

AMENDED IN SENATE AUGUST 10, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2903

**Introduced by ~~Committee on Utilities and Commerce~~ Assembly
Member Gatto**

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, 303 and 309 of, and to add Sections 307.5, 307.6, 309.2, 314.6, 321.5, 910.7, 912.3, 1712, and 8331 to, the Public Utilities Code, relating to ~~public utilities~~: *the Public Utilities Commission, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2903, as amended, ~~Committee on Utilities and Commerce~~ Gatto. ~~Wharfingers: warehouseman: California Consumer Power and Conservation Financing Authority: energy crisis litigation. Public Utilities Commission: duties and responsibilities: governance.~~

(1) Existing law establishes the Public Utilities Commission, with regulatory jurisdiction and authority over public utilities, including common carriers, electrical corporations, gas corporations, telephone corporations, and water corporations. Existing law prohibits a commissioner from holding an official relation to or having a financial interest in a person or corporation subject to regulation by the commission and requires the commission to adopt an updated conflict of interest code and statement of incompatible activities by February 28, 1998.

This bill would prohibit an executive of a public utility from serving as a commissioner within 2 years after leaving the employment of the utility. The bill would require the commission to maintain an updated conflict of interest code and statement of incompatible activities.

(2) Existing law requires the office of the commission to be in the City and County of San Francisco.

This bill would require the commission to report, as specified, to the relevant policy and fiscal committees of the Legislature by March 31, 2017, on options to locate operations and staff outside of the commission's San Francisco headquarters.

(3) Existing law requires the Governor to designate the president of the commission from among its members and requires the president to direct the executive director, the attorney, and other staff of the commission, except for the independent Office of Ratepayer Advocates. Existing law authorizes the executive director to employ those officers, administrative law judges, experts, engineers, statisticians, accountants, inspectors, clerks, and employees as the executive director deems necessary to carry out the provisions of the Public Utilities Act or to perform the duties and exercise the powers conferred upon the commission by law.

This bill would authorize the executive director to authorize commission employees to undertake temporary training and development assignments with other agencies, departments, and commissions that undertake coordinated activities with the commission, including the State Energy Resources Conservation and Development Commission, the State Air Resources Board, and the Division of Oil, Gas, and Geothermal Resources. The bill would require the executive director to work with the University of California, the California State University, and other postsecondary educational institutions to develop curriculum and training necessary or useful to candidates for employment with the commission. The bill would require the commission to appoint a chief administrative law judge and an internal auditor, to hold office at the pleasure of the commission and to perform specified functions.

(4) Existing law places various responsibilities upon the commission to ensure that public utility services are provided in a manner that protects the public safety and the safety of utility employees.

This bill would require the commission to appoint a Deputy Executive Director for Safety to hold office at its pleasure. The deputy executive director would have primary responsibility for implementing the authority of the commission to initiate an investigation into a

safety-related matter and to exercise the emergency authority of the commission to ensure the safety of the public.

(5) The California Constitution authorizes the commission to establish rules, examine records, and prescribe a uniform system of accounts for all public utilities. The Public Utilities Act requires the commission to inspect and audit the books and records of electrical corporations, gas corporations, heat corporations, telegraph corporations, telephone corporations, and water corporations for regulatory and tax purposes.

This bill would authorize the commission to conduct financial and performance audits of any entity or program created by any order, decision, motion, settlement, or other action of the commission. If the commission undertook an audit pursuant to this authority, the bill would require the commission to transmit a copy of the audit report to the Legislature and to the Governor immediately upon completion of the audit and to make the report available to the public.

(6) This bill would require the commission to appoint an independent ombudsman for ethics who would be required to receive complaints and comments from employees of the commission and members of the public concerning how the commission is carrying out its functions. The ombudsman, or staff under the direction of the ombudsman, would be responsible for instituting a program of enhanced ethics training for all commissioners and employees of the commission, including training concerning the commission's conflict of interest code, statement of incompatible activities, and limitations upon ex parte communications.

(7) The California Constitution authorizes the commission to establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. The Public Utilities Act requires the commission to determine whether a proceeding requires a hearing and, if so, to determine whether the matter requires a quasi-legislative, an adjudication, or a ratesetting hearing. The act sets forth certain procedural requirements for the conduct of proceedings.

This bill would authorize reports and analyses by local, state, and federal administrative agencies to be admitted into the evidentiary record of a proceeding if proffered by a party and if specified conditions were met.

(8) The Nuclear Facility Decommissioning Act of 1985 requires the commission to undertake certain steps relative to the decommissioning of a nuclear powerplant by an electrical corporation.

This bill would require the commission to advocate before the federal Nuclear Regulatory Commission for expedited relocation of any spent fuel stored at the San Onofre nuclear generating station, the Diablo Canyon Units 1 and 2 powerplant, and the Humboldt Bay Unit 3 powerplant to an independent, offsite spent fuel storage installation.

(9) This bill would state the intent of the Legislature to transfer the duties and responsibilities of the commission over passenger stage corporations, charter-party carriers of passengers, transportation network companies, household goods carriers, vessel common carriers, private carriers, for-hire vessels, and commercial air operators to state departments within the Transportation Agency in a manner consistent with Article XII of the California Constitution and would require the Governor, by January 31, 2018, to propose the specific budget and statutory changes needed to complete the transfer of the duties and responsibilities to the Transportation Agency by no later than July 1, 2018.

(10) This bill would require the California Research Bureau in the California State Library, by January 1, 2018, to conduct a study of telecommunications service governance to determine what regulatory structure would provide the appropriate regulatory oversight of telecommunications services and to assess the overarching goals of the various programs carried out by the commission, including a discussion of whether the commission, as a whole, is strategically aligned towards a clearly articulated public goal. The bill would require the study to review specified matters and to take into account the history of telecommunications service regulation in the state and changes in technology to make recommendations for guiding principles that clearly define California's goals for the regulation of the telecommunications industry.

(11) This bill would declare that it is to take effect immediately as an urgency statute.

~~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 $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.~~

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

1 *SECTION 1. (a) The Legislature finds and declares both of*
2 *the following:*

3 *(1) The Public Utilities Commission has played a vital and*
4 *important oversight function protecting consumers by regulating*
5 *public utilities.*

6 *(2) Ensuring that oversight function is transparent and*
7 *accountable to Californians, and ensuring that oversight function*
8 *is focused on the safety of our communities, may require relocating*
9 *or augmenting the Public Utilities Commission’s responsibilities.*

10 *(b) By January 1, 2018, the California Research Bureau in the*
11 *California State Library shall conduct a study of*
12 *telecommunications service governance to determine what*
13 *regulatory structure would provide the appropriate regulatory*
14 *oversight of telecommunications services. The study shall assess*
15 *the overarching goals of the various programs carried out by the*
16 *Public Utilities Commission and include a discussion of whether*
17 *the commission, as a whole, is strategically aligned towards a*
18 *clearly articulated public goal. This portion of the study shall take*
19 *into account the history of telecommunications service regulation*
20 *in the state and changes in technology to make recommendations*
21 *for guiding principles to clearly define California’s goals for the*
22 *regulation of the telecommunications industry. The study shall*
23 *review all of the following:*

24 *(1) The relative scope of state and federal jurisdiction over*
25 *telecommunications services and telecommunications service*
26 *providers.*

27 *(2) The extent to which changes in state and federal jurisdiction*
28 *may have affected the ability of the Public Utilities Commission*
29 *to perform the following functions:*

30 *(A) Processing and resolving consumer service complaints,*
31 *including those about voice and broadband service.*

32 *(B) Maintaining and overseeing a fully functional and responsive*
33 *911 system.*

34 *(C) Maintaining and overseeing physical facilities, including*
35 *trunks, poles, and towers used to provide voice and broadband*
36 *service, including 911 service.*

37 *(3) What gaps, if any, exist in the state’s regulatory authority*
38 *that are not otherwise addressed by federal law or regulation over*

1 *telecommunications services, including, but not limited to,*
2 *consumer protection and safety.*

3 *(4) The state and local agencies in addition to the Public*
4 *Utilities Commission that provide consumer protection and ensure*
5 *the safety of telecommunication services.*

6 *(5) How to enhance the processing and resolving of consumer*
7 *complaints about telecommunications service.*

8 *(6) How to enhance consumer protection from abusive practices,*
9 *including those regarding voice and broadband service.*

10 *(7) The extent to which the Federal Communication Commission*
11 *and the Public Utilities Commission provide consumer protection*
12 *related to telecommunications services, particularly in low-income*
13 *and disadvantaged communities, specifically addressing each of*
14 *the following:*

15 *(A) Unjustified payments or disconnection over legitimate billing*
16 *disputes.*

17 *(B) Extended service outages that can be life-threatening for*
18 *sick and elderly citizens and can jeopardize the survival of small*
19 *and medium-sized businesses that depend on telecommunications*
20 *services to function.*

21 *(C) Disruption to, or poor quality of, 911 service.*

22 *(D) The effect on customers of small local telecommunications*
23 *service providers.*

24 *(8) How to ensure the public can reach first responders in an*
25 *emergency, including maintaining and overseeing a fully functional*
26 *and responsive 911 system.*

27 *(9) How to ensure that the physical facilities used to provide*
28 *voice and broadband services, including 911 service, are*
29 *adequately maintained, including trunks, poles, and towers.*

30 *(10) The extent to which it is necessary for utility pole safety*
31 *regulation to be governed by one regulatory structure regardless*
32 *of the type of utility attachment.*

33 *(11) How to ensure the commission is effectively managing the*
34 *state's universal service programs funded through the California*
35 *High-Cost Fund-A Administrative Committee Fund, California*
36 *High-Cost Fund-B Administrative Committee Fund, Universal*
37 *Lifeline Telephone Service Trust Administrative Committee Fund,*
38 *Deaf and Disabled Telecommunications Program Administrative*
39 *Committee Fund, California Teleconnect Fund Administrative*

1 *Committee Fund, and California Advanced Services Fund (Chapter*
 2 *1.5 (commencing with Section 270) of the Public Utilities Code).*

3 *(12) How to ensure the effective administration of the Digital*
 4 *Infrastructure and Video Competition Act of 2006 (Division 2.5*
 5 *(commencing with Section 5800) of the Public Utilities Code).*

6 *(13) The extent to which changes in state and federal jurisdiction*
 7 *may have affected the ability of the Public Utilities Commission*
 8 *to perform any of the aforementioned functions.*

9 *(14) The extent to which competitive telecommunications*
 10 *services are available in California and to what extent there are*
 11 *regions within California that lack competitive alternatives.*

12 *(15) The extent to which competitive telecommunications*
 13 *services create a gap, if any, in regulatory oversight.*

14 *(16) How other states are governing telecommunications*
 15 *services.*

16 *(17) The role of the Public Utilities Commission in regulating*
 17 *the wholesale telecommunications market.*

18 *(18) The extent to which current in-state telecommunications*
 19 *jobs are affected by the transition to new technologies that provide*
 20 *telecommunications services.*

21 *(19) The extent to which there is a regulatory nexus between*
 22 *the provision of water, energy, and telecommunications services.*

23 *SEC. 2. Section 303 of the Public Utilities Code is amended*
 24 *to read:*

25 303. (a) A public utilities commissioner may not hold an
 26 official relation to, nor have a financial interest in, a person or
 27 corporation subject to regulation by the commission. If any
 28 commissioner acquires a financial interest in a corporation or
 29 person subject to regulation by the commission other than
 30 voluntarily, his or her office shall become vacant unless within a
 31 reasonable time he or she divests himself or herself of the interest.

32 *(b) No executive of a public utility may serve as commissioner*
 33 *within two years after leaving the employment of the utility.*

34 ~~(b)~~
 35 (c) The commission shall ~~adopt~~ maintain an updated ~~Conflict~~
 36 ~~of Interest Code and Statement of Incompatible Activities, by~~
 37 ~~February 28, 1998, conflict of interest code and statement of~~
 38 *incompatible activities* in a manner consistent with applicable law.

39 *SEC. 3. Section 307.5 is added to the Public Utilities Code, to*
 40 *read:*

1 307.5. (a) *The commission shall appoint a chief administrative*
2 *law judge, who shall hold office at the pleasure of the commission.*

3 (b) *The chief administrative law judge shall be responsible for*
4 *the oversight of the administrative law judge division and shall*
5 *organize, coordinate, supervise, and direct the operations of the*
6 *division as directed by the commission, consistent with commission*
7 *policies and priorities.*

8 (c) *The chief administrative law judge shall keep a full and true*
9 *record of all proceedings of the commission.*

10 SEC. 4. *Section 307.6 is added to the Public Utilities Code, to*
11 *read:*

12 307.6. (a) *The commission shall appoint an internal auditor,*
13 *who shall hold office at the pleasure of the commission.*

14 (b) *The internal auditor shall be responsible for the oversight*
15 *of the internal audit unit and shall plan, initiate, and perform*
16 *audits of key financial, management, operational, and information*
17 *technology functions within the commission to improve*
18 *accountability and transparency to executive and state*
19 *management.*

20 (c) *The internal auditor shall report his or her findings and*
21 *recommendations directly to an audit subcommittee of the*
22 *commission.*

23 SEC. 5. *Section 309 of the Public Utilities Code is amended*
24 *to read:*

25 309. (a) *The executive director may employ such officers,*
26 *administrative law judges, experts, engineers, statisticians,*
27 *accountants, inspectors, clerks, and employees as the executive*
28 *director deems necessary to carry out the provisions of this part*
29 *or to perform the duties and exercise the powers conferred upon*
30 *the commission by law. All officers and employees shall receive*
31 *such compensation as is fixed by the commission.*

32 (b) *The executive director may authorize commission employees*
33 *to undertake temporary training and development assignments*
34 *with other agencies, departments, and commissions that undertake*
35 *coordinated activities with the commission, including the Energy*
36 *Commission, the State Air Resources Board, and the Division of*
37 *Oil, Gas, and Geothermal Resources.*

38 (c) *The executive director shall work with the University of*
39 *California, the California State University, and other*
40 *postsecondary education institutions to develop curriculum and*

1 *training necessary or useful to candidates for employment with*
2 *the commission.*

3 *SEC. 6. Section 309.2 is added to the Public Utilities Code, to*
4 *read:*

5 *309.2. The commission shall appoint a Deputy Executive*
6 *Director for Safety, who shall hold office at its pleasure. The deputy*
7 *executive director shall have primary responsibility for*
8 *implementing the authority of the commission to initiate an*
9 *investigation into a safety-related matter and to exercise the*
10 *emergency authority of the commission to ensure the safety of the*
11 *public.*

12 *SEC. 7. Section 314.6 is added to the Public Utilities Code, to*
13 *read:*

14 *314.6. (a) The commission may conduct financial and*
15 *performance audits of any entity or program created by any order,*
16 *decision, motion, settlement, or other action of the commission.*

17 *(b) The commission shall complete any audit in a timely manner*
18 *consistent with the Generally Accepted Government Auditing*
19 *Standards developed by the United States Government*
20 *Accountability Office.*

21 *(c) After performing an audit pursuant to this section, the*
22 *commission may conduct additional followup work that is related*
23 *to any findings and recommendations related to the audit.*

24 *SEC. 8. Section 321.5 is added to the Public Utilities Code, to*
25 *read:*

26 *321.5. (a) The commission shall appoint an independent*
27 *ombudsman for ethics. The ombudsman shall receive complaints*
28 *and comments from employees of the commission and members*
29 *of the public concerning how the commission is carrying out its*
30 *functions. The ombudsman shall maintain the confidentiality of*
31 *an employee's identity unless the employee expressly indicates a*
32 *desire to communicate his or her identity to the commission.*

33 *(b) The ombudsman, or staff under the direction of the*
34 *ombudsman, shall be responsible for instituting a program of*
35 *enhanced ethics training for all commissioners and employees of*
36 *the commission, including training concerning the commission's*
37 *conflict of interest code, statement of incompatible activities, and*
38 *limitations upon ex parte communications.*

39 *SEC. 9. Section 910.7 is added to the Public Utilities Code, to*
40 *read:*

1 910.7. (a) By March 31, 2017, the commission shall report to
2 the relevant policy and fiscal committees of the Legislature on
3 options to locate operations and staff outside of the commission's
4 San Francisco headquarters. The report shall explore options for
5 leveraging additional facilities in areas of the state, including
6 Sacramento, that would allow the commission to collaborate with
7 other state entities and provide staff more opportunities for
8 training, career development, and exchange placements with other
9 state entities. The report shall do both of the following:

10 (1) Consider categories of operations in different offices.

11 (2) Analyze recruitment and retention, salary disparities by
12 location based on duty statements, and costs associated with using
13 locations outside of San Francisco with no, or minimal, disruption
14 of current commission employees.

15 (b) The commission shall conduct one or more public workshops
16 to obtain suggestions, concerns, ideas, and comments from
17 stakeholders and interested members of the public in furtherance
18 of the purpose of the report.

19 (c) Pursuant to Section 10231.5 of the Government Code, this
20 section is repealed on March 31, 2021.

21 SEC. 10. Section 912.3 is added to the Public Utilities Code,
22 to read:

23 912.3. Immediately upon completion of an audit of any entity
24 or program created by any order, decision, motion, settlement, or
25 other action by the commission conducted pursuant to Section
26 314.6, the commission shall transmit a copy of the audit report to
27 the Legislature, including to the appropriate policy and fiscal
28 committees or subcommittees of the Legislature, and to the
29 Governor. Once the audit report has been transmitted to the
30 Legislature and the Governor, the report shall be made available
31 to the public.

32 SEC. 11. Section 1712 is added to the Public Utilities Code,
33 to read:

34 1712. (a) Reports and analyses by local, state, and federal
35 administrative agencies may be admitted into the evidentiary
36 record if proffered by a party and both of the following apply:

37 (1) The reports or analyses have been adopted or approved by
38 a vote of the governing body of the agency, approved by the
39 director or head of the agency, or published in a peer-reviewed
40 academic publication.

1 (2) *The commission provides an opportunity, consistent with*
2 *due process, for other parties and the public to analyze and*
3 *respond to any facts asserted by the reports or analyses.*

4 (b) *Unless a witness representing the agency is able to respond*
5 *to questions relating to the content of the reports or analyses, and*
6 *is available for cross-examination, the reports or analyses shall*
7 *not serve as the basis for any findings of fact or conclusions of*
8 *law.*

9 SEC. 12. *Section 8331 is added to the Public Utilities Code,*
10 *to read:*

11 8331. *The commission shall advocate before the federal*
12 *Nuclear Regulatory Commission for expedited relocation of any*
13 *spent fuel stored at the San Onofre Nuclear Generating Station,*
14 *the Diablo Canyon Units 1 and 2 powerplant, and Humboldt Bay*
15 *Unit 3 powerplant to an independent, offsite spent fuel storage*
16 *installation.*

17 SEC. 13. (a) *For purposes of this section, the following terms*
18 *have the following meanings:*

19 (1) *“Charter-party carrier of passengers” has the same meaning*
20 *as defined in Section 5360 of, subject to the exclusions in Section*
21 *5353 of, the Public Utilities Code.*

22 (2) *“Commercial air operator” has the same meaning as defined*
23 *in Section 5500 of the Public Utilities Code.*

24 (3) *“For-hire vessel” has the same meaning as defined in*
25 *Section 4661 of the Public Utilities Code.*

26 (4) *“Household goods carrier” has the same meaning as defined*
27 *in Section 5109 of the Public Utilities Code.*

28 (5) *“Passenger stage corporation” has the same meaning as*
29 *defined in Section 226 of the Public Utilities Code.*

30 (6) *“Private carrier” has the same meaning as defined in*
31 *Section 4001 of the Public Utilities Code.*

32 (7) *“Transportation network company” has the same meaning*
33 *as defined in Section 5431 of the Public Utilities Code.*

34 (8) *“Vessel common carrier” means those persons and*
35 *corporations that are a common carrier pursuant to subdivision*
36 *(b) of Section 212 of the Public Utilities Code.*

37 (b) *It is the intent of the Legislature to transfer the duties and*
38 *responsibilities of the Public Utilities Commission over passenger*
39 *stage corporations, charter-party carriers of passengers,*
40 *transportation network companies, household goods carriers,*

1 vessel common carriers, private carriers, for-hire vessels, and
 2 commercial air operators to state departments within the
 3 Transportation Agency in a manner consistent with Article XII of
 4 the California Constitution. By January 31, 2018, the Governor
 5 shall propose the specific budget and statutory changes needed to
 6 complete the transfer of the duties and responsibilities to the
 7 Transportation Agency by no later than July 1, 2018.

8 (c) It is the intent of the Legislature to make conforming changes
 9 to this code and the other codes of this state to effectuate
 10 subdivision (b) by July 1, 2018.

11 (d) It is the intent of the Legislature to evaluate methods for
 12 ensuring that rail crossings inspected by the Public Utilities
 13 Commission and rail transit approved by the Public Utilities
 14 Commission are in coordination with the Transportation Agency.

15 (9) This act is an urgency statute necessary for the immediate
 16 preservation of the public peace, health, or safety within the
 17 meaning of Article IV of the Constitution and shall go into
 18 immediate effect. The facts constituting the necessity are:

19 In order for the provisions of this act to be applicable as soon
 20 as possible in the 2017–18 fiscal year and thereby facilitate the
 21 orderly transition of duties and responsibilities at the earliest
 22 possible time, it is necessary that this act take effect immediately.

23
 24
 25 **All matter omitted in this version of the bill**
 26 **appears in the bill as introduced in the**
 27 **Assembly, March 3, 2016. (JR11)**
 28