

CALIFORNIA ASSOCIATION  
OF  
MUTUAL WATER COMPANIES

Quarterly Roundtable

**AB 240 – Implementation Guidelines**

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March 7, 2014

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## Overview

### AB 240 Original Bill

- Prior legislative efforts – AB 890, AB 817 & AB 54
- Original intent – provide for lien right & clean up AB 54 ambiguity regarding director training
- Assemblyman Rendon added language re Maywood
- Passed Assembly unanimously
- Language then added to make Brown Act and Public Records Act applicable to mutual water companies

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## Overview

### AB 240 The Legislative Battle

- Early attempts to negotiate - some success
- AB 240 galvanized mutual water companies throughout the state
- CAMWC formed and lobbyist hired
- Anti-AB 240 lobbying almost killed the bill; some onerous and impractical provisions deleted - at least it is manageable!

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## Open Meeting Act

### Basic Rule

**Meetings of the Board of Directors must be open to any "eligible person," who must also be permitted to address the Board on matters related to the water company's business.**

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### What is a meeting?

- In person gatherings ["congregate"]
- Communication through intermediary
- Emails, Facebook, Twitter
- Serial meetings - prohibited!
- *When is a gathering not a "meeting"?*

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### What is an eligible person?

- Shareholder or member of the company
- Tenant/occupant of property receiving water service
- City/County elected official that represents customers
- Any other person authorized by articles or bylaws

▶ **An eligible person may attend any meeting – other than an executive session – upon 24 hours advance written notice**

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## Meetings

### Regular Meeting

*Board sets time and place for its regular meetings.  
Agenda posted 4 days ahead*

### Executive Session

*May be called by president or majority any time.  
Agenda posted 2 days ahead - limited grounds!!!*

### Emergency Meeting

*May be called without notice if unforeseen  
circumstances require immediate attention*

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## Notice of Meeting

- ▶ How given?
  - By posting in a "prominent, publicly accessible place"
  - By mail to "eligible persons" upon request
    - Company can recover costs
    - May be sent via email if recipient consents
  
- ▶ What must the notice contain?
  - Time and place of meeting
  - Copy of agenda

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## Meeting Agenda

- Brief description of each item of business to be transacted or discussed at the meeting
- Must provide opportunity for public to speak
  - Prior to deliberation on an agenda item
  - Reasonable limitations allowed
- General rule: No Board action/discussion if not on agenda
- Exceptions:
  - Emergency
  - Matter arose since agenda posted [2/3 vote]
  - On agenda of meeting <30 days prior and continued
  - Responding to comments by eligible persons
  - Referring matters to staff for further action

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## Executive Sessions

- Must be expressly authorized
- Must be on the agenda
- Any matter discussed must be "generally noted" in minutes of next Board meeting
- Permissible executive/closed sessions:
  - Personnel
  - Litigation
  - Contract formation
  - Shareholder/member discipline
  - Shareholder/member assessments, upon request

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## Challenging Action Taken

- ▶ An eligible person may bring a civil action to have an action taken declared null & void
  - Must first demand that the company correct
  - Must make demand within 90 days of action taken
  - Within 30 days of demand, Board must either:
    - Correct the challenged action and advise in writing
    - Advise in writing of decision to not correct
    - Challenger then has 15 days to file action
- ▶ Action taken in substantial compliance OK
- ▶ Fees and court costs recoverable = \$\$\$\$\$

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## Company Records

An eligible person has the right to inspect the following company records:

- Agendas and minutes of Board meetings
- Copy of the company's annual budget
- Copy of the accounting report now required
- Copy of any records reporting the results of a water quality test
- Copy of annual report to shareholders/members

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## Financial Requirements

Two new requirements under AB 240:

- Annual budget must be adopted in open meeting of the Board on or before start of fiscal year
- Company must contract with a CPA or public accountant to conduct an annual review in accordance with generally accepted accounting standards of the company's financial records and reports

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## Other Provisions of AB 240

- ▶ **AB 54 Requirement:**
  - Ethics training every six years or within 6 months after being elected to Board of Directors
- ▶ **Lien right**
  - Must be in articles or bylaws
  - Must provide 20 days' written notice
- ▶ **Maywood issues**
  - Legislative intent to consolidate
  - Allocates \$1M from 2011 budget (reduced amount)

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Questions?

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