

AMENDED IN SENATE MARCH 30, 1995

SENATE BILL

No. 960

Introduced by Senator Leonard

February 23, 1995

An act to amend Section 25104 of, and to repeal Chapter 3 (commencing with Section 25200) of Division 15 of, the Public Resources Code, and to amend Sections ~~306 and 311~~ 216, 301, 306, 311, and 701.10 of the Public Utilities Code, relating to state agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 960, as amended, Leonard. Public Utilities Commission: Energy Resources and Development Commission.

Under existing law, the State Energy Resources Conservation and Development Commission has specified powers and duties relating to the conservation of energy resources, and the Public Utilities Commission is responsible for the regulation of public utilities within the state.

~~This bill would state the intent of the Legislature to restructure the way that utilities are regulated, revise the responsibilities of both commissions, and have both commissions cease their regulatory functions by 2006.~~

This bill would abolish the Energy Resources and Conservation Development Commission.

The bill would also remove the regulatory authority from the Public Utilities Commission over railroad and water corporations and highway carriers, and would increase the number of commissioners from 5 to 9.

The bill would transfer the powers, duties, and revenues with respect to water corporations granted by existing law to the Public Utilities Commission to the county boards of supervisors, who would be required to regulate the water corporations in their respective counties. This would impose a state-mandated local program.

Existing law requires the office of the Public Utilities Commission to be in the City and County of San Francisco.

This bill would instead require that office to be in the City of Sacramento.

Existing law requires the Public Utilities Commission, upon scheduling hearings and specifying the scope of issues to be heard in any proceeding involving an electrical, gas, telephone, railroad, or water corporation, or a highway carrier, to assign an administrative law judge to preside over the hearings, either sitting alone or assisting the commissioner or commissioners who will hear the case.

This bill would *revise these procedures*, require at least one commissioner to be present at the above proceedings, *and would rename “administrative law judges” as “commissioner consultants.”*

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 ~~SECTION 1. (a) It is the intent of the Legislature to~~
 2 ~~restructure the way that utilities are regulated. The~~
 3 ~~responsibilities of the Public Utilities Commission are~~



1 ~~complex and overwhelming as it must regulate in an~~
2 ~~increasingly competitive environment. In order to more~~
3 ~~carefully examine the significant regulatory issues that~~
4 ~~each commissioner must deal with, the Public Utilities~~
5 ~~Commission should be responsible for regulating~~
6 ~~telecommunications and the Energy Resources~~
7 ~~Conservation and Development Commission should~~
8 ~~move from its forecasting responsibilities to those of~~
9 ~~regulating the monopolies that produce and deliver~~
10 ~~energy.~~

11 ~~—(b) It is the further intent of the Legislature that the~~
12 ~~jurisdiction over water corporations be transferred from~~
13 ~~the Public Utilities Commission to local agencies.~~

14 ~~(c) It is the further intent of the Legislature that the~~
15 ~~Public Utilities Commission and the Energy Resources~~
16 ~~and Development Commission cease to perform their~~
17 ~~regulatory functions by 2006.~~

18 ~~SEC. 2.—~~

19 *SECTION 1. Section 25104 of the Public Resources*
20 *Code is amended to read:*

21 25104. “Commission” means the ~~State Energy~~
22 ~~Resources Conservation and Development Commission~~
23 *Resources Agency. Notwithstanding any other provision*
24 *of law, any statutory reference to the State Energy*
25 *Resources Conservation and Development Commission*
26 *means the Resources Agency.*

27 *SEC. 2. Chapter 3 (commencing with Section 25200)*
28 *of Division 15 of the Public Resources Code is repealed.*

29 *SEC. 3. Section 216 of the Public Utilities Code is*
30 *amended to read:*

31 216. (a) “Public utility” includes every common
32 carrier, *except highway carriers and railroad*
33 *corporations, toll bridge corporation, pipeline*
34 *corporation, gas corporation, electrical corporation,*
35 *telephone corporation, telegraph corporation, water*
36 ~~corporation,~~ *sewer system corporation, and heat*
37 *corporation, where the service is performed for, or the*
38 *commodity is delivered to, the public or any portion*
39 *thereof.*



1 (b) Whenever any common carrier, *except highway*
2 *carriers and railroad corporations*, toll bridge
3 corporation, pipeline corporation, gas corporation,
4 electrical corporation, telephone corporation, telegraph
5 corporation, ~~water—corporation~~, sewer system
6 corporation, or heat corporation performs a service for,
7 or delivers a commodity to, the public or any portion
8 thereof for which any compensation or payment
9 whatsoever is received, that common carrier, *except*
10 *highway carriers and railroad corporations*, toll bridge
11 corporation, pipeline corporation, gas corporation,
12 electrical corporation, telephone corporation, telegraph
13 corporation, ~~water—corporation~~, sewer system
14 corporation, or heat corporation, is a public utility subject
15 to the jurisdiction, control, and regulation of the
16 commission and the provisions of this part.

17 (c) When any person or corporation performs any
18 service for, or delivers any commodity to, any person,
19 private corporation, municipality, or other political
20 subdivision of the state, which in turn either directly or
21 indirectly, mediately or immediately, performs that
22 service for, or delivers that commodity to, the public or
23 any portion thereof, that person or corporation is a public
24 utility subject to the jurisdiction, control, and regulation
25 of the commission and the provisions of this part.

26 (d) Ownership or operation of a facility which
27 employs cogeneration technology or produces power
28 from other than a conventional power source or the
29 ownership or operation of a facility which employs
30 landfill gas technology does not make a corporation or
31 person a public utility within the meaning of this section
32 solely because of the ownership or operation of such a
33 facility.

34 (e) Any corporation or person engaged directly or
35 indirectly in developing, producing, transmitting,
36 distributing, delivering, or selling any form of heat
37 derived from geothermal or solar resources or from
38 cogeneration technology to any privately owned or
39 publicly owned public utility, or to the public or any
40 portion thereof, is not a public utility within the meaning



1 of this section solely by reason of engaging in any of those
2 activities.

3 (f) The ownership or operation of a facility which sells
4 compressed natural gas at retail to the public for use only
5 as a motor vehicle fuel, and the selling of compressed
6 natural gas at retail from such a facility to the public for
7 use only as a motor vehicle fuel, does not make the
8 corporation or person a public utility within the meaning
9 of this section solely because of that ownership, operation,
10 or sale.

11 (g) *Notwithstanding any other provision of law, no*
12 *railroad corporation, water corporation, or highway*
13 *common carrier shall be subject to regulation by, or*
14 *subject to the jurisdiction of, the commission, as either a*
15 *public utility or under any other designation.*

16 *SEC. 4. Section 301 of the Public Utilities Code is*
17 *amended to read:*

18 301. The ~~membership~~ of the Public Utilities
19 Commission, ~~and the~~ shall consist of nine members. The
20 qualifications and tenure of the members of the
21 commission are as provided in Section 1 of Article XII of
22 the Constitution of this state.

23 *SEC. 5. Section 306 of the Public Utilities Code is*
24 *amended to read:*

25 306. (a) The office of the commission shall be in the
26 City of Sacramento. The office shall always be open, legal
27 holidays and nonjudicial days excepted. The commission
28 shall hold its sessions at least once in each calendar month
29 in the City of Sacramento. The commission may also meet
30 at such other times and in such other places as may be
31 expedient and necessary for the proper performance of
32 its duties, and for that purpose may rent quarters or
33 offices.

34 (b) The meetings of the commission shall be open and
35 public in accordance with the provisions of Article 9
36 (commencing with Section 11120) of Chapter 1 of Part 1
37 of Division 3 of Title 2 of the Government Code.

38 In addition to the requirements of Section 11125 of the
39 Government Code, the commission shall include in its
40 notice of meetings the agenda of business to be



1 transacted, and no item of business shall be added to the
2 agenda subsequent to the notice in the absence of an
3 unforeseen emergency situation. A rate increase shall not
4 constitute an unforeseen emergency situation. As used in
5 this subdivision, “meeting” shall include all
6 investigations, proceedings, and showings required by
7 law to be open and public.

8 (c) The commission shall have a seal, bearing the
9 inscription “Public Utilities Commission State of
10 California.” The seal shall be affixed to all writs and
11 authentications of copies of records and to such other
12 instruments as the commission shall direct.

13 (d) The commission may procure all necessary books,
14 maps, charts, stationery, instruments, office furniture,
15 apparatus, and appliances.

16 ~~SEC. 3.—~~

17 *SEC. 6.* Section 311 of the Public Utilities Code is
18 amended to read:

19 311. (a) The commission, each commissioner, the
20 executive director, and the assistant executive directors
21 may administer oaths, certify to all official acts, and issue
22 subpoenas for the attendance of witnesses and the
23 production of papers, waybills, books, accounts,
24 documents, and testimony in any inquiry, investigation,
25 hearing, or proceeding in any part of the state.

26 ~~(b) The administrative law judges may administer~~
27 ~~oaths, examine witnesses, issue subpoenas, and receive~~
28 ~~evidence, under rules that the commission adopts. The~~
29 ~~commission, upon scheduling hearings and specifying the~~
30 ~~scope of issues to be heard in any proceeding involving an~~
31 ~~electrical, gas, telephone, railroad, or water corporation,~~
32 ~~or a highway carrier, shall assign an administrative law~~
33 ~~judge to preside over the hearings, assisting the~~
34 ~~commissioner or commissioners who will hear the case.~~

35 ~~(c) The evidence in any hearing shall be taken by the~~
36 ~~administrative law judge designated for that purpose.~~
37 ~~The administrative law judge may receive and exclude~~
38 ~~evidence offered in the hearing in accordance with the~~
39 ~~rules of practice and procedure of the commission.~~

40 ~~(d) The administrative law judge~~



1 (b) *The assigned commissioner* shall prepare and file
2 an opinion setting forth recommendations, findings, and
3 conclusions. The opinion of the ~~administrative law judge~~
4 *assigned commissioner* is the proposed decision and a part
5 of the public record in the proceeding. The proposed
6 decision of the ~~administrative law judge~~ *assigned*
7 *commissioner* shall be filed with the commission and
8 served upon all parties to the action or proceeding
9 without undue delay, not later than 90 days after the
10 matter has been submitted for decision. The commission
11 shall issue its decision not sooner than 30 days following
12 filing and service of the proposed decision by the
13 ~~administrative law judge~~ *assigned commissioner*, except
14 that the 30-day period may be reduced or waived by the
15 commission in an unforeseen emergency situation or
16 upon the stipulation of all parties to the proceeding. The
17 commission may, in issuing its decision, adopt, modify, or
18 set aside the proposed decision or any part of the decision.
19 Every finding, opinion, and order made in the proposed
20 decision and approved or confirmed by the commission
21 shall, upon that approval or confirmation, be the finding,
22 opinion, and order of the commission.

23 ~~(e)~~
24 (c) Beginning January 1, 1995, any item appearing on
25 the commission's public agenda as an alternate item to an
26 ~~administrative law judge's~~ *assigned commissioner's*
27 proposed decision shall be served upon all parties to the
28 proceeding without undue delay and shall be subject to
29 public review and comment before it may be voted upon.
30 For purposes of this subdivision "alternate" means either
31 a substantive revision to a proposed decision that
32 materially changes the resolution of a contested issue or
33 any substantive addition to findings of fact, conclusions of
34 law, or ordering paragraphs. The commission shall adopt
35 rules by October 1, 1995, that provide for the time and
36 manner of review and comment and the rescheduling of
37 the item on a subsequent public agenda. The
38 commission's rules may provide that the time and
39 manner of review and comment on an alternate item may



1 be reduced or waived by the commission in an
 2 unforeseen emergency situation.

3 ~~(f)~~

4 (d) The commission may specify that the
 5 ~~administrative law judge~~ *assigned commissioner*
 6 assigned to a proceeding involving an electrical, gas,
 7 ~~telephone, railroad, or water corporation, or a highway~~
 8 ~~carrier, or telephone corporation~~ initiated by customer or
 9 subscriber complaint need not prepare, file, and serve an
 10 opinion, unless the commission finds that to do so is
 11 required in the public interest in a particular case.

12 ~~(g) At least one commissioner shall be present at any~~
 13 ~~proceeding held pursuant to this section.~~

14 (e) *The commission may delegate, under the direction*
 15 *of the commissioners, any of the duties provided for in*
 16 *this section.*

17 (f) *Notwithstanding any other provision of law, any*
 18 *reference to an “administrative law judge” shall be*
 19 *deemed to refer to a “commissioner consultant.”*

20 *SEC. 7. Section 701.10 of the Public Utilities Code is*
 21 *amended to read:*

22 701.10. (a) The policy of the State of California is that
 23 rates and charges established ~~by the commission~~ for water
 24 service provided by water corporations shall do all of the
 25 following:

26 ~~(a)~~

27 (1) Provide revenues and earnings sufficient to afford
 28 the utility an opportunity to earn a reasonable return on
 29 its used and useful investment, to attract capital for
 30 investment on reasonable terms and to ensure the
 31 financial integrity of the utility.

32 ~~(b)~~

33 (2) Minimize the long-term cost of reliable water
 34 service to water customers.

35 ~~(c)~~

36 (3) Provide appropriate incentives to water utilities
 37 and customers for conservation of water resources.

38 ~~(d)~~

39 (4) Provide for equity between present and future
 40 users of water service.



1 ~~(e)~~
2 (5) Promote the long-term stabilization of rates in
3 order to avoid steep increases in rates.

4 ~~(f)~~
5 (6) Be based on the cost of providing the water service
6 including, to the extent consistent with the above
7 policies, appropriate coverage of fixed costs with fixed
8 revenues.

9 *(b) Each county board of supervisors shall adopt the*
10 *policy established pursuant to subdivision (a) and shall*
11 *regulate all water corporations within the county. All of*
12 *the powers and duties vested in the commission as of*
13 *January 1, 1996, with respect to the regulation of, and the*
14 *collection of revenues from water corporations shall be*
15 *vested in each county board.*

16 *SEC. 8. Notwithstanding Section 17610 of the*
17 *Government Code, if the Commission on State Mandates*
18 *determines that this act contains costs mandated by the*
19 *state, reimbursement to local agencies and school*
20 *districts for those costs shall be made pursuant to Part 7*
21 *(commencing with Section 17500) of Division 4 of Title*
22 *2 of the Government Code. If the statewide cost of the*
23 *claim for reimbursement does not exceed one million*
24 *dollars (\$1,000,000), reimbursement shall be made from*
25 *the State Mandates Claims Fund.*

26 *Notwithstanding Section 17580 of the Government*
27 *Code, unless otherwise specified, the provisions of this act*
28 *shall become operative on the same date that the act*
29 *takes effect pursuant to the California Constitution.*

