

## LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, \_\_\_\_\_.

General Subject: Public utilities: inverse condemnation: wildfire mitigation plans.

(1) The California Constitution requires the payment of just compensation for private property taken or damaged for a public use. In cases where just compensation has not been paid for damage to private property taken or damaged for a public use, the courts have authorized the filing of inverse condemnation actions by private property owners to seek just compensation pursuant to that constitutional provision. In inverse condemnation cases, the California courts, except in specified cases, have applied a strict liability standard in determining whether the payment of just compensation is required for damages to private property.

In a civil action for inverse condemnation against an electrical corporation or local publicly owned electric utility seeking damages arising from an unintended fire that occurred on or after January 1, 2018, when electrical infrastructure is a substantial cause of the fire, this bill would require the court to balance the public benefit of the electrical infrastructure with the harm caused to private property and determine whether the utility acted reasonably, as specified.

(2) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations. Existing law authorizes the commission to establish rules for all public utilities, subject to control by the Legislature. Under existing law, any public utility that violates or fails to comply with any provision of the California Constitution or the Public Utilities Act, or that fails or neglects to comply with any order, decision, decree, rule, direction, demand, or requirement of the commission, is generally subject to a penalty of not less than \$500, nor more than \$50,000 for each offense. Existing law authorizes the commission to fix the rates and charges for every public utility and requires that those rates and charges be just and reasonable. Existing law prohibits a gas corporation from recovering any fine or penalty in any rate approved by the commission.

This bill would increase that maximum penalty to \$100,000. The bill would prohibit an electrical corporation from recovering a fine or penalty through a rate approved by the commission, and would make related nonsubstantive changes.

(3) Existing law authorizes the commission, after a hearing, to require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote and safeguard the health



and safety of its employees, passengers, customers, and the public. The act requires electrical corporations to annually prepare and submit a wildfire mitigation plan to the commission for review.

This bill would require each plan to include additional elements, and would require an independent evaluator to review and assess the electrical corporation's compliance with its plan. The bill would authorize the electrical corporation to recover in rates the costs of the independent evaluator. The bill would require the commission to approve the plan and to consider the independent evaluator's findings, as specified. The bill would require the commission to assess penalties on an electrical corporation that fails to substantially comply with its plan.

The bill would require an independent 3rd-party evaluator to conduct a safety culture assessment of each electrical corporation, the costs of which would not be recoverable in rates by the electrical corporation.

(4) Under existing law, a violation of an order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because a violation of an order or decision of the commission implementing the requirements of this bill would be a crime, the bill would impose a state-mandated local program.

(5) 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.

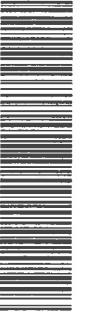
Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



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An act to add Section 1250.321 to the Code of Civil Procedure, to add Section 65040.21 to the Government Code, and to amend Sections 959, 2107, and 8386 of, and to add Sections 748.1, 8386.1, 8386.2, and 8386.3 to, the Public Utilities Code, relating to public utilities.



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

SECTION 1. Section 1250.321 is added to the Code of Civil Procedure, to read:  
1250.321. (a) In a civil action for inverse condemnation against an electrical corporation or local publicly owned electric utility seeking damages arising from an unintended fire when electrical infrastructure is a substantial cause of the fire, the court shall balance the public benefit of the electrical infrastructure with the harm caused to private property and determine whether the utility acted reasonably in that instance. In making this determination, the court shall take into consideration all of the factors set forth in subdivision (b).

(b) An award of compensation for inverse condemnation against a utility shall reflect the utility's proportionate fault and all of the following factors:

(1) Nature of the utility's conduct.  
(2) Nature of the harm to private property.  
(3) Compliance with regulations, laws, Public Utilities Commission orders, and the utility's fire mitigation plans prepared pursuant to Section 8386 of the Public Utilities Code.

(4) Nature of the system that caused the harm and whether alternatives or mitigation measures are available.

(5) Other circumstances that contributed to the fire or the extent of harm caused by the fire.

(c) This section shall not apply to any fire that occurred before January 1, 2018.

SEC. 2. Section 65040.21 is added to the Government Code, to read:

65040.21. Before July 1, 2020, the office shall update the guidance document entitled "Fire Hazard Planning General Plan Technical Advice Series" in consultation with the Department of Housing and Community Development, the Office of Emergency Services, the Department of Forestry and Fire Protection, and other fire and safety experts. The guidance document shall include specific land use strategies to reduce fire risk to buildings, infrastructure, and communities. The office shall update the guidance document thereafter as necessary.

SEC. 3. Section 748.1 is added to the Public Utilities Code, to read:

748.1. An electrical corporation or gas corporation shall not recover through a rate approved by the commission a fine or penalty.

SEC. 4. Section 959 of the Public Utilities Code is amended to read:

~~959. (a) A gas corporation shall not recover any fine or penalty in any rate approved by the commission.~~

~~(b) Each~~

959. Each gas corporation shall demonstrate to the satisfaction of the commission, in its general rate case proceeding, that the requested revenue requirements will be sufficient to enable the gas corporation to fund those projects and activities necessary to maintain safe and reliable service and to meet federal and state safety requirements applicable to its gas plant, in a cost-effective manner.

SEC. 5. Section 2107 of the Public Utilities Code is amended to read:

2107. Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is



subject to a penalty of not less than five hundred dollars (\$500), nor more than one hundred thousand dollars ~~(\$50,000)~~ ~~(\$100,000)~~, for each offense.

SEC. 6. Section 8386 of the Public Utilities Code is amended to read:

8386. (a) Each electrical corporation shall construct, maintain, and operate its electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by those electrical lines and equipment.

(b) Each electrical corporation shall annually prepare and submit a wildfire mitigation plan ~~for the next compliance period to the commission for review. The wildfire mitigation plan shall include:~~ review and approval, according to a schedule established by the commission, which may allow for the staggering of compliance periods for each electrical corporation.

(c) The wildfire mitigation plan shall include:

(1) An accounting of the responsibilities of persons responsible for executing the plan.

(2) The objectives of the plan.

(3) A description of the preventive strategies and programs to be adopted by the electrical corporation to minimize the risk of its electrical lines and equipment causing catastrophic ~~wildfires.~~ wildfires, including consideration of dynamic climate change risks.

(4) A description of the metrics the electrical corporation plans to use to evaluate the plan's performance and the assumptions that underlie the use of those metrics.

(5) A discussion of how the application of previously identified metrics to previous plan performances has informed the plan.

(6) Protocols for disabling reclosers and deenergizing portions of the electrical distribution system that consider the associated impacts on public safety, as well as protocols related to mitigating the public safety impacts of those protocols, including impacts on critical first responders and on health and communication infrastructure.

(7) Protocols for providing advanced notice of deenergization events to ratepayers.

(8) Plans for vegetation management.

(9) Plans for inspections of the electrical corporation's electrical infrastructure.

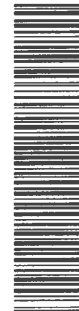
(10) A list that identifies, describes, and prioritizes all wildfire risks, and drivers for those risks, throughout the electrical corporation's service territory, including all relevant wildfire risk and risk mitigation information that is part of Safety Model Assessment Proceeding and Risk Assessment Mitigation Phase filings. The list shall include, but not be limited to, both of the following:

(A) Risks and risk drivers associated with design, construction, operations, and maintenance of the electrical corporation's equipment and facilities.

(B) Particular risks and risk drivers associated with topographic and climatological risk factors throughout the different parts of the electrical corporation's service territory.

(11) A description of how the plan accounts for the wildfire risk identified in the electrical corporation's Risk Assessment Mitigation Phase filing.

(12) Identification of any geographic area in the electrical corporation's service territory that is a higher wildfire threat than is currently identified in a commission fire threat map, and where the commission should consider expanding the high fire threat district based on new information or changes in the environment.



(13) A methodology for identifying and presenting enterprise-wide safety risk and wildfire-related risk that is consistent with the methodology used by other electrical corporations unless the commission determines otherwise.

(14) A description of how the plan is consistent with the electrical corporation's disaster and emergency preparedness plan prepared pursuant to Section 768.6, including both of the following:

(A) Plans to prepare for, and to restore service after, a wildfire, including workforce mobilization and repositioning equipment and employees.

(B) Plans for community outreach and public awareness before, during, and after a wildfire.

(15) A statement of how the electrical corporation will restore service after a wildfire.

(16) Protocols for compliance with requirements adopted by the commission regarding activities to support customers during and after a wildfire, outage reporting, support for low-income customers, billing adjustments, deposit waivers, extended payment plans, suspension of disconnection and nonpayment fees, repair processing and timing, access to utility representatives, and emergency communications.

~~(6)~~

(17) A description of the processes and procedures the electrical corporation will use to do all of the following:

(A) Monitor and audit the implementation of the plan.

(B) Identify any deficiencies in the plan or the plan's implementation and correct those deficiencies.

(C) Monitor and audit the effectiveness of electrical line and equipment inspections, including inspections performed by contractors, carried out under the plan and other applicable statutes and commission rules.

~~(7)~~

(18) Any other information that the commission may require.

~~(e) The commission shall act expeditiously, but no later than 30 days before the beginning of the compliance period, to review and comment on the electrical corporation's wildfire mitigation plan.~~

~~(d) The commission shall provide the electrical corporation with an opportunity to amend a wildfire mitigation plan in response to commission comments within 30 days.~~

~~(e) The commission shall conduct or contract for audits to determine if an electrical corporation is satisfactorily complying with its wildfire mitigation plan.~~

~~(f) The commission may contract with an independent third party to evaluate wildfire mitigation plans or to conduct audits and inspections authorized by this section, and may require electrical corporations to reimburse any related expenses.~~

(d) The commission shall accept comments on each plan from the public, other local and state agencies, and interested parties, and verify that the plan complies with all applicable rules, regulations, and standards, as appropriate.

(e) The commission shall strive to approve each plan within three months of, but shall not approve the plan more than five months after, its submission, unless the commission makes a written determination, including reasons supporting the determination, that the five-month deadline cannot be met and issues an order extending



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the deadline. Each electrical corporation's approved plan shall remain in effect until the commission approves the electrical corporation's subsequent plan.

(f) The commission's approval of a plan does not establish a defense to any enforcement action for a violation of a commission decision, order, or rule.

(g) The commission shall consider whether the costs of implementing each electrical corporation's plan is just and reasonable in its general rate case application. Nothing in this section shall be interpreted as a restriction or limitation on Article 1 (commencing with Section 451) of Chapter 3 of Part 1 of Division 1.

(h) The commission shall conduct an annual review of each electrical corporation's compliance with its plan as follows:

(1) Three months after the end of an electrical corporation's initial compliance period as established by the commission pursuant to subdivision (b), and annually thereafter, each electrical corporation shall file with the commission a report addressing its compliance with the plan during the prior calendar year.

(2) (A) Before March 1, 2021, and before each March 1 thereafter, the commission, in consultation with the Department of Forestry and Fire Protection, shall make available a list of qualified independent evaluators with experience in assessing the safe operation of electrical infrastructure.

(B) (i) Each electrical corporation shall engage an independent evaluator listed pursuant to subparagraph (A) to review and assess the electrical corporation's compliance with its plan. The engaged independent evaluator shall consult with, and operate under the direction of, the Safety and Enforcement Division of the commission. The independent evaluator shall issue a report on July 1 of each year in which a report required by paragraph (1) is filed. As a part of the independent evaluator's report, the independent evaluator shall determine whether the electrical corporation failed to fund any activities included in its plan.

(ii) The commission shall consider the independent evaluator's findings, but the independent evaluator's findings are not binding on the commission, except as otherwise specified.

(iii) The independent evaluator's findings shall be used by the commission to carry out its obligations under Article 1 (commencing with Section 451) of Chapter 3 of Part 1 of Division 1.

(iv) The independent evaluator's findings shall not apply to events that occurred before the initial plan is approved for the electrical corporation.

(3) The commission shall authorize the electrical corporation to recover in rates the costs of the independent evaluator.

(4) The commission shall strive to complete its compliance review within 12 months of, but the review shall not be completed more than 18 months after, the submission of the electrical corporation's compliance report.

(i) An electrical corporation shall not divert revenues authorized to implement the plan to any activities or investments outside of the plan.

(j) Each electrical corporation shall establish a memorandum account to track costs incurred for fire risk mitigation from January 1, 2019, until the commission's approval of the electrical corporation's plan submitted on or before January 15, 2019, that are not otherwise covered in the electrical corporation's revenue requirements. The commission shall review the costs in the memorandum accounts and disallow recovery of those costs the commission deems unreasonable.



SEC. 7. Section 8386.1 is added to the Public Utilities Code, to read:

8386.1. The commission shall assess penalties on an electrical corporation that fails to substantially comply with its plan. In determining an appropriate amount of the penalty, the commission shall consider all of the following:

(a) The nature and severity of any noncompliance with the plan, including whether the noncompliance resulted in harm.

(b) The extent to which the commission has found that the electrical corporation complied with its plans in prior years.

(c) Whether the electrical corporation self-reported the circumstances constituting noncompliance.

(d) Whether the electrical corporation implemented corrective actions with respect to the noncompliance.

(e) Whether the electrical corporation had advance notice of the circumstances constituting noncompliance.

(f) Whether the electrical corporation had previously engaged in conduct of a similar nature that caused significant property damage or injury.

(g) Any other factors established by the commission in a rulemaking proceeding, consistent with this section.

SEC. 8. Section 8386.2 is added to the Public Utilities Code, to read:

8386.2. The commission shall require a safety culture assessment of each electrical corporation to be conducted by an independent third-party evaluator. The commission shall set the schedule for each assessment, including updates to the assessment at least every five years. The electrical corporation shall not seek reimbursement for the costs of the assessment from ratepayers.

SEC. 9. Section 8386.3 is added to the Public Utilities Code, to read:

8386.3. The commission shall evaluate grid technologies for electrical corporations, such as distributed energy resources and microgrids, which can be used to ensure continuous electrical service to critical facilities.

SEC. 10. 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.

