

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:** **SB 1350 (Leno) – Public utilities: fines and penalties.  
As introduced: February 24, 2012**

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT**

**SUMMARY OF BILL:**

This bill would amend Sections 2104 and 2104.5 of the PU Code to allow the California Public Utilities Commission (CPUC) to order that all or a portion of a fine or penalty levied against a gas corporation in relation to safety standards for pipeline facilities or the transportation of gas, be held in trust by the CPUC to offset expenses for gas safety measures that would otherwise be recovered from the utility's customers. Any moneys not used for these purposes shall be paid to the General Fund.

**SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:**

Currently PU code Section 2104.5 requires that all gas safety penalties or fines recovered from violations be paid into the State Treasury to the credit of the General Fund. While this allocation of fines to the General Fund benefits the state through increased revenue, it reduces the CPUC's ability to direct penalty funds in a manner that provides the greatest economic and safety benefit to ratepayers.

SB 1350 allows the CPUC the flexibility to use the money from safety fines/penalties to offset expenses for gas safety measures that would otherwise be recovered from the utility's customers. The legislation does not require the CPUC to take such action, and does not specifically prescribe how the CPUC should direct any such funds.

**SUMMARY OF SUGGESTED AMENDMENTS:**

The bill currently provides that funds held in trust by the CPUC can be used "to offset expenses for gas safety measures that would otherwise be recovered from the utility's customers." "Expenses" is a narrowly defined term and could exclude investments in capital improvements in a utility's gas pipeline system. If they author intends that this

penalty funds be used for safety related capital improvements the bill should be amended to provide that the trust money can be used to “offset investments and expenses incurred by the gas corporation for gas safety measures.”

**DIVISION ANALYSIS (Energy Division):**

Currently all fines and penalties recovered due to safety violations from gas pipelines or transportation, are paid by the CPUC into the State Treasury to the credit of the General Fund. Under SB 1350, the CPUC may hold the moneys paid for fines and penalties in a trust to be used for offsetting expenses incurred by the gas corporation for gas safety measures.

To hold the fine or penalty money in trust, the CPUC would be required to set up a procedure whereby a trust is established for each violating gas utility, and into which each designated fine or penalty paid would be recorded. The CPUC would be required to establish a procedure under which it would direct that utility gas safety expenses, which would have been otherwise paid by ratepayers, be paid for with funds from the trust rather than assumed by the ratepayers. The CPUC may choose to order that certain types of gas safety expenses should be paid for with the trust moneys. Or, the CPUC could choose to offset gas safety expenses in general.

The CPUC would record fine payments, establish a trust, assess gas safety work quality and cost, and transfer appropriate fine and penalty revenue into the utility ratepayers' account. The CPUC should issue public reports detailing these transactions.

A mechanism would need to be established to allocate an appropriate fine amount to the ratepayers account. Some reporting by the utility and auditing by the CPUC would be required to verify that the appropriate credits and debits were made. The CPUC would also need to verify that the safety work had been completed satisfactorily.

SB 1350 should not result in a reduction of the punitive effect on a utility and its shareholders of any fine issued by the CPUC. The fine itself would still be funded by shareholders and funds from the trust established in the bill would only be used to offset expenses the CPUC had determined were otherwise recoverable from ratepayers.

Legislation is required, because the current regulation requiring the CPUC to pay fines and penalties into the General Fund is embedded in PU Code Section 2104.5.

**PROGRAM BACKGROUND:**

Currently the payment of fines and penalties related to safety violations is recorded and then paid by the CPUC into the State Treasury to the credit of the General Fund. This is a fiscal transaction.

The CPUC currently is conducting several investigations to determine if Pacific Gas and Electric Company violated certain gas safety regulations and statutes. The fines ordered in such investigations may be substantial.

In Resolution ALJ\_274, CPUC staff was recently granted authority to write safety citations against utilities. Such citations may result in utility penalties.

**LEGISLATIVE HISTORY:**

None.

**FISCAL IMPACT:**

The Commission would have to add a PURA V position for the work required by the bill.

The PURA V would be required to review the offending utility's accounts and safety activities to ensure that the correct amount of the fine was credited to the ratepayers' accounts for specific gas safety work. This position does not currently exist because the Energy Division does not currently review accounts for safety related work to ensure that ratepayers are credited for utility fines related to safety violations.

The Commission would potentially have to add an ALJ II position, as well.

The ALJ II would have to establish procedures on how the monies held in trust are to be applied as an offset against any new rates. ALJ Division would also have to decide what activities amount to "gas safety measures" that triggers the offset of monies held in trust.

**STATUS:**

SB 1350 is pending hearing in the Senate Energy, Utilities and Communications Committee.

**SUPPORT/OPPOSITION:**

None on file.

**STAFF CONTACTS:**

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**BILL LANGUAGE:**

BILL NUMBER: SB 1350 INTRODUCED  
BILL TEXT

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 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:

SECTION 1. Section 2104 of the Public Utilities Code, as amended by Section 7 of Chapter 552 of the Statutes of 2008, is amended to read:

2104. (a) Except as provided by Sections 2100 and 2107.5, and in addition to the remedies provided in Sections 688.020 and 688.030 of the Code of Civil Procedure, actions to recover penalties under this part may 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, if brought pursuant to this section, 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.

~~All~~ 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.

~~All~~ 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 become operative on January 1, 2014.

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

2104.5. (a) Any penalty for violation of any provision of this act, or of any rule, regulation, general order, or order of the commission, involving safety standards for pipeline facilities or the transportation of gas in the State of California may be compromised by the commission. In determining the amount of ~~such~~ the penalty, or the amount agreed upon in compromise, the appropriateness of ~~such~~ the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of any ~~such~~ penalty, when finally determined, or the amount agreed upon in compromise, may be recovered in a civil action in the name of the ~~People~~ 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 the person complained of resides. In any such action, all penalties incurred, or amounts agreed upon in compromise for violations committed up to the time of commencing the action may be sued for and recovered. In all ~~such~~ those actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the state in any ~~such~~ action, together with the costs thereof, shall be paid into the State Treasury to the credit of the General Fund, except upon order of the commission pursuant to subdivision (b).

(b) The commission may 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.

(c) Any moneys ordered by the commission to be held in trust pursuant to subdivision (b) may 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. Any moneys not used for these purposes shall be paid to the General Fund.