

AMENDED IN ASSEMBLY AUGUST 19, 2015

AMENDED IN ASSEMBLY AUGUST 18, 2015

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, 1701.1, 1701.2, 1701.3, ~~and 1701.4~~ *1701.4*, *and 1701.5* of, and to add Sections 305.5, 307.5, 1701.6, ~~and 1701.7~~ *1701.7*, *and 1701.8* 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. *The bill would require the commission to appoint a chief administrative law judge who would be responsible for the commission's executive and administrative management and oversight of the administrative law judge division and would require the chief administrative law judge to organize, coordinate, supervise, and direct the operations of the administrative law judge division as directed by the commission, consistent with commission policies and priorities.*

Existing law requires the executive director to keep a full and true record of all proceedings of the commission.

This bill would delete that requirement and would instead require the chief administrative law judge to keep a full and true record of all proceedings of the commission.

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

This bill would require the commission to additionally adopt procedures on disqualification of commissioners due to bias or prejudice similar to those of other state agencies and superior courts. For ratesetting or adjudicatory proceedings, the bill would require a commissioner or an administrative law judge to be disqualified ~~if there is an appearance of~~ *for* bias or prejudice based on specified criteria. The bill would require that the commission procedures 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 personal advisors are subject to all of the restrictions on, and reporting requirements applicable to, ex parte

communications, except that oral communications with an advisor in ratesetting proceedings are permitted without the restrictions.

This bill would *require that the commission determine whether every proceeding, not just those requiring a hearing, is a quasi-legislative, adjudication, or ratesetting proceeding. The bill would delete the provision that an ex parte communication concerns a substantive, but not a procedural matter, and instead would provide that an ex parte communication concerns any matter that the commission has not specified in its Rules of Practice and Procedure as being a procedural matter and that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter.* The bill would prohibit the commission from considering as a procedural matter communications between an interested person and a decisionmaker regarding which commissioner or administrative law judge may be assigned to a matter before the commission. The bill would define a person involved in issuing credit ratings or advising entities or persons who may invest in the shares or operations of any party to a proceeding as 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 certain individuals in the commission. The bill would require ~~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 the~~ *commission to establish and maintain a communications log summarizing all oral or written ex parte communications that occur between an interested person and the commission, the attorney for the commission, the executive director of the commission, the personal staff of a commissioner, if the staff is acting in a policy or legal advisory capacity, the chief administrative law judge, or the administrative law judge assigned to the proceeding.* The bill would require the commission to post ~~those summary logs~~ *the communications log* on its Internet Web site.

This bill would require that a decisionmaker, in an adjudication or ratesetting case, who makes or receives a prohibited ex parte communication, or who receives an ex parte communication that was not timely reported, to disclose certain information regarding the communication in the record of the proceeding before the commission takes a vote on the matter. *If a prohibited ex parte communication is not disclosed until after the commission has issued a decision on the*

matter to which the communication pertained, a party not participating in the communication would be authorized to file a petition to rescind or modify the decision. The bill would require the commission to render decisions based upon the record in a case and would provide that an ex parte communication not be part of the record of the proceeding.

This bill would provide that ex parte communications 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 and containing specified information: *in the communications log maintained by the commission.*

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

Under existing law, the exceptions to the prohibition upon ex parte communications in ratesetting proceedings authorize a commissioner to permit oral ex parte communications if all interested parties are invited and given not less than 3 days’ notice. If an ex parte communication meeting is granted to any party, it is required that all other parties also be granted individual ex parte meetings of a substantially equal period of time and that all parties be sent a notice of that authorization at the time the request is granted, at least 3 days prior to the meeting. The exceptions authorize a commissioner to permit written ex parte communications by any party 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 matters in ratesetting cases between parties or persons with an interest and decisionmakers other than the assigned administrative law judge, except that a commissioner would be authorized to permit an oral communication relative to procedural matters if all interested parties are invited and given not less than 3 days’ notice. The bill would prohibit written ex parte communications concerning procedural matters in ratesetting cases

between parties or persons with an interest and decisionmakers other than the assigned administrative law judge, except that a commissioner would be authorized to permit a written communication relative to procedural issues by any party provided that copies of the communication are transmitted to all parties on the same day.

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

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

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~~

1 ~~president shall preside at all meetings and sessions of the~~
2 ~~commission.~~

3 ~~SEC. 2.~~

4 ~~SECTION 1.~~ Section 305.5 is added to the Public Utilities
5 Code, to read:

6 305.5. (a) ~~The commission shall direct the executive director,~~
7 ~~the attorney, and other staff of the commission, except for the staff~~
8 ~~of the Office of Ratepayer Advocates described in Section 309.5;~~
9 ~~in performance of their duties. may delegate specific management~~
10 ~~and internal oversight functions to committees composed of two~~
11 ~~commissioners. Committees shall meet regularly with staff and~~
12 ~~shall report to the commission for additional guidance or approval~~
13 ~~of decisions pertaining to the operations of the commission.~~

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

19 ~~(c)~~

20 ~~(b) The commission shall vote in an open meeting on the~~
21 ~~assignment or reassignment of any proceeding to one or more~~
22 ~~commissioners.~~

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

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

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

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

1 ~~attorney to the commission that the commission may require of~~
2 ~~him or her.~~

3 *SEC. 2. Section 307.5 is added to the Public Utilities Code, to*
4 *read:*

5 *307.5. (a) The commission shall appoint a chief administrative*
6 *law judge, who shall hold office at the pleasure of the commission.*

7 *(b) The chief administrative law judge shall be responsible for*
8 *the commission’s executive and administrative management and*
9 *oversight of the administrative law judge division and shall*
10 *organize, coordinate, supervise, and direct the operations of the*
11 *division as directed by the commission, consistent with commission*
12 *policies and priorities.*

13 *(c) The chief administrative law judge shall keep a full and true*
14 *record of all proceedings of the commission.*

15 ~~SEC. 4.~~

16 *SEC. 3. Section 308 of the Public Utilities Code is amended*
17 *to read:*

18 *308. (a) The commission shall appoint an executive director,*
19 *who shall hold office during its pleasure. The executive director*
20 *shall be responsible for the commission’s executive and*
21 *administrative duties and shall organize, coordinate, supervise,*
22 *and direct the operations and affairs of the commission and*
23 *expedite all matters within the commission’s jurisdiction.*

24 *(b) The executive director shall ~~keep a full and true record of~~*
25 *~~all proceedings of the commission,~~ issue all necessary process,*
26 *writs, warrants, and notices, and perform any other duties as the*
27 *commission prescribes. ~~The commission~~ *president or, by vote, the**
28 *commission may authorize the executive director to dismiss*
29 *complaints or applications when all parties are in agreement*
30 *thereto, in accordance with rules that the commission may*
31 *prescribe.*

32 *(c) The commission may appoint assistant executive directors*
33 *who may serve warrants and other process in any county or city*
34 *and county of this state.*

35 ~~SEC. 5.~~

36 *SEC. 4. Section 309.6 of the Public Utilities Code is amended*
37 *to read:*

38 *309.6. (a) The commission shall adopt procedures on the*
39 *disqualification of commissioners and administrative law judges*

1 due to bias or prejudice similar to those of other state agencies and
2 superior courts.

3 (b) (1) For ratesetting and adjudicatory proceedings, a
4 commissioner or administrative law judge shall be disqualified ~~if~~
5 ~~there is an appearance of~~ *for* bias or prejudice based on any of the
6 following:

7 (A) Actions taken during the proceeding.

8 (B) Private communications before the commencement of the
9 proceeding to influence the request for relief sought by any party
10 to the proceeding.

11 (C) Actions demonstrating any commitment to provide relief
12 to a party.

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

16 (c) The commission procedures shall prohibit a commissioner
17 or administrative law judge from ruling on a motion made by a
18 party to a proceeding to disqualify the commissioner or
19 administrative law judge due to bias or prejudice.

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

22 ~~SEC. 6.~~

23 *SEC. 5.* Section 1701.1 of the Public Utilities Code is amended
24 to read:

25 1701.1. (a) The commission, consistent with due process,
26 public policy, and statutory requirements, shall determine whether
27 a proceeding requires a hearing. The commission shall determine
28 whether ~~the matter requires~~ *each proceeding is* a quasi-legislative,
29 an adjudication, or a ratesetting ~~hearing~~ *proceeding*. The
30 commission's decision as to the nature of the proceeding shall be
31 subject to a request for rehearing within 10 days of the date of that
32 decision. If that decision is not appealed to the commission within
33 that time period it shall not be subsequently subject to judicial
34 review. Only those parties who have requested a rehearing within
35 that time period shall subsequently have standing for judicial
36 review and that review shall only be available at the conclusion
37 of the proceeding. The commission shall render its decision
38 regarding the rehearing within 30 days. The commission shall
39 establish rules regarding ex parte communication on case
40 categorization issues.

1 (b) The commission upon initiating a *an adjudication hearing*
2 *or ratesetting* hearing shall assign one or more commissioners to
3 oversee the case and an administrative law judge where appropriate.
4 The assigned commissioner shall schedule a prehearing conference.
5 The assigned commissioner shall prepare and issue by order or
6 ruling a scoping memo that describes the issues to be considered
7 and the applicable timetable for resolution. *The administrative law*
8 *judge shall either preside and conduct, or assist the assigned*
9 *commissioner or commissioners in presiding and conducting, any*
10 *evidentiary or adjudication hearing that may be required.*

11 (c) *The commission upon initiating a quasi-legislative hearing*
12 *shall assign one or more commissioners to oversee the case and*
13 *an administrative law judge who may be assisted by a technical*
14 *advisory staff member in conducting the proceeding. The assigned*
15 *commissioner shall prepare and issue by order or ruling a scoping*
16 *memo that describes the issues to be considered and the applicable*
17 *timetable for resolution.*

18 ~~(e)~~

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

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

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

30 (4) *“En banc hearing,” for purposes of this article, is a public*
31 *hearing held on the record before a quorum of commissioners at*
32 *which parties to a proceeding shall have the right to participate*
33 *and let their views be heard regarding any factual, legal, or policy*
34 *issue in the proceeding.*

35 ~~(f)~~

36 (e) (1) (A) *“Ex parte communication,” for purposes of this*
37 *article, means any oral or written communication between a*
38 *decisionmaker and an interested person concerning any matter*
39 *before the commission that the commission has not specified in*
40 *its Rules of Practice and Procedure as being a procedural matter*

1 and that does not occur in a public hearing, workshop, or other
2 public proceeding, or on the official record of the proceeding on
3 the matter. The commission shall specify in its Rules of Practice
4 and Procedure, enacted by rulemaking, the types of
5 ~~communications~~ *issues* considered procedural matters under this
6 article. Any communication between an interested person and a
7 decisionmaker regarding which commissioner or administrative
8 law judge may be assigned to a matter before the commission shall
9 not be deemed to be a procedural matter and shall be an ex parte
10 communication subject to this article.

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

13 (i) Any applicant, an agent or an employee of the applicant, or
14 a person receiving consideration for representing the applicant, or
15 a party to the proceeding on any matter before the commission.

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

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

28 (iv) Other categories of individuals deemed by the commission,
29 by rule, to be an interested person.

30 (2) The commission shall by rule adopt and publish a definition
31 of decisionmakers and interested persons for purposes of this
32 section, along with any requirements for written reporting of ex
33 parte communications and appropriate sanctions for noncompliance
34 with any rule proscribing ex parte communications. The definition
35 of decisionmakers shall include, but is not limited to, each
36 commissioner; the attorney for the commission; the executive
37 director of the commission; the personal staff of a commissioner
38 if the staff is acting in a policy or legal advisory capacity; the ~~Chief~~
39 ~~Administrative Law Judge~~ *chief administrative law judge* of the
40 commission; *and* the administrative law judge assigned to the

1 proceeding; and the director of the Energy Division, the director
 2 of the Communications Division, the director of the Water and
 3 Audits Division, and the director of the Safety and Enforcement
 4 Division, where those directors are acting in an advisory capacity
 5 in the proceeding.

6 ~~(3) For quasi-legislative cases, the rules shall provide that ex~~
 7 ~~parte communications that are required to be reported shall be~~
 8 ~~reported by the interested person, whether the communication was~~
 9 ~~initiated by the interested person or the decisionmaker.~~

10 ~~(4) For quasi-legislative cases, ex parte communications shall~~
 11 ~~be reported by an interested person within three working days of~~
 12 ~~the communication by filing a “Notice of Ex Parte~~
 13 ~~Communication” with the commission in accordance with the~~
 14 ~~procedures established by the commission for the service of that~~
 15 ~~notice. The notice shall include the following information:~~

16 ~~(A) The date, time, and location of the communication, whether~~
 17 ~~it was oral, written, or a combination, and the communications~~
 18 ~~medium utilized.~~

19 ~~(B) The person initiating the communication, including a~~
 20 ~~decisionmaker, when applicable, and the identity of the recipient~~
 21 ~~and any persons present during the communication.~~

22 ~~(C) A complete and comprehensive description of the interested~~
 23 ~~person’s and the decisionmaker’s communication and its content,~~
 24 ~~to which shall be attached a copy of any written material or text~~
 25 ~~used during the communication.~~

26 ~~(5)~~

27 ~~(3) For adjudication and ratesetting cases, the rules shall provide~~
 28 ~~that if a prohibited *ex parte communications shall be prohibited,*~~
 29 ~~*as required by this article. The rules shall provide that if an ex*~~
 30 ~~*parte communication—occurs, occurs that is prohibited by this*~~
 31 ~~*article, whether initiated by a decisionmaker or an interested*~~
 32 ~~person, all of the following shall be required:~~

33 ~~(A) The interested person participating in the communication~~
 34 ~~shall report the communication within one working day of the~~
 35 ~~communication by filing a Notice of Prohibited Ex Parte~~
 36 ~~Communication notice with the commission in accordance with~~
 37 ~~the procedures established by the commission for the service of~~
 38 ~~that notice. The notice shall include the information required by~~
 39 ~~paragraph (4). that includes all the following:~~

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

4 (ii) *The identity of the decisionmaker, the identity of the person*
5 *initiating the communication, and any other persons present.*

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

8 (iv) *A copy of any written material or text used during the*
9 *communication.*

10 (B) ~~Any decisionmaker who participated in the prohibited~~
11 ~~communication shall comply with both of the following:~~

12 (i) ~~If the interested person who participated in the~~
13 ~~communication has not timely submitted the Notice of Prohibited~~
14 ~~Ex Parte Communication notice required by subparagraph (A),~~
15 ~~the decisionmaker shall promptly prepare and file a~~
16 ~~"Decisionmaker's Notice of Prohibited Ex Parte Communication"~~
17 ~~with the commission in accordance with the procedures established~~
18 ~~by the commission for the service of that notice. The notice shall~~
19 ~~include the information required by paragraph (4). notice that~~
20 ~~includes the information required by subparagraph (A).~~

21 (ii) ~~If the interested person has timely submitted the Notice of~~
22 ~~Prohibited Ex Parte Communication notice required by~~
23 ~~subparagraph (A), the decisionmaker shall review the interested~~
24 ~~person's submitted notice. If the decisionmaker believes that the~~
25 ~~interested person's submitted notice is not accurate or does not~~
26 ~~meet the requirements of paragraph (4), the decisionmaker shall~~
27 ~~promptly file a notice that corrects or supplements the interested~~
28 ~~person's submitted notice in accordance with the procedures~~
29 ~~established by the commission for the service of that notice. If the~~
30 ~~decisionmaker believes that the interested person's submitted~~
31 ~~notice is accurate and meets the requirements of paragraph (4),~~
32 ~~the decisionmaker shall promptly file a notice that indicates his or~~
33 ~~her concurrence with the interested person's submitted notice in~~
34 ~~accordance with the procedures established by the commission.~~
35 ~~either promptly file a notice affirming the factual representations~~
36 ~~made by the interested person in the notice or promptly file a notice~~
37 ~~correcting or supplementing the factual representations made by~~
38 ~~the interested person.~~

39 (6)

1 (4) The commission shall not take any vote on a matter to which
2 a prohibited ex parte communication is known to have occurred
3 until the notices required by this subdivision have been made and
4 where a notice has been filed pursuant to subparagraph (A) or (B)
5 of paragraph (3) until all parties to the proceeding have been
6 provided a reasonable opportunity to respond to the prohibited ex
7 parte communication.

8 (7)

9 (5) If the a prohibited ex parte communication is not disclosed
10 as required by this subdivision until after the commission has
11 issued a decision on the matter to which the prohibited
12 communication pertained, ~~the commission shall provide a~~
13 ~~reasonable time for a party to a party not participating in the~~
14 ~~communication may~~ file a petition to rescind or modify the
15 decision. *The party may seek a finding that the ex parte*
16 *communication was prohibited and significantly influenced the*
17 *decision's process or outcome as part of any petition to rescind*
18 *or modify the decision.* The commission shall process the petition
19 in accordance with the commission's procedures for petitions for
20 modification and shall issue a decision on the petition no later than
21 180 days after the filing of the petition.

22 (8) ~~A decisionmaker shall periodically report summary logs of~~
23 ~~ex parte communications with interested persons in compliance~~
24 ~~with rules established by the commission to be included in its~~
25 ~~Rules of Practice and Procedure. The commission shall post the~~
26 ~~summary logs on its Internet Web site. A summary log, at a~~
27 ~~minimum, shall include information required in paragraph (3) and~~
28 ~~in subparagraphs (A) and (B) of paragraph (4) and the relevant~~
29 ~~proceedings discussed. If a decisionmaker believes that a Notice~~
30 ~~of Ex Parte Communication submitted by an interested person in~~
31 ~~a quasi-legislative case is inaccurate or fails to meet the~~
32 ~~requirements of paragraphs (3) and (4), the decisionmaker may~~
33 ~~include corrected or supplemental information in the summary log~~
34 ~~and shall also provide notice of any corrected or supplemental~~
35 ~~information in the proceeding to which it pertains in accordance~~
36 ~~with the procedures established by the commission for the service~~
37 ~~of that information. The commission shall enable the posting of~~
38 ~~summary logs on its Internet Web site not later than July 1, 2016.~~

39 (9)

1 (6) (A) Ex parte communications that occur at conferences,
2 including open session communications, shall be governed by the
3 provisions of this article and any rules adopted by the commission
4 pursuant to conferences that are related to an adjudication or
5 ratesetting proceeding shall be prohibited consistent with the ex
6 parte communications requirements of this article.

7 (B) Notwithstanding subparagraph (A), the commission may
8 adopt rules for inclusion in the commission's Rules of Practice
9 and Procedure specific to open session communications if the rules
10 do both of the following:

11 (i) Open session communications relating to a pending
12 adjudication case or a pending ratesetting case shall be prohibited.

13 (ii) Open session communications relating to a pending
14 quasi-legislative case may be permitted if the commission's rules
15 require that permitted open session communications are promptly
16 disclosed in the proceeding to which the communication relates
17 and require that parties to the proceeding are allowed a reasonable
18 opportunity to respond to the communication before the
19 commission may vote on any matter to which the communication
20 pertained.

21 (C) For purposes of this section, "open session communication"
22 means an ex parte communication made in a speech, comment, or
23 writing delivered to all attendees of a noticed session of a
24 conference. All other ex parte communications at a conference,
25 including, but not limited to, communications in a private setting
26 or during meals, entertainment events, tours, and informal
27 discussions among conference attendees, are not included in the
28 definition of open session communication.

29 (B) Ex parte communications that occur at conferences and that
30 are related to a quasi-legislative proceeding shall be governed by
31 the ex parte communication disclosure requirements developed
32 by the commission.

33 (C) For purposes of this section, "ex parte communications that
34 occur at conferences" includes, but is not limited to,
35 communications in a private setting or during meals, entertainment
36 events, and tours, and informal discussions among conference
37 attendees.

38 (10)

1 (7) The commission shall render its decisions based on the
 2 evidence in the record. Ex parte communications shall not be a
 3 part of the record of the proceedings.

4 (f) *The commission may meet in a closed session to discuss*
 5 *administrative matters not related to a proceeding before the*
 6 *commission, so long as no collective consensus is reached or vote*
 7 *taken on any matter requiring a vote of the commissioners.*

8 ~~SEC. 7.~~

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

11 1701.2. ~~(a) If~~ *If* the commission pursuant to Section 1701.1
 12 has determined that an adjudication case requires a hearing, the
 13 procedures prescribed by this section shall be applicable. ~~The~~

14 (a) *The* assigned commissioner or the assigned administrative
 15 law judge shall hear the case in the manner described in the scoping
 16 memo. The scoping memo shall designate whether the assigned
 17 commissioner or the assigned administrative law judge shall preside
 18 in the case. ~~The~~

19 (b) *The* commission shall provide by rule for peremptory
 20 challenges and challenges for cause of the administrative law judge.
 21 Challenges for cause shall include, but not be limited to, financial
 22 interests and prejudice. The rule shall provide that all parties are
 23 entitled to one peremptory challenge of the assignment of the
 24 administrative law judge in all cases. All parties are entitled to
 25 unlimited peremptory challenges in any case in which the
 26 administrative law judge has within the previous 12 months served
 27 in any capacity in an advocacy position at the commission, been
 28 employed by a regulated public utility, or has represented a party
 29 or has been an interested person in the case. ~~The~~

30 (c) *The* assigned commissioner or the administrative law judge
 31 shall prepare and file a decision setting forth recommendations,
 32 findings, and conclusions. The decision shall be filed with the
 33 commission and served upon all parties to the action or proceeding
 34 without undue delay, not later than 60 days after the matter has
 35 been submitted for decision. The decision of the assigned
 36 commissioner or the administrative law judge shall become the
 37 decision of the commission if no further action is taken within 30
 38 days. Any party may appeal the decision to the commission,
 39 provided that the appeal is made within 30 days of the issuance of

1 the decision. The commission may itself initiate a review of the
2 proposed decision on any grounds. ~~The commission~~

3 (d) *The commission shall hold an en banc hearing before a*
4 *quorum of commissioners, in all adjudication cases in which an*
5 *appeal has been filed, at which all parties have an opportunity to*
6 *be heard, unless all parties waive this requirement and a majority*
7 *of commissioners concur with that waiver. The commission shall*
8 *adopt rules for implementation of this requirement, which shall*
9 *provide for the broadest participation by parties to the proceeding*
10 *that the commission can reasonably accommodate, consistent with*
11 *the commissioners' other duties and responsibilities.*

12 (e) *The commission's decision shall be supported by findings*
13 *of fact on all issues material to the decision, and the findings of*
14 *fact shall be based on the record developed by the assigned*
15 *commissioner or the administrative law judge. A decision different*
16 *from that of the assigned commissioner or the administrative law*
17 *judge shall be accompanied by a written explanation of each of*
18 *the changes made to the decision.*

19 ~~(b)~~

20 (f) Notwithstanding Section 307, an officer, employee, or agent
21 of the commission that is personally involved in the prosecution
22 or in the supervision of the prosecution of an adjudication case
23 before the commission shall not participate in the decision of the
24 case, or in the decision of any factually related adjudicatory
25 proceeding, including participation in or advising the commission
26 as to findings of fact, conclusions of law, or orders. An officer,
27 employee, or agent of the commission that is personally involved
28 in the prosecution or in the supervision of the prosecution of an
29 adjudication case may participate in reaching a settlement of the
30 case, but shall not participate in the decision of the commission to
31 accept or reject the settlement, except as a witness or counsel in
32 an open hearing or a hearing closed pursuant to subdivision ~~(d)~~.

33 (h) The Legislature finds that the commission performs both
34 prosecutorial and adjudicatory functions in an adjudication case
35 and declares its intent that an officer, employee, or agent of the
36 commission, including its attorneys, may perform only one of
37 those functions in any adjudication case or factually related
38 adjudicatory proceeding.

39 ~~(e)~~

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

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

7 ~~(d)~~

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

12 ~~(e)~~

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

18 ~~(f)~~

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

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

33 (3) Within seven days of the commission’s determination of the
34 respondent’s ability to pay potential penalties, fines, or restitution,
35 the respondent shall be entitled to an impartial review by an
36 administrative law judge of the sufficiency of the showing made
37 by the respondent of the respondent’s ability to pay. The review
38 by an administrative law judge of the ability of the respondent to
39 pay shall become part of the record of the adjudication and is
40 subject to the commission’s consideration in its order resolving

1 the adjudication case. The administrative law judge may enter
2 temporary orders modifying any financial requirement made of
3 the respondent pending the review by the administrative law judge.

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

11 ~~SEC. 8.~~

12 *SEC. 7.* Section 1701.3 of the Public Utilities Code is amended
13 to read:

14 1701.3. ~~(a) If~~ *If* the commission pursuant to Section 1701.1
15 has determined that a ratesetting case requires a hearing, the
16 procedures prescribed by this section shall be applicable. ~~The~~

17 *(a) The* assigned commissioner shall determine prior to the first
18 hearing whether the commissioner or the assigned administrative
19 law judge shall be designated as the principal hearing officer. The
20 principal hearing officer shall be present for more than one-half
21 of the hearing days. The decision of the principal hearing officer
22 shall be the proposed decision. ~~An~~

23 *(b) An* alternate decision may be issued by the assigned
24 commissioner or the assigned administrative law judge who is not
25 the principal hearing officer. ~~The Any alternate decision may be~~
26 *filed with the commission and served upon all parties to the*
27 *proceeding any time prior to issuance of a final decision by the*
28 *commission, consistent with the requirements of Section 311.*

29 *(c) The* commission shall establish a procedure for any party to
30 request the presence of a commissioner at a hearing. The assigned
31 commissioner shall be present at the closing arguments of the case.
32 ~~The~~

33 *(d) The* principal hearing officer shall present the proposed
34 decision to the full commission in a public meeting. The alternate
35 decision, if any, shall also be presented to the full commission at
36 that public meeting. ~~The alternate decision shall be filed with the~~
37 *commission and shall be served on all parties simultaneously with*
38 *the proposed decision.*

39 ~~The~~

1 (e) 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)

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

15 (e)

16 (g) (1) Ex parte communications are prohibited in ratesetting
17 cases.

18 (A) Oral communications may be permitted ~~without any~~
19 ~~reporting obligation at any time by any~~ by a decisionmaker if all
20 parties are invited and given not less than three working days'
21 notice.

22 (B) Written ex parte communications by any interested person
23 may be permitted ~~without any reporting requirement~~ provided that
24 copies of the communication are transmitted to all parties on the
25 same day as the original communication. Written ex parte
26 communications shall not be part of the record of the proceeding.

27 (C) *The commission may establish a period during which no*
28 *oral or written all-party communications may be permitted and*
29 *the commission may meet in closed session during that period,*
30 *which shall not in any circumstance exceed 14 days. If the*
31 *commission holds the decision, it may permit all-party*
32 *communications during the first half of the interval between the*
33 *hold date and the date that the decision is calendared for final*
34 *decision. The commission may meet in closed session for the second*
35 *half of that interval.*

36 (2) Oral communications concerning a procedural matter in
37 ratesetting cases between interested persons and decisionmakers,
38 except the assigned administrative law judge, are prohibited, except
39 that an oral communication may be permitted at any time by any

1 decisionmaker if all parties are invited and given not less than
2 three working days' notice.

3 (3) Written communications concerning a procedural matter in
4 ratesetting cases between interested persons and decisionmakers,
5 except the assigned administrative law judge, are prohibited, except
6 that a decisionmaker may permit a written communication by any
7 party if copies of the communication are transmitted to all parties
8 on the same day.

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

13 *(h) The commission shall hold an en banc hearing before a
14 quorum of commissioners, after the proposed decision is issued
15 in all contested ratesetting cases, at which all parties have an
16 opportunity to be heard, unless all parties waive this requirement
17 and a majority of commissioners concur with that waiver. The
18 commission shall adopt rules for implementation of this
19 requirement, which shall provide for the broadest participation
20 by parties to the proceeding that the commission can reasonably
21 accommodate, consistent with the commissioners' other duties
22 and responsibilities.*

23 ~~(e)~~

24 *(i) The commission may, in issuing its decision, adopt, modify,
25 or set aside the proposed decision or any part of the decision based
26 on evidence in the record. The final decision of the commission
27 shall be issued not later than 60 days after the issuance of the
28 proposed decision. Under extraordinary circumstances the
29 commission may extend this date for a reasonable period. The
30 60-day period shall be extended for 30 days if any alternate
31 decision is proposed pursuant to Section 311.*

32 ~~SEC. 9:~~

33 *SEC. 8.* Section 1701.4 of the Public Utilities Code is amended
34 to read:

35 1701.4. ~~(a) If~~ *If* the commission pursuant to Section 1701.1
36 has determined that a quasi-legislative case requires a hearing, the
37 procedures prescribed by this section shall be applicable. ~~The~~

38 *(a) The* assigned administrative law judge shall act as an
39 assistant to the assigned commissioner in quasi-legislative cases.
40 ~~The assigned commissioner shall be present for formal hearings.~~

1 The assigned commissioner shall prepare the proposed rule or
2 order with the assistance of the administrative law judge. The
3 assigned commissioner shall present the proposed rule or order to
4 the full commission in a public meeting. The report shall include
5 the number of days of hearing and the number of days that the
6 commissioner was present.

7 (b) Ex parte communications shall be permitted. Any ex parte
8 communication shall be reported ~~by an interested person in~~
9 ~~accordance with subdivision (d) of Section 1701.1 and the~~
10 ~~procedures established by the commission for the service of that~~
11 ~~notice: in compliance with Section 1701.6.~~ No reporting shall be
12 required for written ex parte communications that are transmitted
13 to all parties on the same day as the original communication.

14 (e) ~~Any party has the right to present a final oral argument of~~
15 ~~its case before the commission. Those requests shall be scheduled~~
16 ~~in a timely manner. A quorum of the commission shall be present~~
17 ~~for the final oral arguments.~~

18 (c) *The commission shall hold an en banc hearing before a*
19 *quorum of commissioners, after the proposed decision is issued*
20 *in all contested quasi-legislative cases, unless all parties waive*
21 *this requirement and a majority of commissioners concur with that*
22 *waiver. The commission shall adopt rules for implementation of*
23 *this requirement, which shall provide for the broadest participation*
24 *by parties to the proceeding that the commission can reasonably*
25 *accommodate, consistent with the commissioners' other duties*
26 *and responsibilities.*

27 (d) The commission may, in issuing its rule or order, adopt,
28 modify, or set aside the proposed decision or any part of the rule
29 or order. The final rule or order of the commission shall be issued
30 not later than 60 days after the issuance of the proposed rule or
31 order. Under extraordinary circumstances the commission may
32 extend this date for a reasonable period. The 60-day period shall
33 be extended for 30 days if any alternate rule or order is proposed
34 pursuant to Section 311.

35 *SEC. 9. Section 1701.5 of the Public Utilities Code is amended*
36 *to read:*

37 1701.5. (a) Except as specified in subdivision (b), in a
38 ratesetting or quasi-legislative case, the commission shall resolve
39 the issues raised in the scoping memo within 18 months of the date
40 ~~the scoping memo is issued, proceeding is initiated,~~ unless the

1 commission makes a written determination that the deadline cannot
2 be met, including findings as to the reason, and issues an order
3 extending the deadline. No single order may extend the deadline
4 for more than 60 days.

5 (b) Notwithstanding subdivision (a), the commission may
6 specify in a scoping memo a resolution date later than 18 months
7 from the date the ~~scoping memo is issued~~, *proceeding is initiated*,
8 if that scoping memo includes specific reasons for the necessity
9 of a later date and the commissioner assigned to the case approves
10 the date.

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

13 *1701.6. (a) The commission shall establish and maintain a*
14 *communications log summarizing all oral or written ex parte*
15 *communications, as defined in Section 1701.1.*

16 *(b) The communications log shall include a summary of all oral*
17 *and written communications that meet the definition of an ex parte*
18 *communication that occur between an interested person and any*
19 *of the following officials:*

20 *(1) A commissioner.*

21 *(2) The attorney for the commission.*

22 *(3) The executive director of the commission.*

23 *(4) The personal staff of a commissioner, if the staff is acting*
24 *in a policy or legal advisory capacity.*

25 *(5) The chief administrative law judge of the commission.*

26 *(6) The administrative law judge assigned to the proceeding.*

27 *(c) Each record of a communication in the communication log*
28 *shall include the date of each communication, the persons involved*
29 *in the communication, the topics discussed, and, to the extent*
30 *known, any proceedings that were the subject of each*
31 *communication. Ex parte communications in the summary log*
32 *shall be reported no later than three working days after the*
33 *communication.*

34 *(d) The communication log shall be made available to the public*
35 *on the commission's Internet Web site not later than July 1, 2016.*

36 ~~SEC. 10.~~

37 *SEC. 11. Section ~~1701.6~~1701.7 is added to the Public Utilities*
38 *Code, to read:*

1 ~~1701.6.~~

2 1701.7. (a) In addition to any penalty, fine, or other punishment
3 applicable pursuant to Article 11 (commencing with Section 2100),
4 the commission may assess civil sanctions upon any entity or
5 person, other than a decisionmaker or employee of the commission,
6 who violates, fails to comply with, or procures, aids, or abets any
7 violation of, the ex parte communication requirements of this
8 article or those adopted by the commission pursuant to this article.
9 The civil sanctions may include civil penalties, adverse
10 consequences in commission proceedings, or other appropriate
11 commission orders directed at the entity, person, or both the entity
12 and person, committing the violation.

13 (b) (1) Except as provided in paragraph (2), a civil penalty
14 assessed shall not exceed fifty thousand dollars (\$50,000) per
15 violation. Each day of a continuing violation is a separate violation.
16 If the violation consists of engaging in a communication that is
17 prohibited by the ex parte communication requirements, each day
18 that the violation is not disclosed to the commission and to parties
19 of record in the formal proceeding in which the communication
20 occurred shall constitute a separate violation. ~~If the violation~~
21 ~~consists of failing to file a required notice of a permissible ex parte~~
22 ~~communication or filing a notice of a permissible ex parte~~
23 ~~communication that is inaccurate or incomplete, each day that the~~
24 ~~violation is not remedied shall constitute a separate violation.~~

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

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

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

36 (1) The severity of the violation.

37 (2) The conduct of the entity or person, including the level of
38 experience of the entity or person in participating in commission
39 ~~proceedings.~~ *proceedings and whether the entity or person*
40 *knowingly violated the ex parte communication requirements.*

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

2 (4) The totality of the circumstances in furtherance of the public
3 interest.

4 ~~SEC. 11.~~

5 *SEC. 12.* Section ~~1701.7-1701.8~~ is added to the Public Utilities
6 Code, to read:

7 ~~1701.7.~~

8 *1701.8.* (a) The Attorney General may bring an enforcement
9 action in the Superior Court for the City and County of San
10 Francisco against a decisionmaker or employee of the commission
11 who violates, fails to comply with, or procures, aids, or abets any
12 violation of, the ex parte communication requirements in this article
13 or those adopted by the commission pursuant to this article. The
14 court shall expedite its review of the action to provide effective
15 and timely relief.

16 (b) ~~(1) Notwithstanding~~ *Notwithstanding* Section 1759, in an
17 enforcement action brought pursuant to this section, the court may
18 grant appropriate relief, including disqualification of the
19 decisionmaker from one or more proceedings and civil penalties
20 ~~not to exceed fifty thousand dollars (\$50,000) for each violation.~~
21 *as provided in Section 2111.*

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

26 (c) In determining the appropriate relief, the court may consider
27 the following factors:

28 (1) The severity of the violation.

29 (2) The conduct of the decisionmaker or employee, including
30 whether the decisionmaker or employee knowingly violated the
31 ex parte communication requirements.

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

33 (4) The totality of the circumstances in furtherance of the public
34 interest.

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

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

1 ~~SEC. 12.~~
2 *SEC. 13.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.

O