

# Assembly Bill No. 240

## CHAPTER 633

An act to add Sections 14304, 14305, 14306, and 14307 to the Corporations Code, to amend Section 116755 of the Health and Safety Code, 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.

[ Approved by Governor October 08, 2013. Filed with Secretary of State October 08, 2013. ]

### LEGISLATIVE COUNSEL'S DIGEST

AB 240, 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 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 conduct an annual review of the financial records and reports of the mutual water company, 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.

## DIGEST KEY

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

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## BILL TEXT

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

### SECTION 1.

Section 14304 is added to the Corporations Code, to read:

#### **14304.**

If a shareholder of a mutual water company has not timely paid any rate, charge, or assessment arising from, or related to, water service provided by the mutual water company to the shareholder's property, and if authorized by its articles or bylaws, then after providing at least 20 days' written notice to the shareholder, the board of directors of the mutual water company may authorize the recording of a notice of lien against that shareholder's property to secure the collection of the rates, charges, and assessments owed to the mutual water company by the shareholder.

### SEC. 2.

Section 14305 is added to the Corporations Code, 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) Any eligible person, upon 24 hours advance written notice, may attend meetings of the board of directors of a mutual water company, 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 in Section 14303. The board of directors of the association 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. As specified in paragraph (3) of subdivision (m), an eligible person shall 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) Any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to eligible persons.

(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 (m), except for an emergency meeting or a meeting that will be held solely in executive session, at least four days prior to the meeting. Except for an emergency meeting, eligible persons shall 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. 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 meetings of the board held

in executive session. **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 may 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 a brief 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 association and otherwise complies with the requirements of this title. Except for a meeting that will be held solely in executive session, the notice of the teleconference meeting shall identify at least one physical location so that members of the association 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 association 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.

### **SEC. 3.**

Section 14306 is added to the Corporations Code, to read:

#### **14306.**

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

(b) **The board of a mutual water company that operates a public water system shall contract with a certified public accountant or public accountant to conduct an annual review of the financial records and reports of the mutual water company. The review shall be subject to generally accepted accounting standards.**

(c) Eligible persons may request a copy of the report, and shall reimburse the mutual water company for the costs of providing the report.

(d) For purposes of this section, the term "eligible persons" has the same meaning as that term is defined in subdivision (o) of Section 14305.

### **SEC. 4.**

Section 14307 is added to the Corporations Code, to read:

#### **14307.**

(a) (1) Unless its governing documents impose more stringent standards, a mutual water company that operates a public water system shall make the following records promptly available upon written request to an eligible person upon payment of fees covering direct costs of duplication:

(A) Agendas and minutes of board meetings conducted on or after January 1, 2014.

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

(C) A copy of an accounting report prepared pursuant to subdivision (b) of Section 14306.

(D) A copy of any records reporting the results of a water quality test.

(E) A copy of an annual report that has been distributed to the mutual water company's shareholder or members.

(2) Any request for records pursuant to this subdivision shall be limited to the three calendar years preceding the written request for the records.

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

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

(2) 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.

(3) 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.

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

## **SEC. 5.**

Section 116755 of the Health and Safety Code is amended to read:

### **116755.**

(a) Each board member of a mutual water company that operates a public water system, as defined in Section 116275, shall, within six months of taking office, or by December 31, 2012, if that member was serving on the board on December 31, 2011, complete a two-hour course offered by a qualified trainer regarding the duties of board members of mutual water companies, including, but not limited to, the duty of a corporate director to avoid contractual conflicts of interest and fiduciary duties, the duties of public water systems to provide clean drinking water that complies with the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.) and this chapter, and long-term management of a public water system. A board member of a mutual water company that operates a public water system shall repeat this training every six years. For the purposes of this subdivision, a trainer may be qualified in any of the following ways:

(1) Membership in the California State Bar.

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

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

(b) A mutual water company formed pursuant to Part 7 (commencing with Section 14300) of Division 3 of Title 1 of the Corporations Code, that operates a public water system, shall be liable for the payment of any fines, penalties, costs, expenses, and other amounts that may be imposed upon the mutual water company pursuant to this chapter. The mutual water company may levy an assessment, pursuant to Section 14303 of the Corporations Code, to pay these fines, penalties, costs, expenses, and other amounts so imposed. If the amount of outstanding fines, penalties, costs, expenses and other amounts imposed pursuant to this chapter exceed 5 percent of the annual budget of the mutual water company, then the mutual water company shall levy an assessment, pursuant to Section 14303 of the Corporations Code, to pay those fines, penalties, costs, expenses, and other amounts so imposed.

**SEC. 6.**

Section 10531.5 is added to the Water Code, to read:

**10531.5.**

It is 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 businesses of that city.

**SEC. 7.**

Item 4265-111-6051 of Section 2.00 of the Budget Act of 2011 is amended to read:

4265-111-6051—For local assistance, Department of Public Health, payable from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Fund of 2006 .....	7,500,000
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Provisions:

The funds appropriated in this item shall be to provide grants to public agencies, as provided in Section 75022 of the Public Resources Code, to improve drinking water infrastructure in communities served by mutual water companies in the City of Maywood. Grants may be made to the Water Replenishment District of Southern California for water quality improvement projects to benefit the residents of the City of Maywood, subject to the following conditions: (a) the district manages the design and implementation or construction of the project; (b) the district oversees its operation; (c) a public agency remains the owner of the project after construction; and (d) the mutual water company that incorporates the project into its system complies with Section 14305 of the Corporations Code. Notwithstanding any other law, the funds appropriated in this item shall be available for expenditure until January 1, 2018. Any funds that are not awarded on or before January 1, 2018,

1. shall revert back to the Safe Drinking Water,



Water Quality and Supply, Flood Control, River  
and Coastal Protection Fund of 2006.