

AMENDED IN SENATE JUNE 15, 2000
AMENDED IN ASSEMBLY JANUARY 6, 2000
AMENDED IN ASSEMBLY JUNE 10, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1398

Introduced by Assembly Member Papan

February 26, 1999

~~An act relating to the San Francisco Public Utilities Commission.~~ *An act to repeal and add Sections 1756, 1757, 1757.1, and 1758, of the Public Utilities Code, and to amend Section 1.5 of Chapter 886 of the Statutes of 1998, relating to public utilities.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1398, as amended, Papan. ~~San Francisco Public Utilities Commission: State Auditor~~ *Public utilities: water corporations: judicial review.*

(1) Existing law authorizes any aggrieved party to petition the court of appeal or the Supreme Court, within specified time limits, to a review of a decision of the Public Utilities Commission. Existing law also provides that, until January 1, 2001, a review of commission decisions pertaining solely to water corporations are only by petition for writ of review in the Supreme Court, except that review of complaint or enforcement proceedings may be in the court of appeal or the Supreme Court.

This bill would indefinitely extend the provision related to review of decisions pertaining to water corporations.

(2) Existing law provides that no new or additional evidence may be introduced upon review of a commission by the court. In a complaint or enforcement proceeding, or in a ratemaking or licensing decision of specific application that is addressed to particular parties, the review by the court does not extend further than to determine, on the basis of the entire record whether certain events occurred. Existing law also provides that, until January 1, 2001, this standard of review does not apply to ratemaking or licensing decisions of specific application addressed solely to water corporations.

This bill would indefinitely extend this exemption from the standard of review for specified decisions relating solely to water corporations.

(3) Existing law provides that, except for a specified review process, review by a court does not extend further than to determine, on the basis of the entire record whether any of the following occurred: abuse of discretion, violation of procedure required by law, lack of jurisdiction, not factual support, fraud, or a constitutional violation. Existing law also provides, until January 1, 2001, in reviewing decisions pertaining solely to water corporations, the review extends no further than to determine whether the commission has regularly pursued its authority, including a determination whether the order or decision under review violates any right of the petitioner under the state or federal Constitution.

This bill would indefinitely extend this standard of review for water corporations.

(4) Existing law provides that, until January 1, 2001, the Supreme Court will grant expedited consideration to any petition alleging that the court of appeal has assumed jurisdiction to review a commission decision pertaining solely to a water corporation over which the court of appeal has no jurisdiction.

This bill would indefinitely extend that provision.

~~Under existing law, the San Francisco Public Utilities Commission supplies water at wholesale to various retail water suppliers.~~

~~This bill would declare that it is the intent of the Legislature to implement the recommendations set forth in the State Auditor's audit report concerning the San Francisco Public Utilities Commission.~~

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

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

~~1 SECTION 1. It is the intent of the Legislature to
2 implement the recommendations set forth in the State
3 Auditor's audit report concerning the San Francisco
4 Public Utilities Commission.~~

5 SECTION 1. Section 1756 is added to the Public
6 Utilities Code:

7 1756. (a) Within 30 days after the commission issues
8 its decision denying the application for a rehearing, or, if
9 the application was granted, then within 30 days after the
10 commission issues its decision on rehearing, or at least 120
11 days after the application is granted if no decision on
12 rehearing has been issued, any aggrieved party may
13 petition for a writ of review in the court of appeal or the
14 Supreme Court for the purpose of having the lawfulness
15 of the original order or decision or of the order or decision
16 on rehearing inquired into and determined. If the writ
17 issues, it shall be made returnable at a time and place
18 specified by court order and shall direct the commission
19 to certify its record in the case to the court within the time
20 specified.

21 (b) The petition for review shall be served upon the
22 executive director of the commission either personally or
23 by service at the office of the commission.

24 (c) For purposes of this section, the issuance of a
25 decision or the granting of an application shall be
26 construed to have occurred on the date when the
27 commission mails the decision or grant to the parties to
28 the action or proceeding.

29 (d) The venue of a petition filed in the court of appeal
30 pursuant to this section shall be in the judicial district in
31 which the petitioner resides. If the petitioner is a business,

1 venue shall be in the judicial district in which the
2 petitioner has its principal place of business in California.

3 (e) Any party may seek from the Supreme Court,
4 pursuant to California Rules of Court, an order
5 transferring related actions to a single appellate district.

6 (f) For purposes of this section, review of decisions
7 pertaining solely to water corporations shall only be by
8 petition for writ of review in the Supreme Court, except
9 that review of complaint or enforcement proceedings
10 may be in the court of appeal or the Supreme Court.

11 (g) No order or decision arising out of a commission
12 proceeding under Section 854 shall be reviewable in the
13 court of appeal pursuant to subdivision (a) if the
14 application for commission authority to complete the
15 merger or acquisition was filed on or before December
16 31, 1998, by two telecommunications-related corporations
17 including at least one which provides local
18 telecommunications service to over one million
19 California customers. These orders or decisions shall be
20 reviewed pursuant to the Public Utilities Code in
21 existence on December 31, 1998.

22 SEC. 2. Section 1756 of the Public Utilities Code, as
23 added by Section 10.5 of Chapter 886 of the Statutes of
24 1998, is repealed.

25 ~~1756. (a) Within 30 days after the commission issues~~
26 ~~its decision denying the application for a rehearing, or, if~~
27 ~~the application was granted, then within 30 days after the~~
28 ~~commission issues its decision on rehearing, or at least 120~~
29 ~~days after the application is granted if no decision on~~
30 ~~rehearing has been issued, any aggrieved party may~~
31 ~~petition for a writ of review in the court of appeal or the~~
32 ~~Supreme Court for the purpose of having the lawfulness~~
33 ~~of the original order or decision or of the order or decision~~
34 ~~on rehearing inquired into and determined. If the writ~~
35 ~~issues, it shall be made returnable at a time and place~~
36 ~~specified by court order and shall direct the commission~~
37 ~~to certify its record in the case to the court within the time~~
38 ~~specified.~~

~~(b) The petition for review shall be served upon the executive director of the commission either personally or by service at the office of the commission.~~

~~(c) For purposes of this section, the issuance of a decision or the granting of an application shall be construed to have occurred on the date when the commission mails the decision or grant to the parties to the action or proceeding.~~

~~(d) The venue of a petition filed in the court of appeal pursuant to this section shall be in the judicial district in which the petitioner resides. If the petitioner is a business, venue shall be in the judicial district in which the petitioner has its principal place of business in California.~~

~~(e) Any party may seek from the Supreme Court, pursuant to California Rules of Court, an order transferring related actions to a single appellate district.~~

~~(f) No order or decision arising out of a commission proceeding under Section 854 shall be reviewable in the court of appeal pursuant to subdivision (a) if the application for commission authority to complete the merger or acquisition was filed on or before December 31, 1998, by two telecommunications-related corporations including at least one which provides local telecommunications service to over one million California customers. These orders or decisions shall be reviewed pursuant to the Public Utilities Code in existence on December 31, 1998.~~

~~(g) This section shall become operative on January 1, 2001.~~

SEC. 3. Section 1757 is added to the Public Utilities Code, to read:

1757. (a) No new or additional evidence shall be introduced upon review by the court. In a complaint or enforcement proceeding, or in a ratemaking or licensing decision of specific application that is addressed to particular parties, the review by the court shall not extend further than to determine, on the basis of the entire record which shall be certified by the commission, whether any of the following occurred:

1 (1) The commission acted without, or in excess of, its
2 powers or jurisdiction.

3 (2) The commission has not proceeded in the manner
4 required by law.

5 (3) The decision of the commission is not supported by
6 the findings.

7 (4) The findings in the decision of the commission are
8 not supported by substantial evidence in light of the
9 whole record.

10 (5) The order or decision of the commission was
11 procured by fraud or was an abuse of discretion.

12 (6) The order or decision of the commission violates
13 any right of the petitioner under the Constitution of the
14 United States or the California Constitution.

15 (b) Nothing in this section shall be construed to permit
16 the court to hold a trial de novo, to take evidence other
17 than as specified by the California Rules of Court, or to
18 exercise its independent judgment on the evidence.

19 (c) Notwithstanding subdivision (a), the standard of
20 review in this section shall not apply to ratemaking or
21 licensing decisions of specific application addressed solely
22 to water corporations.

23 SEC. 4. Section 1757 of the Public Utilities Code, as
24 added by Section 12.5 of Chapter 886 of the Statutes of
25 1998, is repealed.

26 ~~1757. (a) No new or additional evidence shall be~~
27 ~~introduced upon review by the court. In a complaint or~~
28 ~~enforcement proceeding, or in a ratemaking or licensing~~
29 ~~decision of specific application that is addressed to~~
30 ~~particular parties, the review by the court shall not~~
31 ~~extend further than to determine, on the basis of the~~
32 ~~entire record which shall be certified by the commission,~~
33 ~~whether any of the following occurred:~~

34 ~~(1) The commission acted without, or in excess of, its~~
35 ~~powers or jurisdiction.~~

36 ~~(2) The commission has not proceeded in the manner~~
37 ~~required by law.~~

38 ~~(3) The decision of the commission is not supported by~~
39 ~~the findings.~~

~~(4) The findings in the decision of the commission are not supported by substantial evidence in light of the whole record.~~

~~(5) The order or decision of the commission was procured by fraud or was an abuse of discretion.~~

~~(6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.~~

~~(b) Nothing in this section shall be construed to permit the court to hold a trial de novo, to take evidence other than as specified by the California Rules of Court, or to exercise its independent judgment on the evidence.~~

~~(c) This section shall become operative on January 1, 2001.~~

SEC. 5. Section 1757.1 is added to the Public Utilities Code, to read:

1757.1. (a) In any proceeding other than a proceeding subject to the standard of review under Section 1757, review by the court shall not extend further than to determine, on the basis of the entire record which shall be certified by the commission, whether any of the following occurred:

(1) The order or decision of the commission was an abuse of discretion.

(2) The commission has not proceeded in the manner required by law.

(3) The commission acted without, or in excess of, its powers or jurisdiction.

(4) The decision of the commission is not supported by the findings.

(5) The order or decision was procured by fraud.

(6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.

(b) In reviewing decisions pertaining solely to water corporations, the review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination whether the order or decision under review violates any right of

1 the petitioner under the Constitution of the United States
2 or this state.

3 (c) No new or additional evidence shall be introduced
4 upon review by the court. The findings and conclusions
5 of the commission on findings of fact shall be final and
6 shall not be subject to review except as provided in this
7 article. The questions of fact shall include ultimate facts
8 and findings and conclusions of the commission on
9 reasonableness and discrimination.

10 SEC. 6. Section 1757.1 of the Public Utilities Code, as
11 added by Section 14.5 of Chapter 886 of the Statutes of
12 1998, is repealed.

13 ~~1757.1. (a) In any proceeding other than a~~
14 ~~proceeding subject to the standard of review under~~
15 ~~Section 1757, review by the court shall not extend further~~
16 ~~than to determine, on the basis of the entire record which~~
17 ~~shall be certified by the commission, whether any of the~~
18 ~~following occurred:~~

19 ~~(1) The order or decision of the commission was an~~
20 ~~abuse of discretion.~~

21 ~~(2) The commission has not proceeded in the manner~~
22 ~~required by law.~~

23 ~~(3) The commission acted without, or in excess of, its~~
24 ~~powers or jurisdiction.~~

25 ~~(4) The decision of the commission is not supported by~~
26 ~~the findings.~~

27 ~~(5) The order or decision was procured by fraud.~~

28 ~~(6) The order or decision of the commission violates~~
29 ~~any right of the petitioner under the Constitution of the~~
30 ~~United States or the California Constitution.~~

31 ~~(b) No new or additional evidence shall be introduced~~
32 ~~upon review by the court. The findings and conclusions~~
33 ~~of the commission on findings of fact shall be final and~~
34 ~~shall not be subject to review except as provided in this~~
35 ~~section. The questions of fact shall include ultimate facts~~
36 ~~and findings and conclusions of the commission on~~
37 ~~reasonableness and discrimination.~~

38 ~~(c) This section shall become operative on January 1,~~
39 ~~2001.~~

1 SEC. 7. Section 1758 is added to the Public Utilities
2 Code, to read:

3 1758. (a) The commission and each party to the
4 action or proceeding before the commission may appear
5 in the review proceeding.

6 Upon the hearing the Supreme Court or court of appeal
7 shall enter judgment either affirming or setting aside the
8 order or decision of the commission.

9 (b) The provisions of the Code of Civil Procedure
10 relating to writs of review shall, so far as applicable and
11 not in conflict with this part, apply to proceedings
12 instituted in the Supreme Court or court of appeal under
13 this article.

14 (c) Under this article, the Supreme Court may review
15 decisions of the court of appeal in the manner provided
16 for other civil actions.

17 (d) The Supreme Court shall grant expedited
18 consideration to any party or commission petition
19 alleging that the court of appeal has assumed jurisdiction
20 to review a commission decision pertaining solely to
21 water corporations over which the court of appeal has no
22 jurisdiction.

23 SEC. 8. Section 1758 of the Public Utilities Code, as
24 added by Section 15.5 of Chapter 886 of the Statutes of
25 1998, is repealed.

26 ~~1758. (a) The commission and each party to the~~
27 ~~action or proceeding before the commission may appear~~
28 ~~in the review proceeding.~~

29 ~~Upon the hearing the Supreme Court or court of appeal~~
30 ~~shall enter judgment either affirming or setting aside the~~
31 ~~order or decision of the commission.~~

32 ~~(b) The provisions of the Code of Civil Procedure~~
33 ~~relating to writs of review shall, so far as applicable and~~
34 ~~not in conflict with this part, apply to proceedings~~
35 ~~instituted in the Supreme Court or court of appeal under~~
36 ~~this article.~~

37 ~~(c) Under this article, the Supreme Court may review~~
38 ~~decisions of the court of appeal in the manner provided~~
39 ~~for other civil actions.~~

1 ~~(d) This section shall become operative on January 1,~~
2 ~~2001.~~

3 *SEC. 9. Section 1.5 of Chapter 886 of the Statutes of*
4 *1998 is amended to read.*

5 Sec. 1.5. (a) The Legislature finds and declares that
6 the conversion of the energy, transportation, and
7 telecommunications industries from traditional
8 regulated markets to competitive markets necessitates a
9 change in the judicial review of Public Utilities
10 Commission decisions that pertain to those industries.
11 The Legislature finds that the activities of the energy,
12 telecommunications, and transportation industries will
13 require expanded access to the court system at all levels.
14 The Legislature finds that uniformity of evolving
15 decisional law and judicial economy will be achieved by
16 providing for appellate review of certain Public Utilities
17 Commission decisions. The Legislature further finds and
18 declares that inasmuch as the water supply industry
19 continues to operate in a traditional, noncompetitive
20 utility market, that changes in judicial review of
21 competitive utility markets are inappropriate in their
22 application to Public Utilities Commission decisions and
23 proceedings that pertain to water corporations—~~until~~
24 ~~January 1, 2001.~~

25 (b) It is the intent of the Legislature in enacting the
26 judicial review provisions of this act to, in part, establish
27 the manner and scope of review taken from decisions of
28 the Public Utilities Commission. It is further the intent of
29 the Legislature to conform judicial review of the Public
30 Utilities Commission decisions that pertain to utility
31 service providers with competitive markets to be
32 consistent with judicial review of the other state agencies.
33 It is the intent of the Legislature to, among other things,
34 overrule *Camp Meeker Water System, Inc. v. Public*
35 *Utilities Commission*, 51 Cal.3d 845, as it pertains only to
36 decisions affecting the energy, transportation, and
37 communications industries, but to leave that decision in
38 place as it pertains to water corporations—~~until January 1,~~
39 ~~2001.~~ Further, it is the intent of the Legislature that
40 decisions by the commission pertaining to the energy,

1 transportation, and communications industries, ~~and~~
2 ~~pertaining to water corporations on and after January 1,~~
3 ~~2001,~~ be subject to review on grounds similar to those of
4 other state agencies.

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