

AMENDED IN ASSEMBLY MAY 18, 2015

AMENDED IN ASSEMBLY APRIL 28, 2015

AMENDED IN ASSEMBLY APRIL 7, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1077

Introduced by Assembly Member Holden

February 27, 2015

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 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 attend the meeting by teleconference, and would further require the board to provide to an eligible person attending a meeting by 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~~ *municipal*, and agricultural shareholders or members,
- 6 many through small water systems and in disadvantaged
- 7 communities 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 in
- 16 their service territories and act in many ways like public agencies,
- 17 and they therefore should take reasonable steps to ensure their
- 18 shareholders and customers have a voice in the operations of the
- 19 company.
- 20 (e) Many mutual water companies have small or no meeting
- 21 facilities, some of which meet in board members' residences, that
- 22 can safely hold only a limited number of people, and are located

1 in remote parts of California that are difficult to access by some
2 shareholders and customers of the mutual water company.

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

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

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

16 SEC. 2. Section 14305 of the Corporations Code is amended
17 to read:

18 14305. (a) (1) This section shall be known and may be cited
19 as the Mutual Water Company Open Meeting Act.

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

22 (b) (1) (A) A board of directors of a mutual water company
23 shall allow an eligible person to personally attend a meeting of the
24 board, if the eligible person gave the board at least 24 hours
25 advance written notice of his or her intent to personally attend the
26 meeting. Notwithstanding any other law, the board of directors
27 may use teleconferencing for the benefit of any eligible person
28 denied attendance at a meeting of the board for failure to provide
29 this notice, or because the number of eligible persons having
30 already provided notice of attendance exceeds the room capacity
31 of the place of the meeting described in the notice issued pursuant
32 to subdivision (f). The teleconferenced meeting or proceeding shall
33 comply with this section and all other applicable provisions of law
34 relating to a specific type of meeting or proceeding conducted by
35 a mutual water company. If the board uses teleconferencing, the
36 board shall provide to an eligible person attending a meeting by
37 teleconference, before the meeting begins, an electronic copy or
38 photocopy of all documents not related to an executive session to
39 be discussed at the meeting, ~~or within 24 hours after the conclusion~~
40 ~~of the meeting if it is not feasible for the board of directors to~~

1 provide photocopied or electronically scanned copies before the
 2 meeting begins. *meeting*. A board of directors of a mutual water
 3 company shall not prohibit an eligible person from attending a
 4 meeting of the board either in person or by technology in
 5 compliance with this paragraph.

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

19 ~~(C)~~

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

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

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

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

9 (c) Any matter discussed in executive session shall be generally
10 noted in the minutes of the meeting at which the executive session
11 occurred.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (B) Electronic transmissions may be used as a method of
37 conducting an emergency meeting if all members of the board,
38 individually or collectively, consent in writing to that action, and
39 if the written consent or consents are filed with the minutes of the

1 meeting of the board. These written consents may be transmitted
2 electronically.

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

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

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

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

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

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

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

39 (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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