

Date of Hearing: April 11, 2011

ASSEMBLY COMMITTEE ON UTILITIES AND COMMERCE

Steven Bradford, Chair

AB 1055 (Hill) – As Introduced: February 18, 2011

SUBJECT: Public Utilities Commission: solicitation of contributions from a regulated person or corporation.

SUMMARY: Prohibits a commissioner or employee of the California Public Utilities Commission (PUC) from knowingly soliciting specified contributions from persons or entities that the PUC regulates, or from people who represent entities regulated by the PUC, or sitting on a board that solicits contributions from the same. Specifically, this bill:

- 1) Prohibits a commissioner or employee of the commission from knowingly soliciting charitable, political, or other contributions from any person or corporation subject to regulation by the PUC, or from any person, including an attorney or law firm, that is representing, or regularly represents, persons or corporations regulated by the PUC.
- 2) Prohibits a commissioner or employee of the PUC that is subject to the PUC's Conflict of Interest Code and Statement of Incompatible Activities from knowingly serving as an officer or upon the board of any organization that solicits charitable, political, or other, contributions from any person or corporation subject to regulation by the PUC, or from any person, including an attorney or law firm, that is representing, or regularly represents, persons or corporations regulated by the PUC.

EXISTING LAW:

- 1) States that PUC has authority over public utilities and the power to fix their rates and charges.
- 2) Prohibits a Commissioner from holding a financial interest in a person or corporation that is regulated by PUC.
- 3) Provides that if a Commissioner involuntarily acquires a financial interest in a person or corporation that is regulated by PUC, his or her office shall become vacant unless he or she divests himself or herself of that interest within a reasonable time.
- 4) Requires PUC to adopt a Conflict of Interest Code and a Statement of Incompatible Activities by February 28, 1998.

FISCAL EFFECT: Unknown.

COMMENTS: According to the author, “a PUC Foundation, funded in part by utility dollars, only advanced the perception that the PUC has an incestuous relationship with the entities it’s supposed to regulate. The Foundation’s existence undermines the public’s confidence in the PUC as a strong regulatory authority, especially when the public is asking that the PUC be more transparent, public, and independent in its thinking as a result of the pipeline explosion in San Bruno.

“Because of the negative attention it the Foundation received, the Board of Directors decided in March to dismantle it. However, this bill is still important because I found out that even though, the CPUC’s employees are subject to the Commission’s Statement of Incompatible Activities, these do not apply to gubernatorial appointees.

“AB 1055 is a first step in ensuring increased accountability and transparency throughout the CPUC.”

1) Background: California law does not permit a PUC commissioner to have a financial interest in any person or corporation subject to PUC regulation. This basic prohibition has been California law since 1875. This prohibition applies regardless of whether the commissioner takes action to his or her financial benefit. However, the courts have opined that a commissioner does not have to forfeit his or her office in cases where he or she voluntarily acquires a financial interest in a company subject to PUC regulation.

In April 2002, a San Francisco Superior Court judge fined then-PUC Commissioner Henry Duque \$5,000 and ordered him removed from the PUC after finding then-Commissioner Duque invested \$27,000 in Nextel, a mobile phone company regulated by the PUC.

On January 3, 2003, the First Appellate District of the California Court of Appeals overturned that order, ruling that because of a "critical gap" in the statute's wording, the law didn't specify any penalty for commissioners who voluntarily invest in a regulated company.

On April 9, 2003, the state Supreme Court declined to take review of the decision by the State Appellate Court, thus allowing the Appellate Court decision to stand.

The Foundation: On September 7, 2010, Articles of Incorporation were filed with the California Secretary of State and establish the California Public Utilities Commission Foundation (Foundation) as a 501(c)(3) non-profit. Some of the Foundation’s stated purposes were to “inform and educate the public regarding” issues of public interest related to the PUC; the history and work of the PUC; and endeavors and achievements of particular employees of the PUC in furtherance of PUC activities.

On September 30, 2010 the Board of Directors adopted bylaws which were executed on October 4, 2010.

On January 26, 2011, the San Francisco Chronicle reported that the PUC had created the foundation to solicit money from the entities it regulates. The article represented that companies were buying \$20,000 tables for the dinner at San Francisco’s Julia Morgan Ballroom with the list of invitees including PG&E, Southern California Edison, TURN, AT&T and others. The dinner was both a fundraiser and a celebration of the CPUC’s 100th anniversary.

The Foundation did host its first fundraiser on January 28, 2011 to celebrate the CPUC Centennial. This was held in conjunction with the CPUC 100 Dinner Committee. The CPUC 100 Dinner Committee was organized as a separate 501(c)(3) for the purpose of hosting a celebratory dinner for CPUC staff and stakeholders.

The dinner cost approximately \$100,000. There were two prices for tickets: PUC employees paid \$100 and regulated entities and stakeholders paid at least \$1000. Regulated entities were allowed to donate more than \$1000. Attendees included approximately 60 PUC employees and 280 individuals from lobbying firms and other entities with business before the CPUC. The additional cost of the event was subsidized by entities with business before the CPUC.

In support of AB 1055, the Oram Group wrote: “The CPUC Foundation reaches too far and sets up another bad precedent for how to fund state business. However they cast it, it’s a direct conflict of interest and a disservice to the public interest. Once a state agency becomes directly dependent on the voluntary support of a private funder(s), there is a strong, sometimes self-defeating, incentive to keep the donor happy.”

Statement of Incompatible Activities: The CPUC’s Statement of Incompatible Activities clearly states that such entertainment and hospitality by those it regulates is prohibited. It states:

- a. An employee shall not receive or accept, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, transportation or any other thing of value from: (1) anyone who is doing or is seeking to do business of any kind with the CPUC or (ii) from any of the following regulated entities: (1) any public utility regulated by the CPUC; (2) any household goods carrier as defined by the Public Utilities Code section 5109; (3) any charter-party carrier of passengers subject to the Passenger Charter-party Carriers Act set forth in Public Utility Code section 5351 et seq. (with the exception of any entity that has been granted only a “Z” permit as defined in Public Utilities Code section 5384(a)); (4) any public transit guideway subject to Public Utilities Code section 99152; or (5) any public transit agency or any other governmental entity conducting rail operations subject to the CPUC’s safety jurisdiction.”

The provision in Section (a) in this bill expresses an ethics policy that is already in place at the PUC. For example, an employee is prohibited from soliciting or receiving business or donations from a utility representative. An employee must not act in a way that could be construed by others as if the employee were seeking advantage based on the prestige of office or placing others in a position where their actions or failure to act in some unrelated private matter could affect their interests before the PUC.

Section (a) in this bill would specifically extend to commissioners these same ethical prohibitions. Under current law (Government Code section 82015), individual commissioners must report payments made by others at their behest for legislative, governmental, or charitable purposes if such behests exceed \$5,000 from a single source in a calendar year. This bill would prohibit commissioners from making behested requests of regulated entities.

Unintended consequences: This bill would prohibit a commissioner or employee that is subject to the PUC's Conflict of Interest Code and Statement of Incompatible Activities from serving as an officer or board member of any organization that solicits charitable, political, or other contributions from any person or corporation subject to regulation by the PUC, or from any person, including an attorney or law firm, that is representing, or regularly represents, persons or corporations regulated by the PUC. The PUC is primarily staffed by professional engineers, accountants, lawyers, economists, and regulatory analysts. These individuals possess skills and abilities that may lend themselves to assisting and working on civic and charitable community matters. Such a provision could result in deterring a very qualified pool of individuals from

becoming more involved in civic and charitable issues that need the type of professional assistance that they could provide. Many of these civic and charitable organizations receive funding from the charitable arms of regulated entities. A few of the organizations which would fall within these restrictions include Habitat for Humanity, Greenlining Institute, Red Cross, California Academy of Science and the California State Parks Foundation.

Prior legislation: In 2003, then Senator Bowen introduced SB 118 which sought to require PUC Commissioners to forfeit office after voluntarily acquiring a financial interest in a corporation or person regulated by the Commission. The bill was intended to address the Appellate Court decision and close the loophole. SB 118 passed out of the Senate but was amended to a different subject matter on the Assembly Floor.

Then Senator Bowen also introduced SB 204 in 2005 which would have created a new conflict of interest standard for members of both the Energy Commission (CEC) and the PUC. SB 204 was vetoed by then Governor who wrote that both the PUC and CEC were subject to strict conflict of interest laws and pre and post-employment restrictions. He felt it added duplication and ambiguity to existing law without providing greater protections.

AB 2006 (Núñez) from the 2003-04 Session included some similar provisions as part of a larger electricity policy bill. It was vetoed by then Governor Schwarzenegger though his veto message was silent as to this issue.

Proposed Amendments: The author and this committee may wish to amend Public Utilities Code Section 303.5 (a) of the bill to prohibit a Governor appointee from knowingly soliciting charitable, political, or other contributions from any person or corporation subject to the regulation of the PUC. The author and this committee may wish to the bill to exclude PUC employees from Public Utilities Code Section 303.5 (b).

REGISTERED SUPPORT / OPPOSITION:

Support:

California Broadband Policy Network (CBPN)
The Oram Group, Inc.

Opposition:

None on file.

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