

ASSEMBLY BILL

No. 2903

Introduced by Committee on Utilities and Commerce

March 3, 2016

An act to amend Sections 25301, 25302, 25417.5, and 25534 of the Public Resources Code, and to amend Section 343 of, to repeal Sections 619 and 623 of, and to repeal Division 1.5 (commencing with Section 3300) of, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2903, as introduced, Committee on Utilities and Commerce. Wharfingers: warehouseman: California Consumer Power and Conservation Financing Authority: energy crisis litigation.

Existing law, until January 1, 2018, requires the Attorney General to represent the Department of Finance and to succeed to all rights, claims, powers, and entitlements of the Electricity Oversight Board in any litigation or settlement to obtain ratepayer recovery for the effects of the 2000–02 energy crisis. Existing law additionally prohibits the Attorney General from expending the proceeds of any settlements of those claims, except as specified.

This bill would additionally require the Attorney General to represent the Department of Finance and to succeed to all rights, claims, powers, and entitlements of the California Consumer Power and Conservation Financing Authority in any litigation or settlement to obtain ratepayer recovery for the effects of the 2000–02 energy crisis and prohibit the Attorney General from expending the proceeds of any settlements of those claims, except as specified.

Existing law authorizes the Public Utilities Commission to supervise and regulate every public utility in the state. Chapter 1063 of the Statutes

of 1980 deleted warehouseman as a category of public utility under the Public Utilities Act, but did not delete the stated authority granted a warehouseman under the act to condemn property necessary for the construction and maintenance of facilities for storing property. Chapter 369 of the Statutes of 1987 deleted wharfingers as a category of public utilities under the Public Utilities Act, but did not delete the stated authority granted to a wharfinger under the act to condemn property necessary for the construction and maintenance of facilities for the receipt or discharge of freight or passengers. However, the authority to condemn property under the act is applicable only to a corporation that is a public utility.

This bill would repeal the stated authority of a wharfinger or warehouseman to condemn property.

Existing law enacted during the 2000–02 energy crisis creates the California Consumer Power and Conservation Financing Authority, with prescribed powers and responsibilities, including the power to issue revenue bonds, for the purposes of augmenting electrical generating facilities to ensure a sufficient and reliable supply of electricity, financing incentives for investment in cost-effective, energy-efficient appliances and energy demand reduction, achieving a specified energy capacity reserve level, providing financing for the retrofit of inefficient electrical powerplants, renewable energy and conservation, and, where appropriate, developing strategies for the authority to facilitate a dependable supply of natural gas at reasonable prices to the public. Existing law prohibits the authority from approving any new program, enterprise, or project, on or after January 1, 2007, unless authority to approve such an activity is granted by statute enacted on or before January 1, 2007.

This bill would repeal the act establishing the authority and make other conforming changes.

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 25301 of the Public Resources Code is
- 2 amended to read:
- 3 25301. (a) At least every two years, the commission shall
- 4 conduct assessments and forecasts of all aspects of energy industry
- 5 supply, production, transportation, delivery and distribution,

1 demand, and prices. The commission shall use these assessments
2 and forecasts to develop and evaluate energy policies and programs
3 that conserve resources, protect the environment, ensure energy
4 reliability, enhance the state's economy, and protect public health
5 and safety. To perform these assessments and forecasts, the
6 commission may require submission of demand forecasts, resource
7 plans, market assessments, related outlooks, individual customer
8 historic electric or gas service usage, or both, and individual
9 customer historic billing data, in a format and level of granularity
10 specified by the commission from electric and natural gas utilities,
11 transportation fuel and technology suppliers, and other market
12 participants. These assessments and forecasts shall be done in
13 consultation with the appropriate state and federal agencies
14 including, but not limited to, the Public Utilities Commission, the
15 Office of Ratepayer Advocates, the Air Resources Board, the
16 Electricity Oversight Board, the Independent System Operator,
17 the Department of Water Resources, ~~the California Consumer~~
18 ~~Power and Conservation Financing Authority~~, the Department of
19 Transportation, and the Department of Motor Vehicles. The
20 commission shall maintain reasonable policies and procedures to
21 protect customer information from unauthorized disclosure.

22 (b) In developing the assessments and forecasts prepared
23 pursuant to subdivision (a), the commission shall do all of the
24 following:

25 (1) Provide information about the performance of energy
26 industries.

27 (2) Develop and maintain the analytical capability sufficient to
28 answer inquiries about energy issues from government, market
29 participants, and the public.

30 (3) Analyze, develop, and evaluate energy policies and
31 programs.

32 (4) Provide an analytical foundation for regulatory and policy
33 decisionmaking.

34 (5) Facilitate efficient and reliable energy markets.

35 SEC. 2. Section 25302 of the Public Resources Code is
36 amended to read:

37 25302. (a) Beginning November 1, 2003, and every two years
38 thereafter, the commission shall adopt an integrated energy policy
39 report. This integrated report shall contain an overview of major
40 energy trends and issues facing the state, including, but not limited

1 to, supply, demand, pricing, reliability, efficiency, and impacts on
2 public health and safety, the economy, resources, and the
3 environment. Energy markets and systems shall be grouped and
4 assessed in three subsidiary volumes:

5 (1) Electricity and natural gas markets.

6 (2) Transportation fuels, technologies, and infrastructure.

7 (3) Public interest energy strategies.

8 (b) The commission shall compile the integrated energy policy
9 report prepared pursuant to subdivision (a) by consolidating the
10 analyses and findings of the subsidiary volumes in paragraphs (1),
11 (2), and (3) of subdivision (a). The integrated energy policy report
12 shall present policy recommendations based on an indepth and
13 integrated analysis of the most current and pressing energy issues
14 facing the state. The analyses supporting this integrated energy
15 policy report shall explicitly address interfuel and intermarket
16 effects to provide a more informed evaluation of potential tradeoffs
17 when developing energy policy across different markets and
18 systems.

19 (c) The integrated energy policy report shall include an
20 assessment and forecast of system reliability and the need for
21 resource additions, efficiency, and conservation that considers all
22 aspects of energy industries and markets that are essential for the
23 state economy, general welfare, public health and safety, energy
24 diversity, and protection of the environment. This assessment shall
25 be based on determinations made pursuant to this chapter.

26 (d) Beginning November 1, 2004, and every two years thereafter,
27 the commission shall prepare an energy policy review to update
28 analyses from the integrated energy policy report prepared pursuant
29 to subdivisions (a), (b), and (c), or to raise energy issues that have
30 emerged since the release of the integrated energy policy report.
31 The commission may also periodically prepare and release
32 technical analyses and assessments of energy issues and concerns
33 to provide timely and relevant information for the Governor, the
34 Legislature, market participants, and the public.

35 (e) In preparation of the report, the commission shall consult
36 with the following entities: the Public Utilities Commission, the
37 Office of Ratepayer Advocates, the State Air Resources Board,
38 the Electricity Oversight Board, the Independent System Operator,
39 the Department of Water Resources, ~~the California Consumer~~
40 ~~Power and Conservation Financing Authority~~, the Department of

1 Transportation, and the Department of Motor Vehicles, and any
2 federal, state, and local agencies it deems necessary in preparation
3 of the integrated energy policy report. To assure collaborative
4 development of state energy policies, these agencies shall make a
5 good faith effort to provide data, assessment, and proposed
6 recommendations for review by the commission.

7 (f) The commission shall provide the report to the Public
8 Utilities Commission, the Office of Ratepayer Advocates, the State
9 Air Resources Board, the Electricity Oversight Board, the
10 Independent System Operator, the Department of Water Resources,
11 ~~the California Consumer Power and Conservation Financing~~
12 ~~Authority~~, and the Department of Transportation. For the purpose
13 of ensuring consistency in the underlying information that forms
14 the foundation of energy policies and decisions affecting the state,
15 those entities shall carry out their energy-related duties and
16 responsibilities based upon the information and analyses contained
17 in the report. If an entity listed in this subdivision objects to
18 information contained in the report, and has a reasonable basis for
19 that objection, the entity shall not be required to consider that
20 information in carrying out its energy-related duties.

21 (g) The commission shall make the report accessible to state,
22 local, and federal entities and to the general public.

23 SEC. 3. Section 25417.5 of the Public Resources Code is
24 amended to read:

25 25417.5. (a) In furtherance of the purposes of the commission
26 as set forth in this chapter, the commission has the power and
27 authority to do all of the following:

28 (1) Borrow money, for the purpose of obtaining funds to make
29 loans pursuant to this chapter, from the California Economic
30 Development Financing ~~Authority~~, *Authority* and the California
31 Infrastructure and Economic Development ~~Bank~~, and the California
32 ~~Consumer Power and Conservation Financing Authority Bank~~
33 from the proceeds of revenue bonds issued by ~~any~~ *either* of those
34 agencies.

35 (2) Pledge, to provide collateral in connection with the
36 borrowing of money pursuant to paragraph (1), loans made
37 pursuant to this chapter or Chapter 5.4 (commencing with Section
38 25440), or the principal and interest payments on loans made
39 pursuant to this chapter or Chapter 5.4 (commencing with Section
40 25440).

1 (3) Sell loans made pursuant to this chapter or Chapter 5.4
2 (commencing with Section 25440), at prices determined in the
3 sole discretion of the commission, to the California Economic
4 Development Financing ~~Authority, Authority and~~ the California
5 Infrastructure and Economic Development ~~Bank, and the California~~
6 ~~Consumer Power and Conservation Financing Authority Bank~~ to
7 raise funds to enable the commission to make loans to eligible
8 institutions.

9 (4) Enter into loan agreements or other contracts necessary or
10 appropriate in connection with the pledge or sale of loans pursuant
11 to paragraph (2) or (3), or the borrowing of money as provided in
12 paragraph (1), containing any provisions that may be required by
13 the California Economic Development Financing ~~Authority,~~
14 ~~Authority or~~ the California Infrastructure and Economic
15 Development ~~Bank, or the California Consumer Power and~~
16 ~~Conservation Financing Authority Bank~~ as conditions of issuing
17 bonds to fund loans to, or the purchase of loans from, the
18 commission.

19 (b) In connection with the pledging of loans, or of the principal
20 and interest payment on loans, pursuant to paragraph (2) of
21 subdivision (a), the commission may enter into pledge agreements
22 setting forth the terms and conditions pursuant to which the
23 commission is pledging loans or the principal and interest payment
24 on loans, and may also agree to have the loans held by bond
25 trustees or by independent collateral or escrow agents and to direct
26 that payments received on those loans be paid to those trustee,
27 collateral, or escrow agents.

28 (c) The commission may employ financial consultants, legal
29 advisers, accountants, and other service providers, as may be
30 necessary in its judgment, in connection with activities pursuant
31 to this chapter.

32 (d) Notwithstanding any other provision of law, this chapter
33 provides a complete, separate, additional, and alternative method
34 for implementing the measures authorized by this chapter,
35 including the authority of the eligible institutions or local
36 jurisdictions to have borrowed and to borrow in the future pursuant
37 to loans made pursuant to this chapter or Chapter 5.4 (commencing
38 with Section 25440), and is supplemental and additional to powers
39 conferred by other laws.

1 SEC. 4. Section 25534 of the Public Resources Code is
2 amended to read:

3 25534. (a) The commission may, after one or more hearings,
4 amend the conditions of, or revoke the certification for, any facility
5 for any of the following reasons:

6 (1) Any material false statement set forth in the application,
7 presented in proceedings of the commission, or included in
8 supplemental documentation provided by the applicant.

9 (2) Any significant failure to comply with the terms or
10 conditions of approval of the application, as specified by the
11 commission in its written decision.

12 (3) A violation of this division or any regulation or order issued
13 by the commission under this division.

14 (4) The owner of a project does not start construction of the
15 project within 12 months after the date all permits necessary for
16 the project become final and all administrative and judicial appeals
17 have been resolved ~~provided the California Consumer Power and~~
18 ~~Conservation Financing Authority notifies the commission that it~~
19 ~~is willing and able to construct the project pursuant to subdivision~~
20 ~~(g): resolved.~~ The project owner may extend the 12-month period
21 by 24 additional months pursuant to subdivision (f). This paragraph
22 applies only to projects with a project permit application deemed
23 complete by the commission after January 1, 2003.

24 (b) The commission may also administratively impose a civil
25 penalty for a violation of paragraph (1) or (2) of subdivision (a).
26 Any civil penalty shall be imposed in accordance with Section
27 25534.1 and may not exceed seventy-five thousand dollars
28 (\$75,000) per violation, except that the civil penalty may be
29 increased by an amount not to exceed one thousand five hundred
30 dollars (\$1,500) per day for each day in which the violation occurs
31 or persists, but the total of the per day penalties may not exceed
32 fifty thousand dollars (\$50,000).

33 (c) A project owner shall commence construction of a project
34 subject to the start-of-construction deadline provided by paragraph
35 (4) of subdivision (a) within 12 months after the project has been
36 certified by the commission and after all accompanying project
37 permits are final and administrative and judicial appeals have been
38 completed. The project owner shall submit construction and
39 commercial operation milestones to the commission within 30
40 days after project certification. Construction milestones shall

1 require the start of construction within the 12-month period
2 established by this subdivision. The commission shall approve
3 milestones within 60 days after project certification. If the 30-day
4 deadline to submit construction milestones to the commission is
5 not met, the commission shall establish milestones for the project.

6 (d) The failure of the owner of a project subject to the
7 start-of-construction deadline provided by paragraph (4) of
8 subdivision (a) to meet construction or commercial operation
9 milestones, without a finding by the commission of good cause,
10 shall be cause for revocation of certification or the imposition of
11 other penalties by the commission.

12 (e) A finding by the commission that there is good cause for
13 failure to meet the start-of-construction deadline required by
14 paragraph (4) of subdivision (a) or any subsequent milestones of
15 subdivision (c) shall be made if the commission determines that
16 any of the following criteria are met:

17 (1) The change in any deadline or milestone does not change
18 the established deadline or milestone for the start of commercial
19 operation.

20 (2) The deadline or milestone is changed due to circumstances
21 beyond the project owner's control, including, but not limited to,
22 administrative and legal appeals.

23 (3) The deadline or milestone will be missed but the project
24 owner demonstrates a good faith effort to meet the project deadline
25 or milestone.

26 (4) The deadline or milestone will be missed due to unforeseen
27 natural disasters or acts of God that prevent timely completion of
28 the project deadline or milestone.

29 (5) The deadline or milestone will be missed for any other reason
30 determined reasonable by the commission.

31 (f) The commission shall extend the start-of-construction
32 deadline required by paragraph (4) of subdivision (a) by an
33 additional 24 months, if the owner reimburses the commission's
34 actual cost of licensing the project, less the amount paid pursuant
35 to subdivision (a) of Section 25806. For the purposes of this
36 section, the commission's actual cost of licensing the project shall
37 be based on a certified audit report filed by the commission staff
38 within 180 days of the commission's certification of the project.
39 The certified audit shall be filed and served on all parties to the
40 proceeding, is subject to public review and comment, and is subject

1 to at least one public hearing if requested by the project owner.
2 Any reimbursement received by the commission pursuant to this
3 subdivision shall be deposited in the General Fund.

4 ~~(g) If the owner of a project subject to the start-of-construction~~
5 ~~deadline provided by paragraph (4) of subdivision (a) fails to~~
6 ~~commence construction, without good cause, within 12 months~~
7 ~~after the project has been certified by the commission and has not~~
8 ~~received an extension pursuant to subdivision (f), the commission~~
9 ~~shall provide immediate notice to the California Consumer Power~~
10 ~~and Conservation Financing Authority. The authority shall evaluate~~
11 ~~whether to pursue the project independently or in conjunction with~~
12 ~~any other public or private entity, including the original certificate~~
13 ~~holder. If the authority demonstrates to the commission that it is~~
14 ~~willing and able to construct the project either independently or~~
15 ~~in conjunction with any other public or private entity, including~~
16 ~~the original certificate holder, the commission may revoke the~~
17 ~~original certification and issue a new certification for the project~~
18 ~~to the authority, unless the authority's statutory authorization to~~
19 ~~finance or approve new programs, enterprises, or projects has~~
20 ~~expired. If the authority declines to pursue the project, the permit~~
21 ~~shall remain with the current project owner until it expires pursuant~~
22 ~~to the regulations adopted by the commission.~~

23 ~~(h) If the commission issues a new certification for a project~~
24 ~~subject to the start-of-construction deadline provided by paragraph~~
25 ~~(4) of subdivision (a) to the authority, the commission shall adopt~~
26 ~~new milestones for the project that allow the authority up to 24~~
27 ~~months to start construction of the project or to start to meet the~~
28 ~~applicable deadlines or milestones. If the authority fails to begin~~
29 ~~construction in conformity with the deadlines or milestones adopted~~
30 ~~by the commission, without good cause, the certification may be~~
31 ~~revoked.~~

32 ~~(i) (1) If the commission issues a new certification for a project~~
33 ~~subject to the start-of-construction deadline provided by paragraph~~
34 ~~(4) of subdivision (a) to the authority and the authority pursues~~
35 ~~the project without participation of the original certificate holder,~~
36 ~~the authority shall offer to reimburse the original certificate holder~~
37 ~~for the actual costs the original certificate holder incurred in~~
38 ~~permitting the project and in procuring assets associated with the~~
39 ~~license, including, but not limited to, major equipment and the~~
40 ~~emission offsets. In order to receive reimbursement, the original~~

1 certificate holder shall provide to the commission documentation
 2 of the actual costs incurred in permitting the project. The
 3 commission shall validate those costs. The certificate holder may
 4 refuse to accept the offer of reimbursement for any asset associated
 5 with the license and retain the asset. To the extent the certificate
 6 holder chooses to accept the offer for an asset, it shall provide the
 7 authority with the asset.

8 ~~(2) If the authority reimburses the original certificate holder for~~
 9 ~~the costs described in paragraph (1), the original certificate holder~~
 10 ~~shall provide the authority with all of the assets for which the~~
 11 ~~original certificate holder received reimbursement.~~

12 ~~(j)~~

13 (g) This section does not prevent a certificate holder from selling
 14 its license to construct and operate a project prior to its revocation
 15 by the commission. In the event of a sale to an entity that is not
 16 an affiliate of the certificate holder, the commission shall adopt
 17 new deadlines or milestones for the project that allow the new
 18 certificate holder up to 12 months to start construction of the
 19 project or to start to meet the applicable deadlines or milestones.

20 ~~(k)~~

21 (h) Paragraph (4) of subdivision (a) and subdivisions (c) to ~~(j)~~;
 22 (g), inclusive, do not apply to licenses issued for the modernization,
 23 repowering, replacement, or refurbishment of existing facilities or
 24 to a qualifying small power production facility or a qualifying
 25 cogeneration facility within the meaning of Sections 201 and 210
 26 of Title II of the federal Public Utility Regulatory Policies Act of
 27 1978 (16 U.S.C. Secs. 796(17), 796(18), and 824a-3), and the
 28 regulations adopted pursuant to those sections by the Federal
 29 Energy Regulatory Commission (18 C.F.R. Parts 292.101 to
 30 292.602, inclusive), nor shall those provisions apply to any other
 31 generation units installed, operated, and maintained at a customer
 32 site exclusively to serve that facility’s load. For the purposes of
 33 this subdivision, “replacement” of an existing facility includes,
 34 but is not limited to, a comparable project at a location different
 35 than the facility being replaced, provided that the commission
 36 certifies that the new project will result in the decommissioning
 37 of the existing facility.

38 ~~(t)~~

39 (i) Paragraph (4) of subdivision (a) and subdivisions (c) to ~~(j)~~;
 40 (g), inclusive, do not apply to licenses issued to “local publicly

1 owned electric utilities,” as defined in Section 224.3 of the Public
2 Utilities Code, whose governing bodies certify to the commission
3 that the project is needed to meet the projected native load of the
4 local publicly owned utility.

5 (m)

6 (j) To implement this section, the commission ~~and the California~~
7 ~~Consumer Power and Conservation Financing Authority may, in~~
8 ~~consultation with each other, may~~ adopt emergency regulations in
9 accordance with Chapter 3.5 (commencing with Section 11340)
10 of Part 1 of Division 3 of Title 2 of the Government Code. For
11 purposes of that chapter, including, without limitation, Section
12 11349.6 of the Government Code, the adoption of the regulations
13 shall be considered by the Office of Administrative Law to be
14 necessary for the immediate preservation of the public peace, health
15 and safety, or general welfare.

16 SEC. 5. Section 343 of the Public Utilities Code is amended
17 to read:

18 343. (a) The Attorney General shall represent the Department
19 of Finance and shall succeed to, and may exercise, all rights,
20 claims, powers, and entitlements of the Electricity Oversight Board
21 *and the California Consumer Power and Conservation Financing*
22 *Authority* in any litigation or settlement to obtain ratepayer
23 recovery for the effects of the 2000–02 energy crisis. This section
24 does not require the Attorney General to litigate any claim, or take
25 any other action, as successor to the Electricity Oversight ~~Board~~
26 ~~Board or the California Consumer Power and Conservation~~
27 ~~Financing Authority.~~

28 (b) The Attorney General shall not distribute or expend the
29 proceeds of any settlements of claims described in subdivision (a),
30 except in accordance with Article 9.5 (commencing with Section
31 16428.1) of Chapter 2 of Part 2 of Division 4 of Title 2 of the
32 Government Code and Division 27 (commencing with Section
33 80000) of the Water Code.

34 (c) The Attorney General shall not distribute or expend the
35 proceeds of any settlements of claims allocated to the Electricity
36 Oversight ~~Board~~. ~~Board or the California Consumer Power and~~
37 ~~Conservation Financing Authority.~~

38 (d) This section shall remain in effect only until January 1, 2018,
39 and as of that date is repealed, unless a later enacted statute, that
40 is enacted before January 1, 2018, deletes or extends that date.

- 1 SEC. 6. Section 619 of the Public Utilities Code is repealed.
- 2 ~~619. A wharfinger may condemn any property necessary for~~
- 3 ~~the construction and maintenance of facilities for the receipt or~~
- 4 ~~discharge of freight or passengers.~~
- 5 SEC. 7. Section 623 of the Public Utilities Code is repealed.
- 6 ~~623. A warehouseman may condemn any property necessary~~
- 7 ~~for the construction and maintenance of its facilities for storing~~
- 8 ~~property.~~
- 9 SEC. 8. Division 1.5 (commencing with Section 3300) of the
- 10 Public Utilities Code is repealed.