

**Introduced by Senator Hill**December 1, 2014

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An act to amend Sections 2104 and 2104.5 of the Public Utilities Code, relating to gas corporations, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

SB 18, as introduced, Hill. Gas Corporations: fines and penalties.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, as defined. The Public Utilities Act requires the commission to investigate the cause of all accidents occurring upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the commission, investigation by it, and authorizes the commission to make any order or recommendation with respect to the investigation that it determines to be just and reasonable. The act provides that any public utility that violates any provision of the California Constitution or the act, or that fails or neglects to comply with any order, decision, decree, rule, direction, demand, or requirement of the commission, where a penalty has not otherwise been provided, is subject to a penalty of not less than \$500 and not more than \$50,000 for each offense. Existing law requires that any fine or penalty imposed by the commission and collected from a public utility be paid to the State Treasury to the credit of the General Fund. The act includes provisions that are specific to gas corporations that involve safety standards for pipeline facilities or the transportation of gas in the state.

This bill would revise the provisions that are specific to gas corporations that involve safety standards for pipeline facilities or the

transportation of gas in the state, to authorize the commission to order that all or a portion of a fine or penalty levied against a gas corporation in three specified proceedings be held in a separate account by the gas corporation to offset investments for pipeline replacement to be undertaken within the service territory of the corporation that would otherwise be recovered from the corporation's ratepayers. The bill would require that moneys ordered by the commission to be held in a separate account be used only for the purpose of offsetting investments by the gas corporation for pipeline replacement to be undertaken within the service territory of the corporation, and only if the investments would otherwise be recovered in rates from the utility's ratepayers. The bill would require that any moneys not used for these purposes be paid to the General Fund 5 years after the date of their deposit into the account. The bill would require the commission to allocate \$30,000,000 from the separate account to fund an independent monitor for a period of no less than 5 years to oversee the pipeline operations of the gas corporation and the effectiveness of the commission's regulatory oversight of those pipeline operations and would require the commission to allocate \$50,000,000 in seed money from the separate account to fund the operations of a pipeline safety trust. By authorizing specified uses of state penalty moneys, this bill would make an appropriation. The bill would also require the commission to allocate \$300,000,000 from the separate account to the General Fund. The bill would authorize the commission to adjust the above-described allocations from the separate account if the fines and penalties levied against the gas corporation in the three specified proceedings are less than \$950,000,000 in total.

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

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

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

1 SECTION 1. Section 2104 of the Public Utilities Code is  
2 amended to read:  
3 2104. (a) Except as provided by Sections 2100 and 2107.5,  
4 actions to recover penalties under this part shall be brought in the  
5 name of the people of the State of California, in the superior court  
6 in and for the county, or city and county, in which the cause or

1 some part thereof arose, or in which the corporation complained  
2 of has its principal place of business, or in which the person  
3 complained of resides. The action shall be commenced and  
4 prosecuted to final judgment by the attorney or agent of the  
5 commission. All fines and penalties may be sued for and recovered.  
6 The commission may enjoin the sale of a public utility's or  
7 common carrier's assets to satisfy unpaid fines and penalties. The  
8 commission may use any of the remedies afforded to a creditor  
9 under the Uniform Fraudulent Transfer Act (Chapter 1  
10 (commencing with Section 3439) of Title 2 of Part 2 of Division  
11 4 of the Civil Code). Respondents who fraudulently transfer assets  
12 to avoid paying commission-imposed fines or penalties are subject  
13 to prosecution under Sections 154, 531, and 531a of the Penal  
14 Code. In all of these actions, the procedure and rules of evidence  
15 shall be the same as in ordinary civil actions, except for  
16 prosecutions under the Penal Code or as otherwise herein provided.  
17 ~~All~~ *Except as provided in Section 2104.5, all* fines and penalties  
18 recovered by the state in any action, together with the costs thereof,  
19 shall be paid into the State Treasury to the credit of the General  
20 Fund. Any action may be compromised or discontinued on  
21 application of the commission upon the terms the court approves  
22 and orders.

23 (b) This section shall become operative on January 1, 2014.

24 SEC. 2. Section 2104.5 of the Public Utilities Code is amended  
25 to read:

26 2104.5. (a) Any penalty for violation of any provision of this  
27 act, or of any rule, regulation, general order, or order of the  
28 commission, involving safety standards for pipeline facilities or  
29 the transportation of gas in the State of ~~California~~ *California*, may  
30 be compromised by the commission. In determining the amount  
31 of ~~such~~ *the* penalty, or the amount agreed upon in compromise,  
32 the appropriateness of ~~such~~ *the* penalty to the size of the business  
33 of the person charged, the gravity of the violation, and the good  
34 faith of the person charged in attempting to achieve compliance,  
35 after notification of a violation, shall be considered. The amount  
36 of any ~~such~~ penalty, when finally determined, or the amount agreed  
37 upon in compromise, may be recovered in a civil action in the  
38 name of the ~~People~~ *people* of the State of California in the superior  
39 court in and for the county, or city and county in which the cause  
40 or some part thereof arose, or in which the corporation complained

1 of has its principal place of business or the person complained of  
2 resides. In any such action, all penalties incurred, or amounts  
3 agreed upon in compromise for violations committed up to the  
4 time of commencing the ~~action~~ *action*, may be sued for and  
5 recovered. In all ~~such~~ *those* actions, the procedure and rules of  
6 evidence shall be the same as in ordinary civil actions, except as  
7 otherwise herein provided. All fines and penalties recovered by  
8 the state in any ~~such~~ action, together with the costs thereof, shall  
9 be paid into the State Treasury to the credit of the General ~~Fund~~.  
10 *Fund, except upon order of the commission pursuant to subdivision*  
11 *(b).*

12 *(b) The commission shall order that any fine or penalty levied*  
13 *against a gas corporation in Investigation 11-02-016, Investigation*  
14 *11-11-009, or Investigation 12-01-007, be held in a separate*  
15 *account by the gas corporation to offset investments for pipeline*  
16 *replacement to be undertaken within the service territory of the*  
17 *corporation and that would otherwise be recovered from the*  
18 *corporation's ratepayers.*

19 *(c) The commission shall set a rate of interest for an account*  
20 *established pursuant to subdivision (b).*

21 *(d) Any moneys ordered by the commission to be held in a*  
22 *separate account pursuant to subdivision (b) shall be used only*  
23 *for the purpose of offsetting investments by the gas corporation*  
24 *for pipeline replacement to be undertaken within the service*  
25 *territory of the corporation, and only if the investments would*  
26 *otherwise be recovered in rates from the utility's ratepayers. Any*  
27 *moneys not used for these purposes shall, five years after the date*  
28 *of their deposit into the account, be paid to the General Fund.*

29 *(e) Notwithstanding subdivision (d), funds held in a separate*  
30 *account pursuant to subdivision (b) shall be allocated by the*  
31 *commission in the following manner:*

32 *(1) Thirty million dollars (\$30,000,000) to fund an independent*  
33 *monitor for a period of no less than five years to oversee both the*  
34 *pipeline operations of the gas corporation described in subdivision*  
35 *(b) and the effectiveness of the commission's regulatory oversight*  
36 *of those pipeline operations.*

37 *(2) Fifty million dollars (\$50,000,000) in seed money to fund*  
38 *the operations of a pipeline safety trust to represent and advocate*  
39 *on behalf of the interests of the public utility customers and*

1 *subscribers within the jurisdiction of the commission in all*  
2 *appropriate venues.*

3 *(3) Three hundred million dollars (\$300,000,000) to the General*  
4 *Fund.*

5 *(f) If any fines or penalties levied against a gas corporation*  
6 *pursuant to the investigations specified in subdivision (b) are less*  
7 *than nine hundred fifty million dollars (\$950,000,000) in total, the*  
8 *commission may adjust the amount of the allocations specified in*  
9 *subdivision (e).*

10 SEC. 3. This act is an urgency statute necessary for the  
11 immediate preservation of the public peace, health, or safety within  
12 the meaning of Article IV of the Constitution and shall go into  
13 immediate effect. The facts constituting the necessity are:

14 In order to address and resolve significant financial issues  
15 presented by ongoing proceedings before the Public Utilities  
16 Commission, it is necessary for this act to take effect immediately.