

AMENDED IN SENATE JULY 1, 2013
AMENDED IN SENATE JUNE 18, 2013
AMENDED IN SENATE JUNE 5, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 240

Introduced by Assembly Member Rendon

February 5, 2013

An act to add Sections 14304, 14305, 14306, and 14307 to the Corporations Code, to amend Section 116755 of the Health and Safety Code, ~~and~~ to add Section 10531.5 to the Water Code, *and to amend Item 4265-111-6051 of Section 2.00 of the Budget Act of 2011*, relating to mutual water companies, *and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 240, as amended, Rendon. Mutual water companies.

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.

(1) Existing law requires each board member of a mutual water company that operates a public water system to complete a training course regarding the duties of board members of mutual water companies, as specified.

This bill would require a board member to repeat this training course every 6 years.

(2) Existing law permits a mutual water company that is not a public utility to levy assessments upon its shares, unless otherwise provided in its articles or bylaws.

This bill would also permit the board of directors of a mutual water company, if authorized by its articles or bylaws, to record a notice of lien against a shareholder's property if the shareholder has not timely paid any rate, charge, or assessment arising from, or related to, water services provided by the mutual water company to the shareholder's property and if the shareholder was given at least 20 days' notice of the lien.

(3) Existing law, the California Public Records Act, provides that public records are open to inspection at all times during the office hours of the state or local agency that retains those records, and that every person has a right to inspect any public record, except as provided. The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate.

This bill would enact the Mutual Water Company Open Meeting Act, which would apply to all mutual water companies, and would permit an eligible person to attend a meeting of a mutual water company, as those terms are defined, and to speak during the meeting, except as provided.

The bill would also require the board of the mutual water company that operates a public water system to adopt, in an open meeting, an annual budget on or before the start of each fiscal year. The bill would require the board of a mutual water company that operates a public water system to contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the mutual water company, and would require the report to be filed, within 12 months of the end of the mutual water company's fiscal year under examination, as a public record with the mutual water company, and to be sent to the Controller and any person served by the mutual water company that submits a written request to the board, as specified.

The bill would also require the board of directors of a mutual water company that operates a public water system to make specified documents available to an eligible person, as defined, upon payment of fees covering the direct costs of duplication, as specified.

(4) Existing law declares that water is a valuable natural resource in California and should be managed to ensure the availability of sufficient

supplies to meet the state’s agricultural, domestic, industrial, and environmental needs. Existing law declares that local agencies can realize efficiencies by coordinating and integrating their assets and seeking mutual solutions to water management issues.

This bill would declare the intent of the Legislature to encourage collaboration among mutual water companies that operate public water systems in the City of Maywood to create a public agency that can consolidate drinking water services for the people and business of that city.

The Budget Act of 2011 appropriated \$7,500,000 from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Fund of 2006 to the Department of Public Health for the provision of grants to public agencies, as specified, to improve drinking water infrastructure in communities served by mutual water companies in the Cities of Maywood and Santa Ana.

This bill would limit the use of this appropriation to providing grants to the Water Replenishment District of Southern California for water quality improvement projects for the benefit of the City of Maywood, subject to specified conditions.

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

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

- 1 SECTION 1. Section 14304 is added to the Corporations Code,
- 2 to read:
- 3 14304. If a shareholder of a mutual water company has not
- 4 timely paid any rate, charge, or assessment arising from, or related
- 5 to, water service provided by the mutual water company to the
- 6 shareholder’s property, and if authorized by its articles or bylaws,
- 7 then after providing at least 20 days’ written notice to the
- 8 shareholder, the board of directors of the mutual water company
- 9 may authorize the recording of a notice of lien against that
- 10 shareholder’s property to secure the collection of the rates, charges,
- 11 and assessments owed to the mutual water company by the
- 12 shareholder.
- 13 SEC. 2. Section 14305 is added to the Corporations Code, to
- 14 read:
- 15 14305. (a) This section shall be known and may be cited as
- 16 the Mutual Water Company Open Meeting Act.

1 (b) Any eligible person may attend meetings of the board of
2 directors of a mutual water company, except when the board
3 adjourns to, or meets solely in, executive session to consider
4 litigation, matters relating to the formation of contracts with third
5 parties, member or shareholder discipline, personnel matters, or
6 to meet with a member or shareholder, upon the member or
7 shareholder's request, regarding the member or shareholder's
8 payment of assessments, as specified in Section 14303. The board
9 of directors of the association shall meet in executive session, if
10 requested by a member or shareholder who may be subject to a
11 fine, penalty, or other form of discipline, and the member shall be
12 entitled to attend the executive session. As specified in paragraph
13 (3) of subdivision (m), an eligible person shall be entitled to attend
14 a teleconference meeting or the portion of a teleconference meeting
15 that is open to eligible persons, and that meeting or portion of the
16 meeting shall be audible to the eligible persons in a location
17 specified in the notice of the meeting.

18 (c) Any matter discussed in executive session shall be generally
19 noted in the minutes of the immediately following meeting that is
20 open to eligible persons.

21 (d) The minutes, minutes proposed for adoption that are marked
22 to indicate draft status, or a summary of the minutes, of any
23 meeting of the board of directors of a mutual water company, other
24 than an executive session, shall be available to eligible persons
25 within 30 days of the meeting. The minutes, proposed minutes, or
26 summary minutes shall be distributed to any eligible person upon
27 request and upon reimbursement of the mutual water company's
28 costs for making that distribution.

29 (e) Eligible persons shall be notified in writing, at the time that
30 the pro forma budget required in Section 14306 is distributed, of
31 their right to have copies of the minutes of meetings of the board
32 of directors, and how and where those minutes may be obtained.

33 (f) Unless the bylaws provide for a longer period of notice,
34 eligible persons shall be given notice of the time and place of a
35 meeting as defined in subdivision (m), except for an emergency
36 meeting or a meeting that will be held solely in executive session,
37 at least four days prior to the meeting. Except for an emergency
38 meeting, eligible persons shall be given notice of the time and
39 place of a meeting that will be held solely in executive session at
40 least two days prior to the meeting. Notice shall be given by posting

1 the notice in a prominent, publicly accessible place or places within
2 the territory served by the mutual water company and by mail to
3 any eligible person who had requested notification of board
4 meetings by mail, at the address requested by the eligible person.
5 Notice may also be given by mail, by delivery of the notice to each
6 unit served by the mutual water company or, with the consent of
7 the eligible person, by electronic means. The notice shall contain
8 the agenda for the meeting.

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

16 (h) The board of directors of the mutual water company shall
17 permit any eligible person to speak at any meeting of the mutual
18 water company or the board of directors, except for meetings of
19 the board held in executive session. A reasonable time limit for
20 all eligible persons to speak to the board of directors or before a
21 meeting of the mutual water company shall be established by the
22 board of directors.

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

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

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

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

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

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

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

11 (C) Direct the mutual water companies officers or staff to
12 perform administrative tasks that are necessary to carry out this
13 subdivision.

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

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

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

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

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

1 (j) (1) The board of directors shall not take action on any item
2 of business outside of a meeting.

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

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

13 (k) An eligible person may bring a civil action for declaratory
14 or equitable relief for a violation of this section by a mutual water
15 company for which he or she is defined as an eligible person,
16 including, but not limited to, injunctive relief, restitution, or a
17 combination thereof, within one year of the date the cause of action
18 accrues.

19 (l) An eligible person who prevails in a civil action to enforce
20 his or her rights pursuant to this section shall be entitled to
21 reasonable attorney's fees and court costs, and the court may
22 impose a civil penalty of up to five hundred dollars (\$500) for each
23 violation, except that each identical violation shall be subject to
24 only one penalty if the violation affects each member of the
25 association equally. A prevailing mutual water company shall not
26 recover any costs, unless the court finds the action to be frivolous,
27 unreasonable, or without foundation.

28 (m) As used in this section:

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

31 (A) A stockholder or member of the mutual water company.

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

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

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

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

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

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

13 (B) A teleconference in which a majority of the members of the
14 board, in different locations, are connected by electronic means,
15 through audio or video or both. A teleconference meeting shall be
16 conducted in a manner that protects the rights of members of the
17 association and otherwise complies with the requirements of this
18 title. Except for a meeting that will be held solely in executive
19 session, the notice of the teleconference meeting shall identify at
20 least one physical location so that members of the association may
21 attend and at least one member of the board of directors or a person
22 designated by the board shall be present at that location.
23 Participation by board members in a teleconference meeting
24 constitutes presence at that meeting as long as all board members
25 participating in the meeting are able to hear one another and
26 members of the association speaking on matters before the board.

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

30 SEC. 3. Section 14306 is added to the Corporations Code, to
31 read:

32 14306. (a) The board of a mutual water company that operates
33 a public water system shall adopt, in an open meeting, an annual
34 budget on or before the start of each fiscal year of the mutual water
35 company.

36 (b) The board of a mutual water corporation that operates a
37 public water system shall contract with a certified public accountant
38 or public accountant to make an annual audit of the accounts and
39 records of the mutual water company. The audit shall conform to
40 generally accepted auditing standards. A report of the audit shall

1 be filed with the mutual water company and shall be sent to the
2 Controller and any person served by the mutual water company
3 that submits a written request to the board. The report shall be filed
4 within 12 months of the end of the mutual water company's fiscal
5 year under examination.

6 SEC. 4. Section 14307 is added to the Corporations Code, to
7 read:

8 14307. (a) Unless its governing documents impose more
9 stringent standards, a mutual water company that operates a public
10 water system shall make the following records promptly available
11 upon request to an eligible person upon payment of fees covering
12 direct costs of duplication:

13 (1) Agendas and minutes of board meetings.

14 (2) A copy of an annual budget adopted pursuant to subdivision
15 (a) of Section 14306.

16 (3) A copy of an audit report prepared pursuant to subdivision
17 (b) of Section 14306.

18 (4) A copy of any records reporting the results of a water quality
19 test.

20 (5) A copy of an annual report.

21 (b) For the purposes of this section, "eligible person" means a
22 person who is any of the following:

23 (1) A stockholder or member of the mutual water company.

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

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

31 (4) Any other person eligible to obtain copies of the records
32 listed in subdivision (a) under provisions of the mutual water
33 company's articles or bylaws.

34 SEC. 5. Section 116755 of the Health and Safety Code is
35 amended to read:

36 116755. (a) Each board member of a mutual water company
37 that operates a public water system, as defined in Section 116275,
38 shall, within six months of taking office, or by December 31, 2012,
39 if that member was serving on the board on December 31, 2011,
40 complete a two-hour course offered by a qualified trainer regarding

1 the duties of board members of mutual water companies, including,
2 but not limited to, the duty of a corporate director to avoid
3 contractual conflicts of interest and fiduciary duties, the duties of
4 public water systems to provide clean drinking water that complies
5 with the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et
6 seq.) and this chapter, and long-term management of a public water
7 system. A board member of a mutual water company shall repeat
8 this training every six years. For the purposes of this subdivision,
9 a trainer may be qualified in any of the following ways:

10 (1) Membership in the California State Bar.

11 (2) Accreditation by the International Association of Continuing
12 Education and Training (IACET) ANSI/IACET 1-2007.

13 (3) Sponsorship by either the Rural Community Assistance
14 Corporation or the California Rural Water Association.

15 (b) A mutual water company formed pursuant to Part 7
16 (commencing with Section 14300) of Division 3 of Title 1 of the
17 Corporations Code shall be liable for the payment of any fines,
18 penalties, costs, expenses, and other amounts that may be imposed
19 upon the mutual water company pursuant to this chapter. The
20 mutual water company may levy an assessment, pursuant to Section
21 14303 of the Corporations Code, to pay these fines, penalties,
22 costs, expenses, and other amounts so imposed. If the amount of
23 outstanding fines, penalties, costs, expenses and other amounts
24 imposed pursuant to this chapter exceed 5 percent of the annual
25 budget of the mutual water company, then the mutual water
26 company shall levy an assessment, pursuant to Section 14303 of
27 the Corporations Code, to pay those fines, penalties, costs,
28 expenses, and other amounts so imposed.

29 SEC. 6. Section 10531.5 is added to the Water Code, to read:

30 10531.5. It is the intent of the Legislature to encourage
31 collaboration among mutual water companies that operate public
32 water systems in the City of Maywood to create a public agency
33 that can consolidate drinking water services for the people and
34 businesses of that city.

35 SEC. 7. *Item 4265-111-6051 of Section 2.00 of the Budget Act*
36 *of 2011 is amended to read:*

| | | |
|----|---|-----------|
| 1 | 4265-111-6051—For local assistance, Department of Public | |
| 2 | Health, payable from the Safe Drinking Water, Water | |
| 3 | Quality and Supply, Flood Control, River and Coastal | |
| 4 | Protection Fund of 2006..... | 7,500,000 |
| 5 | Provisions: | |
| 6 | 1. The funds appropriated in this item shall be to provide | |
| 7 | grants to public agencies, as provided in Section 75022 | |
| 8 | of the Public Resources Code, to improve drinking | |
| 9 | water infrastructure in communities served by mutual | |
| 10 | water companies in the cities City of Maywood and | |
| 11 | Santa Ana . Grants may be made only with respect to | |
| 12 | a mutual water company that dissolves or otherwise | |
| 13 | transfers all responsibility for operation of the public | |
| 14 | water system to the public agency seeking the grant | |
| 15 | to the Water Replenishment District of Southern Cali- | |
| 16 | fornia for water quality improvement projects to ben- | |
| 17 | efit the residents of the City of Maywood, subject to | |
| 18 | the following conditions: (a) the district manages the | |
| 19 | design and implementation or construction of the | |
| 20 | project; (b) the district retains ownership of the project | |
| 21 | and oversees its operation; and (c) the mutual water | |
| 22 | company that incorporates the project into its system | |
| 23 | complies with Section 14305 of the Corporations Code. | |
| 24 | Any funds that are not awarded within three years after | |
| 25 | the effective date of the act adding this item shall re- | |
| 26 | vert back to the Safe Drinking Water, Water Quality | |
| 27 | and Supply, Flood Control, River and Coastal Protec- | |
| 28 | tion Fund of 2006. | |
| 29 | | |