

AMENDED IN ASSEMBLY JULY 7, 1995

AMENDED IN ASSEMBLY JUNE 30, 1995

AMENDED IN SENATE MAY 18, 1995

AMENDED IN SENATE APRIL 26, 1995

AMENDED IN SENATE APRIL 17, 1995

**SENATE BILL**

**No. 1322**

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**Introduced by Senator Calderon**

March 7, 1995

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An act to amend Sections 1216, 1353, 1420, 1756, 1758, 1759, 1760, 1762, 1763, 1764, 1765, 1766, 2766, 3731, 3740, 5251, and 5257 of, to add Section 1756.2 to, and to repeal and add Sections 1757 and 1761 of, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1322, as amended, Calderon. Public Utilities Commission: judicial review.

Existing law provides for judicial review of decisions and findings of the Public Utilities Commission, as specified. Existing law requires that the Supreme Court is the exclusive forum for judicial review of commission proceedings.

This bill would express legislative intent to establish the manner and scope of review of commission decisions and to overrule a specified decision of the Supreme Court of California relating to judicial review of Public Utilities Commission matters. The bill would generally revise

provisions relating to the judicial review of decisions and findings of the Public Utilities Commission. The bill would generally authorize judicial review of commission proceedings to take place in either the Supreme Court or the court of appeal.

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

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

1 SECTION 1. It is the intent of the Legislature in  
2 enacting this act to establish the manner and scope of  
3 review taken from decisions of the Public Utilities  
4 Commission. This change will conform judicial review of  
5 the Public Utilities Commission with the other  
6 constitutionally created state agencies. ~~Further, it~~ It is  
7 the intent of the Legislature to overrule Camp Meeker  
8 Water System, Inc. v. Public Utilities Commission, 51 Cal.  
9 3d 845. *Further, it is the intent of the Legislature that*  
10 *quasi-adjudicative decisions by the commission be subject*  
11 *to review on grounds similar to decisions subject to*  
12 *administrative mandamus, and that quasi-legislative*  
13 *actions by the commission be subject to review on*  
14 *grounds similar to other actions reviewed pursuant to*  
15 *Section 1085 of the Code of Civil Procedure.*

16 SEC. 2. Section 1216 of the Public Utilities Code is  
17 amended to read:

18 1216. (a) The finding of the commission on the  
19 question of the necessity for the taking and the finding  
20 fixing the just compensation to be paid for any property  
21 or interest in or to property under Sections 1206 to 1216,  
22 inclusive, are final and shall not be subject to  
23 modification, alteration, reversal, or review by any court  
24 of this state.

25 (b) The provisions of this part with reference to  
26 rehearing and review shall be applicable to the findings  
27 of the commission made and filed under this chapter.  
28 Petitions for rehearing shall be filed within 20 days from  
29 the date of making and filing the finding as to which a  
30 rehearing is desired.



1 (c) If a finding of the commission made and filed  
2 under this chapter is set aside by the Supreme Court or  
3 the court of appeal of the State of California, the matter  
4 shall be referred back to the commission for further  
5 action in a proceeding before the commission, and the  
6 commission may, on taking further action, consider the  
7 entire testimony theretofore taken in the proceeding  
8 before the commission as well as further testimony, if any,  
9 presented in connection with further action.

10 SEC. 3. Section 1353 of the Public Utilities Code is  
11 amended to read:

12 1353. (a) The commission may make and file its  
13 written findings of fact upon matters concerning which  
14 evidence has been introduced before it which, in its  
15 judgment, have bearing on the value of the property of  
16 the public utility affected. These findings shall be subject  
17 to review by the courts in the same manner and within  
18 the same time as other orders and decisions of the  
19 commission.

20 (b) The findings of the commission so made and filed,  
21 when certified under the seal of the commission, shall be  
22 admissible in evidence in any action, proceeding, or  
23 hearing before the commission or any court in which the  
24 commission, the state, or any officer, department, or  
25 institution thereof, or any county, city and county, city, or  
26 other body politic and the public utility affected may be  
27 interested, whether arising under this part, or otherwise.  
28 These findings, when so introduced, shall be conclusive  
29 evidence of the facts therein stated as of the date therein  
30 stated under conditions then existing, and these facts may  
31 only be controverted by showing a subsequent change in  
32 conditions bearing upon the facts therein determined.

33 SEC. 4. Section 1420 of the Public Utilities Code is  
34 amended to read:

35 1420. (a) The provisions of this part with reference to  
36 rehearing and review shall be applicable to the findings  
37 of the commission made and filed under this chapter.  
38 Petitions for rehearing shall be filed within 20 days from  
39 the date of making and filing the finding as to which a  
40 rehearing is desired.



1 (b) If the finding of the commission is set aside by the  
 2 Supreme Court or the court of appeal of the State of  
 3 California, the matter shall be referred back to the  
 4 commission for further action in the proceeding before  
 5 the commission, and the commission may, in taking  
 6 further action, consider the entire testimony theretofore  
 7 taken in the proceeding before the commission as well as  
 8 further testimony presented in connection with the  
 9 further action.

10 (c) If a writ of review is issued by the Supreme Court  
 11 or court of appeal of the State of California, the time  
 12 within which the political subdivision shall file an action  
 13 in a court of competent jurisdiction or submit the  
 14 proposition to its voters shall be extended to not more  
 15 than 60 days beyond the final decision of the court upon  
 16 that writ.

17 SEC. 5. Section 1756 of the Public Utilities Code is  
 18 amended to read:

19 1756. (a) Within 30 days after the commission issues  
 20 its decision denying the application for a rehearing, or, if  
 21 the application was granted, then within 30 days after the  
 22 commission issues its decision on rehearing, or at least 120  
 23 days after the application is granted if no decision on  
 24 rehearing has been issued, any aggrieved party may  
 25 petition for a writ of review in the court of appeal or the  
 26 Supreme Court for the purpose of having the lawfulness  
 27 of the original order or decision or of the order or decision  
 28 on rehearing inquired into and determined. If the writ  
 29 issues, it shall be made returnable at a time and place  
 30 specified by court order and shall direct the commission  
 31 to certify its record in the case to the court within the time  
 32 specified.

33 (b) The petition for review shall be served upon the  
 34 executive director of the commission either personally or  
 35 by service at the office of the commission.

36 (c) For purposes of this section, the issuance of a  
 37 decision or the granting of an application shall be  
 38 construed to have occurred on the date when the  
 39 commission mails the decision or grant to the parties to  
 40 the action or proceeding.



1 (d) The venue of a petition filed in the court of appeal  
2 pursuant to this section shall be in the judicial district in  
3 which the petitioner resides. If the petitioner is a business,  
4 venue shall be in the judicial district in which the  
5 petitioner has its principal place of business in California.

6 SEC. 6. Section 1756.2 is added to the Public Utilities  
7 Code, to read:

8 1756.2. In any proceeding reviewing an order or  
9 decision of the commission in the Supreme Court or court  
10 of appeal, the commission may appear and be heard as a  
11 party.

12 SEC. 7. Section 1757 of the Public Utilities Code is  
13 repealed.

14 SEC. 8. Section 1757 is added to the Public Utilities  
15 Code, to read:

16 1757. (a) No new or additional evidence shall be  
17 introduced upon review by the court. The review by the  
18 court shall not extend further than to determine, on the  
19 basis of the entire record which shall be certified by the  
20 commission, whether any of the following occurred:

21 (1) The commission acted without, or in excess of, its  
22 powers or jurisdiction.

23 (2) The commission has not proceeded in the manner  
24 required by law.

25 (3) The decision of the commission is not supported by  
26 the findings.

27 (4) In a complaint, enforcement, or other  
28 adjudicatory proceeding, the findings in the decision of  
29 the commission are not supported by substantial  
30 evidence in light of the whole record.

31 (5) The order or decision of the commission was  
32 procured by fraud or was an abuse of discretion.

33 (6) The order or decision of the commission violates  
34 any right of the petitioner under the Constitution of the  
35 United States or the California Constitution.

36 (b) Nothing in this section shall be construed to permit  
37 the court to hold a trial de novo, to take evidence other  
38 than as specified by the California Rules of Court, or to  
39 exercise its independent judgment on the evidence.



1 (c) The findings and conclusions of the commission on  
2 questions of fact shall be final, and shall not be subject to  
3 review except as provided in this article. These questions  
4 of fact shall include ultimate facts and the findings and  
5 conclusions of the commission on reasonableness and  
6 discrimination.

7 SEC. 9. Section 1758 of the Public Utilities Code is  
8 amended to read:

9 1758. (a) The commission and each party to the  
10 action or proceeding before the commission may appear  
11 in the review proceeding. Upon the hearing the Supreme  
12 Court or court of appeal shall enter judgment either  
13 affirming or setting aside the order or decision of the  
14 commission.

15 (b) The provisions of the Code of Civil Procedure  
16 relating to writs of review shall, so far as applicable and  
17 not in conflict with this part, apply to proceedings  
18 instituted in the Supreme Court or court of appeal under  
19 this article.

20 (c) Under this article, the Supreme Court may review  
21 decisions of the court of appeal in the manner provided  
22 for other civil actions.

23 SEC. 10. Section 1759 of the Public Utilities Code is  
24 amended to read:

25 1759. (a) No court of this state, except the Supreme  
26 Court and the court of appeal, to the extent specified in  
27 this article, shall have jurisdiction to review, reverse,  
28 correct, or annul any order or decision of the commission  
29 or to suspend or delay the execution or operation thereof,  
30 or to enjoin, restrain, or interfere with the commission in  
31 the performance of its official duties, as provided by law  
32 and the rules of court.

33 (b) The writ of mandamus shall lie from the Supreme  
34 Court and court of appeal to the commission in all proper  
35 cases *as prescribed in Section 1085 of the Code of Civil*  
36 *Procedure.*

37 SEC. 11. Section 1760 of the Public Utilities Code is  
38 amended to read:

39 1760. In any proceeding wherein the validity of any  
40 order or decision is challenged on the ground that it



1 violates any right of petitioner under the Constitution of  
2 the United States , the Supreme Court or court of appeal  
3 shall exercise an independent judgment on the law and  
4 facts, and the findings or conclusions of the commission  
5 material to the determination of the constitutional  
6 question shall not be final.

7 SEC. 12. Section 1761 of the Public Utilities Code is  
8 repealed.

9 SEC. 13. Section 1761 is added to the Public Utilities  
10 Code, to read:

11 1761. (a) Any stay or suspension of an order or  
12 decision of the commission shall be granted only in  
13 accordance with this article and the rules of court.

14 (b) A stay may be issued against any order or decision  
15 of the commission, other than an order or decision  
16 increasing or decreasing rates or changing a rate  
17 classification.

18 SEC. 14. Section 1762 of the Public Utilities Code is  
19 amended to read:

20 1762. (a) Except as provided in this section, no order  
21 staying or suspending an order or decision of the  
22 commission shall be made by the Supreme Court or court  
23 of appeal except upon five days' notice and after hearing.  
24 If the order or decision of the commission is stayed or  
25 suspended, the order suspending it shall contain a specific  
26 finding, based upon evidence submitted to the court and  
27 identified by reference thereto.

28 (b) The specific finding made pursuant to subdivision  
29 (a) shall certify that great or irreparable damage would  
30 otherwise result to the petitioner and specify the nature  
31 of the damage.

32 (c) The Supreme Court or court of appeal may grant  
33 a temporary stay restraining the operation of the  
34 commission order or decision, other than an order or  
35 decision authorizing an increase or decrease in rates or  
36 changing a rate classification, at any time before the  
37 required hearing and determination of the application  
38 for a stay when, in the opinion of the court, irreparable  
39 loss or damage would result to petitioner unless the  
40 temporary stay is granted. The temporary stay shall



1 remain in force only until the hearing determination of  
2 the application for a stay upon notice. The hearing of the  
3 application for a stay shall be given precedence and  
4 assigned for hearing at the earliest practicable day after  
5 the expiration of the notice.

6 SEC. 15. Section 1763 of the Public Utilities Code is  
7 amended to read:

8 1763. (a) No temporary stay shall be granted by the  
9 Supreme Court or court of appeal unless it clearly appears  
10 from specific facts shown by the verified petition that  
11 immediate and irreparable injury, loss, or damage will  
12 result to the applicant before notice can be served and  
13 hearing had on a motion for a stay as provided in this  
14 article.

15 (b) Every temporary stay shall be endorsed with the  
16 date and hour of issuance, shall be forthwith filed in the  
17 clerk's office and entered of record, shall define the injury  
18 and state why it appears to be irreparable and why the  
19 order was granted without notice, and shall by its terms  
20 expire within a time after entry not to exceed 10 days as  
21 the court may fix, unless within the time so fixed the order  
22 is extended for a like period for good cause shown and the  
23 reasons for the extension entered of record.

24 (c) In case a temporary stay is granted without notice,  
25 the matter of the issuance of a stay shall be set down for  
26 hearing at the earliest possible time, and when it comes  
27 up for hearing the party obtaining the temporary stay  
28 shall proceed with the application for a stay. If the party  
29 does not so proceed, the court shall dissolve the  
30 temporary stay.

31 SEC. 16. Section 1764 of the Public Utilities Code is  
32 amended to read:

33 1764. In case the order or decision of the commission  
34 is stayed or a temporary stay granted, the order of the  
35 Supreme Court or court of appeal shall not become  
36 effective until a suspending bond is executed and filed  
37 with and approved by the court, payable to the people of  
38 the State of California and sufficient in amount and  
39 security to insure the prompt payment by the party  
40 petitioning for the review, of all damages caused by the



1 delay in the enforcement of the order or decision of the  
2 commission and of all money which any person or  
3 corporation may be compelled to pay pending the review  
4 of the proceedings for transportation, transmission,  
5 product, commodity, or service in excess of the charges  
6 fixed by the order or decision of the commission, in case  
7 the order or decision is sustained.

8 SEC. 17. Section 1765 of the Public Utilities Code is  
9 amended to read:

10 1765. In case the Supreme Court or court of appeal  
11 stays any order or decision denying to the utility an  
12 increase in any rate or classification, the court may  
13 condition the stay or temporary stay so as to permit  
14 petitioner to charge a higher rate pending the  
15 determination of the review. The court may attach other  
16 reasonable conditions to the stay or temporary stay.

17 SEC. 18. Section 1766 of the Public Utilities Code is  
18 amended to read:

19 1766. (a) Under no circumstance shall the Supreme  
20 Court or court of appeal stay or suspend any order or  
21 decision by the commission authorizing an increase or  
22 decrease in rates or changing any rate classification.

23 (b) If a commission order or decision authorizing any  
24 increase or decrease in rates, or changing any rate  
25 classification, is set aside by the Supreme Court or court  
26 of appeal, the matter shall be referred back to the  
27 commission for further action consistent with the order  
28 of the court. The commission, in taking this further action,  
29 shall not authorize refunds, and any relief ordered by the  
30 commission that shall have the effect of increasing or  
31 decreasing rates shall be prospective only.

32 SEC. 19. Section 2766 of the Public Utilities Code is  
33 amended to read:

34 2766. (a) Upon application for suspension or deletion  
35 of any certificated point, the commission may authorize  
36 a special temporary suspension. The special temporary  
37 suspension, when authorized, shall be effective 30 days  
38 after the filing of the application and shall only remain  
39 effective pending hearing and decision on the application  
40 if an interested person or party so requests.



1 (b) The special temporary suspension may be ordered  
2 for a maximum 90-day period, and may be renewed by  
3 the commission for an additional 90-day period, if the  
4 additional time is required to complete the proceedings  
5 before the commission, except that a stay of the  
6 commission's decision, on its own motion or by the court,  
7 shall serve to continue the special temporary suspension  
8 until 10 days after termination or review proceeding.

9 SEC. 20. Section 3731 of the Public Utilities Code is  
10 amended to read:

11 3731. Except as otherwise expressly provided, in all  
12 respects in which the commission has power and  
13 authority under the Constitution of this state or under this  
14 chapter, applications and complaints may be made and  
15 filed with the commission, process issued, hearings held,  
16 opinions, orders, and decisions made and filed, petitions  
17 for rehearing filed and acted upon, in regard to the  
18 matters provided for in this chapter, in the same manner,  
19 under the same conditions and subject to the same  
20 limitations, and with the same effect specified in Part 1  
21 (commencing with Section 201) of Division 1, as far as  
22 applicable.

23 SEC. 21. Section 3740 of the Public Utilities Code is  
24 amended to read:

25 3740. Any interim, interlocutory, or other order may  
26 be reviewed as provided in Sections 1756 to 1759,  
27 inclusive. Upon review, only that portion of the record in  
28 the proceeding considered by the commission and upon  
29 which it acted in making the order sought to be reviewed,  
30 need be certified to and considered by the court.

31 SEC. 22. Section 5251 of the Public Utilities Code is  
32 amended to read:

33 5251. (a) Except as otherwise expressly provided, in  
34 all respects in which the commission has power and  
35 authority under the Constitution of this state or under this  
36 chapter, applications and complaints may be made and  
37 filed with the commission, process issued, hearings held,  
38 opinions, orders, and decisions made and filed, petitions  
39 for rehearing filed and acted upon, in regard to the  
40 matters provided for in this chapter, in the same manner,



1 under the same conditions and subject to the same  
2 limitations, and with the same effect specified in the  
3 Public Utilities Act (Part 1 (commencing with Section  
4 201) of Division 1), as far as applicable.

5 (b) A person aggrieved by a final order of the  
6 commission under this chapter may file an application for  
7 a writ of review (Chapter 1 (commencing with Section  
8 1069) of Title 1 of Part 3 of the Code of Civil Procedure)  
9 or a writ of mandamus (Chapter 1 (commencing with  
10 Section 1084) of Title 1 of Part 3 of the Code of Civil  
11 Procedure) in superior court, upon a showing that the  
12 commission has denied rehearing in the matter.

13 SEC. 23. Section 5257 of the Public Utilities Code is  
14 amended to read:

15 5257. Any interim, interlocutory, or other order may  
16 be reviewed as provided in Sections 1756 to 1766,  
17 inclusive. Upon review, only that portion of the record in  
18 the proceeding considered by the commission and upon  
19 which it acted in making the order sought to be reviewed,  
20 need be certified to and considered by the court.

21 SEC. 24. The Public Utilities Commission shall  
22 execute its duties pursuant to this act using existing  
23 funding sources.

24 SEC. 25. Sections 1 to 24, inclusive, of this act shall  
25 apply to review of an order or a decision the effective date  
26 of which is on or after January 1, 1996. Review of orders  
27 or decisions the effective date of which is prior to January  
28 1, 1996, shall be pursuant to the provisions of the Public  
29 Utilities Code in existence the day prior to January 1, 1996.

