

AMENDED IN ASSEMBLY AUGUST 1, 2016

AMENDED IN ASSEMBLY JUNE 20, 2016

AMENDED IN SENATE JANUARY 4, 2016

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 512

Introduced by Senator Hill

February 26, 2015

An act to amend Sections 306, 311.5, 910.1, 1701, 1802, 1804, and 1808 of, to add Sections 1711, 1802.4, and 1803.1 to, and to repeal and add Section 910 of, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 512, as amended, Hill. Public Utilities Commission.

(1) The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities. The Public Utilities Act provides that the office of the commission shall be in the City and County of San Francisco, that the office always be open, except on legal holidays and nonjudicial days, and that the commission hold its sessions at least once in each calendar month in the City and County of San Francisco.

This bill would require that the commission hold its sessions at least once in each calendar month, without specifying the location.

(2) 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, including 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. 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 administrative law judges of the commission. Except in adjudication cases, the bill would require the commission, before determining the scope of the proceeding, where feasible and appropriate, to seek the participation of those who are likely to be affected by a decision in the proceeding. The bill would, until January 1, 2020, require the Policy and Planning Division of the commission to undertake one or more studies of outreach efforts undertaken by other state and federal utility regulatory bodies and to make recommendations to the commission to promote effective outreach, including metrics for use in evaluating success. The bill would require the commission to include a docket card that lists the public versions of all prepared oral and written testimony and advice letter filings, protests, and responses on its Internet Web site. 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.

(3) 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) includes 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) includes information on the operation of the office of the public advisor and identifies the names and telephone numbers of those contact persons responsible for specific cases and matters to be decided, and (D) includes 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, 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 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. The bill would require the report to include a list of the public meetings held outside San Francisco in the previous year and a schedule of meetings anticipated to be held outside San Francisco during the upcoming year. The bill would require the commission to post the report in a conspicuous area of its Internet Web site and disseminate the information in the report, as provided.

(4) The Public Utilities Act requires the commission to submit an annual report to the Legislature 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 commission to annually submit a report to the Legislature on 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 the number of orders issued extending the statutory deadlines for all adjudication, ratesetting, and quasi-legislative cases.

(5) The Public Utilities Act provides intervenor compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers or their representatives for participation or intervention in any proceeding of the commission based, in part, upon whether the intervenor would experience significant financial hardship and makes a substantial contribution to the adoption, in whole or in part, of the commission's order or decision. Existing law precludes a local government entity from receiving intervenor

compensation by excluding them from the definition of a “customer” for purposes of the intervenor compensation provisions.

The bill would permit intervenor compensation to be paid to certain local government entities that intervene or participate in commission proceedings to the extent that their involvement was for the purpose of protecting health and safety, under specified circumstances. The bill would make conforming changes.

Existing law requires a public utility that is the subject of the hearing, investigation, or proceeding in which intervenor fees are awarded to pay those intervenor fees within 30 days and makes the failure to do so a crime.

By expanding the obligation of a public utility to pay intervenor fees to an eligible local government entity, the bill would impose a state-mandated local program by expanding the application of an existing crime.

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.

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 306 of the Public Utilities Code is
- 2 amended to read:
- 3 306. (a) The office of the commission shall be in the City and
- 4 County of San Francisco. The office shall always be open, legal
- 5 holidays and nonjudicial days excepted. The commission shall
- 6 hold its sessions at least once in each calendar month. The
- 7 commission may also meet at such other times and in such places
- 8 as may be expedient and necessary for the proper performance of
- 9 its duties, and for that purpose may rent quarters or offices.
- 10 (b) The meetings of the commission shall be open and public
- 11 in accordance with the provisions of Article 9 (commencing with
- 12 Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of
- 13 the Government Code.
- 14 In addition to the requirements of Section 11125 of the
- 15 Government Code, the commission shall include in its notice of

1 meetings the agenda of business to be transacted, and no item of
2 business shall be added to the agenda subsequent to the notice in
3 the absence of an unforeseen emergency situation. A rate increase
4 shall not constitute an unforeseen emergency situation. As used
5 in this subdivision, “meeting” shall include all investigations,
6 proceedings, and showings required by law to be open and public.

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

11 (d) The commission may procure all necessary books, maps,
12 charts, stationery, instruments, office furniture, apparatus, and
13 appliances.

14 SEC. 2. Section 311.5 of the Public Utilities Code is amended
15 to read:

16 311.5. (a) (1) Prior to commencement of any meeting at which
17 commissioners vote on items on the public agenda, the commission
18 shall make available to the public copies of the agenda, and upon
19 request, any agenda item documents that are proposed to be
20 considered by the commission for action or decision at a
21 commission meeting.

22 (2) In addition, the commission shall publish the agenda, agenda
23 item documents, and adopted decisions in a manner that makes
24 copies of them easily available to the public, including publishing
25 those documents on the Internet. Publication of the agenda and
26 agenda item documents shall occur on the Internet at the same
27 time as the written agenda and agenda item documents are made
28 available to the public.

29 (b) The commission shall publish and maintain the following
30 documents on the Internet:

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

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

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

39 (4) Each of the commission’s rulings. The commission shall
40 maintain those rulings on its Internet Web site until final

1 disposition, including disposition of any judicial appeals, of the
2 respective proceedings in which the rulings were issued.

3 (5) A docket card that lists, by title and date of filing or issuance,
4 all documents filed and all decisions or rulings issued in those
5 proceedings, including the public versions of all prepared oral and
6 written testimony and advice letter filings, protests, and responses.
7 The commission shall maintain the docket card until final
8 disposition, including disposition of any judicial appeals, of the
9 corresponding proceedings.

10 (c) The commission shall make the following information
11 available on the Internet:

12 (1) Information on how members of the public and ratepayers
13 can gain access to the commission's ratemaking process and
14 information regarding the specific matters to be decided.

15 (2) Information on the operation of the office of the public
16 advisor established in Section 321 and how the public advisor can
17 connect members of the public to persons responsible for specific
18 cases and matters to be decided.

19 SEC. 3. Section 910 of the Public Utilities Code is repealed.

20 SEC. 4. Section 910 is added to the Public Utilities Code, to
21 read:

22 910. (a) The commission shall develop, publish, and annually
23 update a report that contains all of the following information:

24 (1) A workplan that describes in clear detail the scheduled
25 proceedings and other decisions that may be considered by the
26 commission during the calendar year.

27 (2) Performance criteria for the commission and the executive
28 director, and an evaluation of the performance of the executive
29 director during the previous year based on criteria established in
30 the prior year's workplan.

31 (3) An accounting of the commission's transactions and
32 proceedings from the prior year, together with other facts,
33 suggestions, and recommendations that the commission deems of
34 value to the people of the state. The accounting shall include the
35 activities that the commission has taken, and plans to take, to
36 reduce the costs of, and the rates for, water and energy, including
37 electricity, to improve the competitiveness of the state's industries,
38 including agriculture, and, to the extent possible, shall include
39 suggestions and recommendations for the reduction of those costs
40 and rates.

1 (4) A description of activities taken and processes instituted to
2 both solicit the input of customers from diverse regions of the state
3 in ratesetting and quasi-legislative proceedings and to process that
4 input in a way that makes it usable in commission decisionmaking.
5 The report shall describe the successes and challenges of these
6 processes, the effect of resource constraints, and efforts to be made
7 during the calendar year to further the goal of increased public
8 participation.

9 (5) A list of the public meetings held outside San Francisco in
10 the previous year, and a schedule of meetings anticipated to be
11 held outside San Francisco during the coming year.

12 (b) (1) The commission shall submit the report required
13 pursuant to subdivision (a) to the Governor and the Legislature,
14 in compliance with Section 9795 of the Government Code, no later
15 than February 1 of each year.

16 (2) The commission shall post the report in a conspicuous area
17 of its Internet Web site and shall have a program to disseminate
18 the information in the report using computer mailing lists to provide
19 regular updates on the information to those members of the public
20 and organizations that request that information.

21 SEC. 5. Section 910.1 of the Public Utilities Code is amended
22 to read:

23 910.1. The commission shall annually submit a report to the
24 Legislature on the commission's timeliness in resolving cases,
25 information on the disposition of applications for rehearings, and
26 the days that commissioners presided in hearings. The report shall
27 include the number of scoping memos issued in each proceeding
28 and the number of orders issued extending the statutory deadlines
29 pursuant to subdivision (e) of Section 1701.2, for all adjudication
30 cases, and pursuant to subdivision (a) of Section 1701.5, for all
31 ratesetting or quasi-legislative cases.

32 SEC. 6. Section 1701 of the Public Utilities Code is amended
33 to read:

34 1701. (a) All hearings, investigations, and proceedings shall
35 be governed by this part and by rules of practice and procedure
36 adopted by the commission, and in the conduct thereof the technical
37 rules of evidence need not be applied. No informality in any
38 hearing, investigation, or proceeding or in the manner of taking
39 testimony shall invalidate any order, ~~decision~~ *decision*, or rule
40 made, approved, or confirmed by the commission.

(b) Notwithstanding Section 11425.10 of the Government Code, Articles 1 through 15, inclusive, of Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code do not apply to a hearing by the commission under this code. The Administrative Adjudication Code of Ethics (Article 16 (commencing with Section 11475) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code) shall apply to administrative law judges of the commission.

SEC. 7. Section 1711 is added to the Public Utilities Code, to read:

1711. (a) Where feasible and appropriate, except for adjudication cases, before determining the scope of the proceeding, the commission shall seek the participation of those who are likely to be affected, including those who are likely to benefit from, and those who are potentially subject to, a decision in that proceeding. The commission shall demonstrate its efforts to comply with this section in the text of the initial scoping memo of the proceeding.

(b) (1) The Policy and Planning Division of the commission shall undertake one or more studies of outreach efforts undertaken by other state and federal utility regulatory bodies and make recommendations to the commission to promote effective outreach, including metrics for use in evaluating success.

(2) This subdivision shall remain in effect only until January 1, 2020, and shall have no force or effect on or after that date, unless a later enacted statute that is chaptered before January 1, 2020, deletes or extends that date.

SEC. 8. Section 1802 of the Public Utilities Code is amended to read:

1802. As used in this article:

(a) "Compensation" means payment for all or part, as determined by the commission, of reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding, and includes the fees and costs of obtaining an award under this article and of obtaining judicial review, if any.

(b) (1) "Customer" means any of the following:

(A) A participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission.

(B) A representative who has been authorized by a customer.

1 (C) A representative of a group or organization authorized
2 pursuant to its articles of incorporation or bylaws to represent the
3 interests of residential customers, or to represent small commercial
4 customers who receive bundled electric service from an electrical
5 corporation.

6 (2) “Customer” does not include any state, federal, or local
7 government agency, any publicly owned public utility, or any
8 entity that, in the commission’s opinion, was established or formed
9 by a local government entity for the purpose of participating in a
10 commission proceeding.

11 (c) “Expert witness fees” means recorded or billed costs incurred
12 by a customer for an expert witness.

13 (d) “Eligible local government entity” means either of the
14 following:

15 (1) A local government entity that is not a publicly owned public
16 utility that intervenes or participates in a commission proceeding
17 for the purpose of protecting the health and safety of the residents
18 within the entity’s jurisdiction after suffering a *catastrophic*
19 material loss, either in significant damage to infrastructure or loss
20 of life and property, *or both*, as a *direct* result of public utility
21 infrastructure.

22 (2) A consortium of local governmental entities that intervene
23 or participate in a commission proceeding for the purpose of
24 protecting public health and ~~safety~~. *safety through prevention of*
25 *material loss, either in significant damage to infrastructure or loss*
26 *of life and property as a result of public utility infrastructure.*

27 (e) “Other reasonable costs” means reasonable out-of-pocket
28 expenses directly incurred by a customer that are directly related
29 to the contentions or recommendations made by the customer that
30 resulted in a substantial contribution.

31 (f) “Party” means any interested party, respondent public utility,
32 or commission staff in a hearing or proceeding.

33 (g) “Proceeding” means an application, complaint, or
34 investigation, rulemaking, alternative dispute resolution procedures
35 in lieu of formal proceedings as may be sponsored or endorsed by
36 the commission, or other formal proceeding before the commission.

37 (h) “Significant financial hardship” means either that the
38 customer cannot afford, without undue hardship, to pay the costs
39 of effective participation, including advocate’s fees, expert witness
40 fees, and other reasonable costs of participation, or that, in the case

1 of a group or organization, the economic interest of the individual
2 members of the group or organization is small in comparison to
3 the costs of effective participation in the proceeding.

4 (i) “Small commercial customer” means any nonresidential
5 customer with a maximum peak demand of less than 50 kilowatts.
6 The commission may establish rules to modify or change the
7 definition of “small commercial customer,” including use of criteria
8 other than a peak demand threshold, if the commission determines
9 that the modification or change will promote participation in
10 proceedings at the commission by organizations representing small
11 businesses, without incorporating large commercial and industrial
12 customers.

13 (j) “Substantial contribution” means that, in the judgment of
14 the commission, the customer’s presentation has substantially
15 assisted the commission in the making of its order or decision
16 because the order or decision has adopted in whole or in part one
17 or more factual contentions, legal contentions, or specific policy
18 or procedural recommendations presented by the customer. Where
19 the customer’s participation has resulted in a substantial
20 contribution, even if the decision adopts that customer’s contention
21 or recommendations only in part, the commission may award the
22 customer compensation for all reasonable advocate’s fees,
23 reasonable expert fees, and other reasonable costs incurred by the
24 customer in preparing or presenting that contention or
25 recommendation.

26 SEC. 9. Section 1802.4 is added to the Public Utilities Code,
27 to read:

28 1802.4. An eligible local government entity is eligible for an
29 award of compensation pursuant to this article for its involvement
30 to the extent that the involvement was for the purpose of protecting
31 health and safety, and consistent with subdivision (d) of Section
32 1802. The eligibility of a local government entity described by
33 paragraph (1) of subdivision (d) of Section 1802, shall be for
34 involvement to the extent that the involvement was germane to
35 the material loss ~~suffered~~. *suffered and to improving safety within*
36 *the entity’s jurisdiction.*

37 SEC. 10. Section 1803.1 is added to the Public Utilities Code,
38 to read:

39 1803.1. Pursuant to Section 1802.4, the commission shall award
40 reasonable advocate’s fees, reasonable expert witness fees, and

1 other reasonable costs of preparation for and participation in a
2 hearing or proceeding to an eligible local government entity that
3 complies with Section 1804 and satisfies both of the following
4 requirements:

5 (a) The entity's presentation makes a substantial contribution
6 to the adoption, in whole or in part, of the commission's order or
7 decision.

8 (b) Participation or intervention without an award of fees or
9 costs imposes a significant financial hardship.

10 SEC. 11. Section 1804 of the Public Utilities Code is amended
11 to read:

12 1804. (a) (1) A customer who, or eligible local government
13 entity that, intends to seek an award under this article shall, within
14 30 days after the prehearing conference is held, file and serve on
15 all parties to the proceeding a notice of intent to claim
16 compensation. In cases where no prehearing conference is
17 scheduled or where the commission anticipates that the proceeding
18 will take less than 30 days, the commission may determine the
19 procedure to be used in filing these requests. In cases where the
20 schedule would not reasonably allow parties to identify issues
21 within the timeframe set forth above, or where new issues emerge
22 subsequent to the time set for filing, the commission may determine
23 an appropriate procedure for accepting new or revised notices of
24 intent.

25 (2) (A) The notice of intent to claim compensation shall include
26 both of the following:

27 (i) A statement of the nature and extent of the customer's or
28 eligible local government entity's planned participation in the
29 proceeding as far as it is possible to set it out when the notice of
30 intent is filed.

31 (ii) An itemized estimate of the compensation that the customer
32 or eligible local government entity expects to request, given the
33 likely duration of the proceeding as it appears at the time.

34 (B) The notice of intent may also include a showing by the
35 customer or eligible local government entity that participation in
36 the hearing or proceeding would pose a significant financial
37 hardship. Alternatively, such a showing shall be included in the
38 request submitted pursuant to subdivision (c).

39 (C) Within 15 days after service of the notice of intent to claim
40 compensation, the administrative law judge may direct the staff,

1 and may permit any other interested party, to file a statement
2 responding to the notice.

3 (b) (1) If the customer's or eligible local government entity's
4 showing of significant financial hardship was included in the notice
5 filed pursuant to subdivision (a), the administrative law judge, in
6 consultation with the assigned commissioner, shall issue within
7 30 days thereafter a preliminary ruling addressing whether the
8 customer or eligible local government entity will be eligible for
9 an award of compensation. The ruling shall address whether a
10 showing of significant financial hardship has been made. A finding
11 of significant financial hardship shall create a rebuttable
12 presumption of eligibility for compensation in other commission
13 proceedings commencing within one year of the date of that
14 finding.

15 (2) The administrative law judge may, in any event, issue a
16 ruling addressing issues raised by the notice of intent to claim
17 compensation. The ruling may point out similar positions, areas
18 of potential duplication in showings, unrealistic expectation for
19 compensation, and any other matter that may affect the customer's
20 or eligible local government entity's ultimate claim for
21 compensation. Failure of the ruling to point out similar positions
22 or potential duplication or any other potential impact on the
23 ultimate claim for compensation shall not imply approval of any
24 claim for compensation. A finding of significant financial hardship
25 in no way ensures compensation. Similarly, the failure of the
26 customer or eligible local government entity to identify a specific
27 issue in the notice of intent or to precisely estimate potential
28 compensation shall not preclude an award of reasonable
29 compensation if a substantial contribution is made.

30 (c) Following issuance of a final order or decision by the
31 commission in the hearing or proceeding, a customer who, or
32 eligible local government entity that, has been found, pursuant to
33 subdivision (b), to be eligible for an award of compensation may
34 file within 60 days a request for an award. The request shall include
35 at a minimum a detailed description of services and expenditures
36 and a description of the customer's or eligible local government
37 entity's substantial contribution to the hearing or proceeding.
38 Within 30 days after service of the request, the commission staff
39 may file, and any other party may file, a response to the request.

1 (d) The commission may audit the records and books of the
2 customer or eligible local government entity to the extent necessary
3 to verify the basis for the award. The commission shall preserve
4 the confidentiality of the customer's or eligible local government
5 entity's records in making its audit. Within 20 days after
6 completion of the audit, if any, the commission shall direct that
7 an audit report shall be prepared and filed. Any other party may
8 file a response to the audit report within 20 days thereafter.

9 (e) Within 75 days after the filing of a request for compensation
10 pursuant to subdivision (c), or within 50 days after the filing of an
11 audit report, whichever occurs later, the commission shall issue a
12 decision that determines whether or not the customer or eligible
13 local government entity has made a substantial contribution to the
14 final order or decision in the hearing or proceeding. If the
15 commission finds that the customer or eligible local government
16 entity requesting compensation has made a substantial contribution,
17 the commission shall describe this substantial contribution and
18 shall determine the amount of compensation to be paid pursuant
19 to Section 1806.

20 SEC. 12. Section 1808 of the Public Utilities Code is amended
21 to read:

22 1808. The commission shall deny any award to any customer
23 or eligible local government entity that attempts to delay or obstruct
24 the orderly and timely fulfillment of the commission's
25 responsibilities.

26 SEC. 13. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.