

AMENDED IN ASSEMBLY JULY 7, 2015

AMENDED IN SENATE MAY 6, 2015

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 660

Introduced by Senators Leno and Hueso

February 27, 2015

An act to amend Sections 305, 307, 308, 309.6, *311*, 1701.1, 1701.2, 1701.3, and 1701.4 of, and to add Sections ~~305.5 and 1701.6~~ *305.5, 1701.6, and 1701.7* to, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 660, 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.

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 commissioners. The bill would require the commission to vote in an open meeting on the assignment or reassignment of 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~~, *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~~ *require that the* commission procedures ~~from~~ *authorizing prohibit* 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) 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~~ *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 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 that is an appropriate subject for ex parte communication. ~~The bill would require the commission to specify those procedural matters that are appropriate subjects for ex parte communications in its Rules of Practice and Procedure.~~ *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. *an interested person*. The bill would require that the commission, by rule, adopt and publish a definition of decisionmakers, that would be required to include ~~each commissioner, the attorney for the commission, the executive director of the commission, the personal staff of each commissioner, including each advisor to a commissioner, the administrative law judge assigned to the proceeding, the director of the Energy Division, the director of the Communications Division, the director of the Water and Audits Division, and the director of the Safety and Enforcement Division.~~ *certain individuals in 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.~~ *decisionmakers to periodically report summary logs of ex parte communications with interested persons in compliance with rules established by the commission, and included in the commission's Rules of Practice and Procedure, and would require the commission to post those summary logs on its Internet Web site.*

This bill would require that a ~~decisionmaker~~ *decisionmaker, in an adjudication or ratesetting case, who makes or receives a prohibited ex parte communication, or who learns that a permissible receives an ex parte communication that was not reported as required, timely reported,* to disclose ~~the content of~~ *certain information regarding the communication in the record of the proceeding.* ~~proceeding before the commission takes a vote on the matter.~~ The bill would require the commission to establish rules for how to handle prohibited ex parte communications, including rules requiring reporting the person initiating the communication and whether the person persisted in continuing the communication after being advised that the communication was prohibited. 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 any proceeding and not be considered, or relied upon, for purposes of the commission's resolution of contested issues.* *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-~~
notice and containing specified information.

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.

~~The~~

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 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 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 ~~issues~~ *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 ~~issues~~ *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 ~~issues~~ *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 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.~~ *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.*

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 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 Office of Ratepayer Advocates described in Section 309.5,
12 in performance of their duties.

13 (b) The commission may delegate specific management and
14 internal oversight functions to committees composed of two
15 commissioners. Committees shall meet regularly with staff and

1 shall report to the commission for additional guidance or approval
2 of decisions pertaining to the operations of the commission.

3 (c) The commission shall vote in an open meeting on the
4 assignment or reassignment of any proceeding to one or more
5 commissioners.

6 SEC. 3. Section 307 of the Public Utilities Code is amended
7 to read:

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

11 (b) The attorney shall represent and appear for the people of the
12 State of California and the commission in all actions and
13 proceedings involving any question under this part or under any
14 order or act of the commission. If directed to do so by the
15 commission, the attorney shall intervene, if possible, in any action
16 or proceeding in which any such question is involved.

17 (c) The attorney shall commence, prosecute, and expedite the
18 final determination of all actions and proceedings directed or
19 authorized by the commission, advise the commission and each
20 commissioner, when so requested, in regard to all matters in
21 connection with the powers and duties of the commission and the
22 members thereof, and generally perform all duties and services as
23 attorney to the commission that the commission may require of
24 him or her.

25 SEC. 4. Section 308 of the Public Utilities Code is amended
26 to read:

27 308. (a) The commission shall appoint an executive director,
28 who shall hold office during its pleasure. The executive director
29 shall be responsible for the commission's executive and
30 administrative duties and shall organize, coordinate, supervise,
31 and direct the operations and affairs of the commission and
32 expedite all matters within the commission's jurisdiction.

33 (b) The executive director shall keep a full and true record of
34 all proceedings of the commission, issue all necessary process,
35 writs, warrants, and notices, and perform any other duties as the
36 commission prescribes. The commission may authorize the
37 executive director to dismiss complaints or applications when all
38 parties are in agreement thereto, in accordance with rules that the
39 commission may prescribe.

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

4 SEC. 5. Section 309.6 of the Public Utilities Code is amended
5 to read:

6 309.6. (a) The commission shall adopt procedures on the
7 disqualification of commissioners and administrative law judges
8 due to bias or prejudice similar to those of other state agencies and
9 superior courts.

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

14 (A) Actions taken during the proceeding.

15 (B) Private communications before the commencement of the
16 proceeding to influence the request for relief sought by any party
17 to the proceeding.

18 (C) Actions demonstrating any commitment to provide relief
19 to a party.

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

23 (c) The commission procedures shall ~~not authorize~~ *prohibit* a
24 commissioner or administrative law judge ~~to rule from ruling~~ on
25 a motion made by a party to a proceeding to disqualify the
26 commissioner or administrative law judge due to bias or prejudice.

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

29 SEC. 6. Section 311 of the Public Utilities Code is amended
30 to read:

31 311. (a) The commission, each commissioner, the executive
32 director, and the assistant executive directors may administer oaths,
33 certify to all official acts, and issue subpoenas for the attendance
34 of witnesses and the production of papers, waybills, books,
35 accounts, documents, and testimony in any inquiry, investigation,
36 hearing, or proceeding in any part of the state.

37 (b) The administrative law judges may administer oaths,
38 examine witnesses, issue subpoenas, and receive evidence, under
39 rules that the commission adopts.

1 (c) The evidence in any hearing shall be taken by the
2 commissioner or the administrative law judge designated for that
3 purpose. The commissioner or the administrative law judge may
4 receive and exclude evidence offered in the hearing in accordance
5 with the rules of practice and procedure of the commission.

6 (d) Consistent with the procedures contained in Sections 1701.1,
7 1701.2, 1701.3, and 1701.4, the assigned commissioner or the
8 administrative law judge shall prepare and file an opinion setting
9 forth recommendations, findings, and conclusions. The opinion
10 of the assigned commissioner or the administrative law judge is
11 the proposed decision and a part of the public record in the
12 proceeding. The proposed decision of the assigned commissioner
13 or the administrative law judge shall be filed with the commission
14 and served upon all parties to the action or proceeding without
15 undue delay, not later than 90 days after the matter has been
16 submitted for decision. The commission shall issue its decision
17 not sooner than 30 days following filing and service of the
18 proposed decision by the assigned commissioner or the
19 administrative law judge, except that the 30-day period may be
20 reduced or waived by the commission in an unforeseen emergency
21 situation or upon the stipulation of all parties to the proceeding or
22 as otherwise provided by law. The commission may, in issuing its
23 decision, adopt, modify, or set aside the proposed decision or any
24 part of the decision. Where the modification is of a decision in an
25 adjudicatory hearing it shall be based upon the evidence in the
26 record. Every finding, opinion, and order made in the proposed
27 decision and approved or confirmed by the commission shall, upon
28 that approval or confirmation, be the finding, opinion, and order
29 of the commission.

30 (e) (1) Any item appearing on the commission's public agenda
31 as an alternate item to a proposed decision or to a decision subject
32 to subdivision (g) shall be served upon all parties to the proceeding
33 without undue delay and shall be subject to public review and
34 comment before it may be voted upon. For purposes of this
35 subdivision, "alternate" means either a substantive revision to a
36 proposed decision that materially changes the resolution of a
37 contested issue or any substantive addition to the findings of fact,
38 conclusions of law, or ordering paragraphs. The commission shall
39 adopt rules that provide for the time and manner of review and
40 comment and the rescheduling of the item on a subsequent public

1 agenda, except that the item may not be rescheduled for
2 consideration sooner than 30 days following service of the
3 alternative item upon all parties. The alternate item shall be
4 accompanied by a digest that clearly explains the substantive
5 revisions to the proposed decision. The commission's rules may
6 provide that the time and manner of review and comment on an
7 alternate item may be reduced or waived by the commission in an
8 unforeseen emergency situation.

9 (2) *In a proceeding in which both a proposed decision and an*
10 *alternate have been served upon the parties and comments have*
11 *been received on the proposed decision or alternate, or both, if*
12 *substantive revisions are made to the proposed decision or*
13 *alternate that was previously served upon the parties and made*
14 *available for comment, the substantively revised proposed decision*
15 *or substantively revised alternate shall be served upon all parties*
16 *to the proceeding and shall be made publicly available on the*
17 *commission's Internet Web site, noted on the docket sheet for the*
18 *proceeding, for not less than five full working days prior to it being*
19 *acted upon by the commission. Any party to the proceeding or*
20 *interested member of the public may file comments with the*
21 *commission addressing any substantively revised aspect of the*
22 *proposed decision or alternate prior to it being acted upon by the*
23 *commission.*

24 (f) The commission may specify that the administrative law
25 judge assigned to a proceeding involving an electrical, gas,
26 telephone, railroad, or water corporation, or a highway carrier,
27 initiated by customer or subscriber complaint need not prepare,
28 file, and serve an opinion, unless the commission finds that to do
29 so is required in the public interest in a particular case.

30 (g) (1) Prior to voting on any commission decision not subject
31 to subdivision (d), the decision shall be served on parties and
32 subject to at least 30 days public review and comment. Any
33 alternate to any commission decision shall be subject to the same
34 requirements as provided for alternate decisions under subdivision
35 (e). For purposes of this subdivision, "decision" also includes
36 resolutions, including resolutions on advice letter filings.

37 (2) The 30-day period may be reduced or waived in an
38 unforeseen emergency situation, upon the stipulation of all parties
39 in the proceeding, for an uncontested matter in which the decision

1 grants the relief requested, or for an order seeking temporary
2 injunctive relief.

3 (3) This subdivision does not apply to uncontested matters that
4 pertain solely to water corporations, or to orders instituting
5 investigations or rulemakings, categorization resolutions under
6 Sections 1701.1 to 1701.4, inclusive, or orders authorized by law
7 to be considered in executive session. Consistent with regulatory
8 efficiency and the need for adequate prior notice and comment on
9 commission decisions, the commission may adopt rules, after
10 notice and comment, establishing additional categories of decisions
11 subject to waiver or reduction of the time period in this section.

12 (h) Notwithstanding any other provision of law, amendments,
13 revisions, or modifications by the commission of its Rules of
14 Practice and Procedure, shall be submitted to the Office of
15 Administrative Law for prior review in accordance with Sections
16 11349, 11349.3, 11349.4, 11349.5, 11349.6, and 11350.3 of, and
17 subdivisions (a) and (b) of Section 11349.1 of, the Government
18 Code. If the commission adopts an emergency revision to its Rules
19 of Practice and Procedure based upon a finding that the revision
20 is necessary for the preservation of the public peace, health and
21 safety, or general welfare, this emergency revision shall only be
22 reviewed by the Office of Administrative Law in accordance with
23 subdivisions (b) to (d), inclusive, of Section 11349.6 of the
24 Government Code. The emergency revision shall become effective
25 upon filing with the Secretary of State and shall remain in effect
26 for no more than 120 days. A petition for writ of review pursuant
27 to Section 1756 of a commission decision amending, revising, or
28 modifying its Rules of Practice and Procedure shall not be filed
29 until the regulation has been approved by the Office of
30 Administrative Law, the Governor, or a court pursuant to Section
31 11350.3 of the Government Code. If the period for filing the
32 petition for writ of review would otherwise have already
33 commenced under Section 1733 or 1756 at the time of that
34 approval, then the period for filing the petition for writ of review
35 shall continue until 30 days after the date of that approval. Nothing
36 in this subdivision shall require the commission to comply with
37 Article 5 (commencing with Section 11346) of Chapter 3.5 of Part
38 1 of Division 3 of Title 2 of the Government Code. This
39 subdivision is only intended to provide for the Office of
40 Administrative Law review of procedural commission decisions

1 relating to commission Rules of Practice and Procedure, and not
2 general orders, resolutions, or other substantive regulations.

3 (i) The commission shall immediately notify the Legislature
4 whenever the commission reduces or waives the time period for
5 public review and comment due to an unforeseen emergency
6 situation, as provided in subdivision (d), (e), or (g).

7 ~~SEC. 6.~~

8 *SEC. 7.* Section 1701.1 of the Public Utilities Code is amended
9 to read:

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

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

32 (c) (1) Quasi-legislative cases, for purposes of this article, are
33 cases that establish policy, including, but not limited to,
34 rulemakings and investigations which may establish rules affecting
35 an entire industry.

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

39 (3) Ratesetting cases, for purposes of this article, are cases in
40 which rates are established for a specific company, including, but

1 not limited to, general rate cases, performance-based ratemaking,
2 and other ratesetting mechanisms.

3 (d) (1) (A) “Ex parte communication,” for purposes of this
4 article, means any oral or written communication between a
5 decisionmaker and a ~~person with an interest in a matter before the~~
6 ~~commission~~ *an interested person* concerning any matter that the
7 commission has not specified *in its Rules of Practice and*
8 *Procedure* as being a procedural matter ~~that is an appropriate~~
9 ~~subject for ex parte communication,~~ *and* that does not occur in a
10 public hearing, workshop, or other public proceeding, or on the
11 official record of the proceeding on the matter. The commission
12 shall specify ~~those procedural matters that are appropriate subjects~~
13 ~~for ex parte communications~~ in its Rules of Practice and ~~Procedure.~~
14 ~~“Person with an interest,”~~ *Procedure, enacted by rulemaking, the*
15 *types of communications considered procedural matters under*
16 *this article. Any communication between an interested person and*
17 *a decisionmaker regarding which commissioner or administrative*
18 *law judge may be assigned to a matter before the commission shall*
19 *not be deemed to be a procedural matter and shall be an ex parte*
20 *communication subject to this article.*

21 (B) “Interested person,” for purposes of this article, means any
22 of the following:

23 (A)

24 (i) Any applicant, an agent or an employee of the applicant, or
25 a person receiving consideration for representing the applicant, or
26 a ~~participant in party to~~ the proceeding on any matter before the
27 commission.

28 (B)

29 (ii) Any person with a financial interest, as described in Article
30 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the
31 Government Code, in a matter before the commission, or an agent
32 or employee of the person with a financial interest, or a person
33 receiving consideration for representing the person with a financial
34 interest. A person involved in issuing credit ratings or advising
35 entities or persons who may invest in the shares or operations of
36 any party to a proceeding is a person with a financial interest.

37 (C)

38 (iii) A representative acting on behalf of any civic,
39 environmental, neighborhood, business, labor, trade, or similar

1 organization who intends to influence the decision of a commission
2 member on a matter before the commission.

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

5 (2) The commission shall by rule adopt and publish a definition
6 of decisionmakers and *interested* persons for purposes of this
7 section, along with any requirements for written reporting of ex
8 parte communications and appropriate sanctions for noncompliance
9 with any rule proscribing ex parte communications. The definition
10 of decisionmakers shall include, but is not limited to, each
11 ~~commissioner, commissioner;~~ the attorney for the ~~commission,~~
12 ~~commission;~~ the executive director of the ~~commission,~~ ~~commission;~~
13 the personal staff of each ~~commissioner,~~ ~~including each advisor~~
14 ~~to a commissioner, a commissioner if the staff is acting in a policy~~
15 ~~or legal advisory capacity; the Chief Administrative Law Judge~~
16 ~~of the commission; the administrative law judge assigned to the~~
17 ~~proceeding, proceeding; and the director of the Energy Division,~~
18 the director of the Communications Division, the director of the
19 Water and Audits Division, and the director of the Safety and
20 Enforcement ~~Division. The Division, where those directors are~~
21 ~~acting in an advisory capacity in the proceeding.~~

22 (3) *For quasi-legislative cases, the rules shall provide that*
23 ~~reportable~~ *ex parte communications that are required to be*
24 *reported shall be reported by the party, interested person, whether*
25 *the communication was initiated by the party interested person or*
26 *the decisionmaker. However, communications between a person*
27 *with an interest who is not a party to a commission proceeding*
28 *and a decisionmaker shall be reported by the decisionmaker in*
29 *accordance with procedures established pursuant to this section*
30 *and shall not be required to be reported by the person with an*
31 *interest who is not a party to a commission proceeding.*
32 **Communications**

33 (4) *For quasi-legislative cases, ex parte communications shall*
34 *be reported by an interested person 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:*

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

4 (B) ~~The identity of the recipient and the person initiating the~~
5 ~~communication, as well as the identity of~~ *including a*
6 *decisionmaker, when applicable, and the identity of the recipient*
7 *and any persons present during the communication.*

8 (C) *A complete and comprehensive description of the party's,*
9 ~~but not the decisionmaker's, interested person's and the~~
10 *decisionmaker's* communication and its content, to which shall be
11 attached a copy of any written material or text used during the
12 communication.

13 ~~(3) Any decisionmaker who makes or receives a prohibited ex~~
14 ~~parte communication, or who learns that a permissible ex parte~~
15 ~~communication was not reported pursuant to paragraph (2), shall~~
16 ~~disclose the content of the communication in the record of the~~
17 ~~proceeding. The commission shall establish rules for how to handle~~
18 ~~prohibited ex parte communications, including rules requiring~~
19 ~~reporting the person initiating the communication and whether the~~
20 ~~person persisted in continuing the communication after being~~
21 ~~advised that the communication was prohibited.~~

22 ~~(4) 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 *(5) For adjudication and ratesetting cases, the rules shall*
26 *provide that if a prohibited ex parte communication occurs,*
27 *whether initiated by a decisionmaker or an interested person, all*
28 *of the following shall be required:*

29 (A) *The interested person participating in the communication*
30 *shall report the communication within one working day of the*
31 *communication by filing a Notice of Prohibited Ex Parte*
32 *Communication with the commission in accordance with the*
33 *procedures established by the commission for the service of that*
34 *notice. The notice shall include the information required by*
35 *paragraph (4).*

36 (B) *A decisionmaker who participated in the prohibited*
37 *communication shall comply with both of the following:*

38 (i) *If the interested person who participated in the*
39 *communication has not timely submitted the Notice of Prohibited*
40 *Ex Parte Communication required by subparagraph (A), the*

1 decisionmaker shall promptly prepare and file a “Decisionmaker’s
2 Notice of Prohibited Ex Parte Communication” with the
3 commission in accordance with the procedures established by the
4 commission for the service of that notice. The notice shall include
5 the information required by paragraph (4).

6 (ii) If the interested person has timely submitted the Notice of
7 Prohibited Ex Parte Communication required by subparagraph
8 (A), the decisionmaker shall review the interested person’s
9 submitted notice. If the decisionmaker believes that the interested
10 person’s submitted notice is not accurate or does not meet the
11 requirements of paragraph (4), the decisionmaker shall promptly
12 file a notice that corrects or supplements the interested person’s
13 submitted notice in accordance with the procedures established
14 by the commission for the service of that notice. If the
15 decisionmaker believes that the interested person’s submitted
16 notice is accurate and meets the requirements of paragraph (4),
17 the decisionmaker shall promptly file a notice that indicates his
18 or her concurrence with the interested person’s submitted notice
19 in accordance with the procedures established by the commission.

20 (6) The commission shall not take any vote on a matter to which
21 a prohibited ex parte communication is known to have occurred
22 until the notices required by this subdivision have been made and
23 all parties to the proceeding have been provided a reasonable
24 opportunity to respond to the prohibited ex parte communication.

25 (7) If the prohibited ex parte communication is not disclosed
26 as required by this subdivision until after the commission has
27 issued a decision on the matter to which the prohibited
28 communication pertained, the commission shall provide a
29 reasonable time for a party to file a petition to rescind or modify
30 the decision. The commission shall process the petition in
31 accordance with the commission’s procedures for petitions for
32 modification and shall issue a decision on the petition no later
33 than 180 days after the filing of the petition.

34 (8) A decisionmaker shall periodically report summary logs of
35 ex parte communications with interested persons in compliance
36 with rules established by the commission to be included in its Rules
37 of Practice and Procedure. The commission shall post the summary
38 logs on its Internet Web site. A summary log, at a minimum, shall
39 include information required in paragraph (3) and in
40 subparagraphs (A) and (B) of paragraph (4) and the relevant

1 *proceedings discussed. If a decisionmaker believes that a Notice*
2 *of Ex Parte Communication submitted by an interested person in*
3 *a quasi-legislative case is inaccurate or fails to meet the*
4 *requirements of paragraphs (3) and (4), the decisionmaker may*
5 *include corrected or supplemental information in the summary*
6 *log and shall also provide notice of any corrected or supplemental*
7 *information in the proceeding to which it pertains in accordance*
8 *with the procedures established by the commission for the service*
9 *of that information. The commission shall enable the posting of*
10 *summary logs on its Internet Web site not later than July 1, 2016.*

11 (9) (A) *Ex parte communications that occur at conferences,*
12 *including open session communications, shall be governed by the*
13 *provisions of this article and any rules adopted by the commission*
14 *pursuant to this article.*

15 (B) *Notwithstanding subparagraph (A), the commission may*
16 *adopt rules for inclusion in the commission’s Rules of Practice*
17 *and Procedure specific to open session communications if the rules*
18 *do both of the following:*

19 (i) *Open session communications relating to a pending*
20 *adjudication case or a pending ratesetting case shall be prohibited.*

21 (ii) *Open session communications relating to a pending*
22 *quasi-legislative case may be permitted if the commission’s rules*
23 *require that permitted open session communications are promptly*
24 *disclosed in the proceeding to which the communication relates*
25 *and require that parties to the proceeding are allowed a reasonable*
26 *opportunity to respond to the communication before the*
27 *commission may vote on any matter to which the communication*
28 *pertained.*

29 (C) *For purposes of this section, “open session communication”*
30 *means an ex parte communication made in a speech, comment, or*
31 *writing delivered to all attendees of a noticed session of a*
32 *conference. All other ex parte communications at a conference,*
33 *including, but not limited to, communications in a private setting*
34 *or during meals, entertainment events, tours, and informal*
35 *discussions among conference attendees, are not included in the*
36 *definition of open session communication.*

37 (10) *The commission shall render its decisions based on the*
38 *evidence in the record. Ex parte communications shall not be a*
39 *part of the record of the proceedings.*

1 ~~SEC. 7.~~

2 SEC. 8. Section 1701.2 of the Public Utilities Code is amended
3 to read:

4 1701.2. (a) If the commission pursuant to Section 1701.1 has
5 determined that an adjudication case requires a hearing, the
6 procedures prescribed by this section shall be applicable. The
7 assigned commissioner or the assigned administrative law judge
8 shall hear the case in the manner described in the scoping memo.
9 The scoping memo shall designate whether the assigned
10 commissioner or the assigned administrative law judge shall preside
11 in the case. The commission shall provide by rule for peremptory
12 challenges and challenges for cause of the administrative law judge.
13 Challenges for cause shall include, but not be limited to, financial
14 interests and prejudice. The rule shall provide that all parties are
15 entitled to one peremptory challenge of the assignment of the
16 administrative law judge in all cases. All parties are entitled to
17 unlimited peremptory challenges in any case in which the
18 administrative law judge has within the previous 12 months served
19 in any capacity in an advocacy position at the commission, been
20 employed by a regulated public utility, or has represented a party
21 or has been a party of interest *an interested person* in the case. The
22 assigned commissioner or the administrative law judge shall
23 prepare and file a decision setting forth recommendations, findings,
24 and conclusions. The decision shall be filed with the commission
25 and served upon all parties to the action or proceeding without
26 undue delay, not later than 60 days after the matter has been
27 submitted for decision. The decision of the assigned commissioner
28 or the administrative law judge shall become the decision of the
29 commission if no further action is taken within 30 days. Any
30 ~~interested~~ party may appeal the decision to the commission,
31 provided that the appeal is made within 30 days of the issuance of
32 the decision. The commission may itself initiate a review of the
33 proposed decision on any grounds. The commission decision shall
34 be based on the record developed by the assigned commissioner
35 or the administrative law judge. A decision different from that of
36 the assigned commissioner or the administrative law judge shall
37 be accompanied by a written explanation of each of the changes
38 made to the decision.

39 (b) Notwithstanding Section 307, an officer, employee, or agent
40 of the commission that is personally involved in the prosecution

1 or in the supervision of the prosecution of an adjudication case
2 before the commission shall not participate in the decision of the
3 case, or in the decision of any factually related adjudicatory
4 proceeding, including participation in or advising the commission
5 as to findings of fact, conclusions of law, or orders. An officer,
6 employee, or agent of the commission that is personally involved
7 in the prosecution or in the supervision of the prosecution of an
8 adjudication case may participate in reaching a settlement of the
9 case, but shall not participate in the decision of the commission to
10 accept or reject the settlement, except as a witness or counsel in
11 an open hearing or a hearing closed pursuant to subdivision (d).
12 The Legislature finds that the commission performs both
13 prosecutorial and adjudicatory functions in an adjudication case
14 and declares its intent that an officer, employee, or agent of the
15 commission, including its attorneys, may perform only one of
16 those functions in any adjudication case or factually related
17 adjudicatory proceeding.

18 (c) (1) Ex parte communications shall be prohibited in
19 adjudication cases.

20 (2) Any oral or written communications concerning procedural
21 ~~issues matters~~ in adjudication cases between ~~parties or persons~~
22 ~~with an interest~~ *interested persons* and decisionmakers, except the
23 assigned administrative law judge, shall be prohibited.

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

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

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

36 (2) If the commission determines that a respondent lacks, or
37 may lack, the ability to pay, the commission may order the
38 respondent to demonstrate, to the satisfaction of the commission,
39 sufficient ability to pay potential penalties, fines, or restitution that
40 may be ordered by the commission. The respondent shall

1 demonstrate the ability to pay, or make other financial
2 arrangements satisfactory to the commission, within seven days
3 of the commission commencing an adjudication case. The
4 commission may delegate to the attorney to the commission the
5 determination of whether a sufficient showing has been made by
6 the respondent of an ability to pay.

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

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

25 ~~SEC. 8.~~

26 *SEC. 9.* Section 1701.3 of the Public Utilities Code is amended
27 to read:

28 1701.3. (a) If the commission pursuant to Section 1701.1 has
29 determined that a ratesetting case requires a hearing, the procedures
30 prescribed by this section shall be applicable. The assigned
31 commissioner shall determine prior to the first hearing whether
32 the commissioner or the assigned administrative law judge shall
33 be designated as the principal hearing officer. The principal hearing
34 officer shall be present for more than one-half of the hearing days.
35 The decision of the principal hearing officer shall be the proposed
36 decision. An alternate decision may be issued by the assigned
37 commissioner or the assigned administrative law judge who is not
38 the principal hearing officer. The commission shall establish a
39 procedure for any party to request the presence of a commissioner
40 at a hearing. The assigned commissioner shall be present at the

1 closing arguments of the case. The principal hearing officer shall
2 present the proposed decision to the full commission in a public
3 meeting. The alternate decision, if any, shall also be presented to
4 the full commission at that public meeting. The alternate decision
5 shall be filed with the commission and shall be served on all parties
6 simultaneously with the proposed decision.

7 The presentation to the full commission shall contain a record
8 of the number of days of the hearing, the number of days that each
9 commissioner was present, and whether the decision was completed
10 on time.

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

20 (c) (1) Ex parte communications are prohibited in ratesetting
21 cases. ~~However, oral ex parte~~

22 (A) *Oral* communications may be permitted *without any*
23 *reporting obligation* at any time by any ~~commissioner~~
24 *decisionmaker* if all ~~interested~~ parties are invited and given not
25 less than three *working days*' notice. ~~Written ex parte~~

26 (B) *Written ex parte* communications by any *interested person*
27 may be permitted by any party *without any reporting requirement*
28 provided that copies of the communication are transmitted to all
29 parties on the same ~~day~~ *day as the original communication*.
30 *Written ex parte communications shall not be part of the record*
31 *of the proceeding*.

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

39 (3) Written communications concerning ~~procedural issues a~~
40 *procedural matter* in ratesetting cases between ~~parties or persons~~

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

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

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

18 ~~SEC. 9.~~

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

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

33 (b) Ex parte communications shall be permitted. Any ex parte
 34 communication shall be reported ~~within three working days of the~~
 35 ~~communication by filing a "Notice of Ex Parte Communication"~~
 36 ~~with the commission~~ *by an interested person* in accordance with
 37 *subdivision (d) of Section 1701.1 and the* procedures established
 38 by the commission for the service of that notice. *No reporting shall*
 39 *be required for written ex parte communications that are*

1 *transmitted to all parties on the same day as the original*
2 *communication.*

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

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

15 ~~SEC. 10. Section 1701.6 is added to the Public Utilities Code,~~
16 ~~to read:~~

17 ~~1701.6. A violation of the ex parte communications~~
18 ~~requirements of this article by any person is punishable by a fine~~
19 ~~not to exceed _____, or by imprisonment, or by both that fine and~~
20 ~~imprisonment.~~

21 ~~SEC. 11. Section 1701.6 is added to the Public Utilities Code,~~
22 ~~to read:~~

23 ~~1701.6. (a) In addition to any penalty, fine, or other~~
24 ~~punishment applicable pursuant to Article 11 (commencing with~~
25 ~~Section 2100), the commission may assess civil sanctions upon~~
26 ~~any entity or person, other than a decisionmaker or employee of~~
27 ~~the commission, who violates, fails to comply with, or procures,~~
28 ~~aids, or abets any violation of, the ex parte communication~~
29 ~~requirements of this article or those adopted by the commission~~
30 ~~pursuant to this article. The civil sanctions may include civil~~
31 ~~penalties, adverse consequences in commission proceedings, or~~
32 ~~other appropriate commission orders directed at the entity, person,~~
33 ~~or both the entity and person, committing the violation.~~

34 ~~(b) (1) Except as provided in paragraph (2), a civil penalty~~
35 ~~assessed shall not exceed fifty thousand dollars (\$50,000) per~~
36 ~~violation. Each day of a continuing violation is a separate~~
37 ~~violation. If the violation consists of engaging in a communication~~
38 ~~that is prohibited by the ex parte communication requirements,~~
39 ~~each day that the violation is not disclosed to the commission and~~
40 ~~to parties of record in the formal proceeding in which the~~

1 communication occurred shall constitute a separate violation. If
2 the violation consists of failing to file a required notice of a
3 permissible *ex parte* communication or filing a notice of a
4 permissible *ex parte* communication that is inaccurate or
5 incomplete, each day that the violation is not remedied shall
6 constitute a separate violation.

7 (2) If the entity or person may obtain, by violating the *ex parte*
8 communication requirements, financial benefits that exceed the
9 maximum amount of civil penalty allowable pursuant to paragraph
10 (1), the commission may impose a civil penalty up to the amount
11 of those financial benefits.

12 (c) Civil penalties assessed pursuant to subdivision (b) upon
13 entities whose rates are determined by the commission shall be in
14 the form of credits to the customers of that entity. Civil penalties
15 collected from other entities shall be deposited in the General
16 Fund.

17 (d) In determining the appropriate civil sanctions, the
18 commission shall consider the following factors:

19 (1) The severity of the violation.

20 (2) The conduct of the entity or person, including the level of
21 experience of the entity or person in participating in commission
22 proceedings.

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

24 (4) The totality of the circumstances in furtherance of the public
25 interest.

26 SEC. 12. Section 1701.7 is added to the Public Utilities Code,
27 to read:

28 1701.7. (a) The Attorney General may bring an enforcement
29 action in the Superior Court for the City and County of San
30 Francisco against a decisionmaker or employee of the commission
31 who violates, fails to comply with, or procures, aids, or abets any
32 violation of, the *ex parte* communication requirements in this
33 article or those adopted by the commission pursuant to this article.
34 The court shall expedite its review of the action to provide effective
35 and timely relief.

36 (b) (1) Notwithstanding Section 1759, in an enforcement action
37 brought pursuant to this section, the court may grant appropriate
38 relief, including disqualification of the decisionmaker from one
39 or more proceedings and civil penalties not to exceed fifty thousand
40 dollars (\$50,000) for each violation.

1 (2) If the decisionmaker or employee may obtain, by violating
2 the ex parte communication requirements, financial benefits that
3 exceed the civil penalties provided in paragraph (1), the court may
4 impose a civil penalty up to the amount of those financial benefits.

5 (c) In determining the appropriate relief, the court may consider
6 the following factors:

7 (1) The severity of the violation.

8 (2) The conduct of the decisionmaker or employee, including
9 whether the decisionmaker or employee knowingly violated the ex
10 parte communication requirements.

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

12 (4) The totality of the circumstances in furtherance of the public
13 interest.

14 (d) The Attorney General may compromise the enforcement
15 action subject to approval by the court.

16 (e) Civil penalties collected pursuant to this section shall be
17 deposited into the Litigation Deposits Fund established pursuant
18 to Article 9 (commencing with Section 16425) of Chapter 2 of Part
19 2 of Division 4 of Title 2 of the Government Code.

20 ~~SEC. 11.~~

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