

AMENDED IN SENATE JUNE 26, 2012

AMENDED IN SENATE MAY 30, 2012

AMENDED IN ASSEMBLY APRIL 7, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 478

Introduced by Assembly Member Hill
(Principal coauthor: Senator Leno)

February 15, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 478, as amended, 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 ~~safety~~ replacement to be undertaken within the service territory of the corporation, and only if the ~~expenses~~ *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 trust account.

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

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) On September 9, 2010, a natural gas transmission pipeline
- 4 owned and operated by Pacific Gas and Electric Company exploded
- 5 under the intersection of Earl Avenue and Glenview Drive in the
- 6 Crestmoor neighborhood of San Bruno, killing eight people,
- 7 injuring more than 50, and destroying 38 homes.
- 8 (b) The explosion was in a section of pipeline thought by Pacific
- 9 Gas and Electric Company to be seamless. Inspection by the
- 10 National Transportation Safety Board (NTSB) determined that the
- 11 pipe in fact had a double-submerged arc weld.

1 (c) The revelation that the utility did not know such basic and
2 vital information as seam type for this pipeline led the NTSB to
3 issue an urgent recommendation that Pacific Gas and Electric
4 Company find traceable, verifiable, and complete records for all
5 pipe in class 3 and 4 locations, and in class 1 and 2 high
6 consequence areas, that had not had their maximum allowable
7 operating pressures established through prior hydrostatic testing.
8 The NTSB recommended that, should the utility not be able to
9 comply with this recommendation, it establish a maximum
10 allowable operating pressure through hydrostatic pressure testing.

11 (d) The Public Utilities Commission (PUC), in Decision
12 11-06-017, ordered all California gas corporations to develop a
13 plan to implement these NTSB recommendations for all
14 transmission pipelines. Pacific Gas and Electric Company's plan
15 for Phase 1, which addressed pipelines in high-consequence areas,
16 proposed to incur expenses of seven hundred fifty million five
17 hundred thousand dollars (\$750,500,000) and to make capital
18 expenditures of one million four hundred thirty-three thousand
19 dollars (\$1,433,000) between 2011 and 2013. Pacific Gas and
20 Electric Company officials have stated that Phase 2 could cost
21 between six billion eight hundred million dollars (\$6,800,000,000)
22 and nine billion dollars (\$9,000,000,000).

23 ~~(e) This investment will greatly exceed the total net investment~~
24 ~~that Pacific Gas and Electric Company has placed in its pipeline~~
25 ~~system over the past several decades. The vast majority of this~~
26 ~~cost is proposed to be borne by the utility's ratepayers.~~

27 ~~(f) Given Pacific Gas and Electric Company's current 11.35~~
28 ~~percent authorized return on equity, each dollar of capital~~
29 ~~investment in pipeline replacement will cost ratepayers more than~~
30 ~~three dollars and fifty cents (\$3.50) in repayment of principal, debt~~
31 ~~service, return on shareholder equity, and taxes on the return on~~
32 ~~shareholder equity over the 45-year amortization of the investment.~~

33 ~~(g)~~

34 (e) Pacific Gas and Electric Company is currently under
35 investigation in three PUC penalty proceedings related to the
36 pipeline accident: Investigation 11-02-016, Investigation
37 11-11-009, and Investigation 12-01-007. The utility projects that
38 fines in these penalty proceedings will likely exceed two hundred
39 million dollars (\$200,000,000).

40 (h)

1 (f) Currently, all fines in PUC penalty proceedings are required
2 by statute to be deposited into the state’s General Fund.

3 (i)

4 (g) Prior to the current investigations involving the San Bruno
5 pipeline explosion, the largest safety-related fine the PUC had
6 levied was a thirty-eight million dollar (\$38,000,000) fine for a
7 fatal natural gas distribution pipeline explosion on Christmas Eve
8 of 2008 in Rancho Cordova.

9 (j)

10 (h) Given the unprecedented amount of pipeline investment that
11 Pacific Gas and Electric Company is proposing to make in the
12 aftermath of the San Bruno explosion and the unprecedented size
13 of the likely fine that the utility faces as a result of the explosion,
14 any fines assessed to the utility as a result of the explosion should
15 go toward offsetting the costs that the utility’s ratepayers would
16 otherwise bear for safety upgrades to the utility’s pipeline system.

17 SEC. 2. Section 2104 of the Public Utilities Code, as amended
18 by Section 7 of Chapter 552 of the Statutes of 2008, is amended
19 to read:

20 2104. (a) Except as provided by Sections 2100 and 2107.5,
21 and in addition to the remedies provided in Sections 688.020 and
22 688.030 of the Code of Civil Procedure, actions to recover penalties
23 under this part may be brought in the name of the people of the
24 State of California, in the superior court in and for the county, or
25 city and county, in which the cause or some part thereof arose, or
26 in which the corporation complained of has its principal place of
27 business, or in which the person complained of resides. The action,
28 if brought pursuant to this section, shall be commenced and
29 prosecuted to final judgment by the attorney or agent of the
30 commission. All fines and penalties may be sued for and recovered.
31 The commission may enjoin the sale of a public utility’s or
32 common carrier’s assets to satisfy unpaid fines and penalties. The
33 commission may use any of the remedies afforded to a creditor
34 under the Uniform Fraudulent Transfer Act (Chapter 1
35 commencing with Section 3439) of Title 2 of Part 2 of Division
36 4 of the Civil Code). Respondents who fraudulently transfer assets
37 to avoid paying commission-imposed fines or penalties are subject
38 to prosecution under Sections 154, 531, and 531a of the Penal
39 Code. In all of these actions, the procedure and rules of evidence
40 shall be the same as in ordinary civil actions, except for

1 prosecutions under the Penal Code or as otherwise herein provided.
2 Except as provided in Section 2104.5, all fines and penalties
3 recovered by the state in any action, together with the costs thereof,
4 shall be paid into the State Treasury to the credit of the General
5 Fund. Any action may be compromised or discontinued on
6 application of the commission upon the terms the court approves
7 and orders.

8 (b) This section shall remain in effect only until January 1, 2014,
9 and as of that date is repealed, unless a later enacted statute, that
10 is enacted before January 1, 2014, deletes or extends that date.

11 SEC. 3. Section 2104 of the Public Utilities Code, as added by
12 Section 8 of Chapter 552 of the Statutes of 2008, is amended to
13 read:

14 2104. (a) Except as provided by Sections 2100 and 2107.5,
15 actions to recover penalties under this part shall be brought in the
16 name of the people of the State of California, in the superior court
17 in and for the county, or city and county, in which the cause or
18 some part thereof arose, or in which the corporation complained
19 of has its principal place of business, or in which the person
20 complained of resides. The action shall be commenced and
21 prosecuted to final judgment by the attorney or agent of the
22 commission. All fines and penalties may be sued for and recovered.
23 The commission may enjoin the sale of a public utility's or
24 common carrier's assets to satisfy unpaid fines and penalties. The
25 commission may use any of the remedies afforded to a creditor
26 under the Uniform Fraudulent Transfer Act (Chapter 1
27 (commencing with Section 3439) of Title 2 of Part 2 of Division
28 4 of the Civil Code). Respondents who fraudulently transfer assets
29 to avoid paying commission-imposed fines or penalties are subject
30 to prosecution under Sections 154, 531, and 531a of the Penal
31 Code. In all of these actions, the procedure and rules of evidence
32 shall be the same as in ordinary civil actions, except for
33 prosecutions under the Penal Code or as otherwise herein provided.
34 Except as provided in Section 2104.5, all fines and penalties
35 recovered by the state in any action, together with the costs thereof,
36 shall be paid into the State Treasury to the credit of the General
37 Fund. Any action may be compromised or discontinued on
38 application of the commission upon the terms the court approves
39 and orders.

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

1 SEC. 4. Section 2104.5 of the Public Utilities Code is amended
2 to read:

3 2104.5. (a) Any penalty for violation of any provision of this
4 act, or of any rule, regulation, general order, or order of the
5 commission, involving safety standards for pipeline facilities or
6 the transportation of gas in the State of California, may be
7 compromised by the commission. In determining the amount of
8 the penalty, or the amount agreed upon in compromise, the
9 appropriateness of the penalty to the size of the business of the
10 person charged, the gravity of the violation, and the good faith of
11 the person charged in attempting to achieve compliance, after
12 notification of a violation, shall be considered. The amount of any
13 penalty, when finally determined, or the amount agreed upon in
14 compromise, may be recovered in a civil action in the name of the
15 people of the State of California in the superior court in and for
16 the county, or city and county in which the cause or some part
17 thereof arose, or in which the corporation complained of has its
18 principal place of business or the person complained of resides.
19 In any such action, all penalties incurred, or amounts agreed upon
20 in compromise for violations committed up to the time of
21 commencing the action, may be sued for and recovered. In all
22 those actions, the procedure and rules of evidence shall be the
23 same as in ordinary civil actions, except as otherwise herein
24 provided. All fines and penalties recovered by the state in any
25 action, together with the costs thereof, shall be paid into the State
26 Treasury to the credit of the General Fund, except upon order of
27 the commission pursuant to subdivision (b).

28 (b) The commission shall order that any fine or penalty levied
29 against a gas corporation in Investigation 11-02-016, Investigation
30 11-11-009, or Investigation 12-01-007, be held in a separate
31 account by the gas corporation to offset investments for pipeline
32 replacement to be undertaken within the service territory of the
33 corporation and that would otherwise be recovered from the
34 corporation's ratepayers.

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

37 (d) ~~(1)~~ Any moneys ordered by the commission to be held in a
38 separate account pursuant to subdivision (b) shall be used;
39 ~~consistent with the intent of the Legislature as stated in paragraph~~
40 ~~(2)~~; only for the purpose of offsetting investments by the gas

1 corporation for pipeline replacement to be undertaken within the
2 service territory of the corporation, and only if the investments
3 would otherwise be recovered in rates from the utility's ratepayers.
4 Any moneys not used for these purposes shall, five years after the
5 date of their deposit into the trust account, be paid to the General
6 Fund.

7 ~~(2) It is the intent of the Legislature that moneys ordered by the~~
8 ~~commission to be held in a separate account pursuant to subdivision~~
9 ~~(b) be used to offset investments that are to be made by a gas~~
10 ~~corporation during the first phase of the utility's implementation~~
11 ~~plan filed in response to Decision 11-06-017, Decision Determining~~
12 ~~Maximum Allowable Operating Pressure Methodology and~~
13 ~~Requiring Filing of Natural Gas Transmission Pipeline~~
14 ~~Replacement or Testing Implementation Plans (filed June 9, 2011);~~
15 ~~if the commission determines that the investments would otherwise~~
16 ~~be recovered in rates from the utility's ratepayers.~~

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

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