

Introduced by Senator Peace

February 4, 1999

An act to add Section 248 to the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 310, as introduced, Peace. Public Utilities Commission: corporations.

Existing law generally requires the business and affairs of a corporation to be managed, and all corporate powers to be exercised, by or under the direction of a board of directors. Existing law imposes fiduciary obligations on a director, as prescribed, including, but not limited to, the duty to perform in good faith, in a manner that director believes to be in the best interests of the corporation and its shareholders. Under other existing law, the Public Utilities Commission is vested with regulatory authority over public utilities, including specified corporations that perform a service for, or deliver a commodity to, the public.

This bill would prohibit the commission from enacting or implementing any decision, order, or rule that interferes with the rights and obligations of the directors of a corporation, including a utility holding company, to efficiently and effectively discharge their fiduciary obligations to the corporation's shareholders, as specified. The bill would make related legislative findings and declarations.

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 248 is added to the Public
2 Utilities Code, to read:

3 248. (a) The Legislature finds and declares all of the
4 following:

5 (1) The overall governance of a California
6 corporation, including a utility holding company, is
7 entrusted to its board of directors, who serve in a fiduciary
8 capacity as representatives of the shareholders.

9 (2) Chapter 3 (commencing with Section 300) of
10 Division 1 of Title 1 of the Corporations Code describes
11 the rights and obligations of California corporations.
12 Section 300 of the Corporations Code requires directors
13 to manage the business and affairs of the corporation.
14 Section 300 of the Corporations Code further requires all
15 corporate powers to be exercised by or under the
16 direction of the board. The board may delegate the
17 management of the day-to-day operation of the business
18 of the corporation to a management company or other
19 person if the business and affairs of the corporation will
20 be managed and all corporate powers will be exercised
21 under the ultimate direction of the board.

22 (3) Section 309 of the Corporations Code requires a
23 director to perform the duties of a director, including
24 duties as a member of any committee of the board upon
25 which the director serves, in good faith, in a manner that
26 the director believes to be in the best interest of the
27 corporation and its shareholders, and with the care,
28 including reasonable inquiry, that an ordinarily prudent
29 person in a like position would use under similar
30 circumstances.

31 (4) To facilitate the director's ability to carry out his or
32 her duties, Section 1602 of the Corporations Code gives
33 each director an absolute right at any reasonable time to
34 inspect and copy all books, records, and documents of
35 every kind and to inspect the physical properties of the
36 corporation of which that person is a director and also of
37 its subsidiary corporations, domestic or foreign.



1 (5) Directors have a duty to make informed
2 judgments, a duty to question officers of the corporation
3 and its subsidiaries and, in general, have a duty before
4 acting to inform themselves of all material information
5 reasonably available.

6 (6) Having directors serve on the boards of
7 subsidiaries is a common practice employed by
8 corporations to ensure that directors receive the
9 information necessary for them to fulfill their obligations
10 to shareholders.

11 (7) The commission has adopted affiliate transaction
12 rules to facilitate the establishment of a competitive
13 energy marketplace by ensuring that utilities do not
14 engage in anticompetitive behavior.

15 (8) The adoption and enforcement by the commission
16 of rules against self-dealing, cross-subsidization, market
17 power, and other anticompetitive activities, however,
18 must not interfere with the ability of a utility holding
19 company to efficiently and effectively discharge its
20 fiduciary responsibilities to its shareholders.

21 (b) The commission may not enact or implement any
22 decision, order, or rule that interferes with the rights and
23 obligations of the directors of a corporation, including a
24 utility holding company, to efficiently and effectively
25 discharge their fiduciary obligations to the corporation's
26 shareholders, including, but not limited to, those
27 requirements imposed by Sections 300 and 309 of the
28 Corporations Code.

