

**Introduced by Senator Hill**February 22, 2013

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An act to amend Sections 305, 307, 308, 309.6, 1701.2, and 1701.3 of the Public Utilities Code, relating to the Public Utilities Commission.

## LEGISLATIVE COUNSEL'S DIGEST

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

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 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.

The bill would repeal the requirement that the president direct the executive director, attorney, and other staff of the commission.

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.

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 California Constitution authorizes the commission to establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. 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.

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.

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 direct the executive director, the attorney, and other  
6 staff of the commission, except for the staff of the division  
7 described in Section 309.5, in the performance of their duties, in  
8 accordance with commission policies and guidelines.~~ The president  
9 shall preside at all meetings and sessions of the commission.

10 SEC. 2. Section 307 of the Public Utilities Code is amended  
11 to read:

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

4 (b) The attorney shall represent and appear for the people of the  
5 State of California and the commission in all actions and  
6 proceedings involving any question under this part or under any  
7 order or act of the commission. If directed to do so by ~~the president,~~  
8 ~~except as otherwise directed by vote of~~ the commission, the  
9 attorney shall intervene, if possible, in any action or proceeding  
10 in which any such question is involved.

11 (c) ~~The~~ *Except as provided in Section 1701.2,* the attorney shall  
12 commence, prosecute, and expedite the final determination of all  
13 actions and proceedings directed or authorized by ~~the president,~~  
14 ~~except as otherwise directed or authorized by vote of~~ the  
15 commission, advise the commission and each commissioner, when  
16 so requested, in regard to all matters in connection with the powers  
17 and duties of the commission and the members thereof, and  
18 generally perform all duties and services as attorney to the  
19 commission that ~~the president, or vote of~~ the commission, may  
20 require of him.

21 SEC. 3. Section 308 of the Public Utilities Code is amended  
22 to read:

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

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

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

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

3 309.6. (a) The commission shall adopt procedures on the  
4 disqualification of administrative law judges *and commissioners*  
5 due to bias or prejudice similar to those of other state agencies and  
6 superior courts.

7 (b) The commission shall develop the procedures with the  
8 opportunity for public review and comment.

9 SEC. 5. Section 1701.2 of the Public Utilities Code is amended  
10 to read:

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

1 of the issuance of the decision. The commission may itself initiate  
2 a review of the proposed decision on any grounds. The commission  
3 decision shall be based on the record developed by the assigned  
4 commissioner or the administrative law judge. A decision different  
5 from that of the assigned commissioner or the administrative law  
6 judge shall be accompanied by a written explanation of each of  
7 the changes made to the decision.

8 *(b) No officer, employee, or agent of the commission that is*  
9 *assigned to assist in the prosecution of, or to testify in, an*  
10 *adjudication case, shall participate in the decision of the case, or*  
11 *in the decision of any factually related proceeding, including*  
12 *participation in or advising the commission as to findings of fact,*  
13 *conclusions of law, or orders. An officer, employee, or agent of*  
14 *the commission that is assigned to assist in the prosecution of an*  
15 *adjudication case may participate in reaching a settlement of the*  
16 *case, but shall not participate in the decision of the commission*  
17 *to accept or reject the settlement, except as a witness or counsel*  
18 *in an open hearing or a hearing closed pursuant to subdivision*  
19 *(d). The Legislature finds that the commission performs both*  
20 *prosecutorial and adjudicatory functions in an adjudication case*  
21 *and declares its intent that an officer, employee, or agent of the*  
22 *commission may perform only one of those functions in any*  
23 *adjudication case, or factually related proceeding.*

24 ~~(b)~~

25 *(c) Ex parte communications shall be prohibited in adjudication*  
26 *cases.*

27 ~~(c)~~

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

32 ~~(d)~~

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

38 ~~(e)~~

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

4 (2) If the commission determines that a respondent lacks, or  
5 may lack, the ability to pay, the commission may order the  
6 respondent to demonstrate, to the satisfaction of the commission,  
7 sufficient ability to pay potential penalties, fines, or restitution that  
8 may be ordered by the commission. The respondent shall  
9 demonstrate the ability to pay, or make other financial  
10 arrangements satisfactory to the commission, within seven days  
11 of the commission commencing an adjudication case. The  
12 commission may delegate to the attorney to the commission the  
13 determination of whether a sufficient showing has been made by  
14 the respondent of an ability to pay.

15 (3) Within seven days of the commission's determination of the  
16 respondent's ability to pay potential penalties, fines, or restitution,  
17 the respondent shall be entitled to an impartial review by an  
18 administrative law judge, of the sufficiency of the showing made  
19 by the respondent of the respondent's ability to pay. The review  
20 by an administrative law judge of the ability of the respondent to  
21 pay shall become part of the record of the adjudication and is  
22 subject to the commission's consideration in its order resolving  
23 the adjudication case. The administrative law judge may enter  
24 temporary orders modifying any financial requirement made of  
25 the respondent pending the review by the administrative law judge.

26 (4) A respondent that is a public utility regulated under a  
27 rate-of-return or rate-of-margin regulatory structure or that has  
28 gross annual revenues of more than one hundred million dollars  
29 (\$100,000,000) generated within California is presumed to be able  
30 to pay potential penalties or fines or to pay restitution that may be  
31 ordered by the commission, and, therefore, paragraphs (1) to (3),  
32 inclusive, do not apply to that respondent.

33 SEC. 6. Section 1701.3 of the Public Utilities Code is amended  
34 to read:

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

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

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

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

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



1 session during that period, which shall not in any circumstance  
2 exceed 14 days. If the commission holds the decision, it may permit  
3 ex parte communications during the first half of the interval  
4 between the hold date and the date that the decision is calendared  
5 for final decision. The commission may meet in closed session for  
6 the second half of that interval.

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

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

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