

AMENDED IN SENATE JUNE 12, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2578**

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**Introduced by Assembly Member Lieu**

February 22, 2008

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An act to amend Sections 688.020 and 688.030 of the Code of Civil Procedure, and to amend Sections 1701.2 and 2104 of the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

AB 2578, as amended, Lieu. Public Utilities Commission: procedures and remedies.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. Existing law authorizes the commission to determine whether a proceeding requires a hearing, authorizes the commission to assign one or more commissioners and administrative law judges to oversee cases, and prescribes separate procedures for proceedings that the commission determines are either quasi-legislative, adjudication, or ratesetting cases. Existing law authorizes the commission to impose various remedies upon finding a violation of the Public Utilities Act or certain other violations, and makes any public utility and any corporation other than a public utility, that violates the act, or that fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission guilty of a crime.

This bill would authorize the commission, ~~when the commission institutes an investigation on its own motion in an adjudication case,~~ to determine that the respondent lacks, or may lack, the ability to pay

potential penalties or fines or to pay restitution that may be ordered by the commission, and if so found, to order the respondent to demonstrate, to the satisfaction of the commission, sufficient ability to pay potential penalties, fines, or restitution. The bill would require the respondent to demonstrate the ability to pay, or make other financial arrangements satisfactory to the commission, within 7 days of the commission ~~adopting an investigation order~~ *commencing an adjudication case*. The bill would authorize the commission to delegate to the attorney ~~for~~ *to* the commission the authority to determine whether a sufficient showing has been made by the respondent of an ability to pay and would authorize the respondent to request impartial review by an administrative law judge. *Certain public utilities would be presumed to be able to pay potential penalties or fines or to pay restitution that may be ordered by the commission.*

~~This bill would provide that if the commission determines that an individual or another corporation has used a corporation regulated by the commission to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, penalties not recovered from the regulated corporation would be authorized to be recovered from the individual or other corporation. The bill would authorize the commission to enjoin the sale of a public utility's or common carrier's assets to satisfy unpaid fines and penalties, would authorize the commission to bring and an action pursuant to the Uniform Fraudulent Transfer Act, and make the fraudulent transfer of assets to avoid paying a commission-imposed~~ *commission-imposed* fine or penalty subject to prosecution under certain existing criminal provisions. By expanding the definition of a crime, the bill would impose a state-mandated local program.

This bill would extend certain existing authorizations for the state or a department or agency of the state to levy on property by warrant or notice of levy pursuant to any provision of the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code, to any provision of the Public Utilities Code.

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: majority. 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 688.020 of the Code of Civil Procedure  
2 is amended to read:

3 688.020. (a) Except as otherwise provided by statute, if a  
4 warrant may properly be issued by the state, or by a department  
5 or agency of the state, pursuant to any provision of the Public  
6 Resources Code, Public Utilities Code, Revenue and Taxation  
7 Code, or Unemployment Insurance Code, and the warrant may be  
8 levied with the same effect as a levy pursuant to a writ of execution,  
9 the state or the department or agency of the state authorized to  
10 issue the warrant may use any of the remedies available to a  
11 judgment creditor, including but not limited to, those provided in  
12 Chapter 6 (commencing with Section 708.010) of Division 2.

13 (b) The proper court for the enforcement of those remedies is  
14 a court of any of the following counties:

15 (1) The county where the debtor resides.

16 (2) The county where the property against which enforcement  
17 is sought is located.

18 (3) If the debtor does not reside in this state, any county of this  
19 state.

20 SEC. 2. Section 688.030 of the Code of Civil Procedure is  
21 amended to read:

22 688.030. (a) If pursuant to any provision of the Public  
23 Resources Code, Public Utilities Code, Revenue and Taxation  
24 Code (excluding Sections 3201 to 3204, inclusive), or  
25 Unemployment Insurance Code, property is levied upon pursuant  
26 to a warrant or notice of levy issued by the state or by a department  
27 or agency of the state for the collection of a liability:

28 (1) If the debtor is a natural person, the debtor is entitled to the  
29 same exemptions to which a judgment debtor is entitled. Except  
30 as provided in subdivisions (b) and (c), the claim of exemption  
31 shall be made, heard, and determined as provided in Chapter 4  
32 (commencing with Section 703.010) of Division 2 in the same  
33 manner as if the property were levied upon under a writ of  
34 execution.

35 (2) A third person may claim ownership or the right to  
36 possession of the property or a security interest in or lien on the  
37 property. Except as provided in subdivisions (b) and (c) or as  
38 otherwise provided by statute, the third-party claim shall be made,

1 heard, and determined as provided in Division 4 (commencing  
2 with Section 720.010) in the same manner as if the property were  
3 levied upon under a writ of execution.

4 (b) In the case of a levy pursuant to a notice of levy:

5 (1) The claim of exemption or the third-party claim shall be  
6 filed with the state department or agency that issued the notice of  
7 levy.

8 (2) The state department or agency that issued the notice of levy  
9 shall perform the duties of the levying officer, except that the state  
10 department or agency need not give itself the notices that the  
11 levying officer is required to serve on a judgment creditor or  
12 creditor or the notices that a judgment creditor or creditor is  
13 required to give to the levying officer. The state department or  
14 agency in performing the duties of the levying officer under this  
15 paragraph has no obligation to search public records or otherwise  
16 seek to determine whether any lien or encumbrance exists on  
17 property sold or collected.

18 (c) A claim of exemption or a third-party claim pursuant to this  
19 section shall be heard and determined in the superior court in the  
20 county where the property levied upon is located.

21 SEC. 3. Section 1701.2 of the Public Utilities Code is amended  
22 to read:

23 1701.2. (a) If the commission pursuant to Section 1701.1 has  
24 determined that an adjudication case requires a hearing, the  
25 procedures prescribed by this section shall be applicable. The  
26 assigned commissioner or the assigned administrative law judge  
27 shall hear the case in the manner described in the scoping memo.  
28 The scoping memo shall designate whether the assigned  
29 commissioner or the assigned administrative law judge shall preside  
30 in the case. The commission shall provide by regulation for  
31 peremptory challenges and challenges for cause of the  
32 administrative law judge. Challenges for cause shall include, but  
33 not be limited to, financial interests and prejudice. The regulation  
34 shall provide that all parties are entitled to one peremptory  
35 challenge of the assignment of the administrative law judge in all  
36 cases. All parties are entitled to unlimited peremptory challenges  
37 in any case in which the administrative law judge has within the  
38 previous 12 months served in any capacity in an advocacy position  
39 at the commission, been employed by a regulated public utility,  
40 or has represented a party or has been a party of interest in the

1 case. The assigned commissioner or the administrative law judge  
2 shall prepare and file a decision setting forth recommendations,  
3 findings, and conclusions. The decision shall be filed with the  
4 commission and served upon all parties to the action or proceeding  
5 without undue delay, not later than 60 days after the matter has  
6 been submitted for decision. The decision of the assigned  
7 commissioner or the administrative law judge shall become the  
8 decision of the commission if no further action is taken within 30  
9 days. Any interested party may appeal the decision to the  
10 commission, provided that the appeal is made within 30 days of  
11 the issuance of the decision. The commission may itself initiate a  
12 review of the proposed decision on any grounds. The commission  
13 decision shall be based on the record developed by the assigned  
14 commissioner or the administrative law judge. A decision different  
15 from that of the assigned commissioner or the administrative law  
16 judge shall be accompanied by a written explanation of each of  
17 the changes made to the decision.

18 (b) Ex parte communications shall be prohibited in adjudication  
19 cases.

20 (c) Notwithstanding any other provision of law, the commission  
21 may meet in a closed hearing to consider the decision that is being  
22 appealed. The vote on the appeal shall be in a public meeting and  
23 shall be accompanied with an explanation of the appeal decision.

24 (d) Adjudication cases shall be resolved within 12 months of  
25 initiation unless the commission makes findings why that deadline  
26 cannot be met and issues an order extending that deadline. In the  
27 event that a rehearing of an adjudication case is granted the parties  
28 shall have an opportunity for final oral argument.

29 ~~(e) (1) If the commission institutes an investigation on its own  
30 motion in an adjudication case, the~~

31 (e) (1) The commission may determine that the respondent  
32 lacks, or may lack, the ability to pay potential penalties or fines  
33 or to pay restitution that may be ordered by the commission.

34 (2) If the commission determines that a respondent lacks, or  
35 may lack, the ability to pay, the commission may order the  
36 respondent to demonstrate, to the satisfaction of the commission,  
37 sufficient ability to pay potential penalties, fines, or restitution that  
38 may be ordered by the commission. The respondent shall  
39 demonstrate the ability to pay, or make other financial  
40 arrangements satisfactory to the commission, within seven days

1 of the commission ~~adopting an investigation order~~ *commencing*  
2 *an adjudication case*. The commission may delegate to the attorney  
3 *to the commission* the determination of whether a sufficient  
4 showing has been made by the respondent of an ability to pay.

5 (3) If within seven days of the ~~commission adopting an~~  
6 ~~investigation order, the respondent makes a request for impartial~~  
7 ~~review, the respondent shall be entitled to review by an~~  
8 *commission's determination of the respondent's ability to pay*  
9 *potential penalties, fines, or restitution, the respondent shall be*  
10 *entitled to an impartial review by an administrative law judge, of*  
11 *the sufficiency of the showing made by the respondent of the*  
12 *respondent's ability to pay. The administrative law judge may*  
13 *enter temporary orders modifying any financial requirement made*  
14 *of the respondent pending the final review by the administrative*  
15 *law judge.*

16 (4) *A respondent that is a public utility regulated under a*  
17 *rate-of-return regulatory structure or that has gross annual*  
18 *revenues of more than one hundred million dollars (\$100,000,000)*  
19 *generated within California is presumed to be able to pay potential*  
20 *penalties or fines or to pay restitution that may be ordered by the*  
21 *commission.*

22 SEC. 4. Section 2104 of the Public Utilities Code is amended  
23 to read:

24 2104. Except as provided by Sections 2100 and 2107.5, and  
25 in addition to the remedies provided in Section 688.020 or 688.030  
26 of the Code of Civil Procedure, actions to recover penalties under  
27 this part shall be brought in the name of the people of the State of  
28 California, in the superior court in and for the county, or city and  
29 county, in which the cause or some part thereof arose, or in which  
30 the corporation complained of has its principal place of business,  
31 or in which the person complained of resides. The action shall be  
32 commenced and prosecuted to final judgment by the attorney or  
33 agent of the commission. All fines and penalties may be sued for  
34 and recovered. ~~If the commission has determined, after notice and~~  
35 ~~an opportunity to be heard, that an individual or another corporation~~  
36 ~~has used a corporation regulated by the commission to perpetrate~~  
37 ~~a fraud, circumvent a statute, or accomplish some other wrongful~~  
38 ~~or inequitable purpose, penalties not recovered from the regulated~~  
39 ~~corporation may be recovered from the individual or other~~  
40 ~~corporation.~~ The commission may enjoin the sale of a public

1 utility's or common carrier's assets to satisfy unpaid fines and  
2 penalties. The commission may use any of the remedies afforded  
3 to a creditor under the Uniform Fraudulent Transfer Act (Chapter  
4 1 (commencing with Section 3439) of Title 2 of Part 2 of Division  
5 4 of the Civil Code). Respondents who fraudulently transfer assets  
6 to avoid paying ~~commission-imposed~~ *commission-imposed* fines  
7 or penalties are subject to prosecution under Sections 154, 531,  
8 and 531a of the Penal Code. In all of these actions, the procedure  
9 and rules of evidence shall be the same as in ordinary civil actions,  
10 except for prosecutions under the Penal Code or as otherwise herein  
11 provided. All fines and penalties recovered by the state in any  
12 action, together with the costs thereof, shall be paid into the State  
13 Treasury to the credit of the General Fund. Any action may be  
14 compromised or discontinued on application of the commission  
15 upon the terms the court approves and orders.

16 SEC. 5. No reimbursement is required by this act pursuant to  
17 Section 6 of Article XIII B of the California Constitution because  
18 the only costs that may be incurred by a local agency or school  
19 district will be incurred because this act creates a new crime or  
20 infraction, eliminates a crime or infraction, or changes the penalty  
21 for a crime or infraction, within the meaning of Section 17556 of  
22 the Government Code, or changes the definition of a crime within  
23 the meaning of Section 6 of Article XIII B of the California  
24 Constitution.