

AMENDED IN SENATE APRIL 10, 2012

SENATE BILL

No. 1350

Introduced by Senator Leno

February 24, 2012

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 amended, 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~~ *a separate account by the gas corporation* to offset investments, expenses, or both, for gas safety measures that would otherwise be recovered from the utility's customers. *The bill would require the commission to set a rate of interest for these accounts. The bill would authorize the commission to audit these accounts.* The bill would require that moneys ordered by the commission to be held in ~~trust~~ *one of these accounts* be used only for the purpose of offsetting investments, expenses, or both, 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, *five years after the date of their deposit into the separate account*, 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

under the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code). Respondents who fraudulently transfer assets to avoid paying commission-imposed fines or penalties are subject to prosecution under Sections 154, 531, and 531a of the Penal Code. In all of these actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except for prosecutions under the Penal Code or as otherwise herein provided. Except as provided in Section 2104.5, all fines and penalties recovered by the state in any action, together with the costs thereof, shall be paid into the State Treasury to the credit of the General Fund. Any action may be compromised or discontinued on application of the commission upon the terms the court approves and orders.

(b) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

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

2104. (a) Except as provided by Sections 2100 and 2107.5, actions to recover penalties under this part shall be brought in the name of the people of the State of California, in the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of has its principal place of business, or in which the person complained of resides. The action shall be commenced and prosecuted to final judgment by the attorney or agent of the commission. All fines and penalties may be sued for and recovered. The commission may enjoin the sale of a public utility's or common carrier's assets to satisfy unpaid fines and penalties. The commission may use any of the remedies afforded to a creditor under the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code). Respondents who fraudulently transfer assets to avoid paying commission-imposed fines or penalties are subject to prosecution under Sections 154, 531, and 531a of the Penal Code. In all of these actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except for prosecutions under the Penal Code or as otherwise herein provided.

1 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 become operative on January 1, 2014.

8 SEC. 3. Section 2104.5 of the Public Utilities Code is amended
9 to read:

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

35 (b) The commission may order that all or a portion of a fine or
36 penalty levied against a gas corporation in relation to a safety
37 standard for pipeline facilities or the transportation of gas in the
38 state be held in ~~trust by the commission~~ *a separate account by the*
39 *gas corporation to offset investments, expenses, or both, for gas*

1 safety measures that would otherwise be recovered from the
2 utility's corporation's customers.

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

5 (d) *The commission may audit an account established pursuant*
6 *to subdivision (b).*

7 ~~(e)~~

8 (e) Any moneys ordered by the commission to be held in ~~trust~~
9 *a separate account* pursuant to subdivision (b) may be used only
10 for the purpose of offsetting *investments, expenses, or both,*
11 incurred by the gas corporation for gas safety measures, and only
12 if the expenses would otherwise be recovered in rates from the
13 utility's customers. Any moneys not used for these purposes shall,
14 *five years after the date of their deposit into the separate account,*
15 be paid to the General Fund.