

AMENDED IN ASSEMBLY JULY 7, 2015
AMENDED IN ASSEMBLY JUNE 24, 2015
AMENDED IN SENATE MAY 6, 2015
AMENDED IN SENATE APRIL 14, 2015

SENATE BILL

No. 48

Introduced by Senator Hill

December 18, 2014

An act to amend Sections 305, 306, 307, 308, 311.5, 321.6, 1701, and 1759 of, and to add Section 1711 to, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 48, as amended, Hill. 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 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, thereby requiring that they be directed or authorized to undertake those actions by the commission.

(2) The Public Utilities Act provides that the office of the commission be in the City and County of San Francisco, that the office always be open, legal holidays and nonjudicial days excepted, that the commission hold its sessions at least once in each calendar month in the City and County of San Francisco, and authorizes the commission to also meet at those other times and places as may be expedient and necessary for the proper performance of its duties.

This bill would require that the commission hold its sessions at least once in each calendar month in the City and County of San Francisco or the City of Sacramento and would require that the commission hold no less than 6 sessions each year in the City of Sacramento.

(3) The California Constitution authorizes the commission to establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. Existing law requires the commission to determine whether a proceeding requires a hearing and, if so, to determine whether the matter requires a quasi-legislative, an adjudication, or a ratesetting hearing. For these purposes, quasi-legislative cases are cases that establish policy rulemakings and investigations which may establish rules affecting an entire industry, adjudication cases are enforcement cases and complaints except those challenging the reasonableness of any rates or charges, and ratesetting cases are cases in which rates are established for a specific company, including general rate cases, performance-based ratemaking, and other ratesetting mechanisms. Existing law requires the commission to publish and maintain certain documents on the Internet, including a docket card that lists all documents filed and all decisions or rulings issued in those proceedings, as provided.

This bill would make the Administrative Adjudication Code of Ethics applicable to administrative law judges of the commission. Except for in adjudication cases, the bill would require the commission, before instituting a proceeding on its own motion, where feasible and appropriate, to seek the views of those who are likely to be affected by a decision in the proceeding, including those who are likely to benefit from, and those who are potentially subject to, a decision in that

proceeding. This bill would require the commission to include a docket card that lists the public versions of all prepared written testimony and advice letter filings, protests, and responses. The bill would require the commission to make additional information available on the Internet, including information on how members of the public and ratepayers can gain access to the commission's ratemaking process.

(4) The Public Utilities Act requires the commission to develop, publish, and annually update an annual workplan that does all of the following: (A) describes in clear detail the scheduled ratemaking proceedings and other decisions that may be considered by the commission during the calendar year, (B) include information on how members of the public and ratepayers can gain access to the commission's ratemaking process and information regarding the specific matters to be decided, (C) include information on the operation of the office of the public adviser and identify the names and telephone numbers of those contact persons responsible for specific cases and matters to be decided, and (D) include a statement that specifies activities that the commission proposes to reduce the costs of, and rates for, energy, including electricity, and for improving the competitive opportunities for state agriculture and other rural energy consumers. The act requires the commission to submit the workplan to the Governor and Legislature by February 1 of each year.

This bill would require the commission to develop, publish, and annually update a report that contains certain specified information, as provided, and would expand the requirement that the workplan, as part of that report, describe in clear detail the scheduled proceedings that may be considered by the commission during the calendar year to include all proceedings and not just ratemaking proceedings. The bill would additionally require that the report include performance criteria for the commission and executive director and evaluate the performance of the executive director during the previous year based on the criteria established in the prior year's workplan.

~~Existing law requires the commission to produce a statement that specifies the proposed activities of the commission in reducing the costs of, and rates for, energy, including electricity, as provided.~~

~~This bill would delete this requirement.~~

The bill would require the president of the commission to present the annual report to the appropriate policy committees of the Senate and Assembly, and the commission to post the report in a conspicuous area

of its Internet Web site and disseminate the information in the report, as provided.

(5) The Public Utilities Act requires the commission to create, and annually submit to the Governor and Legislature by February 1, a report on the number of cases where resolution exceeded the time periods prescribed in scoping memos and the days that commissioners presided in hearings.

This bill would delete the requirement that the report include the number of cases where resolution exceeded the time periods prescribed in scoping memos and instead would require the report to describe the commission's timeliness in resolving cases and include information on the disposition of applications for rehearings. The bill would require that the report include the number of scoping memos issued in each proceeding and to include the number of orders issued extending the statutory deadlines for all adjudication, ratesetting, and quasi-legislative cases. The bill would require this information to be included in the report described in paragraph (4).

(6) The California Constitution provides that the Legislature has plenary power to establish the manner and scope of review of commission action in a court of record. Existing law provides that only the Supreme Court and the court of appeal have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties.

This bill would authorize an action to enforce the requirements of the Bagley-Keene Open Meeting Act or the California Public Records Act to be brought against the commission in the superior court.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) On June 3, 2014, California's Fourth District Court of
4 Appeal, in *Disenhouse v. Peevey* (2014) 226 Cal.App.4th 1096,
5 held that an interested person desiring to enforce the Bagley-Keene
6 Open Meeting Act (Article 9 (commencing with Section 11120)
7 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government

1 Code) against the Public Utilities Commission must do so by filing
2 a petition for writ of mandamus in the Supreme Court or the court
3 of appeal and may not do so by filing an action for injunctive relief
4 in the superior court.

5 (2) The intent of the Bagley-Keene Open Meeting Act is that
6 actions of state agencies be taken openly and that their deliberation
7 be conducted openly.

8 (3) The people's right to remain informed so that they may
9 retain control over the instruments of government that they have
10 created is not less of a right for some agencies than for other
11 agencies, nor shall the people's ability to enforce the Bagley-Keene
12 Open Meeting Act be more hampered for some agencies than for
13 other agencies.

14 (4) The duties, responsibilities, and actions of the Public Utilities
15 Commission affect the well-being of current and future generations
16 and the public interest and principles of fundamental fairness and
17 due process of law require that the commission conduct its affairs
18 in an open, objective, and impartial manner, free of undue influence
19 and the abuse of power and authority.

20 (b) It is the intent of the Legislature that the Public Utilities
21 Commission should be subject to the judicial review provisions
22 of the Bagley-Keene Open Meeting Act.

23 SEC. 2. Section 305 of the Public Utilities Code is amended
24 to read:

25 305. The Governor shall designate a president of the
26 commission from among the members of the commission. The
27 president shall preside at all meetings and sessions of the
28 commission.

29 SEC. 3. Section 306 of the Public Utilities Code is amended
30 to read:

31 306. (a) The office of the commission shall be in the City and
32 County of San Francisco. The office shall always be open, legal
33 holidays and nonjudicial days excepted. The commission shall
34 hold its sessions at least once in each calendar month in the City
35 and County of San Francisco or the City of Sacramento. The
36 commission may also meet at such other times and in such other
37 places as may be expedient and necessary for the proper
38 performance of its duties, and for that purpose may rent quarters
39 or offices. The commission shall hold no less than six sessions
40 each year in the City of Sacramento.

1 (b) The meetings of the commission shall be open and public
2 in accordance with the provisions of Article 9 (commencing with
3 Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of
4 the Government Code.

5 In addition to the requirements of Section 11125 of the
6 Government Code, the commission shall include in its notice of
7 meetings the agenda of business to be transacted, and no item of
8 business shall be added to the agenda subsequent to the notice in
9 the absence of an unforeseen emergency situation. A rate increase
10 shall not constitute an unforeseen emergency situation. As used
11 in this subdivision, “meeting” shall include all investigations,
12 proceedings, and showings required by law to be open and public.

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

17 (d) The commission may procure all necessary books, maps,
18 charts, stationery, instruments, office furniture, apparatus, and
19 appliances.

20 SEC. 4. Section 307 of the Public Utilities Code is amended
21 to read:

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

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

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

39 SEC. 5. Section 308 of the Public Utilities Code is amended
40 to read:

1 308. (a) The commission shall appoint an executive director,
2 who shall hold office during its pleasure. The executive director
3 shall be responsible for the commission's executive and
4 administrative duties and shall organize, coordinate, supervise,
5 and direct the operations and affairs of the commission and
6 expedite all matters within the commission's jurisdiction.

7 (b) The executive director shall keep a full and true record of
8 all proceedings of the commission, issue all necessary process,
9 writs, warrants, and notices, and perform any other duties the
10 commission prescribes. The commission may authorize the
11 executive director to dismiss complaints or applications when all
12 parties are in agreement thereto, in accordance with rules that the
13 commission may prescribe.

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

17 SEC. 6. Section 311.5 of the Public Utilities Code is amended
18 to read:

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

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

32 (b) The commission shall publish and maintain the following
33 documents on the Internet:

34 (1) Each of the commission's proposed and alternate proposed
35 decisions and resolutions, until the decision or resolution is adopted
36 and published.

37 (2) Each of the commission's adopted decisions and resolutions.
38 The publication shall occur within 10 days of the adoption of each
39 decision or resolution by the commission.

1 (3) The then-current version of the commission's general orders
2 and Rules of Practice and Procedure.

3 (4) Each of the commission's rulings. The commission shall
4 maintain those rulings on its Internet Web site until final
5 disposition, including disposition of any judicial appeals, of the
6 respective proceedings in which the rulings were issued.

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

14 (c) The commission shall make the following information
15 available on the Internet:

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

19 (2) Information on the operation of the office of the public
20 advisor established in Section 321 and how the public advisor can
21 connect members of the public to persons responsible for specific
22 cases and matters to be decided.

23 SEC. 7. Section 321.6 of the Public Utilities Code is amended
24 to read:

25 321.6. (a) The commission shall develop, publish, and annually
26 update a report that contains all of the following information:

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

30 (2) Performance criteria for the commission and executive
31 director as well as an evaluation of the performance of the
32 executive director during the previous year based on the criteria
33 established in the prior year's workplan.

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

1 *and to the extent possible, shall include suggestions and*
2 *recommendations for the reduction of those costs and rates.*

3 (4) An accounting of the commission's timeliness in resolving
4 cases, information on the disposition of applications for rehearings,
5 and the days that commissioners presided in hearings. The report
6 shall include the number of scoping memos issued in each
7 proceeding and the number of orders issued extending the statutory
8 deadlines pursuant to subdivision (d) of Section 1701.2, for all
9 adjudication cases, and pursuant to subdivision (a) of Section
10 1701.5, for all ratesetting or quasi-legislative cases.

11 (5) A description of activities undertaken and processes
12 instituted to both solicit the input of customers from diverse regions
13 of the state in ratesetting and quasi-legislative proceedings and to
14 process that input in a way to make it usable in commission
15 decisionmaking. The report shall describe successes and challenges
16 in this process, the effect of resource constraints, and efforts to be
17 made during the calendar year to further the goal of increased
18 public participation.

19 (b) (1) The commission shall submit the annual report required
20 pursuant to subdivision (a) to the Governor and Legislature no
21 later than February 1 of each year.

22 (2) The commission shall post the report in a conspicuous area
23 of its Internet Web site and shall have a program to disseminate
24 the information in the report using computer mailing lists to provide
25 regular updates on the information to those members of the public
26 and organizations that request that information.

27 (c) The president of the commission shall annually appear before
28 the appropriate policy committees of the Senate and Assembly to
29 present the annual report of the commission required pursuant to
30 this section.

31 SEC. 8. Section 1701 of the Public Utilities Code is amended
32 to read:

33 1701. (a) All hearings, investigations, and proceedings shall
34 be governed by this part and by rules of practice and procedure
35 adopted by the commission, and in the conduct thereof the technical
36 rules of evidence need not be applied. No informality in any
37 hearing, investigation, or proceeding or in the manner of taking
38 testimony shall invalidate any order, decision or rule made,
39 approved, or confirmed by the commission.

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

9 SEC. 9. Section 1711 is added to the Public Utilities Code, to
 10 read:

11 1711. Where feasible and appropriate, except for adjudication
 12 cases, before instituting a proceeding on its own motion, the
 13 commission shall seek the views of those who are likely to be
 14 affected, including those who are likely to benefit from, and those
 15 who are potentially subject to, a decision in that proceeding. The
 16 commission shall demonstrate its efforts to comply with this section
 17 in the text of the order instituting the proceeding.

18 SEC. 10. Section 1759 of the Public Utilities Code is amended
 19 to read:

20 1759. (a) No court of this state, except the Supreme Court and
 21 the court of appeal, to the extent specified in this article, shall have
 22 jurisdiction to review, reverse, correct, or annul an order or decision
 23 of the commission or to suspend or delay the execution or operation
 24 thereof, or to enjoin, restrain, or interfere with the commission in
 25 the performance of its official duties, as provided by law and the
 26 rules of court.

27 (b) The writ of mandamus shall lie from the Supreme Court and
 28 from the court of appeal to the commission in all proper cases as
 29 prescribed in Section 1085 of the Code of Civil Procedure.

30 (c) This section does not apply to the following actions, which
 31 may be brought in superior court:

32 (1) An action brought against the commission to enforce the
 33 requirements of the Bagley-Keene Open Meeting Act (Article 9
 34 (commencing with Section 11120) of Chapter 1 of Part 1 of
 35 Division 3 of Title 2 of the Government Code).

36 (2) An action arising from the California Public Records Act
 37 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
 38 Title 1 of the Government Code), including Code) or to review a

- 1 determination made under subdivision (c) of Section 6253 of the
- 2 Government Code.

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