

ASSEMBLY BILL

No. 2303

Introduced by Assembly Member Leno

February 19, 2004

An act to add Section 451.5 to the Public Utilities Code, and to add Section 24428 to the Revenue and Taxation Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2303, as introduced, Leno. Public utilities: corporate taxation: insolvency.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, and authorizes the commission to fix just and reasonable rates and charges.

This bill would require that any expense resulting from a bonus paid to an officer or employee of an insolvent utility be borne by the shareholders of the utility and would prohibit any expense resulting from the payment of a bonus by an insolvent utility from being recovered in rates.

(2) The Bank and Corporation Tax Law allows various deductions in computing income subject to taxation. Among other things, that law allows a deduction for the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including compensation paid to officers and employees.

This bill would provide that no deduction shall be allowed for the costs paid or incurred during the taxable year by a public utility for any bonus paid to an officer or employee during the period that the utility is insolvent, as defined.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of 2/3 of the membership of each house of the Legislature.

(3) Under existing law, a violation of the Public Utilities Act or an order of the commission is a crime.

Because certain provisions of this bill would be a part of the act and a violation of those provisions would be a crime, this bill would impose a state-mandated local program by creating a new crime.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 451.5 is added to the Public Utilities
2 Code, to read:

3 451.5. Any expense resulting from a bonus paid to an officer
4 or employee of an insolvent utility shall be borne by the
5 shareholders of the utility. No expense resulting from the payment
6 of a bonus by an insolvent utility may be recovered in rates. For
7 purposes of this section, “insolvent” means the utility has ceased
8 to pay its debts in the ordinary course of business, the utility cannot
9 pay its debts as they become due, or the utility’s liabilities exceed
10 the utility’s assets.

11 SEC. 2. Section 24428 is added to the Revenue and Taxation
12 Code, to read:

13 24428. (a) Notwithstanding any other provision in this part
14 to the contrary, no deduction shall be allowed for the costs paid or
15 incurred during the taxable year by a public utility for any bonus
16 paid to an officer or employee during the period that the utility is
17 insolvent.

18 (b) For purposes of this section, “insolvent” means the public
19 utility has ceased to pay its debts in the ordinary course of business,



1 the public cannot pay its debts as they become due, or the public
2 utility's liabilities exceed its assets.

3 SEC. 3. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

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