

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 1830 (Pérez, V. M.) – Water service: mobilehome parks.
As introduced: February 22, 2012**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT IF AMENDED

SUMMARY OF BILL:

AB 1830 would amend Section 2705.6 of the Public Utilities Code by adding subsection (d) to provide the California Public Utilities Commission (CPUC) the ability to reimburse mobile home park customers, current and former, for past charges found unjust or unreasonable. The reimbursement would be calculated from the first date of the collection of the unjust or unreasonable rate.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

AB 1830 should be amended to remove the proposed section (d) and section (a) should be amended to remove the ability of former tenants to file complaints. Further, section (a) should be amended to add language that only allows for complaints as to the reasonableness of rates and charges if signed by not less than 25 tenants or 10% of all mobile home park tenants, whichever is less. This amendment is consistent with the requirements for filing rate complaints as specified in the CPUC's Rules and Practice and Procedure, Rule 4.1. This amendment is also consistent with the CPUC's 2010 Water Action Plan that calls for addressing the disparity for accepting rate complaints against mobile home parks and other utilities subject to the CPUC's jurisdiction. Finally, a new section (d) should be added requiring mobilehome parks to notify all tenants of their rights to complain to the CPUC about water rates and service.

SUMMARY OF SUGGESTED AMENDMENTS:

The following language should be inserted into the second sentence of Public Utilities Code Section 2705.6 (a):

(a) However, that mobilehome park is subject to the jurisdiction of the commission to the extent that, if *no less than 25 tenants or 10% of all tenants in the mobilehome park, whichever is less*, complain about the water rates charged or service provided by the mobilehome park, the commission shall determine, based on all the facts and circumstances, whether the rates charged are just and reasonable and whether the service provided is adequate.

The following language should be inserted to replace the proposed section (d):

(d) All mobilehome parks in California shall inform all tenants of their right to file a complaint with the Commission about the water rates charged or service provided by the mobilehome park. This shall be by written notice and shall be served on an annual basis to tenants. Such notice shall also be served upon new tenants upon move-in and to all tenants when water rates or service are changed. Such notice shall inform tenants that the Commission's Public Advisor is available to assist tenants with filing such complaints with the Commission and provide contact information for contacting the Commission's Public Advisor.

DIVISION ANALYSIS (Division of Water and Audits):

AB 1830 as written would likely encourage the filing of more complaints against the hundreds of mobilehome parks in the state. This would require additional staff resources in terms of administrative law judges to hear the complaints and Division of Water and Audit engineers to analyze the water systems and rates.

PROGRAM BACKGROUND:

In Decision 12-02-023, Hernandez v. Sunbird Mobile Home Park, the CPUC determined that it did not have the authority to provide retroactive restitution by rebating rates prior to the filing of a complaint. This is consistent "with the commission practice generally of regulating rates only prospectively, giving both the provider and user of utility services advance notice of the parameters of just and reasonable rates, allowing reparation where the previously authorized and reasonable rates were exceeded." (D.12-02-023 at pp 39-40)

The recent CPUC decision, D.12-02-23 (C.09-11-019), in Hernandez v. Sunbird Mobile Home Park is the CPUC action motivating AB 1830. Legal Division's specific concerns with the legislation are:

- 1) "in violation of this section" - There is no affirmative duty created by this section; thus, there can be no violation. Upon the filing of a complaint, the CPUC can determine that rates are unjust and set rates at a reasonable level. This is different from the CPUC finding an actual violation of a requirement like "all water rates charged at mobile home parks shall be just and reasonable." Also, the

language is unnecessary to carry out the legislative intent. The recommendation is to delete this language.

- 2) "if no discrimination will result from the reimbursement" – It is unclear what this means. Does "discrimination" mean one tenant benefitting at the expense of other tenants or the reparation award being so great that operations at the mobile home park would be threatened by the amount of the award (bankruptcy)? Either way, how is the commission [CPUC] to determine this? Mobile home parks are not rate-regulated. The costs of reparations may be passed on to tenants through rent increases or septic charge increases. The commission has no authority to prevent these types of charges. The recommendation is to delete this language.
- 3) "The commission shall not make an order for the payment of reimbursement upon the ground of unjustness or unreasonableness if the rate in question has been previously declared by formal finding of the commission to be reasonable." Because the CPUC only sets rates at mobile home parks when a complaint is filed, this factual scenario would ever happen. The recommendation is to delete this language.
- 4) There is a three-year limit on how far back the CPUC can go to award reparations. SB 1830, at a minimum, should be clear regarding how far back the CPUC is authorized to go to award reparations from the date that the complaint is filed. More generally, the awarding of reparations pursuant to Public Utilities Code Section 734 is in cases involving utilities subject to the CPUC's regular and continuing rate regulation. The CPUC's rate regulation with respect to mobile home parks is only upon a filing of a complaint. A determination that past rates are unjust or unreasonable may well be contrary to Supreme Court decisions and CPUC practice of setting rates on a prospective basis.

LEGISLATIVE HISTORY:

None.

FISCAL IMPACT:

None.

STATUS:

AB 1830 is pending hearing in the Assembly Utilities and Commerce Committee.

SUPPORT/OPPOSITION:

California Rural Legal Assistance (Sponsor).

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BILL LANGUAGE:

BILL NUMBER: AB 1830 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member V. Manuel Pérez

FEBRUARY 22, 2012

An act to amend Section 2705.6 of the Public Utilities Code, relating to mobilehome parks.

LEGISLATIVE COUNSEL'S DIGEST

AB 1830, as introduced, V. Manuel Pérez. Water service: mobilehome parks.

Existing law authorizes the Public Utilities Commission to regulate public utilities, including water corporations. Under existing law, a mobilehome park that provides water service only to its tenants from water supplies and facilities that it owns, not otherwise dedicated to public service, is not a water corporation, but that mobilehome park is subject to the jurisdiction of the commission to the extent that, if a tenant complains about the water rates charged or service provided by the mobilehome park, the commission is authorized to determine whether the rates charged are just and reasonable and whether the service provided is adequate. Existing law authorizes the commission to afford rate relief or to order the mobilehome park to improve its water supply, facilities, and services on those terms that it finds just and reasonable, or both.

This bill would authorize the commission, if it finds, after investigation, that the mobilehome park has charged an unjust or unreasonable rate in violation of existing law, to order the mobilehome park to reimburse the complainant and any other current and former tenants affected by the rate, calculated as prescribed, if no discrimination will result from the reimbursement. The bill would specify that a current or former tenant may complain. Because a violation of an order or decision of the commission is a crime, this bill would impose a state-mandated local program creating a new crime.

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. Section 2705.6 of the Public Utilities Code is amended

to read:

2705.6. (a) A mobilehome park that provides water service only to its tenants from water supplies and facilities that it owns, not otherwise dedicated to public service, is not a water corporation. However, that mobilehome park is subject to the jurisdiction of the commission to the extent that, if a *current or former* tenant complains about the water rates charged or service provided by the mobilehome park, the commission shall determine, based on all the facts and circumstances, whether the rates charged are just and reasonable and whether the service provided is adequate.

(b) Complaints filed pursuant to subdivision (a) are subject to the provisions of this code and to the Rules of Practice and Procedure of the commission governing complaints and commission investigations.

(c) The commission may afford rate relief or may order the mobilehome park to improve its water supply, facilities, and services on those terms that it finds just and reasonable, or both.

(d) If the commission finds, after investigation, that the mobilehome park has charged an unjust or unreasonable rate in violation of this section, the commission shall order the mobilehome park to reimburse the complainant and any other current and former tenants affected by the rate, if no discrimination will result from the reimbursement. Reimbursement shall be calculated from the first date of collection of the unjust or unreasonable rate, with interest. The commission shall not make an order for the payment of reimbursement upon the ground of unjustness or unreasonableness if the rate in question has been previously declared by formal finding of the commission to be reasonable. The commission shall not recognize the assignment of a reimbursement claim except assignments by operation of law as in cases of death, insanity, bankruptcy, receivership, or order of court.

—(d)

(e) The public adviser created pursuant to Section 321 and necessary staff of the commission shall assist the complainant.

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.