

AMENDED IN SENATE APRIL 11, 2016

**SENATE BILL**

**No. 1049**

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**Introduced by Senator Hill**

February 12, 2016

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An act to amend Section 316 of the Public Utilities Code, relating to ~~electricity~~. *energy public utilities*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1049, as amended, Hill. ~~Electricity~~: *Electrical corporations and gas corporations*: accident investigations.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical *corporations and gas corporations*. *The Natural Gas Pipeline Safety Act of 2011 requires each gas corporation to develop a plan, as specified, for the safe and reliable operation of its commission-regulated gas pipeline facility, as defined*. 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.~~ *The bill would require every gas corporation to cooperate fully with the commission in an investigation into any major accident or any reportable incident concerning commission-regulated gas pipeline facilities, regardless of pending litigation or other investigations. The bill would require each electrical corporation and gas corporation, after the scene of the incident has been made safe and, in the case of a major outage, service has been restored, to provide the commission, upon request, with access to all measurements of every utility instrumentality or facility in the vicinity of the incident, all calculations regarding every instrumentality or facility in the vicinity of the incident, any analysis regarding the cause, or causes, of the incident, and any recording or paraphrasing of any statement by a witness.*

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 *and gas corporation* shall  
4 cooperate fully with the commission in an investigation into any  
5 major accident or any reportable incident, as these terms are defined  
6 by the commission, concerning electric supply ~~facilities~~, *facilities*  
7 *and commission-regulated gas pipeline facilities*, regardless of  
8 pending litigation or other investigations, including, but not limited  
9 to, those that may be related to a commission investigation.

10 (b) After the scene of the incident has been made safe ~~and~~ *and*,  
11 *in the case of a major outage*, service has been restored, each  
12 electrical corporation *and gas corporation* shall provide the  
13 commission, upon its request, immediate access to all of the  
14 following:

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

18 (2) The name and contact information of any known percipient  
19 witness.

20 (3) Any employee percipient witness under the electrical *or gas*  
21 corporation's control.

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

25 (5) *Each and every measurement of every utility instrumentality*  
26 *or facility in the vicinity of the incident. Historical, as well as*  
27 *post-incident measurements, shall be produced. Measurements of*  
28 *instrumentalities or facilities not owned by the utility shall also*  
29 *be produced, if those measurements are available.*

30 (6) *Each and every calculation regarding every instrumentality*  
31 *or facility in the vicinity of the incident. Historical, as well as*  
32 *postincident, calculations shall be produced.*

33 (7) *Each and every analysis regarding the cause, or causes, of*  
34 *the incident. Each analysis shall be produced regardless of whether*  
35 *identified as a root cause analysis, a causal evaluation, a failure*  
36 *analysis, a storm register, or identified in some other manner.*

37 (8) *Each and every recording or paraphrasing of any statement*  
38 *by a witness.*

1     ~~(5)~~

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

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

1 ~~commission on the motion for rehearing, except that the writ shall~~  
2 ~~be brought within 10 working days of the date of the order, or shall~~  
3 ~~be denied as untimely.~~

4 ~~(d)~~

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

9 (e)

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

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