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AB-1077 Mutual water companies: open meetings. (2015-2016)

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Assembly Bill No. 1077

CHAPTER 669

An act to amend Section 14305 of the Corporations Code, relating to mutual water companies.

[Approved by Governor October 09, 2015. Filed with Secretary of State October 09, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1077, Holden. Mutual water companies: open meetings.

Under existing law, a mutual water company is defined as a corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for irrigation or domestic purposes that provides in its articles or bylaws that the water shall be sold, distributed, supplied, or delivered only to owners of its shares, as specified.

A mutual water company may be organized under the General Corporation Law or the Nonprofit Mutual Benefit Corporation Law. The Mutual Water Company Open Meeting Act authorizes an eligible person, upon 24 hours advance written notice, to attend meetings of the board of directors of a mutual water company that operates a public water system, except when the board adjourns to, or meets solely in, executive session.

This bill would prohibit a mutual water company from meeting solely in an executive session without holding a meeting. The bill would require notice of a meeting to be given to an eligible person at least 4 days prior to the meetings. The bill would require a board of directors of a mutual water company to allow an eligible person to personally attend a meeting of the board, if the eligible person gave the board at least 24 hours advance written notice of his or her intent to personally attend the meeting. The bill would authorize the board to allow an eligible person who was denied attendance at a meeting for failure to provide this notice, or because the number of eligible persons having already provided notice of attendance exceeds the room capacity of the place of the meeting, to attend the meeting by teleconference, and would further require the board to provide to an eligible person attending a meeting by teleconference a copy of the documents to be discussed at the meeting, as specified.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Mutual water companies are nonprofit entities that seek to provide quality water service to their residential, commercial, municipal, and agricultural shareholders or members, many through small water systems and in disadvantaged communities throughout the state.

(b) Since 2013, mutual water companies have made great improvements to water quality and service reliability across California, as well as to the transparency of their operations and finances.

(c) Mutual water companies have been leaders in promoting water conservation and efficiency since the drought emergency in California began.

(d) Mutual water companies serve as the sole water provider in their service territories and act in many ways like public agencies, and they therefore should take reasonable steps to ensure their shareholders and customers have a voice in the operations of the company.

(e) Many mutual water companies have small or no meeting facilities, some of which meet in board members' residences, that can safely hold only a limited number of people, and are located in remote parts of California that are difficult to access by some shareholders and customers of the mutual water company.

(f) Many small mutual water companies have limited financial means and it is important that their financial resources be put to efficient use in fulfilling their duty to provide safe and affordable water to their shareholders and members.

(g) Mutual water companies are unique, and unlike large public agencies or for-profit utilities, these nonprofit organizations are solely responsible to their shareholders and customers and not the broader public outside of their service area.

(h) Given the distinctive operational constraints faced by mutual water companies, the Legislature believes that mutual water companies should, where economically and technologically feasible, have means to provide the greatest shareholder and customer access to meetings within these constraints.

SEC. 2. Section 14305 of the Corporations Code is amended to read:

14305. (a) (1) This section shall be known and may be cited as the Mutual Water Company Open Meeting Act.

(2) This section shall only apply to a mutual water company that operates a public water system.

(b) (1) (A) A board of directors of a mutual water company shall allow an eligible person to personally attend a meeting of the board, if the eligible person gave the board at least 24 hours advance written notice of his or her intent to personally attend the meeting.

(B) Notwithstanding any other law, the board of directors may use teleconferencing to provide any eligible person access to the meeting that otherwise would be denied attendance at a meeting of the board for failure to provide this notice, or because the number of eligible persons having already provided notice of attendance exceeds the room capacity of the place of the meeting described in the notice issued pursuant to subdivision (f). The teleconferenced meeting or proceeding shall comply with this section and all other applicable provisions of law relating to a specific type of meeting or proceeding conducted by a mutual water company. If the board uses teleconferencing, the board shall provide to an eligible person attending a meeting by teleconference, before the meeting begins, an electronic copy or photocopy of all documents not related to an executive session to be discussed at the meeting. A board of directors of a mutual water company shall not prohibit an eligible person from attending a meeting of the board either in person, so long as the eligible person has complied with the notice requirement of paragraph (A), or by teleconference except as provided by paragraph (2). A board of directors may allow an eligible person to attend the meeting personally in lieu of using teleconferencing pursuant to this paragraph.

(C) For purposes of this subdivision, the term "teleconference" means, to the extent it is technologically feasible, any electronic means, that includes either audio or video or both, that allows an eligible person to hear a meeting and verbally interact with the board, including, but not limited to, a telephone, cellular telephone with speaker phone technology, or computer, or a device using internet-based video or audio conference technology.

(2) A board of directors of a mutual water company shall only meet in executive session during a meeting. A board may prohibit an eligible person from attending an executive session to consider pending or potential litigation, matters relating to the formation of contracts with third parties, including matters relating to the potential acquisition of real property or water rights, member or shareholder discipline, personnel matters, or to meet with a member or shareholder, upon the member or shareholder's request, regarding the member or shareholder's payment of assessments, as specified in Section 14303.

(3) The board of directors of a mutual water company shall meet in executive session, if requested by a member or shareholder who may be subject to a fine, penalty, or other form of discipline, and the member shall be entitled to attend the executive session.

(4) An eligible person shall be entitled to attend a teleconference meeting, as specified in paragraph (3) of subdivision (o), or the portion of the teleconference meeting that is open to eligible persons, and shall be entitled to attend with or without fulfilling the notice requirement in paragraph (1). The teleconference meeting or portion of the meeting that is open to eligible persons shall be audible to the eligible person in a location specified in the notice of the meeting.

(c) Any matter discussed in executive session shall be generally noted in the minutes of the meeting at which the executive session occurred.

(d) The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the board of directors of a mutual water company, conducted on or after January 1, 2014, other than an executive session, shall be available to eligible persons within 30 days of the meeting. The minutes, proposed minutes, or summary minutes shall be provided to any eligible person upon request and upon reimbursement of the mutual water company's costs for providing the minutes.

(e) The pro forma budget required in Section 14306 shall be available to eligible persons within 30 days of the meeting at which the budget was adopted. The budget shall be provided to any eligible person upon request and upon reimbursement of the mutual water company's costs.

(f) Unless the bylaws provide for a longer period of notice, eligible persons shall be given notice of the time and place of a meeting as defined in subdivision (o), except for an emergency meeting, at least four days prior to the meeting. Notice shall be given by posting the notice in a prominent, publicly accessible place or places within the territory served by the mutual water company and by mail to any eligible person who had requested notification of board meetings by mail, at the address requested by the eligible person. Eligible persons requesting notice by mail shall pay the costs of reproduction and mailing of the notice in advance. Notice may also be given by mail, by delivery of the notice to each unit served by the mutual water company, or, with the consent of the eligible person, by electronic means. The notice shall contain the agenda for the meeting.

(g) An emergency meeting of the board may be called by the chief executive officer of the mutual water company, or by any two members of the board of directors other than the chief executive officer, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide notice as required by this section.

(h) The board of directors of a mutual water company shall permit any eligible person to speak at any meeting of the mutual water company or the board of directors, except for any portion of a meeting that is held in executive session outside the presence of eligible persons. A reasonable time limit for all eligible persons to speak to the board of directors or before a meeting of the mutual water company shall be established by the board of directors.

(i) (1) Except as described in paragraphs (2) to (4), inclusive, the board of directors of the mutual water company shall not discuss or take action on any item at a nonemergency meeting unless the item was placed on the agenda included in the notice that was posted and distributed pursuant to subdivision (f). This subdivision does not prohibit an eligible person who is not a member of the board from speaking on issues not on the agenda.

(2) Notwithstanding paragraph (1), a member of the board of directors, mutual water company officers, or a member of the staff of the mutual water company, may do any of the following:

(A) Briefly respond to statements made or questions posed by a person speaking at a meeting as described in subdivision (h).

(B) Ask a question for clarification, make an announcement, or make a brief report on his or her own activities, whether in response to questions posed by an eligible person or based upon his or her own initiative.

(3) Notwithstanding paragraph (1), the board of directors or a member of the board of directors, subject to rules or procedures of the board of directors, may do any of the following:

(A) Provide a reference to, or provide other resources for factual information to, the mutual water company's officers or staff.

(B) Request the mutual water company's officers or staff to report back to the board of directors at a subsequent meeting concerning any matter, or take action to direct the mutual water company's officers or staff to place a matter of business on a future agenda.

(C) Direct the mutual water company's officers or staff to perform administrative tasks that are necessary to carry out this subdivision.

(4) (A) Notwithstanding paragraph (1), the board of directors may take action on any item of business not appearing on the agenda posted and distributed pursuant to subdivision (f) under any of the following conditions:

(i) Upon a determination made by a majority of the board of directors present at the meeting that an emergency situation exists. An emergency situation exists if there are circumstances that could not have been reasonably foreseen by the board, that require immediate attention and possible action by the board, and that, of necessity, make it impracticable to provide notice.

(ii) Upon a determination made by the board by a vote of two-thirds of the members present at the meeting, or, if less than two-thirds of total membership of the board is present at the meeting, by a unanimous vote of the members present, that there is a need to take immediate action and that the need for action came to the attention of the board after the agenda was posted and distributed pursuant to subdivision (f).

(iii) The item appeared on an agenda that was posted and distributed pursuant to subdivision (f) for a prior meeting of the board of directors that occurred not more than 30 calendar days before the date that action is taken on the item and, at the prior meeting, action on the item was continued to the meeting at which the action is taken.

(B) Before discussing any item pursuant to this paragraph, the board of directors shall openly identify the item to the members in attendance at the meeting.

(j) (1) Notwithstanding any other law, the board of directors shall not take action on any item of business outside of a meeting.

(2) (A) Notwithstanding any other provision of law, the board of directors shall not conduct a meeting via a series of electronic transmissions, including, but not limited to, electronic mail, except as specified in subparagraph (B).

(B) Electronic transmissions may be used as a method of conducting an emergency meeting if all members of the board, individually or collectively, consent in writing to that action, and if the written consent or consents are filed with the minutes of the meeting of the board. These written consents may be transmitted electronically.

(k) (1) An eligible person may bring a civil action for declaratory or equitable relief for a violation of this section by a mutual water company for which he or she is defined as an eligible person for a judicial determination that an action taken by the board is null and void under this section.

(2) Prior to the commencement of an action pursuant to paragraph (1), the eligible person shall make a demand on the board to cure or correct the action alleged to be taken in violation of this section. The demand shall be in writing, and submitted within 90 days from the date the action was taken. The demand shall state the challenged action of the board and the nature of the alleged violation.

(3) Within 30 days of receipt of the demand, the board shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct, or inform the demanding party in writing of its decision not to cure or correct the challenged action.

(4) Within 15 days of receipt of the written notice of the board's decision to cure or correct or not to cure or correct, or within 15 days of the expiration of the 30-day period to cure or correct, whichever is earlier, the demanding party shall commence the action pursuant to paragraph (1). If the demanding party fails to commence the action pursuant to paragraph (1), that party shall be barred from commencing the action thereafter.

(l) A board action that is alleged to have been taken in violation of this section shall not be determined to be void if the action taken was in substantial compliance with this section.

(m) The fact that the board of directors of a mutual water company takes subsequent action to cure or correct an action taken pursuant to this section shall not be construed as, or admissible as evidence of, a violation of this section.

(n) An eligible person who prevails in a civil action to enforce his or her rights pursuant to this section shall be entitled to reasonable attorney's fees and court costs. A prevailing mutual water company shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

(o) As used in this section:

(1) "Eligible person" means a person who is any of the following:

(A) A shareholder or member of the mutual water company.

(B) A person who is an occupant, pursuant to a lease or a rental agreement, of commercial space or a dwelling unit to which the mutual water company sells, distributes, supplies, or delivers drinking water.

(C) An elected official of a city or county who represents people who receive drinking water directly from the mutual water company on a retail basis.

(D) Any other person eligible to participate in the mutual water company's meetings under provisions of the company's articles or bylaws.

(2) "Item of business" means any action within the authority of the board, except those actions that the board has validly delegated to any other person or persons, officer of the mutual water company, or committee of the board comprising less than a majority of the directors.

(3) "Meeting" means either of the following:

(A) A congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business that is within the authority of the board.

(B) A teleconference in which a majority of the members of the board, in different locations, are connected by electronic means, through audio or video or both. A teleconference meeting shall be conducted in a manner that protects the rights of members of the mutual water company and otherwise complies with the requirements of this title. The notice of the teleconference meeting shall identify at least one physical location so that members of the mutual water company may attend and at least one member of the board of directors or a person designated by the board shall be present at that location. Participation by board members in a teleconference meeting constitutes presence at that meeting as long as all board members participating in the meeting are able to hear one another and members of the mutual water company speaking on matters before the board.

(4) "Mutual water company" means a mutual water company, as defined in Section 14300, that operates a public water system, as defined in Section 14300.5.