

Introduced by Senator HillFebruary 12, 2016

An act to amend Section 316 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 1049, as introduced, Hill. Electricity: accident investigations.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law requires the commission to adopt inspection, maintenance, repair, and replacement standards for the distribution systems of electrical corporations in order to provide high quality, safe, and reliable service. Existing law requires every electrical corporation to cooperate fully with the commission in an investigation into any major accident or any reportable incident, as defined by the commission, concerning overhead electric supply facilities, regardless of pending litigation or other investigations, including those that may be related to a commission investigation. Existing law requires every electrical corporation to provide the commission, upon its request, immediate access to specified documents, including any and all documents under the electrical corporation's control that are related to the incident and are not subject to attorney-client privilege or attorney work product doctrine.

This bill would require every electrical corporation to cooperate fully with the commission in an investigation into any major accident or any reportable incident concerning any electric supply facilities, rather than only overhead electric supply facilities. The bill would require an electrical corporation seeking to protect commission requested documents related to an accident or reportable incident from disclosure under the attorney-client privilege or attorney work product doctrine

to bring a motion for protective order. The bill would establish procedures for making the motion, deciding the motion, and commission and judicial review of that decision.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 316 of the Public Utilities Code is
2 amended to read:

3 316. (a) Each electrical corporation shall cooperate fully with
4 the commission in an investigation into any major accident or any
5 reportable incident, as these terms are defined by the commission,
6 concerning ~~overhead~~ electric supply facilities, regardless of pending
7 litigation or other investigations, including, but not limited to,
8 those that may be related to a commission investigation.

9 (b) After the scene of the incident has been made safe and
10 service has been restored, each electrical corporation shall provide
11 the commission, upon its request, immediate access to all of the
12 following:

13 (1) Any factual or physical evidence under the electrical
14 corporation's, or its agent's, physical control, custody, or
15 possession related to the incident.

16 (2) The name and contact information of any known percipient
17 witness.

18 (3) Any employee percipient witness under the electrical
19 corporation's control.

1 (4) The name and contact information of any person or entity
2 that has taken possession of any physical evidence removed from
3 the site of the incident.

4 (5) Any and all documents under the electrical corporation's
5 control that are related to the incident and are not subject to
6 attorney-client privilege or attorney work product doctrine.

7 *(c) In order to prevent disclosure of documents requested by*
8 *the commission pursuant to paragraph (5) of subdivision (b) under*
9 *the attorney-client privilege or attorney work product doctrine,*
10 *an electrical corporation shall bring a motion for protective order*
11 *for a declaration that the documents not be produced. A motion*
12 *for protective order shall be made promptly, within 10 working*
13 *days of a request for production of documents, or shall be denied*
14 *as untimely. If a proceeding investigating the accident or*
15 *reportable incident has been opened and an administrative law*
16 *judge has been assigned for the proceeding, the motion for*
17 *protective order shall be filed with the assigned administrative*
18 *law judge. If no proceeding has been opened or no administrative*
19 *law judge has been assigned to the proceeding, the motion for*
20 *protective order shall be filed with the chief administrative law*
21 *judge of the commission. The chief administrative law judge or*
22 *assigned administrative law judge shall hear and decide the motion*
23 *for protective order promptly, within 10 working days of the filing*
24 *of the motion. Notwithstanding Section 1731, if the motion for*
25 *protective order is denied, or denied in part, the electrical*
26 *corporation may seek a writ of review without having brought a*
27 *motion for reconsideration. Notwithstanding the 30-day time period*
28 *of subdivision (a) of Section 1756, any writ of review shall be*
29 *brought promptly, within 10 working days of service of the order*
30 *denying, or denying in part, the motion for protective order, or it*
31 *shall be denied as untimely. If the chief administrative law judge*
32 *or assigned administrative law judge grants the motion for*
33 *protective order, in whole or in part, the division of the commission*
34 *responsible for investigating the accident or reportable incident*
35 *shall either amend its request for documents to exclude those*
36 *documents that are protected from disclosure or shall seek a*
37 *rehearing before the full commission pursuant to Article 2*
38 *(commencing with Section 1731) of Chapter 9. The commission*
39 *may shorten the time for hearing of the motion for rehearing*
40 *pursuant to this paragraph. An electrical corporation may,*

1 *pursuant to Section 1756, seek a writ of review from the order of*
2 *the commission on the motion for rehearing, except that the writ*
3 *shall be brought within 10 working days of the date of the order,*
4 *or shall be denied as untimely.*

5 ~~(e)~~

6 (d) Each electrical corporation shall preserve any and all
7 documents or evidence it collects as part of its own investigation
8 related to the incident for at least five years or a shorter period of
9 time as authorized by the commission.

10 ~~(e)~~

11 (e) Any and all documents collected by an electrical corporation
12 pursuant to this section shall be catalogued and preserved in an
13 accessible manner for assessment by commission investigators as
14 determined by the commission.

15 SEC. 2. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.