

AMENDED IN ASSEMBLY APRIL 15, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

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

11 (b) *The requirements of subdivision (a) do not apply to any*
12 *bonus that is part of a standard employee compensation contract.*

13 (c) *For purposes of this section, "executive officer" means any*
14 *person who performs policy making functions and is employed by*
15 *the utility, and includes the president, secretary, treasurer, and any*
16 *vice president in charge of a principal business unit, division, or*
17 *function of the utility.*



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

3 24428. (a) Notwithstanding any other provision in this part
4 to the contrary, no deduction shall be allowed for the costs paid or
5 incurred during the taxable year by a public utility for any bonus
6 paid to an ~~officer or employee~~ *executive officer* during the period
7 that the utility is insolvent.

8 ~~(b) For purposes of this section, “insolvent” means the public~~

9 *(b) The requirements of subdivision (a) do not apply to any*
10 *bonus that is part of a standard employee compensation contract.*

11 *(c) For purposes of this section:*

12 *(1) “Executive officer” means any person who performs policy*
13 *making functions and is employed by the utility, and includes the*
14 *president, secretary, treasurer, and any vice president in charge of*
15 *a principal business unit, division, or function of the utility.*

16 *(2) “Insolvent” means the public utility has ceased to pay its*
17 *debts in the ordinary course of business, the public utility cannot*
18 *pay its debts as they become due, or the public utility’s liabilities*
19 *exceed its assets.*

20 SEC. 3. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.

