

AMENDED IN ASSEMBLY JUNE 24, 2015

AMENDED IN SENATE MAY 6, 2015

AMENDED IN SENATE APRIL 14, 2015

SENATE BILL

No. 48

Introduced by Senator Hill

December 18, 2014

An act to amend Sections 305, 306, 307, 308, *311.5*, 321.6, 1701, and 1759 of, and to add ~~Sections 309.8 and~~ *Section 1711* to, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 48, as amended, Hill. Public Utilities Commission.

(1) The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities. The California Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the Constitution, to confer additional authority and jurisdiction upon the commission that is cognate and germane to the regulation of public utilities. Existing law requires the Governor to designate the president of the commission from among its members and requires the president to direct the executive director, the attorney, and other staff of the commission, except for the Office of Ratepayer Advocates. Existing law authorizes the executive director and the attorney to undertake certain actions if directed or authorized by the president, except as otherwise directed or authorized by vote of the commission.

This bill would repeal the requirement that the president direct the executive director, the attorney, and other commission staff. The bill

would delete the authority of the president to direct or authorize the executive director and attorney to undertake certain actions, thereby requiring that they be directed or authorized to undertake those actions by the commission.

(2) The Public Utilities Act provides that the office of the commission be in the City and County of San Francisco, that the office always be open, legal holidays and nonjudicial days excepted, that the commission hold its sessions at least once in each calendar month in the City and County of San Francisco, and authorizes the commission to also meet at those other times and places as may be expedient and necessary for the proper performance of its duties.

This bill would require that the commission hold its sessions at least once in each calendar month in the City and County of San Francisco or the City of Sacramento and would require that the commission hold no less than 6 sessions each year in the City of Sacramento.

(3) The California Constitution authorizes the commission to establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. Existing law requires the commission to determine whether a proceeding requires a hearing and, if so, to determine whether the matter requires a quasi-legislative, an adjudication, or a ratesetting hearing. For these purposes, quasi-legislative cases are cases that establish policy rulemakings and investigations which may establish rules affecting an entire industry, adjudication cases are enforcement cases and complaints except those challenging the reasonableness of any rates or charges, and ratesetting cases are cases in which rates are established for a specific company, including general rate cases, performance-based ratemaking, and other ratesetting mechanisms. *Existing law requires the commission to publish and maintain certain documents on the Internet, including a docket card that lists all documents filed and all decisions or rulings issued in those proceedings, as provided.*

This bill would make the Administrative Adjudication Code of Ethics applicable to ~~adjudication hearings~~ *administrative law judges* of the commission. Except for in adjudication cases, the bill would require the commission, before instituting ~~an investigation or a proceeding~~ on its own motion, where feasible and appropriate, to seek the views of those who are likely to be affected by a decision in the ~~investigation or proceeding~~, including those who are likely to benefit from, and those who are potentially subject to, a decision in that ~~investigation or proceeding~~. ~~This bill would require the commission to post all prepared~~

~~written testimony submitted in its formal proceedings on its Internet Web site. This bill would require the commission to include a docket card that lists the public versions of all prepared written testimony and advice letter filings, protests, and responses. The bill would require the commission to make additional information available on the Internet, including information on how members of the public and ratepayers can gain access to the commission's ratemaking process.~~

(4) The Public Utilities Act requires the commission to develop, publish, and annually update an annual workplan that does all of the following: (A) describes in clear detail the scheduled ratemaking proceedings and other decisions that may be considered by the commission during the calendar year, (B) include information on how members of the public and ratepayers can gain access to the commission's ratemaking process and information regarding the specific matters to be decided, (C) include information on the operation of the office of the public adviser and identify the names and telephone numbers of those contact persons responsible for specific cases and matters to be decided, and (D) include a statement that specifies activities that the commission proposes to reduce the costs of, and rates for, energy, including electricity, and for improving the competitive opportunities for state agriculture and other rural energy consumers. The act requires the commission to submit the workplan to the Governor and Legislature by February 1 of each year.

~~This bill would require the commission to develop, publish, and annually update a report that contains certain specified information, as provided, and would expand the requirement that the ~~workplan~~ workplan, as part of that report, describe in clear detail the scheduled proceedings that may be considered by the commission during the calendar year to include all proceedings and not just ratemaking proceedings. The bill would additionally require that the ~~workplan~~ report include performance criteria for the commission and executive director and evaluate the performance of the executive director during the previous year based on the criteria established in the prior year's workplan.~~

~~Existing law requires the commission to produce a statement that specifies the proposed activities of the commission in reducing the costs of, and rates for, energy, including electricity, as provided.~~

~~This bill would delete this requirement.~~

~~The bill would require the president of the commission to present the annual report to the appropriate policy committees of the Senate and~~

Assembly, and the commission to post the report in a conspicuous area of its Internet Web site and disseminate the information in the report, as provided.

(5) The Public Utilities Act requires the commission to create, and annually submit to the Governor and Legislature by February 1, a report on the number of cases where resolution exceeded the time periods prescribed in scoping memos and the days that commissioners presided in hearings.

This bill would delete the requirement that the report include the number of cases where resolution exceeded the time periods prescribed in scoping memos and instead would require the report to describe the commission's timeliness in resolving cases and include information on the disposition of applications for rehearings. The bill would require that the report include the number of scoping memos issued in each proceeding and to include the number of orders issued extending the statutory deadlines for all adjudication, ratesetting, and quasi-legislative cases. *The bill would require this information to be included in the report described in paragraph (4).*

(6) The California Constitution provides that the Legislature has plenary power to establish the manner and scope of review of commission action in a court of record. Existing law provides that only the Supreme Court and the court of appeal have 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.

This bill would authorize an action to enforce the requirements of the Bagley-Keene Open Meeting Act or the California Public Records Act to be brought against the commission in the superior court.

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. (a) The Legislature finds and declares all of the
2 following:

3 (1) On June 3, 2014, California's Fourth District Court of
4 Appeal, in *Disenhouse v. Peevey* (2014) 226 Cal.App.4th 1096,
5 held that an interested person desiring to enforce the Bagley-Keene
6 Open Meeting Act (Article 9 (commencing with Section 11120))

1 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government
2 Code) against the Public Utilities Commission must do so by filing
3 a petition for writ of mandamus in the Supreme Court or the court
4 of appeal and may not do so by filing an action for injunctive relief
5 in the superior court.

6 (2) The intent of the Bagley-Keene Open Meeting Act is that
7 actions of state agencies be taken openly and that their deliberation
8 be conducted openly.

9 (3) The people's right to remain informed so that they may
10 retain control over the instruments of government that they have
11 created is not less of a right for some agencies than for other
12 agencies, nor shall the people's ability to enforce the Bagley-Keene
13 Open Meeting Act be more hampered for some agencies than for
14 other agencies.

15 (4) The duties, responsibilities, and actions of the Public Utilities
16 Commission affect the well-being of current and future generations
17 and the public interest and principles of fundamental fairness and
18 due process of law require that the commission conduct its affairs
19 in an open, objective, and impartial manner, free of undue influence
20 and the abuse of power and authority.

21 (b) It is the intent of the Legislature that the Public Utilities
22 Commission should be subject to the judicial review provisions
23 of the Bagley-Keene Open Meeting Act.

24 SEC. 2. Section 305 of the Public Utilities Code is amended
25 to read:

26 305. The Governor shall designate a president of the
27 commission from among the members of the commission. The
28 president shall preside at all meetings and sessions of the
29 commission.

30 SEC. 3. Section 306 of the Public Utilities Code is amended
31 to read:

32 306. (a) The office of the commission shall be in the City and
33 County of San Francisco. The office shall always be open, legal
34 holidays and nonjudicial days excepted. The commission shall
35 hold its sessions at least once in each calendar month in the City
36 and County of San Francisco or the City of Sacramento. The
37 commission may also meet at such other times and in such other
38 places as may be expedient and necessary for the proper
39 performance of its duties, and for that purpose may rent quarters

1 or offices. The commission shall hold no less than six sessions
2 each year in the City of Sacramento.

3 (b) The meetings of the commission shall be open and public
4 in accordance with the provisions of Article 9 (commencing with
5 Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of
6 the Government Code.

7 In addition to the requirements of Section 11125 of the
8 Government Code, the commission shall include in its notice of
9 meetings the agenda of business to be transacted, and no item of
10 business shall be added to the agenda subsequent to the notice in
11 the absence of an unforeseen emergency situation. A rate increase
12 shall not constitute an unforeseen emergency situation. As used
13 in this subdivision, “meeting” shall include all investigations,
14 proceedings, and showings required by law to be open and public.

15 (c) The commission shall have a seal, bearing the inscription
16 “Public Utilities Commission State of California.” The seal shall
17 be affixed to all writs and authentications of copies of records and
18 to such other instruments as the commission shall direct.

19 (d) The commission may procure all necessary books, maps,
20 charts, stationery, instruments, office furniture, apparatus, and
21 appliances.

22 SEC. 4. Section 307 of the Public Utilities Code is amended
23 to read:

24 307. (a) The commission may appoint as attorney to the
25 commission an attorney at law of this state, who shall hold office
26 during the pleasure of the commission.

27 (b) The attorney shall represent and appear for the people of the
28 State of California and the commission in all actions and
29 proceedings involving any question under this part or under any
30 order or act of the commission. If directed to do so by the
31 commission, the attorney shall intervene, if possible, in any action
32 or proceeding in which any such question is involved.

33 (c) The attorney shall commence, prosecute, and expedite the
34 final determination of all actions and proceedings directed or
35 authorized by the commission, advise the commission and each
36 commissioner, when so requested, in regard to all matters in
37 connection with the powers and duties of the commission and the
38 members thereof, and generally perform all duties and services as
39 attorney to the commission that the commission may require of
40 him or her.

1 SEC. 5. Section 308 of the Public Utilities Code is amended
2 to read:

3 308. (a) The commission shall appoint an executive director,
4 who shall hold office during its pleasure. The executive director
5 shall be responsible for the commission's executive and
6 administrative duties and shall organize, coordinate, supervise,
7 and direct the operations and affairs of the commission and
8 expedite all matters within the commission's jurisdiction.

9 (b) The executive director shall keep a full and true record of
10 all proceedings of the commission, issue all necessary process,
11 writs, warrants, and notices, and perform any other duties the
12 commission prescribes. The commission may authorize the
13 executive director to dismiss complaints or applications when all
14 parties are in agreement thereto, in accordance with rules that the
15 commission may prescribe.

16 (c) The commission may appoint assistant executive directors
17 who may serve warrants and other process in any county or city
18 and county of this state.

19 ~~SEC. 6. Section 309.8 is added to the Public Utilities Code, to~~
20 ~~read:~~

21 ~~309.8. The commission shall post all prepared written testimony~~
22 ~~submitted in its formal proceedings on its Internet Web site.~~

23 *SEC. 6. Section 311.5 of the Public Utilities Code is amended*
24 *to read:*

25 311.5. (a) (1) Prior to commencement of any meeting at which
26 commissioners vote on items on the public ~~agenda~~ *agenda*, the
27 commission shall make available to the public copies of the agenda,
28 and upon request, any agenda item documents that are proposed
29 to be considered by the commission for action or decision at a
30 commission meeting.

31 (2) In addition, the commission shall publish the agenda, agenda
32 item documents, and adopted decisions in a manner that makes
33 copies of them easily available to the public, including publishing
34 those documents on the Internet. Publication of the agenda and
35 agenda item documents shall occur on the Internet at the same
36 time as the written agenda and agenda item documents are made
37 available to the public.

38 (b) The commission shall publish and maintain the following
39 documents on the Internet:

1 (1) Each of the commission’s proposed and alternate proposed
 2 decisions and resolutions, until the decision or resolution is adopted
 3 and published.

4 (2) Each of the commission’s adopted decisions and resolutions.
 5 The publication shall occur within 10 days of the adoption of each
 6 decision or resolution by the commission.

7 (3) The then-current version of the commission’s general orders
 8 and Rules of Practice and Procedure.

9 (4) Each of the commission’s rulings. The commission shall
 10 maintain those rulings on its Internet Web site until final
 11 disposition, including disposition of any judicial appeals, of the
 12 respective proceedings in which the rulings were issued.

13 (5) A docket card that lists, by title and date of filing or issuance,
 14 all documents filed and all decisions or rulings issued in those
 15 ~~proceedings.~~ *proceedings, including the public versions of all*
 16 *prepared written testimony and advice letter filings, protests, and*
 17 *responses.* The commission shall maintain the docket card until
 18 final disposition, including disposition of any judicial appeals, of
 19 the corresponding proceedings.

20 (c) *The commission shall make the following information*
 21 *available on the Internet:*

22 (1) *Information on how members of the public and ratepayers*
 23 *can gain access to the commission’s ratemaking process and to*
 24 *information regarding the specific matters to be decided.*

25 (2) *Information on the operation of the office of the public*
 26 *advisor established in Section 321 and how the public advisor can*
 27 *connect members of the public to persons responsible for specific*
 28 *cases and matters to be decided.*

29 SEC. 7. Section 321.6 of the Public Utilities Code is amended
 30 to read:

31 321.6. (a) ~~The commission shall do all of the following:~~
 32 *develop, publish, and annually update a report that contains all*
 33 *of the following information:*

34 (1) ~~Develop, publish, and annually update an annual~~A workplan
 35 that describes in clear detail the scheduled proceedings and other
 36 decisions that may be considered by the commission during the
 37 calendar year. ~~The plan shall include, but is not limited to,~~
 38 ~~information on how members of the public and ratepayers can gain~~
 39 ~~access to the commission’s ratemaking process and information~~
 40 ~~regarding the specific matters to be decided. The plan shall also~~

1 include information on the operation of the office of the public
2 advisor and identify the names and telephone numbers of those
3 contact persons responsible for specific cases and matters to be
4 decided. The plan shall also include a statement that specifies
5 activities that the commission proposes to reduce the costs of, and
6 rates for, energy, including electricity, and for improving the
7 competitive opportunities for state agriculture and other rural
8 energy consumers. The plan shall also include performance criteria

9 (2) *Performance criteria* for the commission and executive
10 director and shall evaluate *as well as an evaluation of* the
11 performance of the executive director during the previous year
12 based on the criteria established in the prior year's workplan. The
13 commission shall post the plan under the Official Documents area
14 of its Internet Web site and shall develop a program to disseminate
15 the information in the plan utilizing computer mailing lists to
16 provide regular updates on the information to those members of
17 the public and organizations which request that information.

18 (2) ~~Produce a complete accounting~~

19 (3) *An accounting* of its transactions and proceedings for the
20 preceding year, together with other facts, suggestions, and
21 recommendations that it deems of value to the people of the state
22 and a statement that specifies the activities and achievements of
23 the commission in reducing the costs of, and rates for, energy,
24 including electricity, for state agriculture and other rural energy
25 consumers. *state.*

26 (3) ~~Create a report describing the~~

27 (4) *An accounting of the* commission's timeliness in resolving
28 cases, information on the disposition of applications for rehearings,
29 and the days that commissioners presided in hearings. The report
30 shall include the number of scoping memos issued in each
31 proceeding and the number of orders issued extending the statutory
32 deadlines pursuant to subdivision (d) of Section 1701.2, for all
33 adjudication cases, and pursuant to subdivision (a) of Section
34 1701.5, for all ratesetting or quasi-legislative cases.

35 (5) *A description of activities undertaken and processes*
36 *instituted to both solicit the input of customers from diverse regions*
37 *of the state in ratesetting and quasi-legislative proceedings and*
38 *to process that input in a way to make it usable in commission*
39 *decisionmaking. The report shall describe successes and challenges*
40 *in this process, the effect of resource constraints, and efforts to be*

1 *made during the calendar year to further the goal of increased*
 2 *public participation.*

3 ~~(4) Submit annually the plan, accounting, and report required~~
 4 ~~by paragraphs (1), (2), and (3) to~~

5 *(b) (1) The commission shall submit the annual report required*
 6 *pursuant to subdivision (a) to the Governor and Legislature no*
 7 *later than February 1 of each year.*

8 *(2) The commission shall post the report in a conspicuous area*
 9 *of its Internet Web site and shall have a program to disseminate*
 10 *the information in the report using computer mailing lists to*
 11 *provide regular updates on the information to those members of*
 12 *the public and organizations that request that information.*

13 ~~(b)~~

14 *(c) The president of the commission shall annually appear before*
 15 *the appropriate policy committees of the Senate and Assembly to*
 16 ~~report on the annual workplan access guide~~ *present the annual*
 17 *report of the commission required pursuant to this section.*

18 ~~(e) The president of the commission shall annually appear before~~
 19 ~~the appropriate policy committees of the Senate and Assembly to~~
 20 ~~report on the annual report of the commission on the commission's~~
 21 ~~timeliness in resolving cases and the days that commissioners~~
 22 ~~presided in hearings.~~

23 SEC. 8. Section 1701 of the Public Utilities Code is amended
 24 to read:

25 1701. (a) All hearings, investigations, and proceedings shall
 26 be governed by this part and by rules of practice and procedure
 27 adopted by the commission, and in the conduct thereof the technical
 28 rules of evidence need not be applied. No informality in any
 29 hearing, investigation, or proceeding or in the manner of taking
 30 testimony shall invalidate any order, decision or rule made,
 31 approved, or confirmed by the commission.

32 (b) Notwithstanding Section 11425.10 of the Government Code,
 33 Articles 1 through 15, inclusive, of Chapter 4.5 (commencing with
 34 Section 11400) of Part 1 of Division 3 of Title 2 of the Government
 35 Code do not apply to a hearing by the commission under this code.
 36 The Administrative Adjudication Code of Ethics (Article 16
 37 (commencing with Section 11475) of Chapter 4.5 of Part 1 of
 38 Division 3 of Title 2 of the Government Code) shall apply to
 39 ~~adjudication proceedings~~ *administrative law judges* of the
 40 commission.

1 SEC. 9. Section 1711 is added to the Public Utilities Code, to
2 read:

3 1711. Where feasible and appropriate, except for adjudication
4 cases, before instituting ~~an investigation or a~~ proceeding on its
5 own motion, the commission shall seek the views of those who
6 are likely to be affected, including those who are likely to benefit
7 from, and those who are potentially subject to, a decision in that
8 ~~investigation or~~ proceeding. The commission shall demonstrate
9 its efforts to comply with this section in the text of the order
10 instituting the ~~investigation or~~ proceeding.

11 SEC. 10. Section 1759 of the Public Utilities Code is amended
12 to read:

13 1759. (a) No court of this state, except the Supreme Court and
14 the court of appeal, to the extent specified in this article, shall have
15 jurisdiction to review, reverse, correct, or annul ~~any~~ an order or
16 decision of the commission or to suspend or delay the execution
17 or operation thereof, or to enjoin, restrain, or interfere with the
18 commission in the performance of its official duties, as provided
19 by law and the rules of court.

20 (b) The writ of mandamus shall lie from the Supreme Court and
21 from the court of appeal to the commission in all proper cases as
22 prescribed in Section 1085 of the Code of Civil Procedure.

23 (c) This section does not apply to ~~an action~~ *the following actions,*
24 *which may be brought in superior court:*

25 (1) *An action* brought against the commission to enforce the
26 requirements of the Bagley-Keene Open Meeting Act (Article 9
27 (commencing with Section 11120) of Chapter 1 of Part 1 of
28 Division 3 of Title 2 of the Government ~~Code~~) ~~or the Code~~.

29 (2) *An action arising from the California Public Records Act*
30 *(Chapter 3.5 (commencing with Section 6250) of Division 7 of*
31 *Title 1 of the Government Code), which action may be brought in*
32 *the superior court, including to review a determination made under*
33 *subdivision (c) of Section 6253 of the Government Code.*