

AMENDED IN SENATE JUNE 22, 2015
AMENDED IN ASSEMBLY MAY 18, 2015
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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, and agricultural shareholders or members, many through
- 6 small water systems and in disadvantaged communities throughout
- 7 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.

1 (e) Many mutual water companies have small or no meeting
2 facilities, some of which meet in board members' residences, that
3 can safely hold only a limited number of people, and are located
4 in remote parts of California that are difficult to access by some
5 shareholders and customers of the mutual water company.

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

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

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

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

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

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

25 (b) (1) (A) A board of directors of a mutual water company
26 shall allow an eligible person to personally attend a meeting of the
27 board, if the eligible person gave the board at least 24 hours
28 advance written notice of his or her intent to personally attend the
29 meeting. Notwithstanding any other law, the board of directors
30 may use teleconferencing ~~for the benefit of~~ *to provide* any eligible
31 person *access to the meeting that otherwise would be denied*
32 attendance at a meeting of the board for failure to provide this
33 notice, or because the number of eligible persons having already
34 provided notice of attendance exceeds the room capacity of the
35 place of the meeting described in the notice issued pursuant to
36 subdivision (f). The teleconferenced meeting or proceeding shall
37 comply with this section and all other applicable provisions of law
38 relating to a specific type of meeting or proceeding conducted by
39 a mutual water company. If the board uses teleconferencing, the
40 board shall provide to an eligible person attending a meeting by

1 teleconference, before the meeting begins, an electronic copy or
2 photocopy of all documents not related to an executive session to
3 be discussed at the meeting. A board of directors of a mutual water
4 company shall not prohibit an eligible person from attending a
5 meeting of the board either in person or by ~~technology in~~
6 ~~compliance with this paragraph.~~ *teleconference except as provided*
7 *by paragraph (2).*

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

15 (2) A board of directors of a mutual water company shall only
16 meet in executive session during a meeting. A board may prohibit
17 an eligible person from attending an executive session to consider
18 pending or potential litigation, matters relating to the formation
19 of contracts with third parties, including matters relating to the
20 potential acquisition of real property or water rights, member or
21 shareholder discipline, personnel matters, or to meet with a member
22 or shareholder, upon the member or shareholder’s request,
23 regarding the member or shareholder’s payment of assessments,
24 as specified in Section 14303.

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

29 (4) An eligible person shall be entitled to attend a teleconference
30 meeting, as specified in paragraph (3) of subdivision (o), or the
31 portion of the teleconference meeting that is open to eligible
32 persons, and shall be entitled to attend with or without fulfilling
33 the notice requirement in paragraph (1). The teleconference meeting
34 or portion of the meeting that is open to eligible persons shall be
35 audible to the eligible person in a location specified in the notice
36 of the meeting.

37 (c) Any matter discussed in executive session shall be generally
38 noted in the minutes of the meeting at which the executive session
39 occurred.

1 (d) The minutes, minutes proposed for adoption that are marked
2 to indicate draft status, or a summary of the minutes, of any
3 meeting of the board of directors of a mutual water company,
4 conducted on or after January 1, 2014, other than an executive
5 session, shall be available to eligible persons within 30 days of the
6 meeting. The minutes, proposed minutes, or summary minutes
7 shall be provided to any eligible person upon request and upon
8 reimbursement of the mutual water company's costs for providing
9 the minutes.

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

15 (f) Unless the bylaws provide for a longer period of notice,
16 eligible persons shall be given notice of the time and place of a
17 meeting as defined in subdivision (o), except for an emergency
18 meeting, at least four days prior to the meeting. Notice shall be
19 given by posting the notice in a prominent, publicly accessible
20 place or places within the territory served by the mutual water
21 company and by mail to any eligible person who had requested
22 notification of board meetings by mail, at the address requested
23 by the eligible person. Eligible persons requesting notice by mail
24 shall pay the costs of reproduction and mailing of the notice in
25 advance. Notice may also be given by mail, by delivery of the
26 notice to each unit served by the mutual water company, or, with
27 the consent of the eligible person, by electronic means. The notice
28 shall contain the agenda for the meeting.

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

36 (h) The board of directors of a mutual water company shall
37 permit any eligible person to speak at any meeting of the mutual
38 water company or the board of directors, except for any portion
39 of a meeting that is held in executive session outside the presence
40 of eligible persons. A reasonable time limit for all eligible persons

1 to speak to the board of directors or before a meeting of the mutual
2 water company shall be established by the board of directors.

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

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

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

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

19 (3) Notwithstanding paragraph (1), the board of directors or a
20 member of the board of directors, subject to rules or procedures
21 of the board of directors, may do any of the following:

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

24 (B) Request the mutual water company's officers or staff to
25 report back to the board of directors at a subsequent meeting
26 concerning any matter, or take action to direct the mutual water
27 company's officers or staff to place a matter of business on a future
28 agenda.

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

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

36 (i) Upon a determination made by a majority of the board of
37 directors present at the meeting that an emergency situation exists.
38 An emergency situation exists if there are circumstances that could
39 not have been reasonably foreseen by the board, that require

1 immediate attention and possible action by the board, and that, of
2 necessity, make it impracticable to provide notice.

3 (ii) Upon a determination made by the board by a vote of
4 two-thirds of the members present at the meeting, or, if less than
5 two-thirds of total membership of the board is present at the
6 meeting, by a unanimous vote of the members present, that there
7 is a need to take immediate action and that the need for action
8 came to the attention of the board after the agenda was posted and
9 distributed pursuant to subdivision (f).

10 (iii) The item appeared on an agenda that was posted and
11 distributed pursuant to subdivision (f) for a prior meeting of the
12 board of directors that occurred not more than 30 calendar days
13 before the date that action is taken on the item and, at the prior
14 meeting, action on the item was continued to the meeting at which
15 the action is taken.

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

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

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

25 (B) Electronic transmissions may be used as a method of
26 conducting an emergency meeting if all members of the board,
27 individually or collectively, consent in writing to that action, and
28 if the written consent or consents are filed with the minutes of the
29 meeting of the board. These written consents may be transmitted
30 electronically.

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

36 (2) Prior to the commencement of an action pursuant to
37 paragraph (1), the eligible person shall make a demand on the
38 board to cure or correct the action alleged to be taken in violation
39 of this section. The demand shall be in writing, and submitted
40 within 90 days from the date the action was taken. The demand

1 shall state the challenged action of the board and the nature of the
2 alleged violation.

3 (3) Within 30 days of receipt of the demand, the board shall
4 cure or correct the challenged action and inform the demanding
5 party in writing of its actions to cure or correct, or inform the
6 demanding party in writing of its decision not to cure or correct
7 the challenged action.

8 (4) Within 15 days of receipt of the written notice of the board's
9 decision to cure or correct or not to cure or correct, or within 15
10 days of the expiration of the 30-day period to cure or correct,
11 whichever is earlier, the demanding party shall commence the
12 action pursuant to paragraph (1). If the demanding party fails to
13 commence the action pursuant to paragraph (1), that party shall
14 be barred from commencing the action thereafter.

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

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

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

27 (o) As used in this section:

28 (1) "Eligible person" means a person who is any of the
29 following:

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

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

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

38 (D) Any other person eligible to participate in the mutual water
39 company's meetings under provisions of the company's articles
40 or bylaws.

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

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

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

10 (B) A teleconference in which a majority of the members of the
11 board, in different locations, are connected by electronic means,
12 through audio or video or both. A teleconference meeting shall be
13 conducted in a manner that protects the rights of members of the
14 mutual water company and otherwise complies with the
15 requirements of this title. The notice of the teleconference meeting
16 shall identify at least one physical location so that members of the
17 mutual water company may attend and at least one member of the
18 board of directors or a person designated by the board shall be
19 present at that location. Participation by board members in a
20 teleconference meeting constitutes presence at that meeting as long
21 as all board members participating in the meeting are able to hear
22 one another and members of the mutual water company speaking
23 on matters before the board.

24 (4) “Mutual water company” means a mutual water company,
25 as defined in Section 14300, that operates a public water system,
26 as defined in Section 14300.5.