

AMENDED IN SENATE JUNE 24, 2002

AMENDED IN ASSEMBLY APRIL 18, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2490

Introduced by Assembly Member Canciamilla

February 21, 2002

An act to amend ~~Section 311 of, and to add Section 316.7 Sections 1701.2, 1701.3, 1701.4 of, and to add Sections 316.7 and 1701.5 to, the~~ Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

AB 2490, as amended, Canciamilla. Public Utilities Commission: ~~decisions hearings~~ and reporting.

(1) ~~Existing law requires decisions of the Public Utilities Commission to be issued, at a minimum, following a 30-day period, subject to a reduction or waiver procedure. Existing law does not set forth a maximum period for the issuance of a decision by the commission.~~

~~This bill would require the commission to issue a decision in any matter before it not more than 210 days after submission for decision or not more than 120 days after issuance of a proposed decision in any matter unless the commission first issues a written order extending the time for a final decision, not to exceed 60 additional days, and indicates in that written order the stated cause for the delay or unless an alternate decision, as defined, is issued not later than 120 days following the issuance of the proposed decision, in which case the bill would require~~

~~that a final decision be issued not later than 90 days from the issuance of the alternate decision.~~

~~(2) Under the Public Utilities Act, the Public Utilities Commission has regulatory authority over public utilities and is authorized to conduct investigations and conduct proceedings. Existing law authorizes 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, authorizes the commission to assign one or more commissioners and administrative law judges to oversee cases, and prescribes separate procedures for proceedings that the commission determines are either quasi-legislative, adjudication, or ratesetting cases. Adjudication matters are required to be resolved within 12 months of initiation unless the commission makes findings why that deadline cannot be met and issues an order extending that deadline. In a ratesetting or quasi-legislative hearing, the commission is required to issue a final decision not later than 60 days after the issuance of a proposed decision, except that under extraordinary circumstances the commission may extend the time for issuance of a final decision for a reasonable period.~~

~~This bill would require that the order granting an extension in an adjudication hearing, state the cause for the delay, that the order be approved by the full commission at its next regularly scheduled public meeting, that the order is subject to public review and comment, and that the extension not exceed 60 additional days per extension.~~

~~This bill would require the commission to issue a final decision in a ratesetting or quasi-legislative hearing, not later than 60 days after the issuance of a proposed decision, except where (1) the commission issues a written order extending the time period, not to exceed 60 days per extension, the order states the cause for a needed delay, and the order is approved by the full commission at its next regularly scheduled public meeting and is subject to public review and comment, or (2) the deadline is extended by written agreement of the commission and all parties to a proceeding.~~

~~This bill would require in all proceedings, except for adjudication, that the matter be submitted for decision within 12 months of initiation. The bill would permit this time requirement to be extended where the commission issues a written order extending the time for submission, not to exceed 60 additional days per extension. The bill would require the written order to state the cause for the delay and be approved by a majority of the full commission at its next regularly scheduled public~~



meeting, and would subject the order to public review and comment. The bill would also permit the submission deadline to be extended by written agreement of the commission and all parties to a proceeding.

(2) Existing law requires the Public Utilities Commission to submit to the Governor an annual report containing a complete account of its transactions and proceedings for the preceding fiscal year, along with any other facts, suggestions, and recommendations the commission deems of public value.

This bill would also require the commission to submit a report to the Legislature whenever the commission or the commission's staff, misses a statutory deadline, *except as specified*, to meet or act on a matter before the commission. The bill would require the report to be submitted to the Governor and the Legislature within 10 days of the missed deadline.

(3) *Because a violation of the Public Utilities Act or an order of the commission is a crime under existing law, the bill would impose a state-mandated local program by creating a new 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: ~~no~~ yes.

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

1 ~~SECTION 1. Section 311 of the Public Utilities Code is~~
2 ~~amended to read:~~
3 ~~311. (a) The commission, each commissioner, the executive~~
4 ~~director, and the assistant executive directors may administer~~
5 ~~oaths, certify to all official acts, and issue subpoenas for the~~
6 ~~attendance of witnesses and the production of papers, waybills,~~
7 ~~books, accounts, documents, and testimony in any inquiry,~~
8 ~~investigation, hearing, or proceeding in any part of the state.~~
9 ~~(b) The administrative law judges may administer oaths,~~
10 ~~examine witnesses, issue subpoenas, and receive evidence, under~~
11 ~~rules that the commission adopts.~~
12 ~~(c) The evidence in any hearing shall be taken by the~~
13 ~~commissioner or the administrative law judge designated for that~~

1 purpose. The commissioner or the administrative law judge may
2 receive and exclude evidence offered in the hearing in accordance
3 with the rules of practice and procedure of the commission.

4 ~~(d) Consistent with the procedures contained in Sections~~
5 ~~1701.1, 1701.2, 1701.3, and 1701.4, the assigned commissioner or~~
6 ~~the administrative law judge shall prepare and file an opinion~~
7 ~~setting forth recommendations, findings, and conclusions. The~~
8 ~~opinion of the assigned commissioner or the administrative law~~
9 ~~judge is the proposed decision and a part of the public record in the~~
10 ~~proceeding. The proposed decision of the assigned commissioner~~
11 ~~or the administrative law judge shall be filed with the commission~~
12 ~~and served upon all parties to the action or proceeding without~~
13 ~~undue delay, not later than 90 days after the matter has been~~
14 ~~submitted for decision. The commission shall issue its decision not~~
15 ~~sooner than 30 days following filing and service of the proposed~~
16 ~~decision by the assigned commissioner or the administrative law~~
17 ~~judge, except that the 30-day period may be reduced or waived by~~
18 ~~the commission in an unforeseen emergency situation or upon the~~
19 ~~stipulation of all parties to the proceeding or as otherwise provided~~
20 ~~by law. In no event shall the commission issue a decision in any~~
21 ~~matter before it more than 210 days after submission for decision~~
22 ~~or more than 120 days after issuance of a proposed decision in any~~
23 ~~matter unless the commission first issues a written order extending~~
24 ~~the time for a final decision, not to exceed 60 additional days, and~~
25 ~~indicates in that written order the stated cause for the delay, or~~
26 ~~unless an alternate decision, as defined in subdivision (e), is issued~~
27 ~~not later than 120 days from the issuance of the proposed decision,~~
28 ~~in which case a final decision shall be issued not later than 90 days~~
29 ~~from the issuance of the alternate decision. The commission may,~~
30 ~~in issuing its decision, adopt, modify, or set aside the proposed~~
31 ~~decision or any part of the decision. Where the modification is of~~
32 ~~a decision in an adjudicatory hearing it shall be based upon the~~
33 ~~evidence in the record. Every finding, opinion, and order made in~~
34 ~~the proposed decision and approved or confirmed by the~~
35 ~~commission shall, upon that approval or confirmation, be the~~
36 ~~finding, opinion, and order of the commission.~~

37 ~~(e) Any item appearing on the commission's public agenda as~~
38 ~~an alternate item to a proposed decision or to a decision subject to~~
39 ~~subdivision (g) shall be served upon all parties to the proceeding~~
40 ~~without undue delay and shall be subject to public review and~~

comment before it may be voted upon. For purposes of this subdivision “alternate” means either a substantive revision to a proposed decision that materially changes the resolution of a contested issue or any substantive addition to the findings of fact, conclusions of law, or ordering paragraphs. The commission shall adopt rules that provide for the time and manner of review and comment and the rescheduling of the item on a subsequent public agenda, except that the item may not be rescheduled for consideration sooner than 10 days following service of the alternative item upon all parties. The commission’s rules may provide that the time and manner of review and comment on an alternate item may be reduced or waived by the commission in an unforeseen emergency situation.

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

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

(2) The 30-day period may be reduced or waived in an unforeseen emergency situation, upon the stipulation of all parties in the proceeding, for an uncontested matter in which the decision grants the relief requested, or for an order seeking temporary injunctive relief. In no event shall the commission issue a decision in any matter before it more than 210 days after submission for decision or more than 120 days after issuance of a proposed decision in any matter unless the commission first issues a written order extending the time for a final decision, not to exceed 60 additional days, and indicates in that written order the stated cause for the delay.

(3) This subdivision does not apply to uncontested matters that pertain solely to water corporations, or to orders instituting investigations or rulemakings, categorization resolutions under

1 Sections 1701.1 to 1701.4, inclusive, or orders authorized by law
2 to be considered in executive session. Consistent with regulatory
3 efficiency and the need for adequate prior notice and comment on
4 commission decisions, the commission may adopt rules, after
5 notice and comment, establishing additional categories of
6 decisions subject to waiver or reduction of the time period in this
7 section.

8 (h) Notwithstanding any other provision of law, amendments,
9 revisions, or modifications by the commission of its Rules of
10 Practice and Procedure after January 1, 1999, shall be submitted
11 to the Office of Administrative Law for prior review in accordance
12 with Sections 11349, 11349.3, 11349.4, 11349.5, 11349.6, and
13 11350.3 of, and subdivisions (a) and (b) of Section 11349.1 of, the
14 Government Code. If the commission adopts an emergency
15 revision to its Rules of Practice and Procedure based upon a
16 finding that the revision is necessary for the preservation of the
17 public peace, health and safety, or general welfare, this emergency
18 revision shall only be reviewed by the Office of Administrative
19 Law in accordance with subdivisions (b) to (d), inclusive, of
20 Section 11349.6 of the Government Code. The emergency
21 revision shall become effective upon filing with the Secretary of
22 State and shall remain in effect for no more than 120 days. A
23 petition for writ of review pursuant to Section 1756 of a
24 commission decision amending, revising, or modifying its Rules
25 of Practice and Procedure shall not be filed until the regulation has
26 been approved by the Office of Administrative Law, the Governor,
27 or a court pursuant to Section 11350.3 of the Government Code.
28 If the period for filing the petition for writ of review would
29 otherwise have already commenced under Section 1733 or 1756
30 at the time of that approval, then the period for filing the petition
31 for writ of review shall continue until 30 days after the date of that
32 approval. Nothing in this subdivision shall require the commission
33 to comply with Article 5 (commencing with Section 11346) of
34 Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government
35 Code. This subdivision is only intended to provide for the Office
36 of Administrative Law review of procedural commission
37 decisions relating to Commission Rules of Practice and Procedure,
38 and not General Orders, resolutions, or other substantive
39 regulations.

40 SEC. 2.

1 **SECTION 1.** Section 316.7 is added to the Public Utilities
2 Code, to read:

3 316.7. (a) The commission shall submit a report to the
4 Legislature whenever the commission, or the commission's staff,
5 misses a statutory deadline, *except a deadline in Sections 1701.2,*
6 *1701.3, and 1701.4,* to meet or act on a matter before the
7 commission. The report shall be submitted within 10 days of the
8 missed deadline.

9 (b) The report shall state the nature of the deadline that was
10 missed and the reasons for missing that deadline.

11 (c) The commission shall submit copies of the report to the
12 Governor, the chairs of the Assembly and Senate policy
13 committees with jurisdiction over utility issues, the Chair of the
14 Assembly Budget Committee, and the Chair of the Senate Budget
15 and Fiscal Review Committee.

16
17 **SEC. 2.** *Section 1701.2 of the Public Utilities Code is*
18 *amended to read:*

19 1701.2. (a) If the commission pursuant to Section 1701.1 has
20 determined that an adjudication case requires a hearing, the
21 procedures prescribed by this section shall be applicable. The
22 assigned commissioner or the assigned administrative law judge
23 shall hear the case in the manner described in the scoping memo.
24 The scoping memo shall designate whether the assigned
25 commissioner or the assigned administrative law judge shall
26 preside in the case. The commission shall provide by regulation for
27 peremptory challenges and challenges for cause of the
28 administrative law judge. Challenges for cause shall include, but
29 not be limited to, financial interests and prejudice. The regulation
30 shall provide that all parties are entitled to one peremptory
31 challenge of the assignment of the administrative law judge in all
32 cases. All parties are entitled to unlimited peremptory challenges
33 in any case in which the administrative law judge has within the
34 previous 12 months served in any capacity in an advocacy position
35 at the commission, been employed by a regulated public utility, or
36 has represented a party or has been a party of interest in the case.
37 The assigned commissioner or the administrative law judge shall
38 prepare and file a decision setting forth recommendations,
39 findings, and conclusions. The decision shall be filed with the
40 commission and served upon all parties to the action or proceeding

1 without undue delay, not later than 60 days after the matter has
2 been submitted for decision. The decision of the assigned
3 commissioner or the administrative law judge shall become the
4 decision of the commission if no further action is taken within 30
5 days. Any interested party may appeal the decision to the
6 commission, provided that the appeal is made within 30 days of the
7 issuance of the decision. The commission may itself initiate a
8 review of the proposed decision on any grounds. The commission
9 decision shall be based on the record developed by the assigned
10 commissioner or the administrative law judge. A decision
11 different from that of the assigned commissioner or the
12 administrative law judge shall be accompanied by a written
13 explanation of each of the changes made to the decision.

14 (b) Ex parte communications shall be prohibited in
15 adjudication cases.

16 (c) Notwithstanding any other provision of law, the
17 commission may meet in a closed hearing to consider the decision
18 that is being appealed. The vote on the appeal shall be in a public
19 meeting and shall be accompanied with an explanation of the
20 appeal decision.

21 (d) Adjudication cases shall be resolved within 12 months of
22 initiation unless the commission makes findings why that deadline
23 cannot be met and issues an order extending that deadline, *not to*
24 *exceed 60 additional days per extension. The order granting an*
25 *extension shall state the cause for the delay. The order shall be*
26 *approved by a majority of the full commission at its next regularly*
27 *scheduled public meeting, and shall be subject to public review*
28 *and comment.* In the event that a rehearing of an adjudication case
29 is granted the parties shall have an opportunity for final oral
30 argument.

31 SEC. 3. Section 1701.3 of the Public Utilities Code is
32 amended to read:

33 1701.3. (a) If the commission pursuant to Section 1701.1 has
34 determined that a ratesetting case requires a hearing, the
35 procedures prescribed by this section shall be applicable. The
36 assigned commissioner shall determine prior to the first hearing
37 whether the commissioner or the assigned administrative law
38 judge shall be designated as the principal hearing officer. The
39 principal hearing officer shall be present for more than one-half of
40 the hearing days. The decision of the principal hearing officer shall

1 be the proposed decision. An alternate decision may be issued by
2 the assigned commissioner or the assigned administrative law
3 judge who is not the principal hearing officer. The commission
4 shall establish a procedure for any party to request the presence of
5 a commissioner at a hearing. The assigned commissioner shall be
6 present at the closing arguments of the case. The principal hearing
7 officer shall present the proposed decision to the full commission
8 in a public meeting. The alternate decision, if any, shall also be
9 presented to the full commission at that public meeting. The
10 alternate decision shall be filed with the commission and shall be
11 served on all parties simultaneously with the proposed decision.

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

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

25 (c) Ex parte communications are prohibited in ratesetting
26 cases. However, oral ex parte communications may be permitted
27 at any time by any commissioner if all interested parties are invited
28 and given not less than three days' notice. Written ex parte
29 communications may be permitted by any party provided that
30 copies of the communication are transmitted to all parties on the
31 same day. If an ex parte communication meeting is granted to any
32 party, all other parties shall also be granted individual ex parte
33 meetings of a substantially equal period of time and shall be sent
34 a notice of that authorization at the time that the request is granted.
35 In no event shall that notice be less than three days. The
36 commission may establish a period during which no oral or written
37 ex parte communications shall be permitted and may meet in
38 closed session during that period which shall not in any
39 circumstance exceed 14 days. If the commission holds the decision
40 it may permit ex parte communications during the first half of the

1 interval between the hold date and the date that the decision is
2 calendered for final decision. The commission may meet in closed
3 session for the second half of that interval.

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

8 (e) The commission may, in issuing its decision, adopt, modify,
9 or set aside the proposed decision or any part of the decision based
10 on evidence in the record. The final decision of the commission
11 shall be issued not later than 60 days after the issuance of the
12 proposed decision. ~~Under extraordinary circumstances the~~
13 ~~commission may extend this date for a reasonable period. subject~~
14 ~~to the following exceptions:~~

15 (1) *The commission may issue a written order granting an*
16 *extension, not to exceed 60 additional days per extension, stating*
17 *the cause for the delay, which order shall be approved by a*
18 *majority of the full commission at its next regularly scheduled*
19 *public meeting, and shall be subject to public review and comment.*

20 (2) *The deadline may be extended by written agreement of the*
21 *commission and all parties to the proceeding.*

22 (3) The 60-day period shall be extended for 30 days if any
23 alternate decision is proposed pursuant to Section 311.

24 SEC. 4. *Section 1701.4 of the Public Utilities Code is*
25 *amended to read:*

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

38 (b) Ex parte communications shall be permitted without any
39 restrictions.

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

(d) The commission may, in issuing its rule or order, adopt, modify, or set aside the proposed decision or any part of the rule or order. The final rule or order of the commission shall be issued not later than 60 days after the issuance of the proposed rule or order. ~~Under extraordinary circumstances the commission may extend this date for a reasonable period. subject to the following exceptions:~~

(1) *The commission may issue a written order granting an extension, not to exceed 60 additional days per extension, stating the cause for the delay, which order shall be approved by a majority of the full commission at its next regularly scheduled public meeting, and shall be subject to public review and comment.*

(2) *The deadline may be extended by written agreement of the commission and all parties to the proceeding.*

(3) The 60-day period shall be extended for 30 days if any alternate rule or order is proposed pursuant to Section 311.

SEC. 5. Section 1701.5 is added to the Public Utilities Code, to read:

1701.5. *Except for adjudication cases in a proceeding, including where the commission has determined the proceeding does not require a hearing, the matter shall be submitted to the commission for decision within 12 months of initiation, subject to the following exceptions:*

(a) *The commission may issue a written order extending the time for submission, not to exceed 60 additional days per extension. The order granting an extension shall state the cause for the delay. The order shall be approved by a majority of the full commission at its next regularly scheduled public meeting, and shall be subject to public review and comment.*

(b) *The submission deadline may be extended by written agreement of the commission and all parties to a proceeding.*

SEC. 6. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty*

1 *for a crime or infraction, within the meaning of Section 17556 of*
2 *the Government Code, or changes the definition of a crime within*
3 *the meaning of Section 6 of Article XIII B of the California*
4 *Constitution.*

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