

**Introduced by Senator Leno**February 24, 2012

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An act to amend Sections 2104 and 2104.5 of the Public Utilities Code, relating to public utilities.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1350, as introduced, Leno. Public utilities: 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 relation to a safety standard for pipeline facilities or the transportation of gas in the state be held in trust by the commission to offset expenses for gas safety measures that would otherwise be recovered from the utility's customers. The bill would require that moneys ordered by the commission to be held in trust be used only for the purpose of offsetting expenses incurred by the gas corporation for gas safety measures, and only if the expenses would otherwise be recovered in rates from the utility's customers. The bill would require that any moneys not used for these purposes be paid to the General Fund.

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. Section 2104 of the Public Utilities Code, as  
2 amended by Section 7 of Chapter 552 of the Statutes of 2008, is  
3 amended to read:  
4 2104. (a) Except as provided by Sections 2100 and 2107.5,  
5 and in addition to the remedies provided in Sections 688.020 and  
6 688.030 of the Code of Civil Procedure, actions to recover penalties  
7 under this part may be brought in the name of the people of the  
8 State of California, in the superior court in and for the county, or  
9 city and county, in which the cause or some part thereof arose, or  
10 in which the corporation complained of has its principal place of  
11 business, or in which the person complained of resides. The action,  
12 if brought pursuant to this section, shall be commenced and  
13 prosecuted to final judgment by the attorney or agent of the  
14 commission. All fines and penalties may be sued for and recovered.  
15 The commission may enjoin the sale of a public utility's or  
16 common carrier's assets to satisfy unpaid fines and penalties. The  
17 commission may use any of the remedies afforded to a creditor  
18 under the Uniform Fraudulent Transfer Act (Chapter 1  
19 (commencing with Section 3439) of Title 2 of Part 2 of Division  
20 4 of the Civil Code). Respondents who fraudulently transfer assets  
21 to avoid paying commission-imposed fines or penalties are subject  
22 to prosecution under Sections 154, 531, and 531a of the Penal  
23 Code. In all of these actions, the procedure and rules of evidence  
24 shall be the same as in ordinary civil actions, except for  
25 prosecutions under the Penal Code or as otherwise herein provided.

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

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

10 SEC. 2. Section 2104 of the Public Utilities Code, as added by  
11 Section 8 of Chapter 552 of the Statutes of 2008, is amended to  
12 read:

13 2104. (a) Except as provided by Sections 2100 and 2107.5,  
14 actions to recover penalties under this part shall be brought in the  
15 name of the people of the State of California, in the superior court  
16 in and for the county, or city and county, in which the cause or  
17 some part thereof arose, or in which the corporation complained  
18 of has its principal place of business, or in which the person  
19 complained of resides. The action shall be commenced and  
20 prosecuted to final judgment by the attorney or agent of the  
21 commission. All fines and penalties may be sued for and recovered.  
22 The commission may enjoin the sale of a public utility's or  
23 common carrier's assets to satisfy unpaid fines and penalties. The  
24 commission may use any of the remedies afforded to a creditor  
25 under the Uniform Fraudulent Transfer Act (Chapter 1  
26 (commencing with Section 3439) of Title 2 of Part 2 of Division  
27 4 of the Civil Code). Respondents who fraudulently transfer assets  
28 to avoid paying commission-imposed fines or penalties are subject  
29 to prosecution under Sections 154, 531, and 531a of the Penal  
30 Code. In all of these actions, the procedure and rules of evidence  
31 shall be the same as in ordinary civil actions, except for  
32 prosecutions under the Penal Code or as otherwise herein provided.  
33 ~~All~~ Except as provided in Section 2104.5, all fines and penalties  
34 recovered by the state in any action, together with the costs thereof,  
35 shall be paid into the State Treasury to the credit of the General  
36 Fund. Any action may be compromised or discontinued on  
37 application of the commission upon the terms the court approves  
38 and orders.

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

1 SEC. 3. 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 ~~such~~ *the* penalty, or the amount agreed upon in compromise, the  
9 appropriateness of ~~such~~ *the* penalty to the size of the business of  
10 the person charged, the gravity of the violation, and the good faith  
11 of the person charged in attempting to achieve compliance, after  
12 notification of a violation, shall be considered. The amount of any  
13 ~~such~~ penalty, when finally determined, or the amount agreed upon  
14 in compromise, may be recovered in a civil action in the name of  
15 the ~~People~~ *people* of the State of California in the superior court  
16 in and for the county, or city and county in which the cause or  
17 some part thereof arose, or in which the corporation complained  
18 of has its principal place of business or the person complained of  
19 resides. In any such action, all penalties incurred, or amounts  
20 agreed upon in compromise for violations committed up to the  
21 time of commencing the action may be sued for and recovered. In  
22 all ~~such~~ *those* actions, the procedure and rules of evidence shall  
23 be the same as in ordinary civil actions, except as otherwise herein  
24 provided. All fines and penalties recovered by the state in any ~~such~~  
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 may order that all or a portion of a fine or*  
29 *penalty levied against a gas corporation in relation to a safety*  
30 *standard for pipeline facilities or the transportation of gas in the*  
31 *state be held in trust by the commission to offset expenses for gas*  
32 *safety measures that would otherwise be recovered from the*  
33 *utility's customers.*

34 (c) *Any moneys ordered by the commission to be held in trust*  
35 *pursuant to subdivision (b) may be used only for the purpose of*  
36 *offsetting expenses incurred by the gas corporation for gas safety*  
37 *measures, and only if the expenses would otherwise be recovered*

1 *in rates from the utility's customers. Any moneys not used for these*  
2 *purposes shall be paid to the General Fund.*

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