

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** May 13, 2009

**To:** The Commission  
(Meeting of May 21, 2009 )

**From:** Pamela Loomis, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **AB 1315 (Ruskin) – Public Utilities Commission: governance.  
As amended: May 5, 2009**

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE**

**SUMMARY OF BILL:**

AB 1315 would have the commissioners of the California Public Utilities Commission (Commission or CPUC) select the CPUC's president from among themselves rather than the president being a designee of the Governor. It also would provide that the general counsel and the executive director of the CPUC shall both operate as directed by the Commission rather than as directed by the president of the CPUC.

**SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:**

This bill would undermine the institutional accountability and efficiency that has been achieved by placing the executive director and general counsel under the president's direction. Also, changing the method of selecting the CPUC's president would not accomplish the author's intent of reducing the Governor's influence and making the CPUC more accountable to the Legislature. Rather, having the commissioners select a president from among themselves would most likely foster a Commission that is more insulated from Sacramento.

**SUMMARY OF SUGGESTED AMENDMENTS:**

None.

**DIVISION ANALYSIS (Office of Governmental Affairs):**

- According to the author's statement, this bill is intended "to reduce the direct intervention of the Governor in the internal workings of the PUC. This will assist the Legislature and the public in achieving greater independence and accountability from this crucial public agency. It will reduce the politicization of internal staffing and procedural decisions, while promoting collegiality and cooperation among commissioners."
- However, this bill would reverse and run contrary to the Legislature's intent in 1999, when it enacted SB 33 (Peace).
- SB 33 made the President of the CPUC a designee of the governor instead of an appointment by his/her fellow CPUC commissioners. The reason for this change was a belief that having the president appointed by the governor would make the CPUC more accountable to the Administration and the Legislature. SB 33 also explicitly centralized accountability for the functioning of the CPUC with its president by putting the Commission's executive director and the general counsel directly under the control of the president.
- The president's ability to direct the executive director and general counsel on routine matters enhances the efficient operation of the CPUC, and should not be changed.

**PROGRAM BACKGROUND:**

- Under current law, the president is designated by the Governor, and therefore is more likely to be responsive to the concerns of the Governor and the Legislature. The Governor may replace the president at any time, but the president still remains a commissioner, and the replacement president must be named from among the other sitting commissioners.
- Under current law, the president directs the CPUC's staff (other than the Division of Ratepayer Advocates' staff), including the general counsel and the executive director, subject to the possibility that the full Commission may vote to over-rule the president. In practice, the president's direction of staff is a matter of administrative efficiency. Matters that go beyond mere administration are typically decided by the entire commission.
- Prior to 1999 and the enactment of SB 33 (Peace), the CPUC president was elected by his/her fellow Commissioners, and the general counsel and executive director performed at the direction of the Commission.

**LEGISLATIVE HISTORY:**

AB 1973 (Ruskin, 2008) was similar to this bill except that at the end of session it was amended to also include requiring the Commission to meet in Sacramento once a month and subjecting Commission decision's to the Administrative Procedures Act. It died on the Assembly Floor.

AB 1157 (Ruskin, 2007) was similar to this bill except that it also included an expansion of intervenor compensation. It died in Assembly Committee on Utilities and Commerce Committee.

SB 33 (Chapter 509 of 1999) made the President of the CPUC a designee of the governor instead of appointed by the CPUC commissioners, and explicitly centralized accountability for the functioning of the CPUC with its president by putting the Commission's executive director and the general counsel directly under the control of the president.

**STATUS:**

AB 1315 is awaiting hearing in the Assembly Appropriations Committee.

**STAFF CONTACTS:**

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**Date:** May 13, 2009.

**BILL LANGUAGE:**

BILL NUMBER: AB 1315    AMENDED  
BILL TEXT

AMENDED IN ASSEMBLY    MAY 5, 2009

INTRODUCED BY    Assembly Member Ruskin

FEBRUARY 27, 2009

An act to amend ~~Sections 11351 and 11342.600 of the Government Code, and to amend~~ Sections 305, ~~306,~~ 307, and 308 of the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

AB 1315, as amended, Ruskin. Public Utilities Commission.

~~— The Administrative Procedure Act contains provisions relating to the adoption, review, approval, filing, publication, and judicial review of regulations, as defined, adopted by state agencies in accordance with statutory mandates. The act exempts the Public Utilities Commission, among others, from provisions relating to the adoption, review, approval, and judicial review of regulations, and limits the application of provisions relating to the filing and publication of regulations to only the rules of procedure of the commission.~~

~~— This bill would repeal this exemption and limitation with respect to the commission. The bill would specify that the definition of "regulation" includes every proceeding designated "quasi-legislative" by the commission pursuant to certain existing law.~~

The California Constitution establishes the ~~commission~~ *Public Utilities Commission* , with jurisdiction over all public utilities, as defined. The California Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the Constitution, to confer additional authority and jurisdiction upon the commission, that is cognate and germane to the regulation of public utilities. Existing law requires the Governor to designate the president of the commission from among its members and requires the president to direct the executive director, the attorney, and other staff of the commission, except for the Division of Ratepayer Advocates.

This bill would require the ~~Governor~~ *commission* to appoint ~~, subject to the approval of the Senate,~~ a president of the commission from among its members. The bill would repeal the requirement that the president direct commission staff.

~~— Existing law requires the office of the commission to be in the City and County of San Francisco and that, with certain exceptions, the office always be open. Existing law requires the commission to~~

~~hold its sessions at least once in each calendar month in that city and county, and authorizes the commission to also meet at such other times and in such other places as may be expedient and necessary for the proper performance of its duties.~~

~~This bill would also require the commission to hold at least one session in each calendar month in the City of Sacramento.~~

Existing law authorizes the attorney for the commission, if directed to do so by the president, except as otherwise directed by vote of the commission, to intervene, if possible, in any action or proceeding involving any question arising pursuant to the Public Utilities Act. Existing law requires the attorney for the commission to commence, prosecute, and expedite the final determination of all actions and proceedings, and to generally perform all duties and services as attorney to the commission, as directed or authorized by the president, except as otherwise directed or authorized by vote of the commission.

This bill would authorize the attorney for the commission, if directed to do so by the commission, to intervene, if possible, in any action or proceeding involving any question arising pursuant to the Public Utilities Act. This bill would require the attorney for the commission to commence, prosecute, and expedite the final determination of all actions and proceedings, and to generally perform all duties and services as attorney to the commission, as directed or authorized by the commission.

Existing law requires the executive director for the commission to keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform such other duties as the president, or vote of the commission, prescribes. Existing law provides that the president may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.

This bill would require the executive director to keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform the other duties the commission prescribes. The bill would provide that the commission may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.

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 11351 of the Government Code is amended to read:~~

~~11351. (a) Except as provided in subdivision (b), Article 5 (commencing with Section 11346), Article 6 (commencing with Section 11349), Article 7 (commencing with Section 11349.7), and Article 8 (commencing with Section 11350) shall not apply to the Workers' Compensation Appeals Board, and Article 3 (commencing with Section 11343) and Article 4 (commencing with Section 11344) shall apply only to the rules of procedure of the board.~~

~~(b) The Workers' Compensation Appeals Board shall comply with paragraph (5) of subdivision (a) of Section 11346.4 with respect to regulations that are required to be filed with the Secretary of State~~

~~pursuant to Section 11343.~~

~~—(c) Article 8 (commencing with Section 11350) shall not apply to the Division of Workers' Compensation.~~

~~—SEC. 2.— Section 11342.600 of the Government Code is amended to read:~~

~~—11342.600. "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure. "Regulation" includes, but is not limited to, every proceeding designated "quasi-legislative" by the Public Utilities Commission pursuant to Section 1701.1 of the Public Utilities Code.~~

~~—SEC. 3.— SECTION 1. Section 305 of the Public Utilities Code is amended to read:~~

~~305. The Governor shall appoint, subject to the approval of the Senate, commission shall designate a president of the commission from among the members of the commission. The president shall preside at all meetings and sessions of the commission.~~

~~—SEC. 4.— Section 306 of the Public Utilities Code is amended to read:~~

~~—306. (a) The office of the commission shall be in the City and County of San Francisco. The office shall always be open, legal holidays and nonjudicial days excepted. The commission shall hold its sessions at least once in each calendar month in the City and County of San Francisco. The commission shall hold at least one session in each calendar month in the City of Sacramento. The commission may also meet at such other times and in such other places as may be expedient and necessary for the proper performance of its duties, and for that purpose may rent quarters or offices.~~

~~—(b) The meetings of the commission shall be open and public in accordance with the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~—In addition to the requirements of Section 11125 of the Government Code, the commission shall include in its notice of meetings the agenda of business to be transacted, and no item of business shall be added to the agenda subsequent to the notice in the absence of an unforeseen emergency situation. A rate increase shall not constitute an unforeseen emergency situation. As used in this subdivision, "meeting" shall include all investigations, proceedings, and showings required by law to be open and public.~~

~~—(c) The commission shall have a seal, bearing the inscription "Public Utilities Commission State of California." The seal shall be affixed to all writs and authentications of copies of records and to such other instruments as the commission shall direct.~~

~~—(d) The commission may procure all necessary books, maps, charts, stationery, instruments, office furniture, apparatus, and appliances.~~

~~—SEC. 5.— SEC. 2. Section 307 of the Public Utilities Code is amended to read:~~

~~307. (a) The commission may appoint as attorney to the commission an attorney at law of this state, who shall hold office during the pleasure of the commission.~~

~~(b) The attorney shall represent and appear for the people of the State of California and the commission in all actions and proceedings~~

involving any question under this part or under any order or act of the commission. If directed to do so by the commission, the attorney shall intervene, if possible, in any action or proceeding in which any such question is involved.

(c) The attorney shall commence, prosecute, and expedite the final determination of all actions and proceedings directed or authorized by the commission, advise the commission and each commissioner, when so requested, in regard to all matters in connection with the powers and duties of the commission and the members thereof, and generally perform all duties and services as attorney to the commission that the commission may require of him or her.

~~SEC. 6.~~ SEC. 3. Section 308 of the Public Utilities Code is amended to read:

308. (a) The commission shall appoint an executive director, who shall hold office during its pleasure. The executive director shall be responsible for the commission's executive and administrative duties and shall organize, coordinate, supervise, and direct the operations and affairs of the commission and expedite all matters within the commission's jurisdiction.

(b) The executive director shall keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform the other duties the commission prescribes. The commission may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.

(c) The commission may appoint assistant executive directors who may serve warrants and other process in any county or city and county of this state.