days of receipt of the demand, the board shall  
17 cure or correct the challenged action and inform the demanding  
18 party in writing of its actions to cure or correct, or inform the  
19 demanding party in writing of its decision not to cure or correct  
20 the challenged action.

21 (4) Within 15 days of receipt of the written notice of the board's  
22 decision to cure or correct or not to cure or correct, or within 15  
23 days of the expiration of the 30-day period to cure or correct,  
24 whichever is earlier, the demanding party shall commence the  
25 action pursuant to paragraph (1). If the demanding party fails to  
26 commence the action pursuant to paragraph (1), that party shall  
27 be barred from commencing the action thereafter.

28 (l) A board action that is alleged to have been taken in violation  
29 of this section shall not be determined to be void if the action taken  
30 was in substantial compliance with this section.

31 (m) The fact that the board of directors of a mutual water  
32 company takes subsequent action to cure or correct an action taken  
33 pursuant to this section shall not be construed as, or admissible as  
34 evidence of, a violation of this section.

35 (n) An eligible person who prevails in a civil action to enforce  
36 his or her rights pursuant to this section shall be entitled to  
37 reasonable attorney's fees and court costs. A prevailing mutual  
38 water company shall not recover any costs, unless the court finds  
39 the action to be frivolous, unreasonable, or without foundation.

40 (o) As used in this section:

1 (1) “Eligible person” means a person who is any of the  
2 following:

3 (A) A shareholder or member of the mutual water company.

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

8 (C) An elected official of a city or county who represents people  
9 who receive drinking water directly from the mutual water  
10 company on a retail basis.

11 (D) Any other person eligible to participate in the mutual water  
12 company’s meetings under provisions of the company’s articles  
13 or bylaws.

14 (2) “Item of business” means any action within the authority of  
15 the board, except those actions that the board has validly delegated  
16 to any other person or persons, officer of the mutual water  
17 company, or committee of the board comprising less than a  
18 majority of the directors.

19 (3) “Meeting” means either of the following:

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

23 (B) A teleconference in which a majority of the members of the  
24 board, in different locations, are connected by electronic means,  
25 through audio or video or both. A teleconference meeting shall be  
26 conducted in a manner that protects the rights of members of the  
27 mutual water company and otherwise complies with the  
28 requirements of this title. The notice of the teleconference meeting  
29 shall identify at least one physical location so that members of the  
30 mutual water company may attend and at least one member of the  
31 board of directors or a person designated by the board shall be  
32 present at that location. Participation by board members in a  
33 teleconference meeting constitutes presence at that meeting as long  
34 as all board members participating in the meeting are able to hear  
35 one another and members of the mutual water company speaking  
36 on matters before the board. *Nothing in this subparagraph requires*  
37 *the notice of a meeting to disclose the use of teleconferencing if*  
38 *the use of teleconferencing is approved by the board pursuant to*  
39 *paragraph (1) of subdivision (b).*

- 1 (4) “Mutual water company” means a mutual water company,
- 2 as defined in Section 14300, that operates a public water system,
- 3 as defined in Section 14300.5.

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