

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: March 20, 2012

To: The Commission
(Meeting of March 22, 2012)

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

Subject: **AB 1703 (Hill) – Public utilities: reporting: safety issues.**
As introduced: February 15, 2012

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT IF AMENDED

SUMMARY OF BILL:

This bill would require public utilities to report to the California Public Utilities Commission (CPUC) within 30 days of a final judgment, arbitration award, compromise or settlement in excess of fifty thousand dollars (\$50,000) in any civil action brought by an employee, former employee, contractor or subcontractor against the utility regarding safety issues that could jeopardize the lives or health of Californians. The CPUC may limit this reporting requirement to particular types of claims. The CPUC may enforce and collect penalties for willful (up to \$1,000,000) or negligent (up to \$500,000) failure to comply.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The CPUC should support this bill if amended. This bill places an obligation upon public utilities to inform the CPUC of events which may be highly relevant to our regulatory duties but may otherwise be outside of the CPUC awareness. For instance, the information provided to the CPUC under this bill could show internal utility practices that would not otherwise come to the CPUC attention absent a whistleblower. This bill requires the CPUC to develop the format of the utilities' notification, but does so without a deadline for CPUC action. This bill also states the CPUC may enforce and collect penalties for noncompliance.

This bill should be amended because the benchmark for utilities' reports could be easily circumvented by the utilities. By drawing a line at \$50,000 or more for final judgments against the utilities for the utilities to report civil actions it creates a perverse incentive. Utilities could circumvent the legislation and retaliate against employees and not report such retaliation by settling for less than \$50,000, litigating the case all the way up to the U.S. Supreme Court (with ratepayer dollars) so that the employee would not receive any

timely judgment, or retaliating against employees in other ways which are not actionable (such as transferring employees to lower paying and less satisfying jobs). Additionally, this bill should be amended to limit its scope to electric, gas and rail utilities regulated by the CPUC, so as to not inundate the CPUC with reports from common carriers, water, telecom and other utilities.

SUMMARY OF SUGGESTED AMENDMENTS:

The \$50,000 benchmark should be eliminated from the bill and replaced by a requirement that a public utility be required to file a report with the CPUC whenever any civil action is brought against it. A second notification should be required to be filed with the CPUC following any final judgment, arbitration award, compromise or settlement. Additionally, the term public utilities should be expressly limited to electric, gas and rail utilities.

DIVISION ANALYSIS (Legal Division):

The bill could impact CPUC programs, practice and policy because in its current form, the utilities could attempt to utilize this bill as a restriction on the CPUC's authority by claiming that the legislature has acted on this matter. As such, the utilities could argue that this bill limits any action by the CPUC to address utility management retaliation of employees for reporting safety violations, which did not result in a final judgment or settlement in excess of \$50,000.

PROGRAM BACKGROUND:

The bill may significantly increase the reports to the CPUC and, unless amended, may increase the length of litigation by utilities to preclude reports to the CPUC, or cause the utilities to conduct their retaliatory practices in other ways that preclude the reports.

This bill addresses issues of safety that could jeopardize the lives and health of Californians. As such, there are numerous pending civil and regulatory actions that address similar issues. However, there does not appear to be any pending litigation or other legal issues that would be directly and negatively impacted by this bill.

LEGISLATIVE HISTORY:

This bill is similar to AB 1160 (Hill) that was introduced on February 18, 2011. To the extent that this bill addresses the same subject as AB 1160, the current bill is an improvement because it requires utilities reports by civil actions from contractors and subcontractors, whereas the prior bill only addressed actions by employees and former employees. Both the current bill and the prior bill have in the \$50,000 benchmark. It should also be noted that this bill is very similar to AB 1843 (Hill) for which another division analysis exists.

FISCAL IMPACT:

If the Governor's current budget proposal is approved and the Commission receives additional resources to address issues of public safety, and if the bill's applicability is limited to gas, electric, and rail utilities, then the Commission should be able to meet the bulk of the requirements of this bill without resources above and beyond the resources provided within the Governor's budget. Beyond those resources, the Commission would only require a PURA IV position to review filings on an ongoing basis and assist in coordinating all necessary investigation and enforcement. If these conditions are not met then it is possible there could be significant fiscal impacts. However, it is impossible at this juncture to anticipate how much more resources would be needed, other than the general belief that the workload could be mostly met by the additional resources in the Governor's current budget proposal.

STATUS:

AB 1703 is pending hearing in the Assembly Utilities and Commerce Committee.

SUPPORT/OPPOSITION:

None on file.

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BILL LANGUAGE:

BILL NUMBER: AB 1703 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Hill

FEBRUARY 15, 2012

An act to add Article 6 (commencing with Section 8290) to Chapter 7 of Division 4 of the Public Utilities Code, relating to public utility employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1703, as introduced, Hill. Public utilities: reporting: safety issues.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities. The California Constitution authorizes the commission to establish rules for all public utilities, subject to control by the Legislature.

This bill would require a public utility to file a completed report with the commission within 30 days as to any final judgment, arbitration award, compromise, or settlement in excess of \$50,000 in any civil action brought by an employee, former employee, contractor, or subcontractor of the utility against the utility regarding safety issues that could jeopardize the lives or health of Californians. The bill would authorize the commission to limit this reporting requirement to those particular types of claims that the commission determines are likely to involve claims or allegations that could jeopardize the lives or health of Californians. The bill would require the commission to develop and adopt the report form to be used by a public utility to comply with this reporting requirement. The bill would require specified civil penalties to be imposed for a violation of these requirements.

Under existing law, a violation of any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because a violation of these requirements of the commission would be a crime, the bill would impose a state-mandated local program.

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.

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

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

SECTION 1. Article 6 (commencing with Section 8290) is added to

Chapter 7 of Division 4 of the Public Utilities Code, to read:

Article 6. Reporting Civil Actions

8290. (a) (1) Every public utility shall file a completed report with the commission within 30 days as to any final judgment, arbitration award, compromise, or settlement in excess of fifty thousand dollars (\$50,000) in any civil action brought by an employee, former employee, contractor, or subcontractor of the utility against the utility regarding safety issues that could jeopardize the lives or health of Californians.

(2) The commission may limit the duty to report pursuant to paragraph (1) to those particular types of claims that the commission determines are likely to involve claims or allegations that could jeopardize the lives or health of Californians.

(3) The commission shall develop and adopt a report form to be used by a public utility to comply with the requirements of paragraph (1). Until the commission adopts a report form, the report shall include a copy of the complaint or claim made by the employee, former employee, contractor, or subcontractor and any written judgment, arbitration award, or agreement for the compromise or settlement of an action or claim.

(b) (1) The commission shall assess a penalty of not more than one million dollars (\$1,000,000) against a public utility for a willful failure to comply with the requirements of subdivision (a).

(2) The commission shall assess a penalty of not more than five hundred thousand dollars (\$500,000) for a negligent failure to comply with the requirements of subdivision (a).

(3) The commission may enforce and collect a penalty pursuant to Chapter 11 (commencing with Section 2100) of Part 1 of Division 1.

SEC. 2. 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.