

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2661

Introduced by Assembly Member Bradford

February 21, 2014

An act to amend Section 857 of the Public Utilities Code, add Article 3.7 (commencing with Section 87375) to Chapter 7 of Title 9 of the Government Code, and to repeal and add Section 25205 of the Public Resources Code, relating to ~~utility property~~; the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 2661, as amended, Bradford. ~~Utility right-of-way~~. Political Reform Act of 1974: conflicts of interests: Energy Commission.

The Political Reform Act of 1974 prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the public official knows or has reason to know he or she has a financial interest. The act also imposes certain restrictions on the postgovernmental employment and activities of certain public officials. The act is administered and enforced by the Fair Political Practices Commission.

Existing law establishes the State Energy Resources Conservation and Development Commission, commonly known as the Energy Commission. Existing law prescribes certain qualifications for members of the Energy Commission, including a prohibition against receiving a substantial portion of income from specified energy-related entities in the 2 years preceding appointment to the Energy Commission. Existing law prohibits members of the Energy Commission from being

employed by an electric utility or applicant or, within 2 years after the member ceases to be a member of the Energy Commission, a person who engages in the sale or manufacture of a major component of a facility. Existing law prohibits a member of the Energy Commission from holding any other elected or appointed public office or position, except as specified. Existing law prohibits persons with specified relationships to a member or employee of the Energy Commission from appearing in proceedings and other matters in which the Energy Commission is a party or has a direct and substantial interest.

This bill would repeal these qualification and conflict-of-interest requirements for members and employees of the Energy Commission and recast them within the act. The bill would authorize the Fair Political Practices Commission to exempt a member or employee of the Energy Commission from the application of certain of these provisions after a finding that the member's or employee's interest is not sufficiently substantial to affect the integrity of services expected from the member or employee, as specified.

A violation of the act is punishable as a misdemeanor. By expanding the definition of an existing crime, this bill would impose a state-mandated local program.

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.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a ²/₃ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities. Existing law authorizes a public utility to lease real property acquired for purposes of obtaining a utility right-of-way to a governmental entity for purposes of a public park if the utility retains the use of the right-of-way for public utility purposes, as prescribed.~~

~~This bill would make a nonsubstantive change to these provisions.~~

Vote: ~~majority~~²/₃. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

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

1 SECTION 1. Article 3.7 (commencing with Section 87375) is
2 added to Chapter 7 of Title 9 of the Government Code, to read:

3
4 Article 3.7. Energy Commission Conflicts of Interests
5

6 87375. (a) For purposes of this section, the following terms
7 have the following meanings:

8 (1) “Community choice aggregator” has the same meaning as
9 set forth in Section 331.1 of the Public Utilities Code.

10 (2) “Electrical corporation” has the same meaning as set forth
11 in Section 218 of the Public Utilities Code.

12 (3) “Electric service provider” has the same meaning as set
13 forth in Section 218.3 of the Public Utilities Code.

14 (4) “Energy Commission” means the State Energy Resources
15 Conservation and Development Commission established pursuant
16 to Section 25200 of the Public Resources Code.

17 (5) “Facility” means the structure or equipment necessary for
18 generating, transmitting, or distributing electricity, including
19 electric transmission lines and thermal, wind, hydroelectric, and
20 photovoltaic plants.

21 (6) Notwithstanding paragraph (2) of subdivision (b) of Section
22 82030, for purposes of this section, “income” includes salary and
23 reimbursement for expenses or per diem, and social security,
24 disability, or other similar benefit payments received from a state,
25 local, or federal government agency, and reimbursement for travel
26 expenses and per diem received from a bona fide nonprofit entity
27 exempt from taxation under Section 501(c)(3) of the Internal
28 Revenue Code.

29 (7) “Load serving entity” means a person, including an
30 electrical corporation, electric service provider, or community
31 choice aggregator, who sells or provides, or is authorized to sell
32 or provide, electricity to end users located in the state.

33 (8) “Major component” means any product or equipment
34 integral to facility construction or operation or to electrical
35 generation, transmission, or distribution.

36 (9) “Person” has the same meaning as set forth in Section 82047
37 and includes a city, county, public district or agency, the state or

1 any department or agency thereof, and the United States or any
2 department or agency thereof.

3 (b) An individual shall not be a member of the Energy
4 Commission if, during the two years prior to appointment to the
5 Energy Commission, the individual received a substantial portion
6 of his or her income, directly or indirectly, from any of the
7 following:

8 (1) A load serving entity.

9 (2) A person engaged in, or authorized to engage in, generating,
10 transmitting, or distributing electricity in the state.

11 (3) A person who engages in the sale or manufacture of any
12 major component of a facility located in the state.

13 (c) Except as provided in Section 25202 of the Public Resources
14 Code, and subject to the prohibitions of Section 1099 of the
15 Government Code, a member of the Energy Commission shall not
16 hold any other elected or appointed public office or position.

17 (d) A member or employee of the Energy Commission shall not
18 maintain a relationship as a partner, employer, employee, or
19 consultant with a person who acts as an attorney, agent, or
20 employee for a person other than the state in connection with a
21 judicial or other proceeding, hearing, application, request for
22 ruling, or other determination; contract; claim; controversy; study;
23 plan; or other particular matter in which the Energy Commission
24 is a party or has a direct and substantial interest.

25 (e) If the Fair Political Practices Commission finds that the
26 interest of a member or employee of the Energy Commission, as
27 appropriate, in income described in subdivision (b), in holding an
28 office or position described in subdivision (c) that is not otherwise
29 prohibited by Section 1099, or in a relationship described in
30 subdivision (d) is not sufficiently substantial to affect the integrity
31 of services that the state may expect from the member or employee
32 with respect to the Energy Commission, the subdivision to which
33 the Fair Political Practices Commission's findings pertain shall
34 not apply to that member or employee in that instance.

35 SEC. 2. Section 25205 of the Public Resources Code is
36 repealed.

37 ~~25205. (a) No person shall be a member of the commission~~
38 ~~who, during the two years prior to appointment on the commission,~~
39 ~~received any substantial portion of his or her income directly or~~
40 ~~indirectly from any electric utility, or who engages in sale or~~

1 ~~manufacture of any major component of any facility. A member~~
2 ~~of the commission shall not be employed by any electric utility,~~
3 ~~applicant, or, within two years after he or she ceases to be a~~
4 ~~member of the commission, by any person who engages in the sale~~
5 ~~or manufacture of any major component of any facility.~~

6 ~~(b) Except as provided in Section 25202, the members of the~~
7 ~~commission shall not hold any other elected or appointed public~~
8 ~~office or position.~~

9 ~~(c) The members of the commission and all employees of the~~
10 ~~commission shall comply with all applicable provisions of Section~~
11 ~~19251 of the Government Code.~~

12 ~~(d) A person who is a member or employee of the commission~~
13 ~~shall not participate personally and substantially as a member or~~
14 ~~employee of the commission, through decision, approval,~~
15 ~~disapproval, recommendation, the rendering of advice,~~
16 ~~investigation, or otherwise, in a judicial or other proceeding,~~
17 ~~hearing, application, request for a ruling, or other determination,~~
18 ~~contract, claim, controversy, study, plan, or other particular matter~~
19 ~~in which, to his or her knowledge, he or she, his or her spouse,~~
20 ~~minor child, or partner, or any organization, except a governmental~~
21 ~~agency or educational or research institution qualifying as a~~
22 ~~nonprofit organization under state or federal income tax law, in~~
23 ~~which he or she is serving, or has served as officer, director, trustee,~~
24 ~~partner, or employee while serving as a member or employee of~~
25 ~~the commission or within two years prior to his or her appointment~~
26 ~~as a member of the commission, has a direct or indirect financial~~
27 ~~interest.~~

28 ~~(e) A person who is a partner, employer, or employee of a~~
29 ~~member or employee of the commission shall not act as an attorney,~~
30 ~~agent, or employee for any person other than the state in connection~~
31 ~~with any judicial or other proceeding, hearing, application, request~~
32 ~~for a ruling, or other determination, contract, claim, controversy,~~
33 ~~study, plan, or other particular matter in which the commission is~~
34 ~~a party or has a direct and substantial interest.~~

35 ~~(f) The provisions of this section shall not apply if the Attorney~~
36 ~~General finds that the interest of the member or employee of the~~
37 ~~commission is not so substantial as to be deemed likely to affect~~
38 ~~the integrity of the services which the state may expect from the~~
39 ~~member or employee.~~

1 ~~(g) Any person who violates any provision of this section is~~
2 ~~guilty of a felony and shall be subject to a fine of not more than~~
3 ~~ten thousand dollars (\$10,000) or imprisonment pursuant to~~
4 ~~subdivision (h) of Section 1170 of the Penal Code, or both that~~
5 ~~fine and imprisonment.~~

6 ~~(h) The amendment of subdivision (d) of this section enacted~~
7 ~~by the 1975-76 Regular Session of the Legislature does not~~
8 ~~constitute a change in, but is declaratory of, existing law.~~

9 *SEC. 3. Section 25205 is added to the Public Resources Code,*
10 *to read:*

11 *25205. Members and employees of the commission shall be*
12 *subject to Section 87375 of the Government Code.*

13 *SEC. 4. No reimbursement is required by this act pursuant to*
14 *Section 6 of Article XIII B of the California Constitution because*
15 *the only costs that may be incurred by a local agency or school*
16 *district will be incurred because this act creates a new crime or*
17 *infraction, eliminates a crime or infraction, or changes the penalty*
18 *for a crime or infraction, within the meaning of Section 17556 of*
19 *the Government Code, or changes the definition of a crime within*
20 *the meaning of Section 6 of Article XIII B of the California*
21 *Constitution.*

22 *SEC. 5. The Legislature finds and declares that this bill furthers*
23 *the purposes of the Political Reform Act of 1974 within the meaning*
24 *of subdivision (a) of Section 81012 of the Government Code.*

25 ~~SECTION 1. Section 857 of the Public Utilities Code is~~
26 ~~amended to read:~~

27 ~~857. (a) A public utility that owns real property acquired for~~
28 ~~purposes of obtaining a utility right-of-way, may lease that property~~
29 ~~to a governmental entity for purposes of a public park, if the public~~
30 ~~utility retains the use of the right-of-way for public utility purposes.~~

31 ~~(b) In determining whether a lease of real property to a~~
32 ~~governmental entity for park purposes is for fair value, the~~
33 ~~commission shall include the community benefits of parks and~~
34 ~~open space as a benefit to ratepayers.~~

35 ~~(c) As used in this section, "community benefits" include, but~~
36 ~~are not limited to, improving public health, protecting the~~
37 ~~environment, and increasing recreational assets.~~