

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE MAY 8, 2013

AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 611

Introduced by Senator Hill

February 22, 2013

An act to amend *Sections 101 and 110 of, and to add Section 203.5 to, the Business and Professions Code, and to amend Sections 309.5, 402, 409, 1731, 1756, and 5900 of the Public Utilities Code, relating to the Public Utilities Commission.*

LEGISLATIVE COUNSEL'S DIGEST

SB 611, as amended, Hill. Public Utilities Commission: Division of Ratepayer Advocates.

The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities, as defined. Existing law establishes the Division of Ratepayer Advocates within the commission to represent the interests of public utility customers and subscribers, with the goal of obtaining the lowest possible rate for service consistent with reliable and safe service levels. Existing law requires the Director of the Division of Ratepayer Advocates to submit an annual budget to the commission for final approval.

This bill would rename the Division of Ratepayer Advocates the Office of Ratepayer Advocates, *would transfer the office to the Department of Consumer Affairs*, would authorize the office to seek rehearings and judicial review of commission decisions, and would require that the director of the office develop a budget for the office that would be submitted to the Department of Finance for final approval.

Existing law establishes the Public Utilities Commission Utilities Reimbursement Account and authorizes the commission to annually determine a fee to be paid by every public utility providing service directly to customers or subscribers and subject to the jurisdiction of the commission, except for a railroad corporation. The commission is required to establish the fee, with the approval of the Department of Finance, to produce a total amount equal to that amount established in the authorized commission budget for the same year, and an appropriate reserve to regulate public utilities, less specified sources of funding. Existing law provides for the Public Utilities Commission Ratepayer Advocate Account in the General Fund and requires that money from the Public Utilities Commission Utilities Reimbursement Account be transferred in the annual Budget Act to the Public Utilities Commission Ratepayer Advocate Account for performance of the duties of the division.

This bill would require the commission to continue to collect moneys through Public Utilities Commission reimbursement fees for the support of the Office of Ratepayer Advocates in the amounts authorized by the Department of Finance. The bill would provide that moneys collected for the support of the Office of Ratepayer Advocates be paid into the Office of Ratepayer Advocates Special Fund Account, which the bill would create in the existing Consumer Affairs Fund. The bill would provide that moneys in the account would be available, upon appropriation by the Legislature, only for use by the Office of Ratepayer Advocates in performing its assigned functions and that moneys in the account are held in trust on behalf of the public utility ratepayers from whom the moneys were collected and may not be appropriated, or in any other manner transferred or otherwise diverted, to any other fund or entity.

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 101 of the Business and Professions Code*
- 2 *is amended to read:*
- 3 101. The department is comprised of:
- 4 (a) The Dental Board of California.
- 5 (b) The Medical Board of California.
- 6 (c) The State Board of Optometry.

- 1 (d) The California State Board of Pharmacy.
- 2 (e) The Veterinary Medical Board.
- 3 (f) The California Board of Accountancy.
- 4 (g) The California Architects Board.
- 5 (h) The Bureau of Barbering and Cosmetology.
- 6 (i) The Board for Professional Engineers and Land Surveyors.
- 7 (j) The Contractors' State License Board.
- 8 (k) The Bureau for Private Postsecondary Education.
- 9 (l) The Bureau of Electronic and Appliance Repair, Home
- 10 Furnishings, and Thermal Insulation.
- 11 (m) The Board of Registered Nursing.
- 12 (n) The Board of Behavioral Sciences.
- 13 (o) The State Athletic Commission.
- 14 (p) The Cemetery and Funeral Bureau.
- 15 (q) The State Board of Guide Dogs for the Blind.
- 16 (r) The Bureau of Security and Investigative Services.
- 17 (s) The Court Reporters Board of California.
- 18 (t) The Board of Vocational Nursing and Psychiatric
- 19 Technicians.
- 20 (u) The Landscape Architects Technical Committee.
- 21 (v) The Division of Investigation.
- 22 (w) The Bureau of Automotive Repair.
- 23 (x) The Respiratory Care Board of California.
- 24 (y) The Acupuncture Board.
- 25 (z) The Board of Psychology.
- 26 (aa) The California Board of Podiatric Medicine.
- 27 (ab) The Physical Therapy Board of California.
- 28 (ac) The Arbitration Review Program.
- 29 (ad) The Physician Assistant Committee.
- 30 (ae) The Speech-Language Pathology and Audiology Board.
- 31 (af) The California Board of Occupational Therapy.
- 32 (ag) The Osteopathic Medical Board of California.
- 33 (ah) The Naturopathic Medicine Committee.
- 34 (ai) The Dental Hygiene Committee of California.
- 35 (aj) The Professional Fiduciaries Bureau.
- 36 (ak) *The Office of Ratepayer Advocates.*
- 37 ~~(ak)~~
- 38 (al) Any other boards, offices, or officers subject to its
- 39 jurisdiction by law.

1 *SEC. 2. Section 110 of the Business and Professions Code is*
 2 *amended to read:*

3 110. ~~The~~(a) *Except as provided in subdivision (b), the*
 4 department shall have possession and control of all records, books,
 5 papers, offices, equipment, supplies, funds, appropriations, land
 6 and other property—real or personal—now or hereafter held for
 7 the benefit or use of all of the bodies, offices or officers comprising
 8 the department. The title to all property held by any of these bodies,
 9 offices or officers for the use and benefit of the state, is vested in
 10 the State of California to be held in the possession of the
 11 department. Except as authorized by a board, the department shall
 12 not have the possession and control of examination questions prior
 13 to submission to applicants at scheduled examinations.

14 (b) *The Office of Ratepayer Advocates shall have possession*
 15 *and control of all records, books, papers, offices, equipment,*
 16 *supplies, funds, appropriations, land and other property, real or*
 17 *personal, now or hereafter held for the benefit or use of the office.*
 18 *The title to all property held by the Office of Ratepayer Advocates*
 19 *is vested in the State of California in trust on behalf of the*
 20 *ratepayers of the state's public utilities, to be held in the possession*
 21 *of the office. The records of the Office of Ratepayer Advocates are*
 22 *subject to Section 583 of the Public Utilities Code.*

23 *SEC. 3. Section 203.5 is added to the Business and Professions*
 24 *Code, to read:*

25 203.5. *Within the Consumer Affairs Fund there is hereby*
 26 *created the Office of Ratepayer Advocates Special Fund Account.*
 27 *Moneys in the account shall be available, upon appropriation by*
 28 *the Legislature, only for use by the Office of Ratepayer Advocates*
 29 *in performing its functions pursuant to Section 309.5 of the Public*
 30 *Utilities Code. Moneys in the account are held in trust on behalf*
 31 *of the public utility ratepayers from whom the moneys were*
 32 *collected and may not be appropriated, or in any other manner*
 33 *transferred or otherwise diverted, to any other fund or entity.*

34 ~~SECTION 4.~~

35 *SEC. 4. Section 309.5 of the Public Utilities Code is amended*
 36 *to read:*

37 309.5. (a) *There is, within the Department of Consumer Affairs,*
 38 *an Office of Ratepayer Advocates to represent and advocate on*
 39 *behalf of the interests of public utility customers and subscribers*
 40 *within the jurisdiction of the commission. The goal of the office*

1 shall be to obtain the lowest possible rate for service consistent
2 with reliable and safe service levels. For revenue allocation and
3 rate design matters, the office shall primarily consider the interests
4 of residential and small commercial customers. The office may
5 seek rehearing and judicial review of commission decisions
6 pursuant to Article 2 (commencing with Section 1731) and Article
7 3 (commencing with Section 1756) of Chapter 9.

8 (b) The director of the office shall be appointed by, and serve
9 at the pleasure of, the Governor, subject to confirmation by the
10 Senate.

11 The director shall annually appear before the appropriate policy
12 committees of the Assembly and the Senate to report on the
13 activities of the ~~division~~ office.

14 (c) The director shall develop a budget for the office which shall
15 be subject to final approval of the Department of Finance. As
16 authorized in the approved budget, the office shall employ
17 personnel and resources, including attorneys and other legal support
18 staff at a level sufficient to ensure that customer and subscriber
19 interests are effectively represented in all significant proceedings.
20 The office may employ experts necessary to carry out its functions.
21 The director may appoint a lead attorney who shall represent the
22 office, and shall report to and serve at the pleasure of the director.
23 All attorneys performing services for the office shall report to and
24 be directed by the lead attorney appointed by the director.

25 (d) The commission shall develop appropriate procedures to
26 ensure that the existence of the office does not create a conflict of
27 roles for any employee. The procedures shall include, but shall
28 not be limited to, the development of a code of conduct and
29 procedures for ensuring that advocates and their representatives
30 on a particular case or proceeding are not advising decisionmakers
31 on the same case or proceeding.

32 (e) The office may compel the production or disclosure of any
33 information it deems necessary to perform its duties from any
34 entity regulated by the commission, provided that any objections
35 to any request for information shall be decided in writing by the
36 assigned commissioner or by the commission, if there is no
37 assigned commissioner. ~~The office shall have access, upon request,~~
38 ~~to all information provided to the commission, a commissioner,~~
39 ~~or an officer or person employed by the commission pursuant to~~
40 ~~Section 314.~~

1 (f) ~~There is hereby created the Public Utilities Commission~~
 2 ~~Ratepayer Advocate Account in the General Fund. The commission~~
 3 *shall continue to collect moneys pursuant to Chapter 2.5*
 4 *(commencing with Section 401) for the support of the Office of*
 5 *Ratepayer Advocates in the amounts authorized by the Department*
 6 *of Finance. Moneys from the Public Utilities Commission Utilities*
 7 *Reimbursement Account in the General Fund shall be transferred*
 8 *in the annual Budget Act to the ~~Public Utilities Commission~~*
 9 *~~Ratepayer Advocate Account~~ Office of Ratepayer Advocates*
 10 *Special Fund Account in the Consumer Affairs Fund. The funds*
 11 *in the ~~Public Utilities Commission Ratepayer Advocate Office of~~*
 12 *Ratepayer Advocates Special Fund Account shall be utilized*
 13 *exclusively by the office in the performance of its duties as*
 14 *determined by the director. The director shall annually submit a*
 15 *staffing report to the Director of Finance containing a comparison*
 16 *of the staffing levels for each five-year period.*

17 (g) On or before January 10 of each year, the office shall provide
 18 to the chairperson of the fiscal committee of each house of the
 19 Legislature and to the Joint Legislative Budget Committee all of
 20 the following information:

21 (1) The number of personnel years utilized during the prior year
 22 by the Office of Ratepayer Advocates.

23 (2) The total dollars expended by the Office of Ratepayer
 24 Advocates in the prior year, the estimated total dollars expended
 25 in the current year, and the total dollars proposed for appropriation
 26 in the following budget year.

27 (3) Workload standards and measures for the Office of
 28 Ratepayer Advocates.

29 (h) The office shall meet and confer in an informal setting with
 30 a regulated entity prior to issuing a report or pleading to the
 31 commission regarding alleged misconduct, or a violation of a law
 32 or a commission rule or order, raised by the office in a complaint.
 33 The meet and confer process shall be utilized in good faith to reach
 34 agreement on issues raised by the office regarding any regulated
 35 entity in the complaint proceeding.

36 *SEC. 5. Section 402 of the Public Utilities Code is amended*
 37 *to read:*

38 402. The Public Utilities Commission Utilities Reimbursement
 39 Account is hereby continued in existence. All fees collected by
 40 the commission pursuant to Section 431 shall be transmitted to

1 the Treasurer at least quarterly for deposit in the account *or the*
2 *Office of Ratepayer Advocates Special Fund Account within the*
3 *Consumer Affairs Fund.*

4 *SEC. 6. Section 409 of the Public Utilities Code is amended*
5 *to read:*

6 409. (a) Notwithstanding any other provision of law, all fees
7 and charges collected pursuant to this code by the commission
8 from each public utility subject to Section 431, with the exception
9 of any penalty collected pursuant to Section 405 or 406, shall be
10 deposited in the Public Utilities Commission Utilities
11 Reimbursement Account, in addition to the fee authorized by
12 Section 431, *or in the Office of Ratepayer Advocates Special Fund*
13 *Account within the Consumer Affairs Fund.*

14 (b) A penalty collected pursuant to Section 405 or 406 shall be
15 deposited in the General Fund.

16 ~~SEC. 2.~~

17 *SEC. 7. Section 1731 of the Public Utilities Code is amended*
18 *to read:*

19 1731. (a) The commission shall set an effective date when
20 issuing an order or decision. The commission may set the effective
21 date of an order or decision prior to the date of issuance of the
22 order or decision.

23 (b) (1) After any order or decision has been made by the
24 commission, any party to the action or proceeding, including the
25 Office of Ratepayer Advocates, or any stockholder or bondholder
26 or other party pecuniarily interested in the public utility affected,
27 may apply for a rehearing in respect to any matters determined in
28 the action or proceeding and specified in the application for
29 rehearing. The commission may grant and hold a rehearing on
30 those matters, if in its judgment sufficient reason is made to appear.
31 No cause of action arising out of any order or decision of the
32 commission shall accrue in any court to any corporation or person
33 unless the corporation or person has filed an application to the
34 commission for a rehearing within 30 days after the date of
35 issuance or within 10 days after the date of issuance in the case of
36 an order issued pursuant to either Article 5 (commencing with
37 Section 816) or Article 6 (commencing with Section 851) of
38 Chapter 4 relating to security transactions and the transfer or
39 encumbrance of utility property.

1 (2) The commission shall notify the parties of the issuance of
2 an order or decision by either mail or electronic transmission.
3 Notification of the parties may be accomplished by one of the
4 following methods:

5 (A) Mailing the order or decision to the parties to the action or
6 proceeding.

7 (B) If a party to an action or proceeding consents in advance to
8 receive notice of any order or decision related to the action or
9 proceeding by electronic mail address, notification of the party
10 may be accomplished by transmitting an electronic copy of the
11 official version of the order or decision to the party if the party
12 has provided an electronic mail address to the commission.

13 (C) If a party to an action or proceeding consents in advance to
14 receive notice of any order or decision related to the action or
15 proceeding by electronic mail address, notification of the party
16 may be accomplished by transmitting a link to an Internet Web
17 site where the official version of the order or decision is readily
18 available to the party if the party has provided an electronic mail
19 address to the commission.

20 (3) For the purposes of this article, “date of issuance” means
21 the mailing or electronic transmission date that is stamped on the
22 official version of the order or decision.

23 (c) No cause of action arising out of any order or decision of
24 the commission construing, applying, or implementing the
25 provisions of Chapter 4 of the Statutes of the 2001–02 First
26 Extraordinary Session that (1) relates to the determination or
27 implementation of the department’s revenue requirements, or the
28 establishment or implementation of bond or power charges
29 necessary to recover those revenue requirements, or (2) in the sole
30 determination of the Department of Water Resources, the expedited
31 review of order or decision of the commission is necessary or
32 desirable, for the maintenance of any credit ratings on any bonds
33 or notes of the department issued pursuant to Division 27
34 (commencing with Section 80000) of the Water Code or for the
35 department to meet its obligations with respect to any bonds or
36 notes pursuant to that division, shall accrue in any court to any
37 corporation or person unless the corporation or person has filed
38 an application with the commission for a rehearing within 10 days
39 after the date of issuance of the order or decision. The Department
40 of Water Resources shall notify the commission of any

1 determination pursuant to paragraph (2) of this subdivision prior
2 to the issuance by the commission of any order or decision
3 construing, applying, or implementing the provisions of Chapter
4 4 of the Statutes of the 2001–02 First Extraordinary Session. The
5 commission shall issue its decision and order on rehearing within
6 20 days after the filing of the application.

7 ~~SEC. 3.~~

8 *SEC. 8.* Section 1756 of the Public Utilities Code is amended
9 to read:

10 1756. (a) Within 30 days after the commission issues its
11 decision denying the application for a rehearing, or, if the
12 application was granted, then within 30 days after the commission
13 issues its decision on rehearing, or at least 120 days after the
14 application is granted if no decision on rehearing has been issued,
15 any aggrieved party, including the Office of Ratepayer Advocates,
16 may petition for a writ of review in the court of appeal or the
17 Supreme Court for the purpose of having the lawfulness of the
18 original order or decision or of the order or decision on rehearing
19 inquired into and determined. If the writ issues, it shall be made
20 returnable at a time and place specified by court order and shall
21 direct the commission to certify its record in the case to the court
22 within the time specified.

23 (b) The petition for review shall be served upon the executive
24 director and the general counsel of the commission either
25 personally or by service at the office of the commission.

26 (c) For purposes of this section, the issuance of a decision or
27 the granting of an application shall be construed to have occurred
28 on the date of issuance, as defined in paragraph (3) of subdivision
29 (b) of Section 1731.

30 (d) The venue of a petition filed in the court of appeal pursuant
31 to this section shall be in the judicial district in which the petitioner
32 resides. If the petitioner is a business, venue shall be in the judicial
33 district in which the petitioner has its principal place of business
34 in California.

35 (e) Any party may seek from the Supreme Court, pursuant to
36 California Rules of Court, an order transferring related actions to
37 a single appellate district.

38 (f) For purposes of this section, review of decisions pertaining
39 solely to water corporations shall only be by petition for writ of
40 review in the Supreme Court, except that review of complaint or

1 enforcement proceedings may be in the court of appeal or the
2 Supreme Court.

3 (g) No order or decision arising out of a commission proceeding
4 under Section 854 shall be reviewable in the court of appeal
5 pursuant to subdivision (a) if the application for commission
6 authority to complete the merger or acquisition was filed on or
7 before December 31, 1998, by two telecommunications-related
8 corporations including at least one which provides local
9 telecommunications service to over one million California
10 customers. These orders or decisions shall be reviewed pursuant
11 to the Public Utilities Code in existence on December 31, 1998.

12 ~~SEC. 4.~~

13 *SEC. 9.* Section 5900 of the Public Utilities Code is amended
14 to read:

15 5900. (a) The holder of a state franchise shall comply with
16 the provisions of Sections 53055, 53055.1, 53055.2, and 53088.2
17 of the Government Code, and any other customer service standards
18 pertaining to the provision of video service established by federal
19 law or regulation or adopted by subsequent enactment of the
20 Legislature. All customer service and consumer protection
21 standards under this section shall be interpreted and applied to
22 accommodate newer or different technologies while meeting or
23 exceeding the goals of the standards.

24 (b) The holder of a state franchise shall comply with provisions
25 of Section 637.5 of the Penal Code and the privacy standards
26 contained in Section 551 et seq. of Title 47 of the United States
27 Code.

28 (c) The local entity shall enforce all of the customer service and
29 protection standards of this section with respect to complaints
30 received from residents within the local entity's jurisdiction, but
31 it may not adopt or seek to enforce any additional or different
32 customer service or other performance standards under Section
33 53055.3 or subdivision (q), (r), or (s) of Section 53088.2 of the
34 Government Code, or any other authority or provision of law.

35 (d) The local entity shall, by ordinance or resolution, provide a
36 schedule of penalties for any material breach by a holder of a state
37 franchise of this section. No monetary penalties shall be assessed
38 for a material breach if it is out of the reasonable control of the
39 holder. Further, no monetary penalties may be imposed prior to
40 January 1, 2007. Any schedule of monetary penalties adopted

1 pursuant to this section shall in no event exceed five hundred
2 dollars (\$500) for each day of each material breach, not to exceed
3 one thousand five hundred dollars (\$1,500) for each occurrence
4 of a material breach. However, if a material breach of this section
5 has occurred, and the local entity has provided notice and a fine
6 or penalty has been assessed, and if a subsequent material breach
7 of the same nature occurs within 12 months, the penalties may be
8 increased by the local entity to a maximum of one thousand dollars
9 (\$1,000) for each day of each material breach, not to exceed three
10 thousand dollars (\$3,000) for each occurrence of the material
11 breach. If a third or further material breach of the same nature
12 occurs within those same 12 months, and the local entity has
13 provided notice and a fine or penalty has been assessed, the
14 penalties may be increased to a maximum of two thousand five
15 hundred dollars (\$2,500) for each day of each material breach, not
16 to exceed seven thousand five hundred dollars (\$7,500) for each
17 occurrence of the material breach. With respect to video providers
18 subject to a franchise or license, any monetary penalties assessed
19 under this section shall be reduced dollar-for-dollar to the extent
20 any liquidated damage or penalty provision of a current cable
21 television ordinance, franchise contract, or license agreement
22 imposes a monetary obligation upon a video provider for the same
23 customer service failures, and no other monetary damages may be
24 assessed.

25 (e) The local entity shall give the video service provider written
26 notice of any alleged material breach of the customer service
27 standards of this division and allow the video provider at least 30
28 days from receipt of the notice to remedy the specified material
29 breach.

30 (f) A material breach for the purposes of assessing penalties
31 shall be deemed to have occurred for each day within the
32 jurisdiction of each local entity, following the expiration of the
33 period specified in subdivision (e), that any material breach has
34 not been remedied by the video service provider, irrespective of
35 the number of customers or subscribers affected.

36 (g) Any penalty assessed pursuant to this section shall be
37 remitted to the local entity, which shall submit one-half of the
38 penalty to the Digital Divide Account established in Section 280.5.

39 (h) Any interested person may seek judicial review of a decision
40 of the local entity in a court of appropriate jurisdiction. For this

1 purpose, a court of law shall conduct a de novo review of any
2 issues presented.

3 (i) This section shall not preclude a party affected by this section
4 from utilizing any judicial remedy available to that party without
5 regard to this section. Actions taken by a local legislative body,
6 including a local franchising entity, pursuant to this section shall
7 not be binding upon a court of law. For this purpose, a court of
8 law shall conduct de novo review of any issues presented.

9 (j) For purposes of this section, “material breach” means any
10 substantial and repeated failure of a video service provider to
11 comply with service quality and other standards specified in
12 subdivision (a).

13 (k) The Office of Ratepayer Advocates shall have authority to
14 advocate on behalf of video subscribers regarding renewal of a
15 state-issued franchise and enforcement of this section, and Sections
16 5890 and 5950. For this purpose, the office shall have access to
17 any information in the possession of the commission subject to all
18 restrictions on disclosure of that information that are applicable
19 to the commission.