

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: June 4, 2012

To: The Commission
(Meeting of June 7, 2012)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 861 (Hill) – Public Utilities Act: remedies for violation: gas and electrical corporation executive officer compensation incentives.**
As amended: May 14, 2012

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT IF AMENDED

SUMMARY OF BILL

This bill would make the following changes:

1. Increase the existing maximum fine in Public Utilities (PU) Code Section 2110 from \$1,000 to \$5,000: Existing PU Code Section 2110 provides that every public utility and every officer, agent, or employee of any public utility, who violates....any order, decision, rule, direction, demand or requirement of the California Public Utilities Commission (CPUC)..., in which a penalty has not otherwise been provided is guilty of a misdemeanor and is punishable by a fine not exceeding \$1,000 [or by imprisonment in county jail, or both].
2. Increase the existing range of penalties in PU Code Section 2110 from \$500 to \$20,000 to \$1,000 to \$1,000,000: Existing PU Code 2111 provides that every corporation or person, other than a public utility and its officers, agents, or employees, which or who knowingly violates... any order, decision, rule, direction, demand or requirement of the commission..., in which a penalty has not otherwise been provided is subject to a penalty of not less than \$500, nor more than \$20,000 for each offense.
3. The bill does not change the penalty range applicable to public utilities, which remains set at \$500 to \$50,000 pursuant to PU Code section 2107.
4. Require that any expense resulting from an earnings- or stock price-based incentive program paid to an executive officer of an electric or gas corporation be borne by the

shareholders of the utility and would prohibit any expense from being recovered in rates.

5. Require the CPUC to require an energy utility to prohibit compensation to utility officers if the utility does not implement a policy that, in the event a fine or penalty is levied by the CPUC, the energy utility would recover a proportional amount of the incentive-based compensation received by any current or former officers of the energy utility during the 5-year period preceding the date on which the fine or penalty was levied in excess of what would have been paid to the officers in incentive-based compensation had the fine or penalty been levied during the period in which the violation that resulted in the fine or penalty occurred.
6. Require a holding company of an investor-owned energy utility, in the event a fine or penalty is levied by the CPUC on the investor-owned utility, to recover a proportional amount of the incentive-based compensation received by any current or former officers of the utility holding company during the 5-year period preceding the date on which the fine or penalty was levied in excess of what would have been paid to the officers in incentive-based compensation had the fine or penalty been levied during the period in which the violation that resulted in the fine or penalty occurred.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION

Staff supports the overall intent of the bill to raise the fines/penalties that are codified in Sections 2110 and 2111. Inflation alone would justify increasing the amount from the existing levels.

However, staff observes that the major change in Section 2111, which increases the maximum penalty for non-utilities to \$1 million, is not reflected by any increase in the maximum penalty for utilities, which is unchanged by the legislation, and would remain at \$50,000 as set by Section 2107. This would result in a large disparity between the maximum penalty for a non-utility entity or person (\$1,000,000) and a utility entity (\$50,000). The lack of symmetry in these maximum penalties raises a question of fairness. It is also not clear why a non-utility would be subject to a fine so much higher than a utility.

The increased fine proposed in Section 2110, raising the current maximum of \$1000 to \$5000, would apply in the case of a criminal misdemeanor conviction, which we believe to be a relatively rare occurrence.

In addition to the fairness issue, increasing the maximum allowable fine for a non-utility entity by an exorbitant amount may have the unintended consequence of reducing the pool of willing and able entities that can conduct business with the utility companies. Having such a big potential liability hanging over their heads may act as a disincentive and would likely impact the ability of the non-utility entities from procuring adequate liability insurance in the normal course of their business operation.

The prohibition from rate recovery of any earnings- or stock price-based incentive program paid to an executive officer of a gas or electric corporation, while well intentioned, has the effect of discouraging such compensation schemes. It is unknown if this is being proposed because of empirical evidence that shows earnings- or stock price- based compensation schemes do not benefit ratepayers. Undoubtedly, energy utilities and, by extension, the customers they serve benefit largely from competent executives who can operate energy utilities while balancing safety, efficiency and profitability needs. Should the need to attract the best talent remain as a primary goal for energy utilities and their regulators, given this prohibition, the utilities' compensation schemes may simply revert to a more salary-based remuneration, which itself may not be optimal in ensuring the best performance and output from executives.

The requirement for the CPUC to require an energy utility and its holding company to implement a 5-year "clawback" provision to proportionally offset any fines levied on the company against any incentive-based compensation received by its officers allows a utility to recover from its officers what is essentially undeserved compensation. The language of the bill on this issue is convoluted, however, so it is unclear how this would be implemented, and accordingly it would likely lead to litigation.

The bill would also require the CPUC to prohibit the utility from paying any compensation (including pay and health and retirement benefits) to its officers if the energy utility does not adopt an incentive pay "clawback" provision. This seems a bit extreme, and may raise legal issues that would hinder its implementation.

SUMMARY OF SUGGESTED AMENDMENTS

The penalties applicable to utilities and non-utilities should be comparable. This would best be accomplished by having the existing penalty range in Section 2107 (\$500 to \$50,000) also apply to non-utilities by incorporating those same levels into Section 2111.

While the concept of the "clawback" provision is generally clear, how exactly it is intended to work and how it would be applied is not clear, especially the determination of what is a "proportionate amount." Accordingly, it is hard to recommend specific amendments without a clearer understanding of how this provision is supposed to work.

The language requiring the CPUC to prohibit the utility from paying any compensation to its officers if it does not adopt a "clawback" policy should be deleted. The bill should only require utilities to adopt a "clawback" policy.

DIVISION ANALYSIS (Consumer Protection and Safety Division, Energy Division and Legal Division)

- The CPUC needs to examine if it supports the policy implications resulting from the large disparity between the maximum penalties proposed in the bill for non-utility and utility entities. In addition to the fairness issue, increasing the maximum allowable

fine for a non-utility entity by an exorbitant amount may have the unintended consequence of reducing the pool of willing and able entities that can conduct business with the utility companies. Having such a big potential liability hanging over their heads can serve as a disincentive and would likely impact the ability of the non-utility entities from procuring adequate liability insurance in the normal course of their business operation.

- The bill assumes that earnings- or stock price-based incentive programs paid to executive officers of a gas or electric corporation do not benefit ratepayers. It is not clear that this is consistent with CPUC's existing policies, as the CPUC has not generally barred such incentive pay programs. Staff also notes that, if the bill passes, ratepayers will not immediately benefit from any reduced payment of bonuses resulting from the probation until the next general rate cases are approved as the utilities would have had their revenue requirements already approved, which currently includes any bonuses. The companies would be able to keep monies collected in rates under the existing revenue requirements even if the amounts are not spent after the bill goes into effect, until the next general rate case cycle.
- The requirement for the CPUC to require an energy utility to implement a 5-year claw back provision to proportionally offset any fines levied on the company against any incentive-based compensation received by its officers allows a utility to recover from its officers what is essentially undeserved compensation. This helps strengthen the CPUC's ability to ensure that that compensation structure it authorizes through rates is just and reasonable.
- Because the clawback provisions of the bill are not clear, implementation or enforcement of those provisions is likely to result in litigation. In addition, the provision that (in certain circumstances) prohibits utility officers from receiving any compensation, including pay and health and retirement benefits, may conflict with other state or federal employment and benefits laws.
- Because the existing penalty ranges are statutory, changes to the authorized level of penalties must be made by statute, not by regulatory or administrative action. Because it is not clear whether the CPUC has the existing authority to implement a "clawback" proposal such as that contained in the bill, having such authority set forth in a bill would clarify that authority.
- Increased penalty levels would provide the CPUC with the ability to impose appropriate fines in particularly egregious cases of misconduct. At the same time, the proposal for a \$1 million penalty per offense may be greater than necessary, especially since that level of penalty would not apply to a utility (under the bill's current language). That level of penalty, along with the disparity in penalty levels between utilities and non-utilities, may create perverse incentives.
- Relevant pending litigation or legal issues: The proposed disparity in penalty levels between utilities and non-utilities would likely be a basis for litigation, such as on

equal protection grounds, particularly if the CPUC attempted to impose the higher penalty level on a non-utility. There would likely also be more attempts to challenge the CPUC's authority to impose penalties on non-utilities.

There would likely be legal challenges to any attempt to apply the "clawback" provisions retroactively to any incentive-based compensation paid prior to the enactment of the bill. Any attempt to enforce the "clawback" provisions would likely result in legal challenges to both the statute and the scope of the CPUC's authority. The portion of the bill that requires (in certain circumstances) that the CPUC prohibit utility officers from receiving any compensation, including pay and health and retirement benefits, may conflict with other state or federal employment and benefits laws.

LEGISLATIVE HISTORY

Effective January 1, 2012, the penalty range provided in PU Code Section 2107, for fines applicable to public utilities, was raised from \$500 to \$20,000 to \$500 to \$50,000 for each offense (SB 879 (Padilla), 2011).

FISCAL IMPACT

Unknown.

STATUS

AB 861 is awaiting hearing in the Senate Committee on Energy, Utilities and Communications.

SUPPORT/OPPOSITION

None on file.

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BILL LANGUAGE:

BILL NUMBER: AB 861 AMENDED
BILL TEXT

AMENDED IN SENATE MAY 14, 2012
AMENDED IN ASSEMBLY MAY 27, 2011

INTRODUCED BY Assembly ~~Members~~ ~~Hill~~
- ~~and Nestande~~
Member Hill

FEBRUARY 17, 2011

~~An act to add a heading as Article 1 (commencing with Section 104100) to, and to add Article 2 (commencing with Section 104141) to, Chapter 1 of Part 1 of Division 103 of, the Health and Safety Code, relating to stroke.— An act to add Part 14 (commencing with Section 14640) to Division 3 of Title 1 of the Corporations Code, and to amend Sections 2110 and 2111 of, and to add Sections 451.6 and 451.7 to, the Public Utilities Code, relating to public utilities.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 861, as amended, Hill. ~~California Stroke Registry.~~
Public Utilities Act: remedies for violation: gas and electrical corporation executive officer compensation incentives.

(1) *The California Constitution establishes the Public Utilities Commission, with regulatory jurisdiction over all public utilities, as defined. The Public Utilities Act provides that every public utility and every officer, agent, or employee of a public utility, who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility of any provision of the California Constitution or of the act, or who fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in a violation or noncompliance, in a case in which a penalty has not otherwise been provided, is guilty of a misdemeanor and is punishable by a fine not exceeding \$1,000, or by imprisonment in a county jail not exceeding one year, or by both fine and imprisonment.*

This bill would provide that the fine may not exceed \$5,000.

(2) *The act additionally provides that every corporation or person, other than a public utility and its officers, agents, or employees, knowingly violating or failing to comply with, or procuring, aiding, or abetting any violation of the California Constitution relating to public utilities or of the act, or that fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or procuring, aiding, or abetting any public utility in a violation or*

noncompliance, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than \$500, or more than \$20,000, for each offense.

This bill would increase the penalty to not less than \$1,000 and not more than \$1,000,000 for each offense.

(3) Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law requires that any expense resulting from a bonus paid to an executive officer, as defined, of a public utility that has ceased to pay its debts in the ordinary course of business, be borne by the shareholders of the public utility and prohibits any expense from being recovered in rates.

This bill would require that any expense resulting from an earnings- or stock price-based incentive program paid to an executive officer of an electrical or gas corporation be borne by the shareholders of the utility and would prohibit any expense from being recovered in rates. Because this provision of the bill would be a part of the act and because a violation of an order or decision of the commission implementing this requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

(4) This bill would require the commission to require an energy utility, as defined, to prohibit compensation, as defined, to utility officers, as defined, if the energy utility does not implement a policy that, in the event a fine or penalty is levied by the commission, the energy utility would recover a proportional amount of the incentive-based compensation, as defined, received by any current or former officers of the energy utility during the 5-year period preceding the date on which the fine or penalty was levied in excess of what would have been paid to the officers in incentive-based compensation had the fine or penalty been levied during the period in which the violation that resulted in the fine or penalty occurred.

(5) The General Corporation Law authorizes and regulates the formation and governance of general corporations.

This bill would require a holding company of an investor-owned energy utility, as defined, in the event a fine or penalty is levied by the commission on the investor-owned energy utility, to recover a proportional amount of the incentive-based compensation, as defined, received by any current or former officers of the utility holding company during the 5-year period preceding the date on which the fine or penalty was levied in excess of what would have been paid to the officers in incentive-based compensation had the fine or penalty been levied during the period in which the violation that resulted in the fine or penalty occurred.

(6) 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.

~~Existing law authorizes the State Department of Public Health to perform studies, demonstrate innovative methods, and disseminate information relating to the protection, preservation, and advancement of public health.~~

~~This bill would establish the California Stroke Registry, to be~~

~~administered by the State Department of Public Health, as specified, to serve as a centralized repository for stroke data to promote quality improvement for acute stroke treatment. The bill would require that the program be implemented only to the extent funds from federal or private sources are made available for this purpose.~~

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Part 14 (commencing with Section 14640) is added to Division 3 of Title 1 of the Corporations Code , to read:

PART 14. PUBLIC UTILITY HOLDING COMPANIES

14640. For purposes of this part, the following terms have the following meanings:

(a) "Commission" means the Public Utilities Commission.

(b) "Holding company" means an entity with ownership of 80 percent or more of an investor-owned energy utility.

(c) "Incentive-based compensation" means, including, but not limited to, short-term incentives, long-term incentives, stock options awarded as compensation, and special recognition awards.

(d) "Investor-owned energy utility" means a gas corporation, as defined in Section 222, an electrical corporation, as defined in Section 218, of the Public Utilities Code, or one that is both a gas corporation and an electrical corporation.

(e) "Officer" means a person required to file under Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.) with respect to an investor-owned energy utility or a utility holding company of an investor-owned energy utility.

14641. In the event a fine or penalty is levied by the commission on an investor-owned energy utility, the holding company shall recover a proportional amount of the incentive-based compensation received by any current or former officers of the holding company during the five-year period preceding the date on which the fine or penalty was levied in excess of what would have been paid to the officers in incentive-based compensation had the fine or penalty been levied during the period in which the violation that resulted in the fine or penalty occurred.

SEC. 2. Section 451.6 is added to the Public Utilities Code , to read:

451.6. (a) Any expense resulting from an earnings- or stock price-based incentive program paid to an executive officer of an electrical corporation or a gas corporation shall not be recoverable either directly or indirectly in rates and shall be borne exclusively by the shareholders of the public utility.

(b) For purposes of this section, "executive officer" means any person who performs policymaking functions and is employed by the electrical corporation or gas corporation subject to the approval of the board of directors, and includes the president, secretary, treasurer, and any vice president in charge of a principal business unit, division, or function of the utility.

SEC. 3. Section 451.7 is added to the Public Utilities Code , to read:

451.7. (a) For purposes of this section, the following terms have the following meanings:

(1) "Compensation" means, but is not limited to, base pay, health and welfare benefits, retirement benefits, and other benefit programs.

(2) "Energy utility" means a gas corporation, an electrical corporation, or that is both a gas corporation and an electrical corporation.

(3) "Incentive-based compensation" means, but is not limited to, short-term incentives, long-term incentives, stock options awarded as compensation, and special recognition awards.

(4) "Officer" means a person required to file under Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.) with respect to an energy utility.

(b) The commission shall require an energy utility to prohibit compensation to utility officers if the energy utility does not implement a policy that, in the event a fine or penalty is levied by the commission, the energy utility shall recover a proportional amount of the incentive-based compensation received by any current or former officers of the energy utility during the five-year period preceding the date on which the fine or penalty was levied in excess of what would have been paid to the officers in incentive-based compensation had the fine or penalty been levied during the period in which the violation that resulted in the fine or penalty occurred.

SEC. 4. Section 2110 of the Public Utilities Code is amended to read:

2110. Every public utility and every officer, agent, or employee of any public utility, who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility of any provision of the ~~Constitution of this state~~ California Constitution or of this part, or who fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in ~~such~~ the violation or noncompliance in a case in which a penalty has not otherwise been provided, is guilty of a misdemeanor and is punishable by a fine not exceeding ~~one~~ five thousand dollars ~~(\$1,000)~~ (\$5,000) , or by imprisonment in a county jail not exceeding one year, or by both ~~such~~ fine and imprisonment.

SEC. 5. Section 2111 of the Public Utilities Code is amended to read:

2111. Every corporation or person, other than a public utility and its officers, agents, or employees, which or who knowingly violates or fails to comply with, or procures, aids or abets any violation of any provision of the ~~Constitution of this state~~ California Constitution relating to public utilities or of this part, or fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in ~~such~~ the violation or noncompliance, in a case in which a penalty has not otherwise been provided for ~~such~~ the corporation or person, is subject to a penalty of not less than ~~five hundred~~

~~one thousand dollars —(\$500)
(\$1,000) , nor more than —twenty thousand dollars
(\$20,000)— one million dollars (\$1,000,000) for
each offense.~~

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

~~SECTION 1.— The Legislature finds and declares all of the following:~~

~~—(a) Stroke, also known as cerebrovascular accident or brain attack, is the third leading cause of death and the leading cause of severe, long term disability and death in California.~~

~~—(b) Stroke kills approximately 15,585 Californians each year and accounts for almost 200,000 hospitalizations.~~

~~—(c) The rapid identification, diagnosis, and treatment of stroke can save the lives of stroke patients and in some cases can reverse neurological damage, such as paralysis and speech and language impairments, leaving stroke patients with few or no neurological deficits.~~

~~SEC. 2.— The heading of Article 1 (commencing with Section 104100) is added to Chapter 1 of Part 1 of Division 103 of the Health and Safety Code, to read:~~

~~Article 1. High Blood Pressure~~

~~SEC. 3.— Article 2 (commencing with Section 104141) is added to Chapter 1 of Part 1 of Division 103 of the Health and Safety Code, to read:~~

~~Article 2. California Stroke Registry~~

~~104141. (a) The State Department of Public Health shall establish a statewide California Stroke Registry. The purpose of this registry is to serve as a centralized repository for stroke data to promote quality improvement for acute stroke treatment. The registry shall align with the stroke consensus metrics developed by national health organizations such as the federal Centers for Disease Control and Prevention, The Joint Commission, the American Heart Association, and the American Stroke Association. The acquisition of data for the registry shall be by voluntary reports and encompass all areas of the state for which stroke data are available.~~

~~(b) The registry shall be under the direction of the director and housed within the California Heart Disease and Stroke Prevention Program. The cardiovascular disease program may accept, on behalf of the state, grants of public or private funds.~~

~~(c) The department may contract with an agency, including, but not limited to, a health systems agency, single county health department, or multicounty health department groupings, representing a designated reporting region for the purposes of collecting and~~

~~collating acute stroke data.~~

~~—(d) The department may contract, or provide grant awards, to implement public health activities to fulfill required funding award objectives.~~

~~—(c) In establishing the registry, the director shall:~~

~~—(1) Maintain a statewide stroke database that compiles information and statistics voluntarily reported on stroke care. To the extent possible, the department shall coordinate with the organizations specified in subdivision (a) to avoid duplication and redundancy in data collection.~~

~~—(2) Recommend that hospitals and emergency medical services agencies report case specific data that is voluntarily reported on the treatment of individuals with suspected acute stroke to the representative of the department authorized to compile the stroke data, or any individual, agency, or organization designated to cooperate with that representative.~~

~~—(3) Encourage sharing of information and data among health care providers to improve the quality of care for stroke.~~

~~—(4) Facilitate the communication and analysis of health information and data among the health care professionals providing care for individuals with stroke.~~

~~—(5) Consult with the Stroke Advisory Committee regarding ways in which to improve the quality of stroke care and delivery in California.~~

~~—(f) All information collected pursuant to this section shall be confidential. For purposes of this section, this information shall be referred to as "confidential information."~~

~~—104141.5. (a) Persons with a valid scientific interest who are engaged in demographic, epidemiological, or other similar studies related to health, and who meet qualifications determined by the department, and who agree, in writing, to maintain confidentiality, may be authorized to access confidential information for research purposes. An entity that receives confidential information from the department shall ensure the confidentiality of the information. The department shall provide only information that does not identify individual cases or institutional or individual sources of information. Before confidential information is disclosed for study, researchers shall do both of the following:~~

~~—(1) Obtain approval of their committee for the protection of human subjects established in accordance with Part 46 (commencing with Section 46.101) of Title 45 of the Code of Federal Regulations.~~

~~—(2) Provide documentation to the department that demonstrates to the department's satisfaction that the entity has established the procedures and ability to maintain the confidentiality of the information.~~

~~—(b) Notwithstanding any other law, any disclosure authorized by this section shall include only the information necessary for the stated purpose of the requested disclosure, used for the approved purpose, and not be further disclosed.~~

~~—(c) The furnishing of confidential information to the department or its authorized representative in accordance with this section shall not expose any person, agency, or entity furnishing information to liability, and shall not be considered a waiver of any privilege or a violation of a confidential relationship.~~

~~—(d) The department shall maintain an accurate record of all persons who are given access to confidential information. The record shall include the name of the person authorizing access; name, title,~~

~~address, and organizational affiliation of persons given access; dates of access; and the specific purpose for which information is to be used. The record of access shall be open to public inspection during normal operating hours of the department.~~

~~—(c) Notwithstanding any other law, no part of the confidential information shall be available for subpoena, nor shall it be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding, nor shall this information be deemed admissible as evidence in any civil, criminal, administrative, or other tribunal or court for any reason.~~

~~—(f) This section shall not prohibit the publication of reports and statistical compilations that do not in any way identify individual cases or institutional or individual sources of information.~~

~~—(g) Notwithstanding the restrictions in this section, the individual to whom the information pertains shall have access to his or her own information in accordance with Chapter 1 (commencing with Section 1798) of Title 1.8 of the Civil Code.~~

~~—104142. For the purpose of this article, stroke means either of the following:~~

~~—(a) Ischemic stroke, defined as an occlusion of a blood vessel that blocks blood flow to the brain, depriving the brain of oxygen, and resulting in brain tissue death. This definition includes transient ischemic attacks, defined as stroke like symptoms for less than 24 hours.~~

~~—(b) Hemorrhagic stroke, defined as a rupture of a blood vessel, resulting in bleeding into or around the brain.~~

~~—104142.5. Nothing in this article shall preempt the authority of facilities or individuals providing diagnostic or treatment services to patients with stroke to maintain their own facility-based stroke registries.~~

~~—104143. This article shall not be construed as a medical practice guideline and shall not be used to restrict the authority of a hospital to provide services for which it has received a license under state law.~~

~~—104143.5. This article shall be implemented only to the extent funds from federal or private sources are made available for this purpose.~~

~~—104144. All contracts with, and the utilization of, the program's fiscal intermediary shall not be subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.~~