

AMENDED IN SENATE FEBRUARY 4, 2015

SENATE BILL

No. 18

Introduced by Senator Hill

December 1, 2014

An act to *add Section 4216.11 to the Government Code, and to amend Sections 2104.1702.5, 2104, and 2104.5 of of, and to add Section 320.5 to, the Public Utilities Code, relating to gas corporations, utility service, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 18, as amended, Hill. *Gas and Electrical Corporations: fines and penalties: penalties: underground utility facilities.*

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 establish the California Underground Facilities Safe Excavation Authority. The bill would create the Safe Energy Infrastructure and Excavation Fund in the State Treasury and would provide that moneys deposited into the fund are to be used to cover the administrative expenses of the authority, upon appropriation by the Legislature. The bill would authorize the commission to use excess moneys in the fund for specified purposes relating to the safety of underground utilities, upon appropriation by the Legislature.

Existing law requires the commission to develop and implement a safety enforcement program that is applicable to gas corporations and electrical corporations and that includes procedures for monitoring, data tracking and analysis, and investigations, as well as issuance of citations by commission staff, under the direction of the executive director of the commission, for correction and punishment of safety violations. That law requires the commission to develop and implement an appeals process to govern issuance and appeal of citations, or resolution of corrective action orders. That law requires the commission to implement the safety enforcement program for gas safety by July 1, 2014, and for electrical safety by January 1, 2015.

This bill would require that moneys collected as a result of the issuance of citations to gas corporations and electrical corporations pursuant to the above-described law be deposited in the Safe Energy Infrastructure and Excavation Fund.

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 4216.11 is added to the Government Code,*
2 *to read:*
3 *4216.11. The California Underground Facilities Safe*
4 *Excavation Authority is hereby created.*
5 *SEC. 2. Section 320.5 is added to the Public Utilities Code, to*
6 *read:*
7 *320.5. (a) The Safe Energy Infrastructure and Excavation*
8 *Fund is hereby established in the State Treasury. Moneys deposited*
9 *into the fund shall be used to cover the administrative expenses of*
10 *the California Underground Facilities Safe Excavation Authority,*
11 *upon appropriation by the Legislature.*
12 *(b) Any excess moneys in the fund that are not necessary for*
13 *the administrative expenses of the California Underground*
14 *Facilities Safe Excavation Authority may, upon appropriation by*
15 *the Legislature, be apportioned by the commission for the following*
16 *purposes:*
17 *(1) The California Underground Facilities Safe Excavation*
18 *Authority, for the purpose of the education and training of persons*

1 *who violate Article 2 (commencing with Section 4216) of Chapter*
2 *3.1 of Division 5 of Title 1 of the Government Code.*

3 *(2) Regional notification centers, as defined in Section 4216 of*
4 *the Government Code, to cover the cost of public education and*
5 *outreach programs designed to promote excavation safety around*
6 *underground facilities.*

7 *(3) The commission, to further a workforce development*
8 *program, which shall be consistent with its equal employment*
9 *opportunity program, that recruits and trains safety staff to perform*
10 *the highest quality gas and electric utility inspections, audits,*
11 *accident investigations, and data tracking and analysis. The*
12 *commission may only apportion moneys for this purpose upon*
13 *commission approval of the workforce development program at a*
14 *meeting of the commission.*

15 *SEC. 3. Section 1702.5 of the Public Utilities Code is amended*
16 *to read:*

17 1702.5. (a) The commission shall, in an existing or new
18 proceeding, develop and implement a safety enforcement program
19 applicable to gas corporations and electrical corporations which
20 includes procedures for monitoring, data tracking and analysis,
21 and investigations, as well as issuance of citations by commission
22 staff, under the direction of the executive director. The enforcement
23 program shall be designed to improve gas and electrical system
24 safety through the enforcement of applicable law, or order or rule
25 of the commission related to safety using a variety of enforcement
26 mechanisms, including the issuance of corrective actions, orders,
27 and citations by designated commission staff, and recommendations
28 for action made to the commission by designated commission staff.

29 (1) When considering the issuance of citations and assessment
30 of penalties, the commission staff shall take into account voluntary
31 reporting of potential violations, voluntary removal or resolution
32 efforts undertaken, the prior history of violations, the gravity of
33 the violation, and the degree of culpability.

34 (2) The procedures shall include, but are not limited to,
35 providing notice of violation within a reasonable period of time
36 after the discovery of the violation.

37 (3) The commission shall adopt an administrative limit on the
38 amount of monetary penalty that may be set by commission staff.

39 (b) The commission shall develop and implement an appeals
40 process to govern the issuance and appeal of citations or resolution

of corrective action orders issued by the commission staff. The appeals process shall provide the respondent a reasonable period of time, upon receiving a citation, to file a notice of appeal, shall afford an opportunity for a hearing, and shall require the hearing officer to expeditiously provide a draft disposition.

(c) The commission shall, within a reasonable time set by the commission, conclude a safety enforcement action with a finding of violation, a corrective action order, a citation, a determination of no violation, approval of the corrective actions undertaken by the gas corporation or electrical corporation, or other action. The commission may institute a formal proceeding regarding the alleged violation, potentially resulting in additional enforcement action, regardless of any enforcement action taken at the commission staff level.

(d) The commission shall implement the safety enforcement program for gas safety by July 1, 2014, and implement the safety enforcement program for electrical safety no later than January 1, 2015.

(e) This section does not apply to an exempt wholesale generator, a qualifying small power producer, or qualifying cogenerator, as defined in Section 796 of Title 16 of the United States Code and the regulations enacted pursuant thereto. Nothing in this section affects the commission's authority pursuant to Section 761.3.

(f) *Moneys collected as a result of the issuance of citations pursuant to this section shall be deposited in the Safe Energy Infrastructure and Excavation Fund.*

~~SECTION 4.~~

SEC. 4. Section 2104 of the Public Utilities Code is amended to read:

2104. (a) Except as provided by Sections 2100 and 2107.5, actions to recover penalties under this part shall be brought in the name of the people of the State of California, in the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of has its principal place of business, or in which the person complained of resides. The action shall be commenced and prosecuted to final judgment by the attorney or agent of the commission. All fines and penalties may be sued for and recovered. The commission may enjoin the sale of a public utility's or

1 common carrier's assets to satisfy unpaid fines and penalties. The
2 commission may use any of the remedies afforded to a creditor
3 under the Uniform Fraudulent Transfer Act (Chapter 1
4 (commencing with Section 3439) of Title 2 of Part 2 of Division
5 4 of the Civil Code). Respondents who fraudulently transfer assets
6 to avoid paying commission-imposed fines or penalties are subject
7 to prosecution under Sections 154, 531, and 531a of the Penal
8 Code. In all of these actions, the procedure and rules of evidence
9 shall be the same as in ordinary civil actions, except for
10 prosecutions under the Penal Code or as otherwise herein provided.
11 Except as provided in ~~Section~~ *Sections 1702.5 and 2104.5*, all fines
12 and penalties recovered by the state in any action, together with
13 the costs thereof, shall be paid into the State Treasury to the credit
14 of the General Fund. Any action may be compromised or
15 discontinued on application of the commission upon the terms the
16 court approves and orders.

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

18 ~~SEC. 2.~~

19 *SEC. 5.* Section 2104.5 of the Public Utilities Code is amended
20 to read:

21 2104.5. (a) Any penalty for violation of any provision of this
22 act, or of any rule, regulation, general order, or order of the
23 commission, involving safety standards for pipeline facilities or
24 the transportation of gas in the State of California, may be
25 compromised by the commission. In determining the amount of
26 the penalty, or the amount agreed upon in compromise, the
27 appropriateness of the penalty to the size of the business of the
28 person charged, the gravity of the violation, and the good faith of
29 the person charged in attempting to achieve compliance, after
30 notification of a violation, shall be considered. The amount of any
31 penalty, when finally determined, or the amount agreed upon in
32 compromise, may be recovered in a civil action in the name of the
33 people of the State of California in the superior court in and for
34 the county, or city and county in which the cause or some part
35 thereof arose, or in which the corporation complained of has its
36 principal place of business or the person complained of resides.
37 In any such action, all penalties incurred, or amounts agreed upon
38 in compromise for violations committed up to the time of
39 commencing the action, may be sued for and recovered. In all
40 those actions, the procedure and rules of evidence shall be the

1 same as in ordinary civil actions, except as otherwise herein
2 provided. All fines and penalties recovered by the state in any
3 action, together with the costs thereof, shall be paid into the State
4 Treasury to the credit of the General Fund, except upon order of
5 the commission pursuant to subdivision (b) *or as described in*
6 *Section 1702.5.*

7 (b) The commission shall order that any fine or penalty levied
8 against a gas corporation in Investigation 11-02-016, Investigation
9 11-11-009, or Investigation 12-01-007, be held in a separate
10 account by the gas corporation to offset investments for pipeline
11 replacement to be undertaken within the service territory of the
12 corporation and that would otherwise be recovered from the
13 corporation's ratepayers.

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

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

24 (e) Notwithstanding subdivision (d), funds held in a separate
25 account pursuant to subdivision (b) shall be allocated by the
26 commission in the following manner:

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

32 (2) Fifty million dollars (\$50,000,000) in seed money to fund
33 the operations of a pipeline safety trust to represent and advocate
34 on behalf of the interests of the public utility customers and
35 subscribers within the jurisdiction of the commission in all
36 appropriate venues.

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

39 (f) If any fines or penalties levied against a gas corporation
40 pursuant to the investigations specified in subdivision (b) are less

1 than nine hundred fifty million dollars (\$950,000,000) in total, the
2 commission may adjust the amount of the allocations specified in
3 subdivision (e).

4 ~~SEC. 3.~~

5 *SEC. 6.* This act is an urgency statute necessary for the
6 immediate preservation of the public peace, health, or safety within
7 the meaning of Article IV of the Constitution and shall go into
8 immediate effect. The facts constituting the necessity are:

9 In order to address and resolve significant financial issues
10 presented by ongoing proceedings before the Public Utilities
11 Commission *and to provide funding necessary to protect the public*
12 *health and safety*, it is necessary for this act to take effect
13 immediately.