

AMENDED IN SENATE JANUARY 4, 2016

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 215

Introduced by Senator *Senators Leno and Hueso*

February 12, 2015

An act to amend Sections ~~305, 307, 308, 309.6, 1701.1, and 1701.2~~ *1701.2, 1701.3, 1701.4, and 1701.5* of, and to add ~~Section 305.5~~ *Sections 1701.6, 1701.7, and 1701.8* to, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 215, as amended, Leno. 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 California 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.~~ *commission, upon initiating a hearing, to assign one or more commissioners to oversee the case and an administrative law judge, where appropriate. Existing law requires the assigned commissioner to prepare and issue,*

by order or ruling, a scoping memo that describes the issues to be considered and the applicable timetable for resolution. Existing law requires the commission to adopt procedures on the disqualification of administrative law judges due to bias or prejudice similar to those of other state agencies and superior courts.

~~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, and would instead require that they be directed or authorized to undertake those actions by the commission. The bill would authorize the commission to delegate specific management and internal oversight functions to committees composed of 2 or more commissioners and would exempt a meeting conducted by those committees from the Bagley-Keene Open Meeting Act. The bill would require the commission to vote in an open meeting on the assignment or reassignment of any proceeding to one or more commissioners.~~

~~(2) Existing law requires the commission, upon initiating a hearing, to assign one or more commissioners to oversee the case and an administrative law judge, where appropriate. Existing law requires the assigned commissioner to prepare and issue, by order or ruling, a scoping memo that describes the issues to be considered and the applicable timetable for resolution. Existing law requires the commission to adopt procedures on the disqualification of administrative law judges due to bias or prejudice similar to those of other state agencies and superior courts.~~

This bill would require the commission to additionally adopt procedures on disqualification of commissioners due to bias or prejudice similar to those of other state agencies and superior courts. For ratesetting or adjudicatory proceedings, the bill would require a commissioner or an administrative law judge to be disqualified if there is an appearance of bias or prejudice based on specified criteria. The bill would prohibit commission procedures from authorizing a commissioner or administrative law judge from ruling on a motion made by a party to a proceeding to disqualify the commissioner or administrative law judge due to bias or prejudice.

~~(3) Existing law~~

~~(2) The Public Utilities Act 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. The act regulates communications in hearings before the commission and defines “ex parte communication” to mean any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural, issues that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. Existing law defines “person with an interest” to mean, among other things, a person with a financial interest in a matter before the commission, or an agent or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest. Existing law requires the commission, by regulation, to adopt and publish a definition of the terms “decisionmaker” and “persons” for those purposes, along with any requirements for written reporting of ex parte communications and appropriate sanctions for noncompliance with any rule proscribing ex parte communications. *The act provides that ex parte communications are prohibited in adjudication cases and are prohibited in ratesetting cases, with certain exceptions. The act requires that ex parte communications be permitted in quasi-legislative cases, without any restrictions. The commission’s Rules of Practice and Procedure define a “decisionmaker” as any commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned administrative law judge, or the Law and Motion Administrative Law Judge. The Rules of Practice and Procedure provide that communications with a commissioner’s personal advisors are subject to all of the restrictions on, and reporting requirements applicable to, ex parte communications, except that oral communications with an advisor in ratesetting proceedings are permitted without the restrictions.*

This bill would require that the commission determine whether every proceeding, not just those requiring a hearing, is a quasi-legislative, adjudication, or ratesetting proceeding. The bill would delete the provision that an ex parte communication concerns a substantive, but not a procedural matter, and instead would provide that an ex parte

communication concerns any matter that the commission has not specified in its Rules of Practice and Procedure as being a procedural matter and that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. The bill would prohibit the commission from considering as a procedural matter communications between an interested person and a decisionmaker regarding which commissioner or administrative law judge may be assigned to a matter before the commission. The bill would define a person involved in issuing credit ratings or advising entities or persons who may invest in the shares or operations of any party to a proceeding as a person with a financial interest. The bill would define “decisionmaker” to include the executive director of the commission, the general counsel of the commission, and the directors of specified divisions of the commission. The bill would require communications between a person with an interest who is not a party to a commission proceeding and a decisionmaker to be reported by the decisionmaker but would not require the communications to be reported by the person with an interest who is not a party to a commission proceeding. require that the commission, by rule, adopt and publish a definition of decisionmakers, that would be required to include certain individuals in the commission. The bill would require the commission to establish and maintain a communications log summarizing all oral or written ex parte communications that occur between an interested person and any decisionmaker. The bill would require the commission to post the communications log on its Internet Web site.

This bill would require that a decisionmaker, in an adjudication or ratesetting case, who makes or receives a prohibited ex parte communication, or who receives an ex parte communication that was not timely reported, to disclose certain information regarding the communication in the record of the proceeding before the commission takes a vote on the matter. If a prohibited ex parte communication is not disclosed until after the commission has issued a decision on the matter to which the communication pertained, a party not participating in the communication would be authorized to file a petition to rescind or modify the decision. The bill would require the commission to render decisions based upon the record in a case and would provide that an ex parte communication not be part of the record of the proceeding.

This bill would provide that ex parte communications may be permitted in quasi-legislative proceedings, but would require that they

be reported within 3 working days in the communications log maintained by the commission.

This bill would require the commission to additionally prohibit communications concerning procedural issues in adjudication cases between parties or persons with an interest and decisionmakers, except for the assigned administrative law judge.

Under existing law, the exceptions to the prohibition upon ex parte communications in ratesetting proceedings authorize a commissioner to permit oral ex parte communications if all interested parties are invited and given not less than 3 days' notice. If an ex parte communication meeting is granted to any party, it is required that all other parties also be granted individual ex parte meetings of a substantially equal period of time and that all parties be sent a notice of that authorization at the time the request is granted, at least 3 days prior to the meeting. The exceptions authorize a commissioner to permit written ex parte communications by any party if copies of the communication are transmitted to all parties.

This bill would delete the requirement that if an ex parte communication meeting is granted to any party in a ratesetting proceeding, that all other parties also be granted individual ex parte meetings of a substantially equal period of time and that all parties be sent a notice of that authorization at the time the request is granted, at least 3 days prior to the meeting. The bill would prohibit oral communications concerning procedural matters in ratesetting cases between parties or persons with an interest and decisionmakers other than the assigned administrative law judge, except that a commissioner would be authorized to permit an oral communication relative to procedural matters if all interested parties are invited and given not less than 3 days' notice. The bill would prohibit written ex parte communications concerning procedural matters in ratesetting cases between parties or persons with an interest and decisionmakers other than the assigned administrative law judge, except that a commissioner would be authorized to permit a written communication relative to procedural issues by any party if copies of the communication are transmitted to all parties on the same day.

This bill would expressly make the prohibitions upon ex parte communications that relate to adjudicatory or ratesetting proceedings applicable to ex parte communications that occur at conferences, as defined. The bill would also make the requirements that pertain to ex

parte communications that relate to quasi-legislative proceedings applicable to ex parte communications that occur at conferences.

This bill would authorize the commission to impose civil sanctions, including civil penalties, on any entity or person, other than a decisionmaker or employee of the commission, that violates ex parte communication requirements. The bill would authorize the Attorney General to bring an enforcement action in the Superior Court of the City and County of San Francisco against a decisionmaker or employee of the commission who violates the ex parte communication requirements.

~~(4) The Public Utilities Act requires the commission to prohibit ex parte communications in adjudication cases.~~

(3) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

~~This bill would require the commission to additionally prohibit communications concerning procedural issues in adjudication cases between parties or persons with an interest and decisionmakers, except for the assigned administrative law judge. Because a violation of this prohibition would be a crime, this bill would impose a state-mandated local program.~~

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by expanding the application of a crime.

~~(5)~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(6) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.~~

~~This bill would make legislative findings to that effect.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 305 of the Public Utilities Code is~~
2 ~~amended to read:~~

3 ~~305. The Governor shall designate a president of the~~
4 ~~commission from among the members of the commission. The~~
5 ~~president shall preside at all meetings and sessions of the~~
6 ~~commission.~~

7 ~~SEC. 2. Section 305.5 is added to the Public Utilities Code, to~~
8 ~~read:~~

9 ~~305.5. (a) The commission shall direct the executive director,~~
10 ~~the attorney, and other staff of the commission, except for the staff~~
11 ~~of the division described in Section 309.5, in performance of their~~
12 ~~duties.~~

13 ~~(b) The commission may delegate specific management and~~
14 ~~internal oversight functions to committees composed of two or~~
15 ~~more commissioners. Committees shall meet regularly with staff~~
16 ~~and shall report to the commission for additional guidance or~~
17 ~~approval of decisions pertaining to the operations of the~~
18 ~~commission.~~

19 ~~(c) A meeting conducted pursuant to subdivision (b) is exempt~~
20 ~~from the Bagley-Keene Open Meeting Act (Article 9 (commencing~~
21 ~~with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title~~
22 ~~2 of the Government Code).~~

23 ~~(d) The commission shall vote in an open meeting on the~~
24 ~~assignment or reassignment of any proceeding to one or more~~
25 ~~commissioners.~~

26 ~~SEC. 3. Section 307 of the Public Utilities Code is amended~~
27 ~~to read:~~

28 ~~307. (a) The commission may appoint as attorney to the~~
29 ~~commission an attorney at law of this state, who shall hold office~~
30 ~~during the pleasure of the commission.~~

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

37 ~~(c) The attorney shall commence, prosecute, and expedite the~~
38 ~~final determination of all actions and proceedings directed or~~

1 authorized by the commission, advise the commission and each
 2 commissioner, when so requested, in regard to all matters in
 3 connection with the powers and duties of the commission and the
 4 members thereof, and generally perform all duties and services as
 5 attorney to the commission that the commission may require of
 6 him or her.

7 ~~SEC. 4. Section 308 of the Public Utilities Code is amended~~
 8 ~~to read:~~

9 308. (a) The commission shall appoint an executive director,
 10 who shall hold office during its pleasure. The executive director
 11 shall be responsible for the commission's executive and
 12 administrative duties and shall organize, coordinate, supervise,
 13 and direct the operations and affairs of the commission and
 14 expedite all matters within the commission's jurisdiction.

15 (b) The executive director shall keep a full and true record of
 16 all proceedings of the commission, issue all necessary process,
 17 writs, warrants, and notices, and perform any other duties as the
 18 commission prescribes. The commission may authorize the
 19 executive director to dismiss complaints or applications when all
 20 parties are in agreement thereto, in accordance with rules that the
 21 commission may prescribe.

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

25 ~~SEC. 5.~~

26 ~~SECTION 1. Section 309.6 of the Public Utilities Code is~~
 27 ~~amended to read:~~

28 309.6. (a) The commission shall adopt procedures on the
 29 disqualification of commissioners and administrative law judges
 30 due to bias or prejudice similar to those of other state agencies and
 31 superior courts.

32 (b) (1) For ratesetting and adjudicatory proceedings, a
 33 commissioner or administrative law judge shall be disqualified if
 34 there is an appearance of bias or prejudice based on any of the
 35 following:

36 (A) Actions taken during the ~~proceeding~~. *proceeding that*
 37 *demonstrate bias or prejudice.*

38 (B) Private communications before the commencement of the
 39 proceeding to influence the request for relief sought by any party
 40 to the proceeding.

1 (C) Actions demonstrating any commitment to provide relief
2 to a party.

3 (2) Past work experience by the commissioner or administrative
4 law judge shall not be a sufficient basis for demonstrating an
5 appearance of bias or prejudice pursuant to paragraph (1).

6 (c) The commission procedures shall not authorize a
7 commissioner or administrative law judge to rule on a motion
8 made by a party to a proceeding to disqualify the commissioner
9 or administrative law judge due to bias or prejudice.

10 (d) The commission shall develop the procedures with the
11 opportunity for public review and comment.

12 ~~SEC. 6. Section 1701.1 of the Public Utilities Code is amended~~
13 ~~to read:~~

14 ~~1701.1. (a) The commission, consistent with due process,~~
15 ~~public policy, and statutory requirements, shall determine whether~~
16 ~~a proceeding requires a hearing. The commission shall determine~~
17 ~~whether the matter requires a quasi-legislative, an adjudication,~~
18 ~~or a ratesetting hearing. The commission's decision as to the nature~~
19 ~~of the proceeding shall be subject to a request for rehearing within~~
20 ~~10 days of the date of that decision. If that decision is not appealed~~
21 ~~to the commission within that time period it shall not be~~
22 ~~subsequently subject to judicial review. Only those parties who~~
23 ~~have requested a rehearing within that time period shall~~
24 ~~subsequently have standing for judicial review and that review~~
25 ~~shall only be available at the conclusion of the proceeding. The~~
26 ~~commission shall render its decision regarding the rehearing within~~
27 ~~30 days. The commission shall establish regulations regarding ex~~
28 ~~parte communication on case categorization issues.~~

29 ~~(b) The commission upon initiating a hearing shall assign one~~
30 ~~or more commissioners to oversee the case and an administrative~~
31 ~~law judge where appropriate. The assigned commissioner shall~~
32 ~~schedule a prehearing conference. The assigned commissioner~~
33 ~~shall prepare and issue by order or ruling a scoping memo that~~
34 ~~describes the issues to be considered and the applicable timetable~~
35 ~~for resolution.~~

36 ~~(c) (1) Quasi-legislative cases, for purposes of this article, are~~
37 ~~cases that establish policy, including, but not limited to,~~
38 ~~rulemakings and investigations which may establish rules affecting~~
39 ~~an entire industry.~~

~~1 (2) Adjudication cases, for purposes of this article, are
2 enforcement cases and complaints except those challenging the
3 reasonableness of any rates or charges as specified in Section 1702.~~

~~4 (3) Ratesetting cases, for purposes of this article, are cases in
5 which rates are established for a specific company, including, but
6 not limited to, general rate cases, performance-based ratemaking,
7 and other ratesetting mechanisms.~~

~~8 (4) (A) “Ex parte communication,” for purposes of this article,
9 means any oral or written communication between a decisionmaker
10 and a person with an interest in a matter before the commission
11 concerning substantive, but not procedural issues, that does not
12 occur in a public hearing, workshop, or other public proceeding,
13 or on the official record of the proceeding on the matter. “Person
14 with an interest,” for purposes of this article, means any of the
15 following:~~

~~16 (i) Any applicant, an agent or an employee of the applicant, or
17 a person receiving consideration for representing the applicant, or
18 a participant in the proceeding on any matter before the
19 commission.~~

~~20 (ii) Any person with a financial interest, as described in Article
21 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the
22 Government Code, in a matter before the commission, or an agent
23 or employee of the person with a financial interest, or a person
24 receiving consideration for representing the person with a financial
25 interest. A person involved in issuing credit ratings or advising
26 entities or persons who may invest in the shares or operations of
27 any party to a proceeding is a person with a financial interest.~~

~~28 (iii) A representative acting on behalf of any civic,
29 environmental, neighborhood, business, labor, trade, or similar
30 organization who intends to influence the decision of a commission
31 member on a matter before the commission.~~

~~32 (B) Decisionmakers shall include the general counsel, the
33 executive director, the director of the Energy Division, the director
34 of the Communications Division, the director of the Water and
35 Audits Division, and the director of the Safety and Enforcement
36 Division. The commission shall by regulation adopt and publish
37 a definition of additional decisionmakers and persons for purposes
38 of this section, along with any requirements for written reporting
39 of ex parte communications and appropriate sanctions for
40 noncompliance with any rule proscribing ex parte communications.~~

1 The regulation shall provide that reportable communications shall
2 be reported by the party, whether the communication was initiated
3 by the party or the decisionmaker. However, communications
4 between a person with an interest who is not a party to a
5 commission proceeding and a decisionmaker shall be reported by
6 the decisionmaker in accordance with procedures established
7 pursuant to this section and shall not be required to be reported by
8 the person with an interest who is not a party to a commission
9 proceeding. Communications shall be reported within three
10 working days of the communication by filing a “Notice of Ex Parte
11 Communication” with the commission in accordance with the
12 procedures established by the commission for the service of that
13 notice. The notice shall include the following information:

14 (i) The date, time, and location of the communication, and
15 whether it was oral, written, or a combination.

16 (ii) The identity of the recipient and the person initiating the
17 communication, as well as the identity of any persons present
18 during the communication.

19 (iii) A description of the party’s, but not the decisionmaker’s,
20 communication and its content, to which shall be attached a copy
21 of any written material or text used during the communication.

22 (C) An ex parte communication shall not be part of the record
23 of any proceeding and shall not be considered, or relied upon, for
24 purposes of the commission’s resolution of contested issues.

25 SEC. 7. Section 1701.2 of the Public Utilities Code is amended
26 to read:

27 1701.2. (a) If the commission pursuant to Section 1701.1 has
28 determined that an adjudication case requires a hearing, the
29 procedures prescribed by this section shall be applicable. The
30 assigned commissioner or the assigned administrative law judge
31 shall hear the case in the manner described in the scoping memo.
32 The scoping memo shall designate whether the assigned
33 commissioner or the assigned administrative law judge shall preside
34 in the case. The commission shall provide by rule for peremptory
35 challenges and challenges for cause of the administrative law judge.
36 Challenges for cause shall include, but not be limited to, financial
37 interests and prejudice. The rule shall provide that all parties are
38 entitled to one peremptory challenge of the assignment of the
39 administrative law judge in all cases. All parties are entitled to
40 unlimited peremptory challenges in any case in which the

1 administrative law judge has within the previous 12 months served
2 in any capacity in an advocacy position at the commission, been
3 employed by a regulated public utility, or has represented a party
4 or has been a party of interest in the case. The assigned
5 commissioner or the administrative law judge shall prepare and
6 file a decision setting forth recommendations, findings, and
7 conclusions. The decision shall be filed with the commission and
8 served upon all parties to the action or proceeding without undue
9 delay, not later than 60 days after the matter has been submitted
10 for decision. The decision of the assigned commissioner or the
11 administrative law judge shall become the decision of the
12 commission if no further action is taken within 30 days. Any
13 interested party may appeal the decision to the commission,
14 provided that the appeal is made within 30 days of the issuance of
15 the decision. The commission may itself initiate a review of the
16 proposed decision on any grounds. The commission decision shall
17 be based on the record developed by the assigned commissioner
18 or the administrative law judge. A decision different from that of
19 the assigned commissioner or the administrative law judge shall
20 be accompanied by a written explanation of each of the changes
21 made to the decision.

22 (b) Notwithstanding Section 307, an officer, employee, or agent
23 of the commission that is personally involved in the prosecution
24 or in the supervision of the prosecution of an adjudication case
25 before the commission shall not participate in the decision of the
26 case, or in the decision of any factually related adjudicatory
27 proceeding, including participation in or advising the commission
28 as to findings of fact, conclusions of law, or orders. An officer,
29 employee, or agent of the commission that is personally involved
30 in the prosecution or in the supervision of the prosecution of an
31 adjudication case may participate in reaching a settlement of the
32 case, but shall not participate in the decision of the commission to
33 accept or reject the settlement, except as a witness or counsel in
34 an open hearing or a hearing closed pursuant to subdivision (d).
35 The Legislature finds that the commission performs both
36 prosecutorial and adjudicatory functions in an adjudication case
37 and declares its intent that an officer, employee, or agent of the
38 commission, including its attorneys, may perform only one of
39 those functions in any adjudication case or factually related
40 adjudicatory proceeding.

1 ~~(e) (1) Ex parte communications shall be prohibited in~~
2 ~~adjudication cases.~~

3 ~~(2) Any oral or written communications concerning procedural~~
4 ~~issues in adjudication cases between parties or persons with an~~
5 ~~interest and decisionmakers, except the assigned administrative~~
6 ~~law judge, shall be prohibited.~~

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

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

16 ~~(f) (1) The commission may determine that the respondent~~
17 ~~lacks, or may lack, the ability to pay potential penalties or fines~~
18 ~~or to pay restitution that may be ordered by the commission.~~

19 ~~(2) If the commission determines that a respondent lacks, or~~
20 ~~may lack, the ability to pay, the commission may order the~~
21 ~~respondent to demonstrate, to the satisfaction of the commission,~~
22 ~~sufficient ability to pay potential penalties, fines, or restitution that~~
23 ~~may be ordered by the commission. The respondent shall~~
24 ~~demonstrate the ability to pay, or make other financial~~
25 ~~arrangements satisfactory to the commission, within seven days~~
26 ~~of the commission commencing an adjudication case. The~~
27 ~~commission may delegate to the attorney to the commission the~~
28 ~~determination of whether a sufficient showing has been made by~~
29 ~~the respondent of an ability to pay.~~

30 ~~(3) Within seven days of the commission's determination of the~~
31 ~~respondent's ability to pay potential penalties, fines, or restitution,~~
32 ~~the respondent shall be entitled to an impartial review by an~~
33 ~~administrative law judge of the sufficiency of the showing made~~
34 ~~by the respondent of the respondent's ability to pay. The review~~
35 ~~by an administrative law judge of the ability of the respondent to~~
36 ~~pay shall become part of the record of the adjudication and is~~
37 ~~subject to the commission's consideration in its order resolving~~
38 ~~the adjudication case. The administrative law judge may enter~~
39 ~~temporary orders modifying any financial requirement made of~~
40 ~~the respondent pending the review by the administrative law judge.~~

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

8 *SEC. 2. Section 1701.1 of the Public Utilities Code is amended*
9 *to read:*

10 1701.1. (a) ~~The commission, commission shall determine~~
11 ~~whether each proceeding is a quasi-legislative, an adjudication,~~
12 ~~or a ratesetting proceeding and, consistent with due process, public~~
13 ~~policy, and statutory requirements, shall determine whether a the~~
14 ~~proceeding requires a hearing. The commission shall determine~~
15 ~~whether the matter requires a quasi-legislative, an adjudication,~~
16 ~~or a ratesetting hearing. The commission's decision as to the nature~~
17 ~~of the proceeding shall be subject to a request for rehearing within~~
18 ~~10 days of the date of that decision. If that decision is not appealed~~
19 ~~to the commission within that time period it shall not be~~
20 ~~subsequently subject to judicial review. decision or any subsequent~~
21 ~~ruling that expands the scope of the proceeding. Only those parties~~
22 ~~who have requested a rehearing within that time period shall~~
23 ~~subsequently have standing for judicial review and that review~~
24 ~~shall only be available at the conclusion of the proceeding. The~~
25 ~~commission shall render its decision regarding the rehearing within~~
26 ~~30 days. The commission shall establish regulations rules regarding~~
27 ~~ex parte communication on case categorization issues.~~

28 (b) ~~The commission commission, upon initiating a hearing an~~
29 ~~adjudication proceeding or ratesetting proceeding, shall assign~~
30 ~~one or more commissioners to oversee the case and an~~
31 ~~administrative law judge where appropriate. The assigned~~
32 ~~commissioner shall schedule a prehearing conference. The assigned~~
33 ~~commissioner shall prepare and issue by order or ruling a scoping~~
34 ~~memo that describes the issues to be considered and the applicable~~
35 ~~timetable for resolution. The administrative law judge shall either~~
36 ~~preside and conduct, or assist the assigned commissioner or~~
37 ~~commissioners in presiding and conducting, any evidentiary or~~
38 ~~adjudication hearing that may be required.~~

39 (c) *The commission, upon initiating a quasi-legislative*
40 *proceeding, shall assign one or more commissioners to oversee*

1 *the case and an administrative law judge, where appropriate, who*
2 *may be assisted by a technical advisory staff member in conducting*
3 *the proceeding. The assigned commissioner shall prepare and*
4 *issue by order or ruling a scoping memo that describes the issues*
5 *to be considered and the applicable timetable for resolution.*

6 ~~(e)~~

7 (d) (1) Quasi-legislative cases, for purposes of this article, are
8 cases that establish policy, including, but not limited to,
9 rulemakings and investigations which may establish rules affecting
10 an entire industry.

11 (2) Adjudication cases, for purposes of this article, are
12 enforcement cases and complaints except those challenging the
13 reasonableness of any rates or charges as specified in Section 1702.

14 (3) Ratesetting cases, for purposes of this article, are cases in
15 which rates are established for a specific company, including, but
16 not limited to, general rate cases, performance-based ratemaking,
17 and other ratesetting mechanisms.

18 (4) “All-party conference,” for purposes of this article, is a
19 public hearing held on the record before a quorum of
20 commissioners at which parties to a proceeding shall have the
21 right to participate and communicate their views regarding any
22 factual, legal, or policy issue in the proceeding.

23 ~~(4)~~

24 (e) (1) (A) “Ex parte communication,” for purposes of this
25 article, means any oral or written communication between a
26 decisionmaker and ~~a person with an interest in a~~ *an interested*
27 *person concerning any matter before the commission concerning*
28 ~~substantive, but not procedural issues; that the commission has not~~
29 ~~specified in its Rules of Practice and Procedure as being a~~
30 *procedural matter and that does not occur in a public hearing,*
31 *workshop, or other public proceeding, or on the official record of*
32 *the proceeding on the matter. “Person with an interest,” for*
33 ~~purposes of this article, means any of the following: The~~
34 *commission shall specify in its Rules of Practice and Procedure,*
35 *enacted by rulemaking, the types of issues considered procedural*
36 *matters under this article. Any communication between an*
37 *interested person and a decisionmaker regarding which*
38 *commissioner or administrative law judge may be assigned to a*
39 *matter before the commission shall not be deemed to be a*

1 *procedural matter and shall be an ex parte communication subject*
 2 *to this article.*

3 (B) *“Interested person,” for purposes of this article, means any*
 4 *of the following:*

5 (A)

6 (i) Any applicant, an agent or an employee of the applicant, or
 7 a person receiving consideration for representing the applicant, or
 8 a participant in the proceeding on any matter before the
 9 commission.

10 (B)

11 (ii) Any person with a financial interest, as described in Article
 12 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the
 13 Government Code, in a matter before the commission, or an agent
 14 or employee of the person with a financial interest, or a person
 15 receiving consideration for representing the person with a financial
 16 interest. *A person involved in issuing credit ratings or advising*
 17 *entities or persons who may invest in the shares or operations of*
 18 *any party to a proceeding is a person with a financial interest.*

19 (C)

20 (iii) A representative acting on behalf of any civic,
 21 environmental, neighborhood, business, labor, trade, or similar
 22 organization who intends to influence the decision of a commission
 23 member on a matter before the commission.

24 (iv) *Other categories of individuals deemed by the commission,*
 25 *by rule, to be an interested person.*

26 (2) The commission shall by ~~regulation~~ *rule* adopt and publish
 27 a definition of decisionmakers and *interested* persons for purposes
 28 of this ~~section, article,~~ along with any requirements for written
 29 reporting of ex parte communications and appropriate sanctions
 30 for noncompliance with any rule proscribing ex parte
 31 communications. ~~The regulation shall provide that reportable~~
 32 ~~communications shall be reported by the party, whether the~~
 33 ~~communication was initiated by the party or the decisionmaker.~~
 34 ~~Communications shall be reported within three working days of~~
 35 ~~the communication by filing a “Notice of Ex Parte~~
 36 ~~Communication” with the commission in accordance with the~~
 37 ~~procedures established by the commission for the service of that~~
 38 ~~notice. The notice shall include the following information:~~
 39 *definition of decisionmakers shall include, but is not limited to,*
 40 *each commissioner; the attorney for the commission; the executive*

1 *director of the commission; the personal staff of a commissioner*
2 *if the staff is acting in a policy or legal advisory capacity; the chief*
3 *administrative law judge of the commission; and the administrative*
4 *law judge assigned to the proceeding.*

5 *(3) For adjudication and ratesetting cases, the rules shall*
6 *provide that ex parte communications shall be prohibited, as*
7 *required by this article. The rules shall provide that if an ex parte*
8 *communication occurs that is prohibited by this article, whether*
9 *initiated by a decisionmaker or an interested person, all of the*
10 *following shall be required:*

11 *(A) The interested person shall report the communication within*
12 *one working day of the communication by filing a notice with the*
13 *commission that includes all the following:*

14 *(i) The date, time, and location of the communication, and*
15 *whether—~~it~~ the communication was oral, or written, or a*
16 *combination: combination of both, and the communication medium*
17 *utilized.*

18 *(ii) The identity of the ~~recipient and the~~ decisionmaker, the*
19 *identity of the person initiating the communication, as well as the*
20 *identity of any persons present during the communication: and*
21 *any other persons present.*

22 *(iii) A complete and comprehensive description of the interested*
23 *person's and the decisionmaker's communication and its content.*

24 ~~(iii)~~
25 *(iv) A description of the party's, but not the decisionmaker's,*
26 *communication and its content, to which shall be attached a copy*
27 *of any written material or text used during the communication.*

28 *(B) Any decisionmaker who participated in the communication*
29 *shall comply with both of the following:*

30 *(i) If the interested person who participated in the*
31 *communication has not timely submitted the notice required by*
32 *subparagraph (A), the decisionmaker shall promptly prepare and*
33 *file a notice that includes the information required by*
34 *subparagraph (A).*

35 *(ii) If the interested person has timely submitted the notice*
36 *required by subparagraph (A), the decisionmaker shall either*
37 *promptly file a notice affirming the factual representations made*
38 *by the interested person in the notice or promptly file a notice*
39 *correcting or supplementing the factual representations made by*
40 *the interested person.*

1 (4) *The commission shall not take any vote on a matter where*
2 *a notice has been filed pursuant to subparagraph (A) or (B) of*
3 *paragraph (3) until all parties to the proceeding have been*
4 *provided a reasonable opportunity to respond to the*
5 *communication.*

6 (5) *If a prohibited ex parte communication is not disclosed as*
7 *required by this subdivision until after the commission has issued*
8 *a decision on the matter to which the prohibited communication*
9 *pertained, a party not participating in the communication may file*
10 *a petition to rescind or modify the decision. The party may seek a*
11 *finding that the ex parte communication was prohibited and*
12 *significantly influenced the decision's process or outcome as part*
13 *of any petition to rescind or modify the decision. The commission*
14 *shall process the petition in accordance with the commission's*
15 *procedures for petitions for modification and shall issue a decision*
16 *on the petition no later than 180 days after the filing of the petition.*

17 (6) (A) *Ex parte communications that occur at conferences that*
18 *are related to an adjudication or ratesetting proceeding shall be*
19 *prohibited consistent with the ex parte communications*
20 *requirements of this article.*

21 (B) *Ex parte communications that occur at conferences and that*
22 *are related to a quasi-legislative proceeding shall be governed by*
23 *the ex parte communication disclosure requirements developed*
24 *by the commission.*

25 (C) *For purposes of this section, "ex parte communications that*
26 *occur at conferences" includes, but is not limited to,*
27 *communications in a private setting or during meals, entertainment*
28 *events, and tours, and informal discussions among conference*
29 *attendees.*

30 (7) *The commission shall render its decisions based on the*
31 *evidence in the record. Ex parte communications shall not be a*
32 *part of the record of the proceedings.*

33 (f) *The commission may meet in a closed session to discuss*
34 *administrative matters so long as no collective consensus is*
35 *reached or vote taken on any matter requiring a vote of the*
36 *commissioners. The commission shall, by rule, adopt and publish*
37 *a definition of "administrative matters" for purposes of this*
38 *section.*

39 (g) *The commission shall permit oral and written comments*
40 *received from the public at noticed public participation hearings*

1 *convened by the commission to be included in the record of its*
2 *proceedings. The commission shall provide parties to the*
3 *proceeding a reasonable opportunity to respond to any public*
4 *comments included in the record of proceedings.*

5 *SEC. 3. Section 1701.2 of the Public Utilities Code is amended*
6 *to read:*

7 *1701.2. (a) If the commission pursuant to Section 1701.1 has*
8 *determined that an adjudication case requires a hearing, ~~the~~*
9 *procedures prescribed by this section shall be applicable. The*
10 *assigned commissioner or the assigned administrative law judge*
11 *shall hear the case in the manner described in the scoping memo.*
12 *The scoping memo shall designate whether the assigned*
13 *commissioner or the assigned administrative law judge shall preside*
14 *in the case. The commission shall provide by rule for peremptory*
15 *challenges and challenges for cause of the administrative law judge.*
16 *Challenges for cause shall include, but not be limited to, financial*
17 *interests and prejudice. The rule shall provide that all parties are*
18 *entitled to one peremptory challenge of the assignment of the*
19 *administrative law judge in all cases. All parties are entitled to*
20 *unlimited peremptory challenges in any case in which the*
21 *administrative law judge has within the previous 12 months served*
22 *in any capacity in an advocacy position at the commission, been*
23 *employed by a regulated public utility, or has represented a party*
24 *or has been a party of interest in the case. The assigned*
25 *commissioner or the assigned administrative law judge shall hear*
26 *the case in the manner described in the scoping memo. The scoping*
27 *memo shall designate whether the assigned commissioner or the*
28 *assigned administrative law judge shall preside in the case.*

29 *(b) The commission shall provide by rule for peremptory*
30 *challenges and challenges for cause of the administrative law*
31 *judge. Challenges for cause shall include, but not be limited to,*
32 *financial interests and prejudice. The rule shall provide that all*
33 *parties are entitled to one peremptory challenge of the assignment*
34 *of the administrative law judge in all cases. All parties are entitled*
35 *to unlimited peremptory challenges in any case in which the*
36 *administrative law judge has within the previous 12 months served*
37 *in any capacity in an advocacy position at the commission, been*
38 *employed by a regulated public utility, or has represented a party*
39 *or has been an interested person in the case.*

1 (c) *The assigned commissioner or the administrative law judge*
2 *shall prepare and file a decision setting forth recommendations,*
3 *findings, and conclusions. The decision shall be filed with the*
4 *commission and served upon all parties to the action or proceeding*
5 *without undue delay, not later than 60 days after the matter has*
6 *been submitted for decision. The decision of the assigned*
7 *commissioner or the administrative law judge shall become the*
8 *decision of the commission if no further action is taken within 30*
9 *days. Any—interested party may appeal the decision to the*
10 *commission, provided that the appeal is made within 30 days of*
11 *the issuance of the decision. The commission may itself initiate a*
12 *review of the proposed decision on any grounds. ~~The commission~~*
13 *~~decision shall be based on the record developed by the assigned~~*
14 *~~commissioner or the administrative law judge. A decision different~~*
15 *~~from that of the assigned commissioner or the administrative law~~*
16 *~~judge shall be accompanied by a written explanation of each of~~*
17 *~~the changes made to the decision.~~*

18 (d) *The commission may hold an all-party conference before a*
19 *quorum of commissioners at which all parties have an opportunity*
20 *to be heard. The commission shall adopt rules for implementation*
21 *of all-party conferences that ensure the broadest participation by*
22 *parties to the proceeding that the commission can reasonably*
23 *accommodate consistent with the commissioners' other duties and*
24 *responsibilities.*

25 (e) *The commission's decision shall be supported by findings*
26 *of fact on all issues material to the decision, and the findings of*
27 *fact shall be based on the record developed by the assigned*
28 *commissioner or the administrative law judge. A decision different*
29 *from that of the assigned commissioner or the administrative law*
30 *judge shall be accompanied by a written explanation of each of*
31 *the changes made to the decision.*

32 ~~(b)~~

33 (f) *Notwithstanding Section 307, an officer, employee, or agent*
34 *of the commission that is personally involved in the prosecution*
35 *or in the supervision of the prosecution of an adjudication case*
36 *before the commission shall not participate in the decision of the*
37 *case, or in the decision of any factually related adjudicatory*
38 *proceeding, including participation in or advising the commission*
39 *as to findings of fact, conclusions of law, or orders. An officer,*
40 *employee, or agent of the commission that is personally involved*

1 in the prosecution or in the supervision of the prosecution of an
2 adjudication case may participate in reaching a settlement of the
3 case, but shall not participate in the decision of the commission to
4 accept or reject the settlement, except as a witness or counsel in
5 an open hearing or a hearing closed pursuant to subdivision-(d).
6 (h). The Legislature finds that the commission performs both
7 prosecutorial and adjudicatory functions in an adjudication case
8 and declares its intent that an officer, employee, or agent of the
9 commission, including its attorneys, may perform only one of
10 those functions in any adjudication case or factually related
11 adjudicatory proceeding.

12 ~~(e)~~

13 (g) (1) Ex parte communications shall be prohibited in
14 adjudication cases.

15 (2) *Any oral or written communications concerning procedural*
16 *matters in adjudication cases between interested persons and*
17 *decisionmakers, except the assigned administrative law judge,*
18 *shall be prohibited.*

19 ~~(d)~~

20 (h) Notwithstanding any other law, the commission may meet
21 in a closed hearing to consider the decision that is being appealed.
22 The vote on the appeal shall be in a public meeting and shall be
23 accompanied with an explanation of the appeal decision.

24 ~~(e)~~

25 (i) Adjudication cases shall be resolved within 12 months of
26 initiation unless the commission makes findings why that deadline
27 cannot be met and issues an order extending that deadline. In the
28 event that a rehearing of an adjudication case is granted, the parties
29 shall have an opportunity for final oral argument.

30 ~~(f)~~

31 (j) (1) The commission may determine that the respondent
32 lacks, or may lack, the ability to pay potential penalties or fines
33 or to pay restitution that may be ordered by the commission.

34 (2) If the commission determines that a respondent lacks, or
35 may lack, the ability to pay, the commission may order the
36 respondent to demonstrate, to the satisfaction of the commission,
37 sufficient ability to pay potential penalties, fines, or restitution that
38 may be ordered by the commission. The respondent shall
39 demonstrate the ability to pay, or make other financial
40 arrangements satisfactory to the commission, within seven days

1 of the commission commencing an adjudication case. The
 2 commission may delegate to the attorney to the commission the
 3 determination of whether a sufficient showing has been made by
 4 the respondent of an ability to pay.

5 (3) Within seven days of the commission's determination of the
 6 respondent's ability to pay potential penalties, fines, or restitution,
 7 the respondent shall be entitled to an impartial review by an
 8 administrative law judge of the sufficiency of the showing made
 9 by the respondent of the respondent's ability to pay. The review
 10 by an administrative law judge of the ability of the respondent to
 11 pay shall become part of the record of the adjudication and is
 12 subject to the commission's consideration in its order resolving
 13 the adjudication case. The administrative law judge may enter
 14 temporary orders modifying any financial requirement made of
 15 the respondent pending the review by the administrative law judge.

16 (4) A respondent that is a public utility regulated under a rate
 17 of return or rate of margin regulatory structure or that has gross
 18 annual revenues of more than one hundred million dollars
 19 (\$100,000,000) generated within California is presumed to be able
 20 to pay potential penalties or fines or to pay restitution that may be
 21 ordered by the commission, and, therefore, paragraphs (1) to (3),
 22 inclusive, do not apply to that respondent.

23 *SEC. 4. Section 1701.3 of the Public Utilities Code is amended*
 24 *to read:*

25 1701.3. (a) If the commission pursuant to Section 1701.1 has
 26 determined that a ratesetting case requires a hearing, the procedures
 27 prescribed by ~~this section~~ subdivisions (b), (d), (f), and (i) shall be
 28 applicable. ~~The~~

29 (b) *The* assigned commissioner shall determine prior to the first
 30 hearing whether the commissioner or the assigned administrative
 31 law judge shall be designated as the principal hearing officer. The
 32 principal hearing officer shall be present for more than one-half
 33 of the hearing days. The decision of the principal hearing officer
 34 shall be the proposed decision. ~~An~~

35 (c) *An* alternate decision may be issued by the assigned
 36 commissioner or the assigned administrative law judge who is not
 37 the principal hearing officer. ~~The~~ *Any alternate decision may be*
 38 *filed with the commission and served upon all parties to the*
 39 *proceeding any time prior to issuance of a final decision by the*
 40 *commission, consistent with the requirements of Section 311.*

1 (d) The commission shall establish a procedure for any party to
2 request the presence of a commissioner at a hearing. The assigned
3 commissioner shall be present at ~~the any closing arguments of in~~
4 the case. ~~The~~

5 (e) The principal hearing officer shall present the proposed
6 decision to the full commission in a public meeting. The alternate
7 decision, if any, shall also be presented to the full commission at
8 that public meeting. ~~The alternate decision shall be filed with the~~
9 ~~commission and shall be served on all parties simultaneously with~~
10 ~~the proposed decision.~~

11 (f) The presentation to the full commission shall contain a
12 record of the number of days of the hearing, the number of days
13 that each commissioner was present, and whether the decision was
14 completed on time.

15 ~~(b)~~

16 (g) The commission shall provide by ~~regulation rule~~ for
17 peremptory challenges and challenges for cause of the
18 administrative law judge. Challenges for cause shall include, but
19 not be limited to, financial interests and prejudice. All parties shall
20 be entitled to unlimited peremptory challenges in any case in which
21 the administrative law judge has within the previous 12 months
22 served in any capacity in an advocacy position at the commission,
23 been employed by a regulated public utility, or has represented a
24 party or has been a ~~party of interest~~ *an interested person* in the
25 case.

26 ~~(e)~~

27 (h) (1) Ex parte communications are prohibited in ratesetting
28 cases. ~~However, oral ex parte communications may be permitted~~
29 ~~at any time by any commissioner if all interested parties are invited~~
30 ~~and given not less than three days' notice. Written ex parte~~
31 ~~communications may be permitted by any party provided that~~
32 ~~copies of the communication are transmitted to all parties on the~~
33 ~~same day. If an ex parte communication meeting is granted to any~~
34 ~~party, all other parties shall also be granted individual ex parte~~
35 ~~meetings of a substantially equal period of time and shall be sent~~
36 ~~a notice of that authorization at the time that the request is granted.~~
37 ~~In no event shall that notice be less than three days. The~~

38 (A) *Oral communications may be permitted by a decisionmaker*
39 *if all parties are invited to the meeting and given not less than*
40 *three working days' notice.*

1 (B) *Written ex parte communications by any interested person*
2 *may be permitted if copies of the communication are transmitted*
3 *to all parties on the same day as the original communication.*
4 *Written ex parte communications shall not be part of the record*
5 *of the proceeding.*

6 (C) *The commission may establish a period during which no*
7 *oral or written ~~ex parte~~ all-party communications ~~shall~~ may be*
8 *permitted and the commission may meet in closed session during*
9 *that period, which shall not in any circumstance exceed 14 days.*
10 *If the commission holds the decision, it may permit ~~ex parte~~*
11 *all-party communications during the first half of the interval*
12 *between the hold date and the date that the decision is calendared*
13 *for final decision. The commission may meet in closed session for*
14 *the second half of that interval.*

15 (2) *Oral communications concerning a procedural matter in*
16 *ratesetting cases between interested persons and decisionmakers,*
17 *except the assigned administrative law judge, are prohibited, except*
18 *that an oral communication may be permitted at any time by any*
19 *decisionmaker if all parties are invited and given not less than*
20 *three working days' notice.*

21 (3) *Written communications concerning a procedural matter in*
22 *ratesetting cases between interested persons and decisionmakers,*
23 *except the assigned administrative law judge, are prohibited, except*
24 *that a decisionmaker may permit a written communication by any*
25 *party if copies of the communication are transmitted to all parties*
26 *on the same day.*

27 (d)

28 (i) *Any party has the right to present a final oral argument of*
29 *its case before the commission. Those requests shall be scheduled*
30 *in a timely manner. A quorum of the commission shall be present*
31 *for the final oral arguments.*

32 (j) *After the issuance of a proposed decision in a ratesetting*
33 *case, the commission may hold an all-party conference before a*
34 *quorum of commissioners at which all parties have an opportunity*
35 *to be heard. The commission shall adopt rules for implementation*
36 *of all-party conferences that ensure the broadest participation by*
37 *parties to the proceeding that the commission can reasonably*
38 *accommodate consistent with the commissioners' other duties and*
39 *responsibilities.*

40 (e)

1 (k) The commission may, in issuing its decision, adopt, modify,
2 or set aside the proposed decision or any part of the decision based
3 on evidence in the record. The final decision of the commission
4 shall be issued not later than 60 days after the issuance of the
5 proposed decision. Under extraordinary circumstances the
6 commission may extend this date for a reasonable period. The
7 60-day period shall be extended for 30 days if any alternate
8 decision is proposed pursuant to Section 311.

9 *SEC. 5. Section 1701.4 of the Public Utilities Code is amended*
10 *to read:*

11 1701.4. (a) If the commission pursuant to Section 1701.1 has
12 determined that a quasi-legislative case requires a hearing, the
13 procedures prescribed by ~~this section~~ subdivisions (b) and (d) to
14 (f), inclusive, shall be applicable. ~~The~~

15 (b) ~~The assigned administrative law judge and any assigned~~
16 ~~technical advisory staff shall act as an assistant to the assigned~~
17 ~~commissioner in quasi-legislative cases.—The—assigned~~
18 ~~commissioner shall be present for formal hearings.~~ The assigned
19 commissioner shall prepare the proposed rule or order with the
20 assistance of the administrative law judge. ~~judge and any assigned~~
21 ~~technical advisory staff.~~ The assigned commissioner shall present
22 the proposed rule or order to the full commission in a public
23 meeting. The report shall include the number of days of hearing
24 and the number of days that the commissioner was present.

25 (b)

26 (c) ~~Ex parte communications shall be permitted without any~~
27 ~~restrictions.~~ *may be permitted. Any ex parte communication shall*
28 *be reported in compliance with Section 1701.6. No reporting shall*
29 *be required for written ex parte communications that are*
30 *transmitted to all parties on the same day as the original*
31 *communication.*

32 (e)

33 (d) Any party has the right to present a final oral argument of
34 its case before the commission. Those requests shall be scheduled
35 in a timely manner. A quorum of the commission shall be present
36 for the final oral arguments.

37 (e) *After the issuance of a proposed decision in a*
38 *quasi-legislative case, the commission may hold an all-party*
39 *conference before a quorum of commissioners at which all parties*
40 *have an opportunity to be heard. The commission shall adopt rules*

1 *for implementation of all-party conferences that ensure the*
 2 *broadest participation by parties to the proceeding that the*
 3 *commission can reasonably accommodate consistent with the*
 4 *commissioners' other duties and responsibilities.*

5 ~~(d)~~

6 (f) The commission may, in issuing its rule or order, adopt,
 7 modify, or set aside the proposed decision or any part of the rule
 8 or order. The final rule or order of the commission shall be issued
 9 not later than 60 days after the issuance of the proposed rule or
 10 order. Under extraordinary circumstances the commission may
 11 extend this date for a reasonable period. The 60-day period shall
 12 be extended for 30 days if any alternate rule or order is proposed
 13 pursuant to Section 311.

14 *SEC. 6. Section 1701.5 of the Public Utilities Code is amended*
 15 *to read:*

16 1701.5. (a) Except as specified in subdivision (b), in a
 17 ratesetting or quasi-legislative case, the commission shall resolve
 18 the issues raised in the scoping memo within 18 months of the date
 19 ~~the scoping memo is issued,~~ *proceeding is initiated,* unless the
 20 commission makes a written determination that the deadline cannot
 21 be met, including findings as to the reason, and issues an order
 22 extending the deadline. ~~No single order may extend the deadline~~
 23 ~~for more than 60 days.~~

24 (b) Notwithstanding subdivision (a), the commission may
 25 specify in a scoping memo a resolution date later than 18 months
 26 from the date ~~the scoping memo is issued,~~ *proceeding is initiated,*
 27 if that scoping memo includes specific reasons for the necessity
 28 of a later date and the commissioner assigned to the case approves
 29 the date.

30 *SEC. 7. Section 1701.6 is added to the Public Utilities Code,*
 31 *to read:*

32 1701.6. (a) *The commission shall establish and maintain a*
 33 *communications log summarizing all oral and written ex parte*
 34 *communications, as defined in Section 1701.1.*

35 (b) *The communications log shall include a summary of all oral*
 36 *and written communications that meet the definition of an ex parte*
 37 *communication that occur between an interested person and any*
 38 *decisionmaker.*

39 (c) *Each record of a communication in the communication log*
 40 *shall include the date of each communication, the persons involved*

1 *in the communication, and, to the extent known, any proceedings*
2 *that were the subject of each communication. Ex parte*
3 *communications in the summary log shall be reported no later*
4 *than three working days after the communication.*

5 *(d) The communication log shall be made available to the public*
6 *on the commission's Internet Web site not later than July 1, 2017.*

7 SEC. 8. *Section 1701.7 is added to the Public Utilities Code,*
8 *to read:*

9 *1701.7. (a) In addition to any penalty, fine, or other*
10 *punishment applicable pursuant to Article 11 (commencing with*
11 *Section 2100), the commission may assess civil sanctions upon*
12 *any entity or person, other than a decisionmaker or employee of*
13 *the commission, who violates, fails to comply with, or procures,*
14 *aids, or abets any violation of, the ex parte communication*
15 *requirements of this article or those adopted by the commission*
16 *pursuant to this article. The civil sanctions may include civil*
17 *penalties, adverse consequences in commission proceedings, or*
18 *other appropriate commission orders directed at the entity, person,*
19 *or both the entity and person, committing the violation.*

20 *(b) (1) Except as provided in paragraph (2), a civil penalty*
21 *assessed shall not exceed fifty thousand dollars (\$50,000) per*
22 *violation. Each day of a continuing violation is a separate*
23 *violation. If the violation consists of engaging in a communication*
24 *that is prohibited by the ex parte communication requirements,*
25 *each day that the violation is not disclosed to the commission and*
26 *to parties of record in the formal proceeding in which the*
27 *communication occurred shall constitute a separate violation.*

28 *(2) If the entity or person may obtain, by violating the ex parte*
29 *communication requirements, financial benefits that exceed the*
30 *maximum amount of civil penalty allowable pursuant to paragraph*
31 *(1), the commission may impose a civil penalty up to the amount*
32 *of those financial benefits.*

33 *(c) Civil penalties assessed pursuant to subdivision (b) upon*
34 *entities whose rates are determined by the commission shall be in*
35 *the form of credits to the customers of that entity. Civil penalties*
36 *collected from other entities shall be deposited in the General*
37 *Fund.*

38 *(d) In determining the appropriate civil sanctions, the*
39 *commission shall consider the following factors:*

40 *(1) The severity of the violation.*

1 (2) *The conduct of the entity or person, including the level of*
2 *experience of the entity or person in participating in commission*
3 *proceedings and whether the entity or person knowingly violated*
4 *the ex parte communication requirements.*

5 (3) *The financial resources of the entity or person.*

6 (4) *The totality of the circumstances in furtherance of the public*
7 *interest.*

8 *SEC. 9. Section 1701.8 is added to the Public Utilities Code,*
9 *to read:*

10 *1701.8. (a) The Attorney General may bring an enforcement*
11 *action in the Superior Court for the City and County of San*
12 *Francisco against a decisionmaker or employee of the commission*
13 *who violates, fails to comply with, or procures, aids, or abets any*
14 *violation of, the ex parte communication requirements in this*
15 *article or those adopted by the commission pursuant to this article.*
16 *The court shall expedite its review of the action to provide effective*
17 *and timely relief.*

18 *(b) Notwithstanding Section 1759, in an enforcement action*
19 *brought pursuant to this section, the court may grant appropriate*
20 *relief, including disqualification of the decisionmaker from one*
21 *or more proceedings and civil penalties as provided in Section*
22 *2111.*

23 *(c) In determining the appropriate relief, the court may consider*
24 *the following factors:*

25 *(1) The severity of the violation.*

26 *(2) The conduct of the decisionmaker or employee, including*
27 *whether the decisionmaker or employee knowingly violated the ex*
28 *parte communication requirements.*

29 *(3) The financial resources of the decisionmaker or employee.*

30 *(4) The totality of the circumstances in furtherance of the public*
31 *interest.*

32 *(d) The Attorney General may compromise the enforcement*
33 *action subject to approval by the court.*

34 *(e) Civil penalties collected pursuant to this section shall be*
35 *deposited into the Litigation Deposits Fund established pursuant*
36 *to Article 9 (commencing with Section 16425) of Chapter 2 of Part*
37 *2 of Division 4 of Title 2 of the Government Code.*

38 ~~SEC. 8.~~

39 *SEC. 10. No reimbursement is required by this act pursuant to*
40 *Section 6 of Article XIII B of the California Constitution because*

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

8 ~~SEC. 9. The Legislature finds and declares that Section 2 of~~
9 ~~this act, which adds Section 305.5 to the Public Utilities Code,~~
10 ~~imposes a limitation on the public's right of access to the meetings~~
11 ~~of public bodies or the writings of public officials and agencies~~
12 ~~within the meaning of Section 3 of Article I of the California~~
13 ~~Constitution. Pursuant to that constitutional provision, the~~
14 ~~Legislature makes the following findings to demonstrate the interest~~
15 ~~protected by this limitation and the need for protecting that interest:~~

16 ~~(a) The limitations are reasonable in light of the need for the~~
17 ~~Public Utilities Commission to manage its internal affairs in a~~
18 ~~manner that allows all commissioners to fully participate.~~

19 ~~(b) The specific management and internal oversight functions~~
20 ~~addressed by this limitation do not involve determinations of law~~
21 ~~or policy that would bias the outcome of pending proceedings or~~
22 ~~harm the public interest.~~

23 ~~(c) In order to ensure the effective functioning of the~~
24 ~~commission, this act is necessary.~~