

AMENDED IN SENATE JUNE 7, 2012
AMENDED IN SENATE MAY 14, 2012
AMENDED IN ASSEMBLY MAY 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 861

Introduced by Assembly Member Hill

February 17, 2011

An act to ~~add Part 14 (commencing with Section 14640) to Division 3 of Title 1 of the Corporations Code, and to amend Sections 2110 and 2111 of, and to add Sections 451.6 and 451.7 to, the Public Utilities Code, relating to public utilities.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 861, as amended, Hill. Public Utilities Act: remedies for violation: gas and electrical corporation executive officer compensation incentives.

(1) The California Constitution establishes the Public Utilities Commission, with regulatory jurisdiction over all public utilities, as defined. The Public Utilities Act provides that every public utility and every officer, agent, or employee of a public utility, who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility of any provision of the California Constitution or of the act, or who fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in a violation or noncompliance, in a case in which a penalty has not otherwise been provided, is guilty of a misdemeanor and is punishable by a fine not exceeding \$1,000, or by imprisonment in a county jail not exceeding one year, or by both fine and imprisonment.

This bill would provide that the fine may not exceed \$5,000.

(2) The act additionally provides that every corporation or person, other than a public utility and its officers, agents, or employees, knowingly violating or failing to comply with, or procuring, aiding, or abetting any violation of the California Constitution relating to public utilities or of the act, or that fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or procuring, aiding, or abetting any public utility in a violation or noncompliance, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than \$500, or more than \$20,000, for each offense.

This bill would increase the *maximum* penalty to not less than \$1,000 and not more than \$50,000 for each offense.

(3) 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. Existing law requires that any expense resulting from a bonus paid to an executive officer, as defined, of a public utility that has ceased to pay its debts in the ordinary course of business, be borne by the shareholders of the public utility and prohibits any expense from being recovered in rates.

This bill would require that any expense resulting from an earnings- or stock price-based incentive program paid to an executive officer ~~employee or director~~ of an electrical or gas corporation be borne by the shareholders of the utility and would prohibit any expense from being recovered in rates. Because this provision of the bill would be a part of the act and because a violation of an order or decision of the commission implementing this requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

(4) This bill would *prospectively* require the commission to require an energy utility, as defined, to prohibit compensation, as defined, to utility officers, as defined, if the energy utility does not implement a policy that, in the event a fine or penalty is levied by the commission, the energy utility would recover a proportional amount of the incentive-based compensation, as defined, received by any current or former officers of the energy utility during the 5-year period preceding the date on which the fine or penalty was levied in excess of what would have been paid to the officers in incentive-based compensation had the fine or penalty been levied during the period in which the violation that resulted in the fine or penalty occurred., *if monetary sanctions are imposed by the commission on an energy public utility, as defined, for*

a violation, as defined, that the energy public utility recover any excess compensation, as defined, received by any current or former officer or director, as defined, of the energy public utility during the 5-year period preceding the date on which the monetary sanctions are imposed. If monetary sanctions are imposed by the commission on an energy public utility for a violation, and the energy public utility is owned 80% or more by a holding company, as defined, the bill would prospectively require that the holding company recover any excess compensation received by any current or former officer or director of the holding company during the 5-year period preceding the date on which the monetary sanctions were imposed.

~~(5) The General Corporation Law authorizes and regulates the formation and governance of general corporations.~~

~~This bill would require a holding company of an investor-owned energy utility, as defined, in the event a fine or penalty is levied by the commission on the investor-owned energy utility, to recover a proportional amount of the incentive-based compensation, as defined, received by any current or former officers of the utility holding company during the 5-year period preceding the date on which the fine or penalty was levied in excess of what would have been paid to the officers in incentive-based compensation had the fine or penalty been levied during the period in which the violation that resulted in the fine or penalty occurred.~~

~~(6)~~

~~(5) 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. Part 14 (commencing with Section 14640) is~~
- 2 ~~added to Division 3 of Title 1 of the Corporations Code, to read:~~

1 PART 14. ~~PUBLIC UTILITY HOLDING COMPANIES~~

2
3 14640. For purposes of this part, the following terms have the
4 following meanings:

5 (a) ~~“Commission” means the Public Utilities Commission.~~

6 (b) ~~“Holding company” means an entity with ownership of 80
7 percent or more of an investor-owned energy utility.~~

8 (c) ~~“Incentive-based compensation” means, including, but not
9 limited to, short-term incentives, long-term incentives, stock
10 options awarded as compensation, and special recognition awards.~~

11 (d) ~~“Investor-owned energy utility” means a gas corporation,
12 as defined in Section 222, an electrical corporation, as defined in
13 Section 218, of the Public Utilities Code, or one that is both a gas
14 corporation and an electrical corporation.~~

15 (e) ~~“Officer” means a person required to file under Section 16
16 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et
17 seq.) with respect to an investor-owned energy utility or a utility
18 holding company of an investor-owned energy utility.~~

19 14641. In the event a fine or penalty is levied by the
20 commission on an investor-owned energy utility, the holding
21 company shall recover a proportional amount of the incentive-based
22 compensation received by any current or former officers of the
23 holding company during the five-year period preceding the date
24 on which the fine or penalty was levied in excess of what would
25 have been paid to the officers in incentive-based compensation
26 had the fine or penalty been levied during the period in which the
27 violation that resulted in the fine or penalty occurred.

28 SEC. 2.

29 SECTION 1. Section 451.6 is added to the Public Utilities
30 Code, to read:

31 451.6. (a) ~~Any expense resulting from an earnings- or stock
32 price-based incentive program paid to an executive officer
33 employee or director of an electrical corporation or a gas
34 corporation shall not be recoverable either directly or indirectly
35 in rates and shall be borne exclusively by the shareholders of the
36 public utility.~~

37 (b) ~~For purposes of this section, “executive officer” means any
38 person who performs policymaking functions and is employed by
39 the electrical corporation or gas corporation subject to the approval
40 of the board of directors, and includes the president, secretary,~~

1 ~~treasurer, and any vice president in charge of a principal business~~
2 ~~unit, division, or function of the utility.~~

3 ~~SEC. 3.~~

4 ~~SEC. 2.~~ Section 451.7 is added to the Public Utilities Code, to
5 read:

6 451.7. (a) For purposes of this section, the following terms
7 have the following meanings:

8 ~~(1) “Compensation” means, but is not limited to, base pay, health~~
9 ~~and welfare benefits, retirement benefits, and other benefit~~
10 ~~programs.~~

11 ~~(2)~~

12 (1) “Energy public utility” means a gas corporation, an electrical
13 corporation, or a public utility that is both a gas corporation and
14 an electrical corporation.

15 (2) “Excess compensation” means the difference between what
16 an officer or director received in incentive-based compensation
17 during the period in which a violation occurred and what that
18 officer or director would have received had a monetary sanction
19 been imposed concurrent with the violation.

20 (3) “Holding company” means an entity with ownership of 80
21 percent or more of an energy public utility.

22 ~~(3)~~

23 (4) “Incentive-based compensation” means, but is not limited
24 to, short-term incentives, long-term incentives, stock options
25 awarded as compensation, and special recognition awards.

26 (5) “Monetary sanction” means a commission imposed
27 requirement that an energy public utility pay money as a result of
28 a violation that relates to public safety, including any fine, penalty,
29 or requirement to pay restitution.

30 ~~(4)~~

31 (6) “Officer” ~~means a person required to file under and~~
32 ~~“director,” with respect to an energy public utility or holding~~
33 ~~company, have the same meaning as defined in Section 16 of the~~
34 ~~federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et~~
35 ~~seq.) with respect to an energy utility.~~

36 (7) “Violation” means the failure by an energy public utility to
37 comply with any provision of the California Constitution, of this
38 part, or of any order, decision, decree, rule, direction, demand,
39 or requirement of the commission that relates to public safety,

1 *results in a monetary sanction being imposed on the energy public*
 2 *utility by the commission.*

3 ~~(b) The commission shall require an energy utility to prohibit~~
 4 ~~compensation to utility officers if the energy utility does not~~
 5 ~~implement a policy that, in the event a fine or penalty is levied~~ *If*
 6 *a monetary sanction is imposed by the commission on an energy*
 7 *public utility for a violation, the energy public utility shall recover*
 8 ~~a proportional amount of the incentive-based compensation excess~~
 9 ~~compensation received by any current or former officers~~ *officer*
 10 *or director of the energy public utility during the five-year period*
 11 *preceding the date on which the fine or penalty was levied in excess*
 12 ~~of what would have been paid to the officers in incentive-based~~
 13 ~~compensation had the fine or penalty been levied during the period~~
 14 ~~in which the violation that resulted in the fine or penalty occurred~~
 15 *monetary sanction was imposed.*

16 *(c) If a monetary sanction is imposed by the commission on an*
 17 *energy public utility for a violation, and the energy public utility*
 18 *is owned 80 percent or more by a holding company, the holding*
 19 *company shall recover any excess compensation received by any*
 20 *current or former officer or director of the holding company during*
 21 *the five-year period preceding the date on which the monetary*
 22 *sanction was imposed.*

23 *(d) In any order or decision of the commission that imposes a*
 24 *monetary sanction on an energy public utility, the commission*
 25 *shall make findings whether the monetary sanction is being made*
 26 *as a result of a violation relating to safety. If monetary sanctions*
 27 *are being imposed, in part, as a result of a violation relating to*
 28 *safety, the commission shall specify what monetary sanctions are*
 29 *being imposed because of a violation relating to safety.*

30 *(e) The requirements of this section are applicable to any*
 31 *contract between an energy public utility and a director or officer*
 32 *of that energy public utility, and to any contract between a holding*
 33 *company and a director or officer of that holding company, that*
 34 *is executed, modified, or extended beginning January 1, 2013.*

35 ~~SEC. 4.~~

36 *SEC. 3.* Section 2110 of the Public Utilities Code is amended
 37 to read:

38 2110. Every public utility and every officer, agent, or employee
 39 of any public utility, who violates or fails to comply with, or who
 40 procures, aids, or abets any violation by any public utility of any

1 provision of the California Constitution or of this part, or who fails
2 to comply with any part of any order, decision, rule, direction,
3 demand, or requirement of the commission, or who procures, aids,
4 or abets any public utility in the violation or noncompliance in a
5 case in which a penalty has not otherwise been provided, is guilty
6 of a misdemeanor and is punishable by a fine not exceeding five
7 thousand dollars (\$5,000), or by imprisonment in a county jail not
8 exceeding one year, or by both fine and imprisonment.

9 ~~SEC. 5.~~

10 *SEC. 4.* Section 2111 of the Public Utilities Code is amended
11 to read:

12 2111. Every corporation or person, other than a public utility
13 and its officers, agents, or employees, which or who knowingly
14 violates or fails to comply with, or procures, aids or abets any
15 violation of any provision of the California Constitution relating
16 to public utilities or of this part, or fails to comply with any part
17 of any order, decision, rule, direction, demand, or requirement of
18 the commission, or who procures, aids, or abets any public utility
19 in the violation or noncompliance, in a case in which a penalty has
20 not otherwise been provided for the corporation or person, is
21 subject to a penalty of not less than ~~one thousand dollars (\$1,000)~~
22 *five hundred dollars (\$500)*, nor more than ~~one million dollars~~
23 *(fifty thousand dollars (\$50,000))* for each offense.

24 ~~SEC. 6.~~

25 *SEC. 5.* No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.

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