

AMENDED IN ASSEMBLY AUGUST 22, 2014

AMENDED IN ASSEMBLY JUNE 9, 2014

AMENDED IN SENATE APRIL 8, 2013

AMENDED IN SENATE MARCH 13, 2013

SENATE BILL

No. 115

Introduced by Senator Hill

(Coauthor: Senator Block)

(Coauthor: Assembly Member Mullin)

January 16, 2013

An act to amend Section ~~25711.5 of the Public Resources Code, relating to energy.~~ *1759 of the Public Utilities Code, relating to the Public Utilities Commission.*

LEGISLATIVE COUNSEL'S DIGEST

SB 115, as amended, Hill. ~~Electric Program Investment Charge Fund.~~ *Public Utilities Commission: Bagley-Keene Open Meeting Act: judicial review.*

The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities. The California Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the Constitution, to confer additional authority and jurisdiction upon the commission that is cognate and germane to the regulation of public utilities, and to establish the manner and scope of review of commission action in a court of record. Existing law provides that only the Supreme Court and the court of appeal have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay

the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties.

This bill would authorize an action to enforce the requirements of the Bagley-Keene Open Meeting Act to be brought against the commission in the superior court.

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined. The Reliable Electric Service Investments Act required the commission to require the state's 3 largest electrical corporations, until January 1, 2012, to identify a separate electrical rate component, commonly referred to as the public goods charge, to collect specified amounts to fund energy efficiency, renewable energy, and research, development, and demonstration programs that enhance system reliability and provide in-state benefits. Existing decisions of the commission institute an Electric Program Investment Charge, referred to as EPIC, to fund research, development, and demonstration programs.~~

~~Existing law creates in the State Treasury the Electric Program Investment Charge Fund to be administered by the State Energy Resources Conservation and Development Commission and requires moneys received by the Public Utilities Commission for those programs the Public Utilities Commission has determined should be administered by the State Energy Resources Conservation and Development Commission to be forwarded by the Public Utilities Commission to the State Energy Resources Conservation and Development Commission at least quarterly for deposit in the fund. Existing law requires the State Energy Resources Conservation and Development Commission, in administering moneys in the fund for research, development, and demonstration programs, to develop and administer the EPIC program for the purpose of awarding funds to projects that will benefit ratepayers and lead to technological advancement and breakthroughs to overcome the barriers that prevent the achievement of the state's statutory energy goals and that result in a portfolio of projects that is strategically focused and sufficiently narrow to make advancement on the most significant technological challenges, including: (1) energy storage, (2) renewable energy resources and their integration into the grid, (3) energy efficiency, (4) integration of electric vehicles into the electrical grid, and (5) accurately forecasting the availability of renewable energy resources for integration into the electrical grid. Existing law provides that the chapter creating the fund does not authorize the levy of a charge or any increase in the amount collected pursuant to any existing charge, nor~~

~~add to or detract from, any existing authority of the Public Utilities Commission to levy or increase charges.~~

~~This bill would require the portfolio of projects funded through the EPIC program to additionally include projects pertaining to safety of the electrical grid.~~

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

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

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*

3 (a) *On June 3, 2014, California’s Fourth District Court of*
4 *Appeal, in Disenhouse v. Peevey (2014) 226 Cal.App.4th 1096,*
5 *held that an interested person desiring to enforce the Bagley-Keene*
6 *Open Meeting Act against the Public Utilities Commission must*
7 *do so by filing a petition for writ of mandamus in the Supreme*
8 *Court or the Court of Appeal and may not do so by filing an action*
9 *for injunctive relief in the superior court.*

10 (b) *The intent of the Bagley-Keene Open Meeting Act is that*
11 *actions of state agencies be taken openly and that their deliberation*
12 *be conducted openly.*

13 (c) *The people’s right to remain informed so that they may retain*
14 *control over the instruments of government that they have created*
15 *is not less of a right for some agencies than for other agencies,*
16 *nor shall the people’s ability to enforce the Bagley-Keene Open*
17 *Meeting Act be more hampered for some agencies than for other*
18 *agencies.*

19 SEC. 2. *Section 1759 of the Public Utilities Code is amended*
20 *to read:*

21 1759. (a) *No court of this state, except the Supreme Court and*
22 *the court of appeal, to the extent specified in this article, shall have*
23 *jurisdiction to review, reverse, correct, or annul any order or*
24 *decision of the commission or to suspend or delay the execution*
25 *or operation thereof, or to enjoin, restrain, or interfere with the*
26 *commission in the performance of its official duties, as provided*
27 *by law and the rules of court.*

28 (b) *The writ of mandamus shall lie from the Supreme Court and*
29 *from the court of appeal to the commission in all proper cases as*
30 *prescribed in Section 1085 of the Code of Civil Procedure.*

1 (c) *This section does not apply to an action brought against the*
2 *commission to enforce the requirements of the Bagley-Keene Open*
3 *Meeting Act (Article 9 (commencing with Section 11120) of*
4 *Chapter 1 of Part 1 of Division 3 of Title 2 of the Government*
5 *Code), which action may be brought in the superior court.*

6 ~~SECTION 1. Section 25711.5 of the Public Resources Code~~
7 ~~is amended to read:~~

8 ~~25711.5. In administering moneys in the fund for research,~~
9 ~~development, and demonstration programs under this chapter, the~~
10 ~~commission shall develop and implement the Electric Program~~
11 ~~Investment Charge (EPIC) program to do all of the following:~~

12 ~~(a) Award funds for projects that will benefit electricity~~
13 ~~ratepayers and lead to technological advancement and~~
14 ~~breakthroughs to overcome the barriers that prevent the~~
15 ~~achievement of the state's statutory energy goals and that result~~
16 ~~in a portfolio of projects that is strategically focused and~~
17 ~~sufficiently narrow to make advancement on the most significant~~
18 ~~technological challenges that shall include, but not be limited to,~~
19 ~~safety of the electrical grid, energy storage, renewable energy and~~
20 ~~its integration into the electrical grid, energy efficiency, integration~~
21 ~~of electric vehicles into the electrical grid, and accurately~~
22 ~~forecasting the availability of renewable energy for integration~~
23 ~~into the grid.~~

24 ~~(b) In consultation with the Treasurer, establish terms that shall~~
25 ~~be imposed as a condition to receipt of funding for the state to~~
26 ~~accrue any intellectual property interest or royalties that may derive~~
27 ~~from projects funded by the EPIC program. The commission, when~~
28 ~~determining if imposition of the proposed terms is appropriate,~~
29 ~~shall balance the potential benefit to the state from those terms~~
30 ~~and the effect those terms may have on the state achieving its~~
31 ~~statutory energy goals. The commission shall require each reward~~
32 ~~recipient, as a condition of receiving moneys pursuant to this~~
33 ~~chapter, to agree to any terms the commission determines are~~
34 ~~appropriate for the state to accrue any intellectual property interest~~
35 ~~or royalties that may derive from projects funded by the EPIC~~
36 ~~program.~~

37 ~~(c) Require each applicant to report how the proposed project~~
38 ~~may lead to technological advancement and potential breakthroughs~~
39 ~~to overcome barriers to achieving the state's statutory energy goals.~~

1 ~~(d) Establish a process for tracking the progress and outcomes~~
2 ~~of each funded project, including an accounting of the amount of~~
3 ~~funds spent by program administrators and individual grant~~
4 ~~recipients on administrative and overhead costs and whether the~~
5 ~~project resulted in any technological advancement or breakthrough~~
6 ~~to overcome barriers to achieving the state's statutory energy goals.~~

7 ~~(e) Notwithstanding Section 10231.5 of the Government Code,~~
8 ~~prepare and submit to the Legislature no later than April 30 of~~
9 ~~each year an annual report in compliance with Section 9795 of the~~
10 ~~Government Code that shall include all of the following:~~

11 ~~(1) A brief description of each project for which funding was~~
12 ~~awarded in the immediately prior calendar year, including the~~
13 ~~name of the recipient and the amount of the award, a description~~
14 ~~of how the project is thought to lead to technological advancement~~
15 ~~or breakthroughs to overcome barriers to achieving the state's~~
16 ~~statutory energy goals, and a description of why the project was~~
17 ~~selected.~~

18 ~~(2) A brief description of each project funded by the EPIC~~
19 ~~program that was completed in the immediately prior calendar~~
20 ~~year, including the name of the recipient, the amount of the award,~~
21 ~~and the outcomes of the funded project.~~

22 ~~(3) A brief description of each project funded by the EPIC~~
23 ~~program for which an award was made in the previous years but~~
24 ~~that is not completed, including the name of the recipient and the~~
25 ~~amount of the award, and a description of how the project will~~
26 ~~lead to technological advancement or breakthroughs to overcome~~
27 ~~barriers to achieving the state's statutory energy goals.~~

28 ~~(4) Identification of the award recipients that are~~
29 ~~California-based entities, small businesses, or businesses owned~~
30 ~~by women, minorities, or disabled veterans.~~

31 ~~(5) Identification of which awards were made through a~~
32 ~~competitive bid, interagency agreement, or sole source method,~~
33 ~~and the action of the Joint Legislative Budget Committee pursuant~~
34 ~~to paragraph (2) of subdivision (g) for each award made through~~
35 ~~an interagency agreement or sole source method.~~

36 ~~(6) Identification of the total amount of administrative and~~
37 ~~overhead costs incurred for each project.~~

38 ~~(f) Establish requirements to minimize program administration~~
39 ~~and overhead costs, including costs incurred by program~~
40 ~~administrators and individual grant recipients. Each program~~

1 administrator and grant recipient, including a public entity, shall
2 be required to justify actual administration and overhead costs
3 incurred, even if the total costs incurred do not exceed a cap on
4 those costs that the commission may adopt.

5 ~~(g) (1) The commission shall use a sealed competitive bid as~~
6 ~~the preferred method to solicit project applications and award funds~~
7 ~~pursuant to the EPIC program.~~

8 ~~(2) (A) The commission may use a sole source or interagency~~
9 ~~agreement method if the project cannot be described with sufficient~~
10 ~~specificity so that bids can be evaluated against specifications and~~
11 ~~criteria set forth in a solicitation for bid and if both of the following~~
12 ~~conditions are met:~~

13 ~~(i) The commission, at least 60 days prior to making an award~~
14 ~~pursuant to this subdivision, notifies the Joint Legislative Budget~~
15 ~~Committee and the relevant policy committees in both houses of~~
16 ~~the Legislature, in writing, of its intent to take the proposed action.~~

17 ~~(ii) The Joint Legislative Budget Committee either approves or~~
18 ~~does not disapprove the proposed action within 60 days from the~~
19 ~~date of notification required by clause (i).~~

20 ~~(B) It is the intent of the Legislature to enact this paragraph to~~
21 ~~ensure legislative oversight for awards made on a sole source basis,~~
22 ~~or through an interagency agreement.~~

23 ~~(3) Notwithstanding any other law, standard terms and~~
24 ~~conditions that generally apply to contracts between the~~
25 ~~commission and any entities, including state entities, do not~~
26 ~~automatically preclude the award of moneys from the fund through~~
27 ~~the sealed competitive bid method.~~