

Date of Hearing: May 13, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Brian Maienschein, Chair

AB 1077 (Holden) – As Amended April 28, 2015

SUBJECT: Mutual water companies: open meetings.

SUMMARY: Makes a number of changes to the Mutual Water Company Open Meeting Act. Specifically, **this bill:**

- 1) Revises and recasts the Mutual Water Company Open Meeting Act (Act) as follows:
 - a) Requires a Board of Directors (Board) 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;
 - b) Allows the Board to use teleconferencing for the benefit of any eligible person denied attendance at a meeting of the Board for failure to provide the notice specified above, 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 of the meeting;
 - c) Requires a teleconferenced meeting or proceeding to comply with the Act and all other applicable provisions of law relating to a specific type of meeting or proceeding conducted by a mutual water company;
 - d) Requires, if the Board uses teleconferencing, the Board to 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, or within 24 hours after the conclusion of the meeting if it is not feasible for the Board to provide photocopied or electronically scanned copies before the meeting begins;
 - e) Prohibits a mutual water company Board from prohibiting an eligible person from attending a meeting of the Board either in person or by technology, as specified;
 - f) Requires any eligible person who attends a meeting by teleconference as specified above to identify themselves and any other persons present with them who are able to hear the Board meeting as soon as practicable after they have joined the meeting;
 - g) Requires any eligible person attending a meeting by teleconference to ensure that no one who is not an eligible person is able to hear or participate in that meeting, and to comply with any time limits for speaking established pursuant to the Act;
 - h) Requires an eligible person to forfeit his or her right to participate in future Board meetings by teleconference if it is discovered that someone who is not an eligible person listened to the Board meeting with the knowledge of the eligible person, upon the Board finding a violation following a disciplinary hearing;

- i) Defines “teleconference” to mean, 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;
 - j) Requires a Board to only meet in executive session during a meeting, and makes conforming changes;
 - k) Specifies that a Board may prohibit an eligible person from attending an executive session to consider pending or potential litigation, or matters relating to the potential acquisition of real property or water rights;
 - l) Specifies that an eligible person shall be allowed to attend a teleconferenced meeting without fulfilling the notice requirements specified in a), above;
 - m) Specifies that a Board 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 of the meeting that was posted and distributed pursuant to the Act; and,
 - n) Provides that nothing in the Act pertaining to a teleconference of a majority of the Board requires the notice of a meeting to disclose the use of teleconferencing if the use of teleconferencing is approved by the Board pursuant to a) through i), above.
- 2) Makes additional clarifying and technical changes.
- 3) Makes a number of findings and declarations regarding mutual water companies.

EXISTING LAW:

- 1) Specifies that any corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for irrigation purposes or for domestic use must be known as a mutual water company.
- 2) Defines a “public water system” to mean a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. A public water system includes the following:
 - a) Any collection, treatment, storage, and distribution facilities under control of the operator of the system that are used primarily in connection with the system;
 - b) Any collection or pretreatment storage facilities not under the control of the operator that are used primarily in connection with the system; and,
 - c) Any water system that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

- 3) Establishes, pursuant to the Act, increased transparency requirements for mutual water companies that operate a public water system, including the following provisions:
- a) Allows any eligible person, upon 24 hours advance written notice, to attend meetings of the Board, except when the Board adjourns to, or meets solely in, executive session to consider litigation, matters relating to the formation of contracts with third parties, 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;
 - b) Requires an eligible person to be entitled to attend a teleconference meeting or the portion of a teleconference meeting that is open to eligible persons, and that meeting or portion of the meeting shall be audible to the eligible persons in a location specified in the notice of the meeting;
 - c) Requires any matter discussed in executive session to be generally noted in the minutes of the immediately following meeting that is open to eligible persons;
 - d) Requires, unless the bylaws provide for a longer period of notice, eligible persons to be given notice of the time and place of a meeting, as specified, except for an emergency meeting or a meeting that will be held solely in executive session, at least four days prior to the meeting;
 - e) Requires, except for an emergency meeting, eligible persons to be given notice of the time and place of a meeting that will be held solely in executive session at least two days prior to the meeting;
 - f) Requires the Board to permit any eligible person to speak at any meeting of the mutual water company or the Board, except for meetings of the Board held in executive session. A reasonable time limit for all eligible persons to speak to the Board or before a meeting of the mutual water company shall be established by the Board;
 - g) Provides, with limited exceptions, that a mutual water company Board may not discuss or take action on any item at a nonemergency meeting unless the item was placed on the agenda included in the meeting notice that was posted and distributed pursuant to the Act;
 - h) Includes in the definition of "meeting" 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;
 - i) Requires a teleconference meeting to be conducted in a manner that protects the rights of members of the mutual water company and otherwise complies with the requirements of the Corporations Code;
 - j) Requires, except for a meeting that will be held solely in executive session, the notice of a teleconference meeting to identify at least one physical location so that members of the mutual water company may attend and at least one member of the Board or a person designated by the Board shall be present at that location;

- k) Provides that 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; and,
- l) Defines "eligible person" to mean any of the following:
 - i) A shareholder or member of the mutual water company;
 - ii) 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;
 - iii) 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; or,
 - iv) Any other person eligible to participate in the mutual water company's meetings under provisions of the company's articles or bylaws.
- 4) Requires, pursuant to the Ralph M. Brown Act (Brown Act), that all meetings of a legislative body, as defined, of a local agency be open and public and all persons permitted to attend, unless a closed session is authorized.
- 5) Defines, for purposes of the Brown Act, local agency to mean a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill makes numerous changes to the Act, the major provisions of which are as follows:
 - a) Removes a requirement that eligible persons be entitled to attend a teleconference meeting or portion of a teleconference meeting open to eligible persons, and a requirement that the teleconference meeting shall be audible to eligible persons in a location specified in the notice of the meeting. Instead, this bill allows a mutual water company Board to use teleconferencing for the benefit of any eligible person who has been denied attendance at a Board meeting because the person failed to provide 24 hours advance written notice, or because the number of eligible persons who provided notice of attendance exceeds the room capacity of the meeting;
 - b) Requires the Board to provide an eligible person attending a meeting by teleconference an electronic copy or photocopy of all documents to be discussed at the meeting (excluding documents related to an executive session) before the meeting begins, or within 24 hours after the conclusion of the meeting if it is not feasible for the Board to provide copies before the meeting begins;

- c) Requires any eligible person who attends a meeting by teleconference to identify themselves and any other persons present with them who are able to hear the Board meeting as soon as practicable after they have joined the meeting;
- d) Requires any eligible person attending a meeting by teleconference to ensure that no one who is not an eligible person is able to hear or participate in that meeting, and to comply with any time limits for speaking established pursuant to the Act;
- e) Requires an eligible person to forfeit his or her right to participate in future Board meetings by teleconference if it is discovered that someone who is not an eligible person listened to the Board meeting with the knowledge of the eligible person and the Board finds a violation following a disciplinary hearing;
- f) Requires a Board to meet in executive session only during a meeting (removes the ability of a Board to meet in executive session only, separate from of a meeting that eligible persons may attend);
- g) Specifies that a Board may prohibit an eligible person from attending an executive session where matters relating to the potential acquisition of real property or water rights will be discussed;
- h) Specifies that an eligible person shall be allowed to attend a teleconference meeting without fulfilling the 24-hour notice requirements of the Act; and,
- i) Provides that nothing in the Act pertaining to a teleconference of a Board majority requires the notice of a meeting to disclose the use of teleconferencing, if the use of teleconferencing is approved by the Board pursuant to the Act.

This bill is sponsored by the author.

- 2) **Author's Statement.** According to the author, "The existing Mutual Water Company Open Meetings Act permits water company shareholders and their tenants to attend meetings after providing notice. However, in the two years since the passage of AB 240 some water companies have struggled to comply with the Act. Greater interest in attending these public meetings has burdened mutual water companies small staffs, exceeded the capacity of some meeting facilities, and, in some cases, the water company's service territory is too large and remote for all shareholders to conveniently attend meetings.

"Assembly Bill 1077 will provide mutual water companies the ability to use teleconferencing tools, currently provided to local agencies, to provide better access to meetings. Whether a meeting is inaccessible to a shareholder because of distance or capacity of the mutual water companies facilities, teleconferencing will enable all shareholders to have their voice heard and provide enhanced opportunities for consumer participation in these companies operations."

- 3) **Background.** Public water systems that deliver domestic water generally fall into three categories:

- a) Local agencies (cities and special districts). Local Agency Formation Commissions (LAFCOs) control the cities and special districts' boundaries and local officials are responsible to their voters for their water rates;
- b) Investor-owned public utilities. The California Public Utilities Commission (PUC) controls the companies' service areas and their water rates; or,
- c) Mutual water companies. These private entities, formed under statutes governing corporations, respond to their shareholders, usually the landowners who receive water service. Neither LAFCOs nor the PUC regulate mutual water companies.

The State Department of Public Health and some county health departments monitor the quality of drinking water delivered to most households, regardless of the type of public water system that delivers the water.

Most mutual water companies are organized pursuant to the General Corporation Law or the Nonprofit Mutual Benefit Corporation Law. Shareholders in a mutual water company hold a right to purchase water from the company. Stock in a company is usually linked to the ownership of a parcel served by the company and transfers with the land when the parcel is sold to successive owners. This type of corporate structure allows landowners to establish, essentially, a customer-owned water provider to serve their properties.

Governance of a mutual water company is generally limited to shareholders, or members, of the company. While the details of any particular company's governing structure are determined by its articles and bylaws, most mutual water companies allow only shareholders and members to vote on organizational matters and serve on the company's governing board.

- 4) **Recent Legislative History.** In response to concerns that some mutual water companies lacked capital to pay for needed water quality improvements and the managerial capacity to operate successful public water systems, the Legislature passed AB 54 (Solorio), Chapter 512, Statutes 2011. AB 54 established training requirements for mutual water company's board members regarding the duties of board members, made mutual water companies liable for specified fines and penalties for violating the California Safe Drinking Water Act, and expanded LAFCOs' authority to review matters related to mutual water companies.

More recently, AB 240 (Rendon), Chapter 633, Statutes of 2013, increased transparency requirements for mutual water companies by establishing the Act. The bill also allowed mutual water companies to impose liens to collect unpaid charges. While the requirements of AB 240 opened the meetings of mutual water companies to "eligible persons," these requirements are far more limited than the requirements of the Brown Act.

- 5) **Policy Considerations.** The Committee may wish to consider the following:
 - a) This bill removes a requirement that eligible persons be *entitled* to attend a teleconference meeting or portion of a teleconference meeting open to eligible persons. This bill also contains a provision stating that nothing in the Act pertaining to a teleconference of a Board majority requires the notice of a meeting to disclose the use of teleconferencing, if the use of teleconferencing is approved by the Board pursuant to the Act. There is no requirement in the Act for the Board to formally "approve" the use of

teleconferencing. Furthermore, allowing a Board to use teleconferencing without including that information in the notice of the meeting and without a duty to allow eligible persons to participate seems counter to the Act's goals of increasing transparency in the meetings of mutual water companies. The Committee may wish to consider restoring language that gives eligible persons the right to attend teleconference meetings (whether or not they provide proper notice) and striking language that allows a Board to teleconference without notice.

- b) This bill requires a mutual water company Board to provide an eligible person who attends a meeting by teleconference a copy of all documents to be discussed at the meeting before the meeting begins, *or within 24 hours after the conclusion of the meeting if it is not feasible for the Board to provide copies before the meeting begins*. Providing copies of documents that will be discussed at a meeting a day later defeats the purpose of open, informed participation. Leaving this decision up to the discretion of the Board because it determined it wasn't "feasible" is questionable. The Committee may wish to consider striking this language from the bill.
- c) This bill imposes a number of new requirements on eligible persons who attend meetings via teleconference. It requires eligible persons to identify themselves and any other persons present with them who are able to hear the Board meeting as soon as practicable after they have joined the meeting; and, it requires any eligible person to ensure that no one who is not an eligible person is able to hear or participate in that meeting. If it is discovered that someone who is not an eligible person listened to the Board meeting with the knowledge of the eligible person and the Board finds a violation following a disciplinary hearing, the eligible person must forfeit his or her right to participate in future Board meetings by teleconference. Mutual water companies are private corporations, not judicial bodies. These requirements for eligible persons and the authority granted to mutual water companies to conduct "disciplinary hearings" raise due process issues. The Committee may wish to consider striking this language from the bill.

- 6) **Related Legislation.** AB 656 (Cristina Garcia) allows a mutual water company and a public agency to form a joint powers authority (JPA) to provide insurance, to be co-insured, and to provide risk-pooling and technical support, continuing education, safety engineering, and operational and managerial advisory assistance to members of the JPA for the purpose of reducing potential risk liabilities. AB 656 passed this Committee on a 9-0 vote on April 29 and is pending in the Assembly Appropriations Committee.

AB 617 (Perea) modifies portions of last year's Sustainable Groundwater Management Act (SGMA), including, among other things, provisions that allow mutual water companies to join Groundwater Sustainability Agencies (GSA) formed by one or more public agencies pursuant to a JPA, and to exercise all of the GSA powers provided by SGMA. AB 617 is pending in the Assembly Appropriations Committee.

- 7) **Arguments in Support.** Sierra Club California, in support, states, "Despite the Open Meeting Act, mutual water companies are continuing to find ways to prevent citizens from attending meetings. To counter this, AB 1077 expands the open meeting requirements for mutual water companies in simple ways, like webcasts. This is a non-burdensome way to ensure that people can see the discussions surrounding items such as the rates they pay for water."

8) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

Sierra Club California

Opposition

None on file

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