

AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 611

Introduced by Senator Hill

February 22, 2013

An act to amend Sections 305, 307, 308, ~~309.6~~, 309.5, 309.7, 321.6, 958.5, 1701.1, 1701.2, ~~and~~ 1701.3, 1731, 1756, 5900, and 7661 of, and to add Section 854.5 to, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 611, as amended, Hill. Public Utilities Commission: organization: proceedings.

~~The~~

(1) *The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities, as defined. 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 establishes the Division of Ratepayer Advocates within the commission to represent the interests of public utility customers and subscribers, with the goal of obtaining the lowest possible rate for service consistent with reliable and safe service levels. Existing law requires the Director of the Division of Ratepayer Advocates to submit an annual budget to the commission for final approval. 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 Division of Ratepayer Advocates, in accordance with commission policies and guidelines. *Existing law directs the consumer protection and safety division of the commission to undertake certain railroad safety and gas pipeline safety functions.*

The bill would repeal the requirement that the president direct the executive director, attorney, and other staff of the commission. *The bill would rename the Division of Ratepayer Advocates the Office of Ratepayer Advocates, would authorize the office to seek rehearings and judicial review of commission decisions, and would require that the director of the office develop a budget for the office that would be submitted to the Department of Finance for final approval. The bill would change current statutory references from the division of consumer protection and safety to the division of safety and enforcement.*

Existing

(2) *Existing law* authorizes the attorney for the commission, if directed to do so by the president, except as otherwise directed by vote of the commission, to intervene, if possible, in any action or proceeding involving any question arising pursuant to the Public Utilities Act. Existing law requires the attorney for the commission to commence, prosecute, and expedite the final determination of all actions and proceedings, and to generally perform all duties and services as attorney to the commission, as directed or authorized by the president, except as otherwise directed or authorized by vote of the commission.

This bill would authorize the attorney for the commission, if directed to do so by the commission, to intervene, if possible, in any action or proceeding involving any question arising pursuant to the Public Utilities Act. This bill would require the attorney for the commission to commence, prosecute, and expedite the final determination of all actions and proceedings, and to generally perform all duties and services as attorney to the commission, as directed or authorized by the commission. *The bill would provide that in carrying out his or her functions and duties, the attorney is subject to the State Bar Act and the Rules of Professional Conduct of the State Bar of California.*

Existing

(3) *Existing law* requires the executive director for the commission to keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform such other duties as the president, or vote of the commission, prescribes. Existing law provides that the president may authorize the executive director to dismiss complaints or applications when all parties are in

agreement thereto, in accordance with rules that the commission may prescribe.

This bill would require the executive director to keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform the other duties the commission prescribes. The bill would provide that the commission may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.

The

(4) The California Constitution authorizes the commission to establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process, and to establish rules for all public utilities. Existing law provides for the appointment of administrative law judges and the assigning of commissioners to preside over cases before the commission and 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 the disqualification of commissioners due to bias or prejudice similar to those of other state agencies and superior courts. correct certain statutory references from the commission adopting regulations to the commission adopting rules.

(5) Existing law requires the commission, by January 10 of each year, to report to the Joint Legislative Budget Committee and appropriate fiscal and policy committees of the Legislature on all sources and amounts of funding and actual and proposed expenditures, including any costs to ratepayers, related to specified entities or programs established by the commission by order, decision, motion, settlement, or other action, including, but not limited to, the California Clean Energy Fund, the California Emerging Technology Fund, and the Pacific Forest and Watershed Lands Stewardship Council, and any entities or programs, other than those expressly authorized by statute, that are established by the commission under specified statutes.

This bill would prohibit the Public Utilities Commission, by order, decision, motion, settlement, or other action from establishing a nonstate entity, as defined. The bill would prohibit the commission from entering into a contract with any nonstate entity in which a person serves as an owner, director, or officer while serving as a commissioner. The bill

would provide that any contract between the commission and a nonstate entity is void and ceases to exist by operation of law, if a person who was a commissioner at the time the contract was awarded, entered into, or extended, on or after January 1, 2014, becomes an owner, director, or officer of the nonstate entity while serving as a commissioner.

The California Constitution provides that the Legislature may remove a commissioner of the Public Utilities Commission for incompetence, neglect of duty, or corruption, ²/₃ of the membership of each house concurring.

This bill would provide that a commissioner who acts as an owner, director, or officer of a nonstate entity that was established prior to January 1, 2014, as a result of an order, decision, motion, settlement, or other action by the commission in which the commissioner participated, is negligent of his or her duty and may be removed pursuant to the California Constitution.

Existing

~~(6) Existing law establishes certain procedures that are applicable to adjudication, rulemaking and ratesetting cases. Existing law requires the commission, by regulation, to provide for peremptory challenges and challenges for cause of an assigned administrative law judge in adjudication and ratesetting cases and entitles parties to unlimited peremptory challenges in any case in which the administrative law judge has, within the previous 12 months, served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been a party of interest in the case.~~

This bill would ~~require the commission, by rule, to provide for peremptory challenges and challenges for cause of an assigned administrative law judge or assigned commissioner in adjudication and ratesetting cases and entitles parties to unlimited peremptory challenges in any case in which the administrative law judge or assigned commissioner has, within the previous 12 months, served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been a party of interest in the case. The bill would prohibit an officer, employee, or agent of the commission that is assigned to assist in the prosecution of, or to testify in, an adjudication case, from participating in the decision of the case, or in the decision of any factually related proceeding. The bill would permit an officer, employee, or agent of the commission that is assigned to assist in the prosecution of an adjudication case to~~

participate in reaching a settlement of the case, but would prohibit the officer, employee, or agent from participating in the decision of the commission to accept or reject the settlement, except as a witness or counsel in an open hearing or a specified closed hearing.

(7) Existing law requires the commission to submit an annual 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 additionally require the commission to include data on the disposition of applications for rehearing in that report.

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

3 305. The Governor shall designate a president of the
4 commission from among the members of the commission. The
5 president shall preside at all meetings and sessions of the
6 commission.

7 SEC. 2. Section 307 of the Public Utilities Code is amended
8 to read:

9 307. (a) The commission may appoint as attorney to the
10 commission an attorney at law of this state, who shall hold office
11 during the pleasure of the commission. *In carrying out his or her*
12 *functions and duties, the attorney shall be subject to the State Bar*
13 *Act and the Rules of Professional Conduct of the State Bar of*
14 *California.*

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

21 (c) Except as provided in Section 1701.2, the attorney shall
22 commence, prosecute, and expedite the final determination of all
23 actions and proceedings directed or authorized by the commission,
24 advise the commission and each commissioner, when so requested,
25 in regard to all matters in connection with the powers and duties

1 of the commission and the members thereof, and generally perform
 2 all duties and services as attorney to the commission that the
 3 ~~commission~~, *commission* may require of him *or her*.

4 SEC. 3. Section 308 of the Public Utilities Code is amended
 5 to read:

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

12 (b) The executive director shall keep a full and true record of
 13 all proceedings of the commission, issue all necessary process,
 14 writs, warrants, and notices, and perform such other duties as the
 15 commission, prescribes. The commission may authorize the
 16 executive director to dismiss complaints or applications when all
 17 parties are in agreement thereto, in accordance with rules that the
 18 commission may prescribe.

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

22 ~~SEC. 4. Section 309.6 of the Public Utilities Code is amended~~
 23 ~~to read:~~

24 ~~309.6. (a) The commission shall adopt procedures on the~~
 25 ~~disqualification of administrative law judges and commissioners~~
 26 ~~due to bias or prejudice similar to those of other state agencies and~~
 27 ~~superior courts.~~

28 ~~(b) The commission shall develop the procedures with the~~
 29 ~~opportunity for public review and comment.~~

30 SEC. 4. Section 309.5 of the Public Utilities Code is amended
 31 to read:

32 309.5. (a) There is within the commission a ~~Division~~ *an Office*
 33 of Ratepayer Advocates to represent and advocate on behalf of the
 34 interests of public utility customers and subscribers within the
 35 jurisdiction of the commission. The goal of the ~~division~~ *office* shall
 36 be to obtain the lowest possible rate for service consistent with
 37 reliable and safe service levels. For revenue allocation and rate
 38 design matters, the ~~division~~ *office* shall primarily consider the
 39 interests of residential and small commercial customers. *The office*
 40 *may seek rehearing and judicial review of commission decisions*

1 *pursuant to Article 2 (commencing with Section 1731) and Article*
2 *3 (commencing with Section 1756) of Chapter 9.*

3 (b) The director of the ~~division~~ *office* shall be appointed by, and
4 serve at the pleasure of, the Governor, subject to confirmation by
5 the Senate.

6 The director shall annually appear before the appropriate policy
7 committees of the Assembly and the Senate to report on the
8 activities of the division.

9 (c) The director shall develop a budget for the ~~division~~ *office*
10 which shall be subject to final approval of the ~~commission~~. ~~In~~
11 ~~accordance with the approved budget, the commission shall, by~~
12 ~~rule or order, provide for the assignment of personnel to, and the~~
13 ~~functioning of, the division. The division may employ experts~~
14 ~~necessary to carry out its functions. Personnel Department of~~
15 ~~Finance. As authorized in the approved budget, the office shall~~
16 ~~employ personnel~~ and resources, including attorneys and other
17 legal support, ~~shall be provided by the commission to the division~~
18 ~~staff~~ at a level sufficient to ensure that customer and subscriber
19 interests are effectively represented in all significant proceedings.
20 *The office may employ experts necessary to carry out its functions.*
21 The director may appoint a lead attorney who shall represent the
22 ~~division, office~~, and shall report to and serve at the pleasure of the
23 director. All attorneys ~~assigned by the commission to perform~~
24 ~~performing services for the division office~~ shall report to and be
25 directed by the lead attorney appointed by the director.

26 (d) The commission shall develop appropriate procedures to
27 ensure that the existence of the ~~division~~ *office* does not create a
28 conflict of roles for any employee. The procedures shall include,
29 but shall not be limited to, the development of a code of conduct
30 and procedures for ensuring that advocates and their representatives
31 on a particular case or proceeding are not advising decisionmakers
32 on the same case or proceeding.

33 (e) The ~~division~~ *office* may compel the production or disclosure
34 of any information it deems necessary to perform its duties from
35 any entity regulated by the commission, provided that any
36 objections to any request for information shall be decided in writing
37 by the assigned commissioner or by the ~~president of the~~
38 ~~commission~~, if there is no assigned commissioner. *The office shall*
39 *have access, upon request, to all information provided to the*

1 *commission, a commissioner, or an officer or person employed by*
2 *the commission pursuant to Section 314.*

3 (f) There is hereby created the Public Utilities Commission
4 Ratepayer Advocate Account in the General Fund. Moneys from
5 the Public Utilities Commission Utilities Reimbursement Account
6 in the General Fund shall be transferred in the annual Budget Act
7 to the Public Utilities Commission Ratepayer Advocate Account.
8 The funds in the Public Utilities Commission Ratepayer Advocate
9 Account shall be utilized exclusively by the ~~division~~ *office* in the
10 performance of its duties as determined by the director. The director
11 shall annually submit a staffing report containing a comparison of
12 the staffing levels for each five-year period.

13 (g) On or before January 10 of each year, the ~~commission~~ *office*
14 shall provide to the chairperson of the fiscal committee of each
15 house of the Legislature and to the Joint Legislative Budget
16 Committee all of the following information:

17 (1) The number of personnel years ~~assigned to the Division~~
18 *utilized during the prior year by the Office* of Ratepayer Advocates.

19 (2) The total dollars expended by the ~~Division Office~~ of
20 Ratepayer Advocates in the prior year, the estimated total dollars
21 expended in the current year, and the total dollars proposed for
22 appropriation in the following budget year.

23 (3) Workload standards and measures for the ~~Division Office~~
24 of Ratepayer Advocates.

25 (h) The ~~division~~ *office* shall meet and confer in an informal
26 setting with a regulated entity prior to issuing a report or pleading
27 to the commission regarding alleged misconduct, or a violation of
28 a law or a commission rule or order, raised by the ~~division~~ *office*
29 in a complaint. The meet and confer process shall be utilized in
30 good faith to reach agreement on issues raised by the ~~division~~
31 *office* regarding any regulated entity in the complaint proceeding.

32 *SEC. 5. Section 309.7 of the Public Utilities Code is amended*
33 *to read:*

34 309.7. (a) The division of the commission responsible for
35 ~~consumer protection and safety and enforcement~~ shall be
36 responsible for inspection, surveillance, and investigation of the
37 rights-of-way, facilities, equipment, and operations of railroads
38 and public mass transit guideways, and for enforcing state and
39 federal laws, regulations, orders, and directives relating to
40 transportation of persons or commodities, or both, of any nature

1 or description by rail. The ~~consumer protection and~~ safety *and*
2 *enforcement* division shall advise the commission on all matters
3 relating to rail safety, and shall propose to the commission rules,
4 ~~regulations~~, orders, and other measures necessary to reduce the
5 dangers caused by unsafe conditions on the railroads of the state.
6 The delegation of enforcement responsibility to the ~~consumer~~
7 ~~protection and~~ safety *and enforcement* division shall not diminish
8 the power of other agencies of state government to enforce laws
9 relating to employee or environmental safety, pollution prevention,
10 or public health and safety.

11 (b) In performing its duties, the ~~consumer protection and~~ safety
12 *and enforcement* division shall exercise all powers of investigation
13 granted to the commission, including rights to enter upon land or
14 facilities, inspect books and records, and compel testimony. The
15 commission shall employ sufficient federally certified inspectors
16 to ensure at the time of inspection that railroad locomotives and
17 equipment and facilities located in class I railroad yards in
18 California are inspected not less frequently than every 180 days,
19 and all main and branch line tracks are inspected not less frequently
20 than every 12 months. In performing its duties, the safety *and*
21 *enforcement* division shall consult with representatives of railroad
22 corporations, labor organizations representing railroad employees,
23 and the Federal Railroad Administration.

24 (c) The general counsel shall assign to the ~~consumer protection~~
25 ~~and~~ safety *and enforcement* division the personnel and attorneys
26 necessary to fully utilize the powers granted to the commission by
27 any state law, and by any federal law relating to rail transportation,
28 including, but not limited to, the Federal Rail Safety Act (45 U.S.C.
29 Sec. 421m, et seq.), to enforce safety laws, rules, regulations, and
30 orders, and to collect fines and penalties resulting from the
31 violation of any safety rule or regulation.

32 (d) The activities of the ~~consumer protection and~~ safety *and*
33 *enforcement* division that relate to safe operation of common
34 carriers by rail, other than those relating to grade crossing
35 protection, shall also be supported by the fees paid by railroad
36 corporations, if any, pursuant to Sections 421 to 424, inclusive.
37 The activities of the ~~consumer protection and~~ safety *and*
38 *enforcement* division that relate to grade crossing protection shall
39 be supported by funds appropriated therefor from the State
40 Highway Account in the State Transportation Fund. On or before

1 November 30 of each year, the commission shall report to the
2 Legislature on the activities of the safety *and enforcement* division,
3 and shall fully document in the report all expenditures of those
4 funds in the audit report provided in subdivision (f) of Section
5 421.

6 *SEC. 6. Section 321.6 of the Public Utilities Code is amended*
7 *to read:*

8 321.6. (a) The commission shall do all of the following:

9 (1) Develop, publish, and annually update an annual workplan
10 that describes in clear detail the scheduled ratemaking proceedings
11 and other decisions that may be considered by the commission
12 during the calendar year. The plan shall include, but is not limited
13 to, information on how members of the public and ratepayers can
14 gain access to the commission's ratemaking process and
15 information regarding the specific matters to be decided. The plan
16 shall also include information on the operation of the office of the
17 public adviser and identify the names and telephone numbers of
18 those contact persons responsible for specific cases and matters
19 to be decided. The plan shall also include a statement that specifies
20 activities that the commission proposes to reduce the costs of, and
21 rates for, energy, including electricity, and for improving the
22 competitive opportunities for state agriculture and other rural
23 energy consumers. The commission shall post the plan under the
24 Official Documents area of its Internet Web site and shall develop
25 a program to disseminate the information in the plan utilizing
26 computer mailing lists to provide regular updates on the
27 information to those members of the public and organizations
28 which request that information.

29 (2) Produce a complete accounting of its transactions and
30 proceedings for the preceding year, together with other facts,
31 suggestions, and recommendations that it deems of value to the
32 people of the state and a statement that specifies the activities and
33 achievements of the commission in reducing the costs of, and rates
34 for, energy, including electricity, for state agriculture and other
35 rural energy consumers.

36 (3) Create a report on the number of cases where resolution
37 exceeded the time periods prescribed in scoping memos,
38 *information on the disposition of applications for rehearings*, and
39 the days that commissioners presided in hearings.

1 (4) Submit annually the plan, accounting, and report required
2 by paragraphs (1), (2), and (3) to the Governor and Legislature no
3 later than February 1 of each year.

4 (b) The president of the commission shall annually appear before
5 the appropriate policy committees of the Senate and Assembly to
6 report on the annual workplan access guide of the commission
7 required pursuant to this section.

8 (c) The president of the commission shall annually appear before
9 the appropriate policy committees of the Senate and Assembly to
10 report on the annual report of the commission on the number of
11 cases where resolution exceeded the time periods prescribed in
12 scoping memos and the days that commissioners presided in
13 hearings, pursuant to Section 13 of Chapter 856 of the Statutes of
14 1996.

15 *SEC. 7. Section 854.5 is added to the Public Utilities Code, to*
16 *read:*

17 *854.5. (a) For purposes of this section, a “nonstate entity”*
18 *means a company, corporation, partnership, firm, or other entity*
19 *or group of entities, whether organized for profit or not for profit.*

20 *(b) The commission, by order, decision, motion, settlement, or*
21 *other action shall not establish a nonstate entity. This subdivision*
22 *does not limit the authority of the commission to form an advisory*
23 *committee or other body whose budget is subject to oversight by*
24 *the commission and the Department of Finance.*

25 *(c) The commission shall not enter into a contract with a*
26 *nonstate entity in which a person serves as an owner, director, or*
27 *officer while serving as a commissioner. Any contract between the*
28 *commission and a nonstate entity shall be void and cease to exist*
29 *by operation of law, if a commissioner, who was a commissioner*
30 *at the time the contract was awarded, entered into, or extended,*
31 *becomes, on or after January 1, 2014, an owner, director, or officer*
32 *of the nonstate entity while serving as a commissioner.*

33 *(d) A commissioner who acts as an owner, director, or officer*
34 *of a nonstate entity that was established prior to January 1, 2014,*
35 *as a result of an order, decision, motion, settlement, or other action*
36 *by the commission in which the commissioner participated, is*
37 *negligent of his or her duty pursuant to Section 1 of Article XII of*
38 *the California Constitution, for which the commissioner may be*
39 *removed pursuant to that section.*

1 *SEC. 8. Section 958.5 of the Public Utilities Code is amended*
2 *to read:*

3 958.5. (a) Twice a year, or as determined by the commission,
4 each gas corporation shall file with the commission's ~~consumer~~
5 ~~protection~~ *safety and enforcement* division a gas transmission and
6 storage safety report. The ~~consumer-protection~~ *safety and*
7 ~~enforcement~~ division shall review the reports to monitor each gas
8 corporation's storage and pipeline-related activities to assess
9 whether the projects that have been identified as high risk are being
10 carried out, and to track whether the gas corporation is spending
11 its allocated funds on these storage and pipeline-related safety,
12 reliability, and integrity activities for which they have received
13 approval from the commission.

14 (b) The gas transmission and storage safety report shall include
15 a thorough description and explanation of the strategic planning
16 and decisionmaking approach used to determine and rank the gas
17 storage projects, intrastate transmission line safety, integrity, and
18 reliability, operation and maintenance activities, and inspections
19 of its intrastate transmission lines. If there has been no change in
20 the gas corporation's approach for determining and ranking which
21 projects and activities are prioritized since the previous gas
22 transmission and storage safety report, the subsequent report may
23 reference the immediately preceding report.

24 (c) If the commission's ~~consumer-protection~~ *safety and*
25 ~~enforcement~~ division determines that there is a deficiency in a gas
26 corporation's prioritization or administration of the storage or
27 pipeline capital projects or operation and maintenance activities,
28 the division shall bring the problems to the commission's
29 immediate attention.

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

32 1701.1. (a) The commission, consistent with due process,
33 public policy, and statutory requirements, shall determine whether
34 a proceeding requires a hearing. The commission shall determine
35 whether the matter requires a quasi-legislative, an adjudication,
36 or a ratesetting hearing. The commission's decision as to the nature
37 of the proceeding shall be subject to a request for rehearing within
38 10 days of the date of that decision. If that decision is not appealed
39 to the commission within that time period it shall not be
40 subsequently subject to judicial review. Only those parties who

1 have requested a rehearing within that time period shall
2 subsequently have standing for judicial review and that review
3 shall only be available at the conclusion of the proceeding. The
4 commission shall render its decision regarding the rehearing within
5 30 days. The commission shall establish ~~regulations~~ *rules* regarding
6 ex parte communication on case categorization issues.

7 (b) The commission upon initiating a hearing shall assign one
8 or more commissioners to oversee the case and an administrative
9 law judge where appropriate. The assigned commissioner shall
10 schedule a prehearing conference. The assigned commissioner
11 shall prepare and issue by order or ruling a scoping memo that
12 describes the issues to be considered and the applicable timetable
13 for resolution.

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

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

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

25 (4) “Ex parte communication,” for purposes of this article,
26 means any oral or written communication between a decisionmaker
27 and a person with an interest in a matter before the commission
28 concerning substantive, but not procedural issues, that does not
29 occur in a public hearing, workshop, or other public proceeding,
30 or on the official record of the proceeding on the matter. “Person
31 with an interest,” for purposes of this article, means any of the
32 following:

33 (A) Any applicant, an agent or an employee of the applicant,
34 or a person receiving consideration for representing the applicant,
35 or a participant in the proceeding on any matter before the
36 commission.

37 (B) Any person with a financial interest, as described in Article
38 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the
39 Government Code, in a matter before the commission, or an agent
40 or employee of the person with a financial interest, or a person

1 receiving consideration for representing the person with a financial
2 interest.

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

7 The commission shall by ~~regulation~~ *rule* adopt and publish a
8 definition of decisionmakers and persons for purposes of this
9 section, along with any requirements for written reporting of ex
10 parte communications and appropriate sanctions for noncompliance
11 with any rule proscribing ex parte communications. The ~~regulation~~
12 *rule* shall provide that reportable communications shall be reported
13 by the party, whether the communication was initiated by the party
14 or the decisionmaker. Communications shall be reported within
15 three working days of the communication by filing a “Notice of
16 Ex Parte Communication” with the commission in accordance
17 with the procedures established by the commission for the service
18 of that notice. The notice shall include the following information:

19 (i) The date, time, and location of the communication, and
20 whether it was oral, written, or a combination.

21 (ii) The identity of the recipient and the person initiating the
22 communication, as well as the identity of any persons present
23 during the communication.

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

27 ~~SEC. 5.~~

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

30 1701.2. (a) If the commission pursuant to Section 1701.1 has
31 determined that an adjudication case requires a hearing, the
32 procedures prescribed by this section shall be applicable. The
33 assigned commissioner or the assigned administrative law judge
34 shall hear the case in the manner described in the scoping memo.
35 The scoping memo shall designate whether the assigned
36 commissioner or the assigned administrative law judge shall preside
37 in the case. The commission shall provide by rule for peremptory
38 challenges and challenges for cause of the administrative law judge
39 ~~or assigned commissioner~~. Challenges for cause shall include, but
40 not be limited to, financial interests and prejudice. The rule shall

1 provide that all parties are entitled to one peremptory challenge
2 of the assignment of the administrative law judge ~~and one~~
3 ~~peremptory challenge of the assigned commissioner~~ in all cases.
4 All parties are entitled to unlimited peremptory challenges in any
5 case in which the administrative law judge ~~or the assigned~~
6 ~~commissioner~~ has within the previous 12 months served in any
7 capacity in an advocacy position at the commission, been employed
8 by a regulated public utility, or has represented a party or has been
9 a party of interest in the case. The assigned commissioner or the
10 administrative law judge shall prepare and file a decision setting
11 forth recommendations, findings, and conclusions. The decision
12 shall be filed with the commission and served upon all parties to
13 the action or proceeding without undue delay, not later than 60
14 days after the matter has been submitted for decision. The decision
15 of the assigned commissioner or the administrative law judge shall
16 become the decision of the commission if no further action is taken
17 within 30 days. Any interested party may appeal the decision to
18 the commission, provided that the appeal is made within 30 days
19 of the issuance of the decision. The commission may itself initiate
20 a review of the proposed decision on any grounds. The commission
21 decision shall be based on the record developed by the assigned
22 commissioner or the administrative law judge. A decision different
23 from that of the assigned commissioner or the administrative law
24 judge shall be accompanied by a written explanation of each of
25 the changes made to the decision.

26 (b) No officer, employee, or agent of the commission that is
27 assigned to assist in the prosecution of, ~~or~~ to testify in, *or to*
28 *supervise the prosecution of* an adjudication case *before the*
29 *commission*, shall participate in the decision of the case, or in the
30 decision of any factually related proceeding, including participation
31 in or advising the commission as to findings of fact, conclusions
32 of law, or orders. An officer, employee, or agent of the commission
33 that is assigned to assist in the prosecution of an adjudication case
34 may participate in reaching a settlement of the case, but shall not
35 participate in the decision of the commission to accept or reject
36 the settlement, except as a witness or counsel in an open hearing
37 or a hearing closed pursuant to subdivision (d). The Legislature
38 finds that the commission performs both prosecutorial and
39 adjudicatory functions in an adjudication case and declares its
40 intent that an officer, employee, or agent of the commission,

1 *including its attorneys*, may perform only one of those functions
2 in any adjudication case, or factually related proceeding.

3 (c) Ex parte communications shall be prohibited in adjudication
4 cases.

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

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

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

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

28 (3) Within seven days of the commission's determination of the
29 respondent's ability to pay potential penalties, fines, or restitution,
30 the respondent shall be entitled to an impartial review by an
31 administrative law judge, of the sufficiency of the showing made
32 by the respondent of the respondent's ability to pay. The review
33 by an administrative law judge of the ability of the respondent to
34 pay shall become part of the record of the adjudication and is
35 subject to the commission's consideration in its order resolving
36 the adjudication case. The administrative law judge may enter
37 temporary orders modifying any financial requirement made of
38 the respondent pending the review by the administrative law judge.

39 (4) A respondent that is a public utility regulated under a rate
40 of return or rate of margin regulatory structure or that has gross

1 annual revenues of more than one hundred million dollars
2 (\$100,000,000) generated within California is presumed to be able
3 to pay potential penalties or fines or to pay restitution that may be
4 ordered by the commission, and, therefore, paragraphs (1) to (3),
5 inclusive, do not apply to that respondent.

6 ~~SEC. 6.~~

7 *SEC. 11.* Section 1701.3 of the Public Utilities Code is amended
8 to read:

9 1701.3. (a) If the commission pursuant to Section 1701.1 has
10 determined that a ratesetting case requires a hearing, the procedures
11 prescribed by this section shall be applicable. The assigned
12 commissioner shall determine prior to the first hearing whether
13 the commissioner or the assigned administrative law judge shall
14 be designated as the principal hearing officer. The principal hearing
15 officer shall be present for more than one-half of the hearing days.
16 The decision of the principal hearing officer shall be the proposed
17 decision. An alternate decision may be issued by the assigned
18 commissioner or the assigned administrative law judge who is not
19 the principal hearing officer. The commission shall establish a
20 procedure for any party to request the presence of a commissioner
21 at a hearing. The assigned commissioner shall be present at the
22 closing arguments of the case. The principal hearing officer shall
23 present the proposed decision to the full commission in a public
24 meeting. The alternate decision, if any, shall also be presented to
25 the full commission at that public meeting. The alternate decision
26 shall be filed with the commission and shall be served on all parties
27 simultaneously with the proposed decision.

28 The presentation to the full commission shall contain a record
29 of the number of days of the hearing, the number of days that each
30 commissioner was present, and whether the decision was completed
31 on time.

32 (b) The commission shall provide by rule for peremptory
33 challenges and challenges for cause of the administrative law judge
34 ~~or the assigned commissioner~~. Challenges for cause shall include,
35 but not be limited to, financial interests and prejudice. All parties
36 shall be entitled to unlimited peremptory challenges in any case
37 in which the administrative law judge ~~or assigned commissioner~~
38 has, within the previous 12 months, served in any capacity in an
39 advocacy position at the commission, been employed by a regulated

1 public utility, or has represented a party or has been a party of
2 interest in the case.

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

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

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

34 *SEC. 12. Section 1731 of the Public Utilities Code is amended*
35 *to read:*

36 1731. (a) The commission shall set an effective date when
37 issuing an order or decision. The commission may set the effective
38 date of an order or decision prior to the date of issuance of the
39 order or decision.

1 (b) (1) After any order or decision has been made by the
2 commission, any party to the action or proceeding, *including the*
3 *Office of Ratepayer Advocates*, or any stockholder or bondholder
4 or other party pecuniarily interested in the public utility affected,
5 may apply for a rehearing in respect to any matters determined in
6 the action or proceeding and specified in the application for
7 rehearing. The commission may grant and hold a rehearing on
8 those matters, if in its judgment sufficient reason is made to appear.
9 No cause of action arising out of any order or decision of the
10 commission shall accrue in any court to any corporation or person
11 unless the corporation or person has filed an application to the
12 commission for a rehearing within 30 days after the date of
13 issuance or within 10 days after the date of issuance in the case of
14 an order issued pursuant to either Article 5 (commencing with
15 Section 816) or Article 6 (commencing with Section 851) of
16 Chapter 4 relating to security transactions and the transfer or
17 encumbrance of utility property.

18 (2) The commission shall notify the parties of the issuance of
19 an order or decision by either mail or electronic transmission.
20 Notification of the parties may be accomplished by one of the
21 following methods:

22 (A) Mailing the order or decision to the parties to the action or
23 proceeding.

24 (B) If a party to an action or proceeding consents in advance to
25 receive notice of any order or decision related to the action or
26 proceeding by electronic mail address, notification of the party
27 may be accomplished by transmitting an electronic copy of the
28 official version of the order or decision to the party if the party
29 has provided an electronic mail address to the commission.

30 (C) If a party to an action or proceeding consents in advance to
31 receive notice of any order or decision related to the action or
32 proceeding by electronic mail address, notification of the party
33 may be accomplished by transmitting a link to an Internet Web
34 site where the official version of the order or decision is readily
35 available to the party if the party has provided an electronic mail
36 address to the commission.

37 (3) For the purposes of this article, “date of issuance” means
38 the mailing or electronic transmission date that is stamped on the
39 official version of the order or decision

1 (c) No cause of action arising out of any order or decision of
2 the commission construing, applying, or implementing the
3 provisions of Chapter 4 of the Statutes of the 2001–02 First
4 Extraordinary Session that (1) relates to the determination or
5 implementation of the department’s revenue requirements, or the
6 establishment or implementation of bond or power charges
7 necessary to recover those revenue requirements, or (2) in the sole
8 determination of the Department of Water Resources, the expedited
9 review of order or decision of the commission is necessary or
10 desirable, for the maintenance of any credit ratings on any bonds
11 or notes of the department issued pursuant to Division 27
12 (commencing with Section 80000) of the Water Code or for the
13 department to meet its obligations with respect to any bonds or
14 notes pursuant to that division, shall accrue in any court to any
15 corporation or person unless the corporation or person has filed
16 an application with the commission for a rehearing within 10 days
17 after the date of issuance of the order or decision. The Department
18 of Water Resources shall notify the commission of any
19 determination pursuant to paragraph (2) of this subdivision prior
20 to the issuance by the commission of any order or decision
21 construing, applying, or implementing the provisions of Chapter
22 4 of the Statutes of the 2001–02 First Extraordinary Session. The
23 commission shall issue its decision and order on rehearing within
24 20 days after the filing of the application.

25 *SEC. 13. Section 1756 of the Public Utilities Code is amended*
26 *to read:*

27 1756. (a) Within 30 days after the commission issues its
28 decision denying the application for a rehearing, or, if the
29 application was granted, then within 30 days after the commission
30 issues its decision on rehearing, or at least 120 days after the
31 application is granted if no decision on rehearing has been issued,
32 any aggrieved party, *including the Office of Ratepayer Advocates*,
33 may petition for a writ of review in the court of appeal or the
34 Supreme Court for the purpose of having the lawfulness of the
35 original order or decision or of the order or decision on rehearing
36 inquired into and determined. If the writ issues, it shall be made
37 returnable at a time and place specified by court order and shall
38 direct the commission to certify its record in the case to the court
39 within the time specified.

1 (b) The petition for review shall be served upon the executive
2 director and the general counsel of the commission either
3 personally or by service at the office of the commission.

4 (c) For purposes of this section, the issuance of a decision or
5 the granting of an application shall be construed to have occurred
6 on the date of issuance, as defined in paragraph~~(4)~~ (3) of
7 subdivision (b) of Section 1731.

8 (d) The venue of a petition filed in the court of appeal pursuant
9 to this section shall be in the judicial district in which the petitioner
10 resides. If the petitioner is a business, venue shall be in the judicial
11 district in which the petitioner has its principal place of business
12 in California.

13 (e) Any party may seek from the Supreme Court, pursuant to
14 California Rules of Court, an order transferring related actions to
15 a single appellate district.

16 (f) For purposes of this section, review of decisions pertaining
17 solely to water corporations shall only be by petition for writ of
18 review in the Supreme Court, except that review of complaint or
19 enforcement proceedings may be in the court of appeal or the
20 Supreme Court.

21 (g) No order or decision arising out of a commission proceeding
22 under Section 854 shall be reviewable in the court of appeal
23 pursuant to subdivision (a) if the application for commission
24 authority to complete the merger or acquisition was filed on or
25 before December 31, 1998, by two telecommunications-related
26 corporations including at least one which provides local
27 telecommunications service to over one million California
28 customers. These orders or decisions shall be reviewed pursuant
29 to the Public Utilities Code in existence on December 31, 1998.

30 *SEC. 14. Section 5900 of the Public Utilities Code is amended*
31 *to read:*

32 5900. (a) The holder of a state franchise shall comply with
33 the provisions of Sections 53055, 53055.1, 53055.2, and 53088.2
34 of the Government Code, and any other customer service standards
35 pertaining to the provision of video service established by federal
36 law or regulation or adopted by subsequent enactment of the
37 Legislature. All customer service and consumer protection
38 standards under this section shall be interpreted and applied to
39 accommodate newer or different technologies while meeting or
40 exceeding the goals of the standards.

1 (b) The holder of a state franchise shall comply with provisions
2 of Section 637.5 of the Penal Code and the privacy standards
3 contained in Section 551 et seq. of Title 47 of the United States
4 Code.

5 (c) The local entity shall enforce all of the customer service and
6 protection standards of this section with respect to complaints
7 received from residents within the local entity's jurisdiction, but
8 it may not adopt or seek to enforce any additional or different
9 customer service or other performance standards under Section
10 53055.3 or subdivision (q), (r), or (s) of Section 53088.2 of the
11 Government Code, or any other authority or provision of law.

12 (d) The local entity shall, by ordinance or resolution, provide a
13 schedule of penalties for any material breach by a holder of a state
14 franchise of this section. No monetary penalties shall be assessed
15 for a material breach if it is out of the reasonable control of the
16 holder. Further, no monetary penalties may be imposed prior to
17 January 1, 2007. Any schedule of monetary penalties adopted
18 pursuant to this section shall in no event exceed five hundred
19 dollars (\$500) for each day of each material breach, not to exceed
20 one thousand five hundred dollars (\$1,500) for each occurrence
21 of a material breach. However, if a material breach of this section
22 has occurred, and the local entity has provided notice and a fine
23 or penalty has been assessed, and if a subsequent material breach
24 of the same nature occurs within 12 months, the penalties may be
25 increased by the local entity to a maximum of one thousand dollars
26 (\$1,000) for each day of each material breach, not to exceed three
27 thousand dollars (\$3,000) for each occurrence of the material
28 breach. If a third or further material breach of the same nature
29 occurs within those same 12 months, and the local entity has
30 provided notice and a fine or penalty has been assessed, the
31 penalties may be increased to a maximum of two thousand five
32 hundred dollars (\$2,500) for each day of each material breach, not
33 to exceed seven thousand five hundred dollars (\$7,500) for each
34 occurrence of the material breach. With respect to video providers
35 subject to a franchise or license, any monetary penalties assessed
36 under this section shall be reduced dollar-for-dollar to the extent
37 any liquidated damage or penalty provision of a current cable
38 television ordinance, franchise contract, or license agreement
39 imposes a monetary obligation upon a video provider for the same

1 customer service failures, and no other monetary damages may be
2 assessed.

3 (e) The local entity shall give the video service provider written
4 notice of any alleged material breach of the customer service
5 standards of this division and allow the video provider at least 30
6 days from receipt of the notice to remedy the specified material
7 breach.

8 (f) A material breach for the purposes of assessing penalties
9 shall be deemed to have occurred for each day within the
10 jurisdiction of each local entity, following the expiration of the
11 period specified in subdivision (e), that any material breach has
12 not been remedied by the video service provider, irrespective of
13 the number of customers or subscribers affected.

14 (g) Any penalty assessed pursuant to this section shall be
15 remitted to the local entity, which shall submit one-half of the
16 penalty to the Digital Divide Account established in Section 280.5.

17 (h) Any interested person may seek judicial review of a decision
18 of the local entity in a court of appropriate jurisdiction. For this
19 purpose, a court of law shall conduct a de novo review of any
20 issues presented.

21 (i) This section shall not preclude a party affected by this section
22 from utilizing any judicial remedy available to that party without
23 regard to this section. Actions taken by a local legislative body,
24 including a local franchising entity, pursuant to this section shall
25 not be binding upon a court of law. For this purpose, a court of
26 law shall conduct de novo review of any issues presented.

27 (j) For purposes of this section, “material breach” means any
28 substantial and repeated failure of a video service provider to
29 comply with service quality and other standards specified in
30 subdivision (a).

31 (k) The ~~Division~~ *Office* of Ratepayer Advocates shall have
32 authority to advocate on behalf of video subscribers regarding
33 renewal of a state-issued franchise and enforcement of this section,
34 and Sections 5890 and 5950. For this purpose, the ~~division~~ *office*
35 shall have access to any information in the possession of the
36 commission subject to all restrictions on disclosure of that
37 information that are applicable to the commission.

38 *SEC. 15. Section 7661 of the Public Utilities Code is amended*
39 *to read:*

1 7661. (a) The commission shall require every railroad
2 corporation operating in this state to develop, within 90 days of
3 the effective date of the act adding this section, in consultation
4 with, and with the approval of, the ~~California Emergency~~
5 ~~Management Agency~~ *Office of Emergency Services*, a protocol for
6 rapid communications with the agency, the Department of the
7 California Highway Patrol, and designated county public safety
8 agencies in an endangered area if there is a runaway train or any
9 other uncontrolled train movement that threatens public health and
10 safety.

11 (b) A railroad corporation shall promptly notify the ~~California~~
12 ~~Emergency Management Agency~~ *Office of Emergency Services*,
13 the Department of the California Highway Patrol, and designated
14 county public safety agencies, through a communication to the
15 Warning Center of the ~~California Emergency Management Agency~~
16 *Office of Emergency Services*, if there is a runaway train or any
17 other uncontrolled train movement that threatens public health and
18 safety, in accordance with the railroad corporation's
19 communications protocol developed pursuant to subdivision (a).

20 (c) The notification required pursuant to subdivision (b) shall
21 include the following information, whether or not an accident or
22 spill occurs:

23 (1) The information required by subdivision (c) of Section 7673.

24 (2) In the event of a runaway train, a train list.

25 (3) In the event of an uncontrolled train movement or
26 uncontrolled movement of railcars, a track list or other inventory
27 document if available.

28 (d) ~~The consumer protection and safety and enforcement~~ division
29 shall investigate any incident that results in a notification required
30 pursuant to subdivision (b), and shall report its findings concerning
31 the cause or causes to the commission. The commission shall
32 include the division's report in its report to the Legislature pursuant
33 to Section 7711.