

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 660

Introduced by Senator Hueso

February 27, 2015

An act to amend ~~Section 1701.1~~ of *Sections 1701.1, 1701.3, and 1701.4* of, and to add *Section 1701.6* to, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 660, as amended, Hueso. Public Utilities Commission: proceedings: ex parte communications.

The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities. The California Constitution authorizes the commission to establish rules for all public utilities, subject to control by the Legislature, and to establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process.

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. 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. 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 requires the commission, by regulation, to adopt and publish 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, by rule, adopt and publish a definition of decisionmakers, that would be required to include commissioners, each advisor to a commissioner, and an administrative law judge assigned to the proceeding, thereby making the restrictions on ex parte communications applicable to an advisor to a commissioner in a ratesetting proceeding.

This bill would require that a decisionmaker who makes or receives a prohibited ex parte communication, or who learns that a permissible ex parte communication was not reported as required, to disclose the content of the communication in the record of the proceeding.

This bill would provide that ex parte communications are permitted in quasi-legislative proceedings, but would require that they be reported within 3 working days of the communication by filing a “Notice of Ex Parte Communication” with the commission in accordance with procedures established by the commission for the service of that notice.

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 provided that 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, 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 issues 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 issues if all interested parties are invited and given not less than 3 days' notice. The bill would prohibit written ex parte communications concerning procedural issues 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 provided that copies of the communication are transmitted to all parties on the same day.

This bill would make any violation of the ex parte communications requirements by any person punishable by an unspecified fine or by imprisonment, or by both that fine and imprisonment, thereby imposing a state-mandated local program by creating new crimes.

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.

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.

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 1701.1 of the Public Utilities Code is
2 amended to read:

3 1701.1. (a) The commission, consistent with due process,
4 public policy, and statutory requirements, shall determine whether
5 a proceeding requires a hearing. The commission shall determine
6 whether the matter requires a quasi-legislative, an adjudication,
7 or a ratesetting hearing. The commission’s decision as to the nature
8 of the proceeding shall be subject to a request for rehearing within
9 10 days of the date of that decision. If that decision is not appealed
10 to the commission within that time period it shall not be
11 subsequently subject to judicial review. Only those parties who
12 have requested a rehearing within that time period shall
13 subsequently have standing for judicial review and that review
14 shall only be available at the conclusion of the proceeding. The
15 commission shall render its decision regarding the rehearing within
16 30 days. The commission shall establish rules regarding ex parte
17 communication on case categorization issues.

18 (b) The commission upon initiating a hearing shall assign one
19 or more commissioners to oversee the case and an administrative
20 law judge where appropriate. The assigned commissioner shall
21 schedule a prehearing conference. The assigned commissioner
22 shall prepare and issue by order or ruling a scoping memo that
23 describes the issues to be considered and the applicable timetable
24 for resolution.

25 (c) (1) Quasi-legislative cases, for purposes of this article, are
26 cases that establish policy, including, but not limited to,
27 rulemakings and investigations which may establish rules affecting
28 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 (d) (1) “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 (A) Any applicant, an agent or an employee of the applicant,
17 or a person receiving consideration for representing the applicant,
18 or a participant in the proceeding on any matter before the
19 commission.

20 (B) 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.

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

30 (2) The commission shall by rule adopt and publish a definition
31 of decisionmakers and persons for purposes of this section, along
32 with any requirements for written reporting of ex parte
33 communications and appropriate sanctions for noncompliance with
34 any rule proscribing ex parte communications. The rules shall
35 provide that reportable communications shall be reported by the
36 party, whether the communication was initiated by the party or
37 the decisionmaker. The definition of decisionmakers shall include,
38 but is not limited to, commissioners, each advisor to a
39 commissioner appointed pursuant to Section 309.1, and an
40 administrative law judge assigned to the proceeding.

1 Communications shall be reported within three working days of
2 the communication by filing a “Notice of Ex Parte
3 Communication” with the commission in accordance with the
4 procedures established by the commission for the service of that
5 notice. The notice shall include the following information:

6 (A) The date, time, and location of the communication, whether
7 it was oral, written, or a combination, and the communications
8 medium utilized.

9 (B) The identity of the recipient and the person initiating the
10 communication, as well as the identity of any persons present
11 during the communication.

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

15 (3) *Any decisionmaker who makes or receives a prohibited ex*
16 *parte communication, or who learns that a permissible ex parte*
17 *communication was not reported pursuant to paragraph (2), shall*
18 *disclose the content of the communication in the record of the*
19 *proceeding.*

20 *SEC. 2. Section 1701.3 of the Public Utilities Code is amended*
21 *to read:*

22 1701.3. (a) If the commission pursuant to Section 1701.1 has
23 determined that a ratesetting case requires a hearing, the procedures
24 prescribed by this section shall be applicable. The assigned
25 commissioner shall determine prior to the first hearing whether
26 the commissioner or the assigned administrative law judge shall
27 be designated as the principal hearing officer. The principal hearing
28 officer shall be present for more than one-half of the hearing days.
29 The decision of the principal hearing officer shall be the proposed
30 decision. An alternate decision may be issued by the assigned
31 commissioner or the assigned administrative law judge who is not
32 the principal hearing officer. The commission shall establish a
33 procedure for any party to request the presence of a commissioner
34 at a hearing. The assigned commissioner shall be present at the
35 closing arguments of the case. The principal hearing officer shall
36 present the proposed decision to the full commission in a public
37 meeting. The alternate decision, if any, shall also be presented to
38 the full commission at that public meeting. The alternate decision
39 shall be filed with the commission and shall be served on all parties
40 simultaneously with the proposed decision.

1 The presentation to the full commission shall contain a record
2 of the number of days of the hearing, the number of days that each
3 commissioner was present, and whether the decision was completed
4 on time.

5 (b) The commission shall provide by regulation for peremptory
6 challenges and challenges for cause of the administrative law judge.
7 Challenges for cause shall include, but not be limited to, financial
8 interests and prejudice. All parties shall be entitled to unlimited
9 peremptory challenges in any case in which the administrative law
10 judge has within the previous 12 months served in any capacity
11 in an advocacy position at the commission, been employed by a
12 regulated public utility, or has represented a party or has been a
13 party of interest in the case.

14 (c) (1) Ex parte communications are prohibited in ratesetting
15 cases. However, oral ex parte communications may be permitted
16 at any time by any commissioner if all interested parties are invited
17 and given not less than three days' notice. Written ex parte
18 communications may be permitted by any party provided that
19 copies of the communication are transmitted to all parties on the
20 same day. ~~If an ex parte communication meeting is granted to any
21 party, all other parties shall also be granted individual ex parte
22 meetings of a substantially equal period of time and shall be sent
23 a notice of that authorization at the time that the request is granted.
24 In no event shall that notice be less than three days. The
25 commission may establish a period during which no oral or written
26 ex parte communications shall be permitted and may meet in closed
27 session during that period, which shall not in any circumstance
28 exceed 14 days. If the commission holds the decision, it may permit
29 ex parte communications during the first half of the interval
30 between the hold date and the date that the decision is calendared
31 for final decision. The commission may meet in closed session for
32 the second half of that interval.~~

33 (2) *Oral communications concerning procedural issues in*
34 *ratesetting cases between parties or persons with an interest and*
35 *decisionmakers, except the assigned administrative law judge, are*
36 *prohibited, except that an oral communication may be permitted*
37 *at any time by any commissioner if all interested parties are invited*
38 *and given not less than three days' notice.*

39 (3) *Written communications concerning procedural issues in*
40 *ratesetting cases between parties or persons with an interest and*

1 *decisionmakers, except the assigned administrative law judge, are*
2 *prohibited, except that a commissioner may permit a written*
3 *communication by any party if copies of the communication are*
4 *transmitted to all parties on the same day.*

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

9 (e) The commission may, in issuing its decision, adopt, modify,
10 or set aside the proposed decision or any part of the decision based
11 on evidence in the record. The final decision of the commission
12 shall be issued not later than 60 days after the issuance of the
13 proposed decision. Under extraordinary circumstances the
14 commission may extend this date for a reasonable period. The
15 60-day period shall be extended for 30 days if any alternate
16 decision is proposed pursuant to Section 311.

17 *SEC. 3. Section 1701.4 of the Public Utilities Code is amended*
18 *to read:*

19 1701.4. (a) If the commission pursuant to Section 1701.1 has
20 determined that a quasi-legislative case requires a hearing, the
21 procedures prescribed by this section shall be applicable. The
22 assigned administrative law judge shall act as an assistant to the
23 assigned commissioner in quasi-legislative cases. The assigned
24 commissioner shall be present for formal hearings. The assigned
25 commissioner shall prepare the proposed rule or order with the
26 assistance of the administrative law judge. The assigned
27 commissioner shall present the proposed rule or order to the full
28 commission in a public meeting. The report shall include the
29 number of days of hearing and the number of days that the
30 commissioner was present.

31 (b) ~~Ex parte communications shall be permitted without any~~
32 ~~restrictions.~~ *permitted. Any ex parte communication shall be*
33 *reported within three working days of the communication by filing*
34 *a "Notice of Ex Parte Communication" with the commission in*
35 *accordance with procedures established by the commission for*
36 *the service of that notice.*

37 (c) Any party has the right to present a final oral argument of
38 its case before the commission. Those requests shall be scheduled
39 in a timely manner. A quorum of the commission shall be present
40 for the final oral arguments.

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

9 *SEC. 4. Section 1701.6 is added to the Public Utilities Code,*
10 *to read:*

11 *1701.6. A violation of the ex parte communications*
12 *requirements of this article by any person is punishable by a fine*
13 *not to exceed _____, or by imprisonment, or by both that fine and*
14 *imprisonment.*

15 ~~SEC. 2.~~

16 *SEC. 5.* No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.