

AMENDED IN SENATE SEPTEMBER 4, 2015

AMENDED IN SENATE SEPTEMBER 1, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 895

Introduced by Assembly Member Rendon

February 26, 2015

An act to amend Sections 16428.3 and 16428.5 of, and to add Section 16428.25 to, the Government Code, and to amend ~~Section~~ *Sections* 453.5 *and* 1759 of the Public Utilities Code, relating to ~~utility rates~~ *public utilities*.

LEGISLATIVE COUNSEL'S DIGEST

AB 895, as amended, Rendon. Utility rate refunds: energy crisis ~~litigation~~ *litigation*: *Public Utilities Commission*: *judicial review*.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. When the commission orders rate refunds to be distributed, existing law requires the commission to require the public utility to pay refunds to all current utility customers, and, when practicable, to prior customers, on an equitable pro rata basis without regard as to whether or not the customer is classifiable as a residential or commercial tenant, landlord, homeowner, business, industrial, educational, governmental, nonprofit, agricultural, or any other type of entity.

Existing law establishes the Ratepayer Relief Fund in the State Treasury to benefit electricity and natural gas ratepayers and to fund investigation and litigation costs of the state in pursuing allegations of

overcharges and unfair business practices against generators, suppliers, or marketers of electricity or natural gas arising from the energy crisis of 2000–02. Existing law requires that any energy settlement agreement, as defined, entered into by the Attorney General, after reimbursing the Attorney General’s litigation and investigation expenses, direct settlement funds to the following purposes in priority order: (1) to reduce ratepayer costs of those utility ratepayers harmed by the actions of the settling parties; and (2) for deposit in the Ratepayer Relief Fund. Existing law authorizes the moneys deposited in the Ratepayer Relief Fund to be appropriated for certain purposes for the benefit of ratepayers.

This bill would require the Attorney General or the Public Utilities Commission to enter into an energy settlement agreement solely on a monetary basis and would prohibit the agreement from including nonmonetary compensation in lieu of monetary compensation. The bill would prohibit the commission from distributing or expending the proceeds of claims in any litigation or settlement to obtain ratepayer recovery for the effects of the 2000–02 energy crisis and would require that the proceeds, after reimbursing the commission’s litigation and investigation expenses, be deposited into the Ratepayer Relief Fund. The bill would require the moneys in the fund to be appropriated for those purposes for the benefit of ratepayers.

The California Constitution provides that the Legislature has plenary power to establish the manner and scope of review of commission action in a court of record. Existing law provides that only the Supreme Court and the court of appeal have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties.

This bill would authorize an action to enforce the requirements of the Bagley-Keene Open Meeting Act or the California Public Records Act to be brought against the commission in the superior court.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. Section 16428.25 is added to the Government
- 2 Code, immediately following Section 16428.2, to read:
- 3 16428.25. (a) The Attorney General or the Public Utilities
- 4 Commission shall enter into an energy settlement agreement solely

1 on a monetary basis. The energy settlement agreement shall not
2 include any nonmonetary compensation in lieu of monetary
3 compensation.

4 (b) The section does not apply to a settlement agreement entered
5 into before January 1, 2016.

6 SEC. 2. Section 16428.3 of the Government Code is amended
7 to read:

8 16428.3. Any energy settlement agreement entered into by the
9 Attorney General, after reimbursing the Attorney General's
10 litigation and investigation expenses, to the maximum extent
11 possible, shall direct settlement funds to the following purposes
12 in priority order:

13 (a) To reduce ratepayer costs of those utility ratepayers harmed
14 by the actions of the settling parties. To the extent the ratepayers
15 of the investor-owned utilities were harmed, the settlement funds
16 shall be directed to reduce their costs, to the maximum extent
17 possible, through reduction of rates or the reduction of ratepayer
18 debt obligations incurred as a result of the energy crisis.

19 (b) For deposit in the fund.

20 SEC. 3. Section 16428.5 of the Government Code is amended
21 to read:

22 16428.5. Moneys in the fund shall be expended upon
23 appropriation by the Legislature, for the benefit of ratepayers.
24 Moneys in the fund shall be appropriated for the following
25 purposes:

26 (a) To reduce rates for customers in the affected service areas
27 of electrical utilities and gas utilities.

28 (b) To reduce the debt service on bonds issued pursuant to
29 Division 27 (commencing with Section 80000) of the Water Code.

30 SEC. 4. Section 453.5 of the Public Utilities Code is amended
31 to read:

32 453.5. (a) (1) If the commission orders rate refunds to be
33 distributed, the commission shall require public utilities to pay
34 refunds to all current utility customers, and, when practicable, to
35 prior customers, on an equitable pro rata basis without regard as
36 to whether or not the customer is classifiable as a residential or
37 commercial tenant, landlord, homeowner, business, industrial,
38 educational, governmental, nonprofit, agricultural, or any other
39 type of entity.

(2) For the purposes of this section, “equitable pro rata basis” means in proportion to the amount originally paid for the utility service involved, or in proportion to the amount of the utility service actually received.

(3) This section shall not prevent the commission from authorizing refunds to residential and other small customers to be based on current usage.

(b) (1) The commission shall not distribute or expend the proceeds of claims in any litigation or settlement to obtain ratepayer recovery for the effects of the 2000–02 energy crisis.

(2) Proceeds of any claims recovered by the commission arising out of the energy crisis of 2000–02, after reimbursing the commission’s litigation and investigation expenses, to the maximum extent possible, shall be deposited into the Ratepayer Relief Fund established pursuant to Section 16428.15 of the Government Code and expended, upon appropriation, for purposes set forth in Section 16428.5 of the Government Code.

SEC. 5. Section 1759 of the Public Utilities Code is amended to read:

1759. (a) No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul ~~any~~ *an* order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court.

(b) The writ of mandamus shall lie from the Supreme Court and from the court of appeal to the commission in all proper cases as prescribed in Section 1085 of the Code of Civil Procedure.

(c) *This section does not apply to the following actions, which may be brought in superior court:*

(1) *An action brought against the commission to enforce the requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).*

(2) *An action arising from the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) or to review a determination made under subdivision (c) of Section 6253 of the Government Code.*

1 SEC. 6. (a) *With regard to Section 5 of this act, the Legislature*
2 *finds and declares all of the following:*

3 (1) *On June 3, 2014, California's Fourth District Court of*
4 *Appeal, in Disenhouse v. Peevey (2014) 226 Cal.App.4th 1096,*
5 *held that an interested person desiring to enforce the Bagley-Keene*
6 *Open Meeting Act (Article 9 (commencing with Section 11120) of*
7 *Chapter 1 of Part 1 of Division 3 of Title 2 of the Government*
8 *Code) against the Public Utilities Commission must do so by filing*
9 *a petition for writ of mandamus in the Supreme Court or the court*
10 *of appeal and may not do so by filing an action for injunctive relief*
11 *in the superior court.*

12 (2) *Also in 2014, the Public Utilities Commission argued in the*
13 *Superior Court of San Francisco that Section 1759 of the Public*
14 *Utilities Code prevents the superior court from ordering the*
15 *commission to provide the City of San Bruno, pursuant to the*
16 *California Public Records Act (Chapter 3.5 (commencing with*
17 *Section 6250) of Division 7 of Title 1 of the Government Code),*
18 *with emails documenting improper communications between*
19 *commissioners and utility executives.*

20 (3) *The Public Utilities Commission continues to maintain the*
21 *position that the superior court does not have jurisdiction to hear*
22 *actions arising out of the California Public Records Act, and has*
23 *cited the Disenhouse case defending this position.*

24 (4) *The intent of the Bagley-Keene Open Meeting Act is that*
25 *actions of state agencies be taken openly and that their deliberation*
26 *be conducted openly.*

27 (5) *The intent of the California Public Records Act is to protect*
28 *the fundamental right of every person in this state to access*
29 *information concerning the conduct of the people's business.*

30 (6) *The people's right to remain informed so that they may*
31 *retain control over the instruments of government that they have*
32 *created is not less of a right for some agencies than for other*
33 *agencies, nor shall the people's ability to enforce the Bagley-Keene*
34 *Open Meeting Act and the California Public Records Act be more*
35 *hampered for some agencies than for other agencies.*

36 (7) *The duties, responsibilities, and actions of the Public Utilities*
37 *Commission affect the well-being of current and future generations,*
38 *and the public interest and principles of fundamental fairness and*
39 *due process of law require that the commission conduct its affairs*

1 *in an open, objective, and impartial manner, free of undue*
2 *influence and the abuse of power and authority.*

3 *(b) It is the intent of the Legislature that the Public Utilities*
4 *Commission should be subject to the judicial review provisions of*
5 *the Bagley-Keene Open Meeting Act and the California Public*
6 *Records Act.*

7 ~~SEC. 5.—This act does~~

8 *SEC. 7. Sections 1, 2, 3, and 4 of this act do not apply to any*
9 *claims brought by an electrical corporation, as defined in Section*
10 *218 of the Public Utilities Code, that arise from the energy crisis*
11 *of 2000–02.*