

AMENDED IN ASSEMBLY APRIL 30, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 235

Introduced by Assembly Member Mayes

January 18, 2019

An act to ~~add Chapter 7 (commencing with Section 8400) to Division 4.1 amend Section 451.1~~ of the Public Utilities Code, relating to ~~utilities: electrical corporations.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 235, as amended, Mayes. ~~Electrical corporations: local publicly owned electric utilities: California Wildfire Catastrophe Fund Act. recovery of catastrophic wildfire costs and expenses.~~

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including ~~electrical corporations, while local publicly owned electric utilities are under the direction of their governing boards: corporations.~~ Existing law authorizes the commission to fix just and reasonable rates and ~~charges: charges for public utilities.~~

Existing law authorizes the commission, in a proceeding on an application by an electrical corporation to recover costs and expenses arising from a catastrophic wildfire occurring on or after January 1, 2019, to allow cost recovery if the costs and expenses are just and reasonable, after consideration of the conduct of the utility. In evaluating the reasonableness of the costs and expenses, the commission is required to consider the conduct of the electrical corporation and relevant information submitted into the commission record, including in 12 specified areas.

Notwithstanding the commission's determination of whether the costs and expenses are just and reasonable as described above, when

determining recovery by an electrical corporation for costs and expenses arising from a catastrophic wildfire occurring on or after January 1, 2019, this bill would authorize the commission to consider the electrical corporation's financial status and determine the maximum amount the corporation can pay without harming ratepayers or materially impacting the electrical corporation's ability to provide adequate and safe service.

~~Existing law provides for the issuance of rate reduction bonds by the California Infrastructure and Economic Development Bank for the recovery of transition costs, as defined, by electrical corporations. Existing law authorizes the commission to issue financing orders, to support the issuance of recovery bonds, as defined, by the recovery corporation, as defined, secured by a dedicated rate component, to finance the unamortized balance of the regulatory asset awarded Pacific Gas and Electric Company in commission Decision 03-12-035.~~

~~Existing law, under specific circumstances, authorizes the commission, upon application by an electrical corporation, to issue financing orders to support the issuance of recovery bonds to finance costs, in excess of insurance proceeds, incurred, or that are expected to be incurred, by an electrical corporation, excluding fines and penalties, related to wildfires, as provided:~~

~~This bill would create the California Wildfire Catastrophe Fund Authority, which would be governed by a board of directors. The bill would authorize electrical corporations and local publicly owned electric utilities to participate in the authority. The bill would require each participating entity to make an initial contribution and annual contributions to the authority, and would require the board to deposit those contributions into an account dedicated to receiving contributions from that participating entity. The bill would require the shareholders of certain large electrical corporations to make an initial contribution of an unspecified amount to the authority, if the large electrical corporation chooses to participate in the authority. Upon a participating entity incurring costs relating to a wildfire and submitting a claim for those costs to the board, the bill would require the board to reimburse the participating entity for those costs, as specified, and would require the board to determine if the participating entity will be required to make increased annual contributions over a specified period of years to make the authority's applicable contribution pool whole. The bill would exempt contributions to the authority from all state taxes and would require the contributions to be held in trust for the participating entity that made the contribution.~~

~~This bill would require the commission to deem an initial or annual contribution, except an increased annual contribution, just and reasonable. The bill would require the board, in consultation with the commission, to determine how to apportion an electrical corporation's increased annual contribution between its ratepayers and shareholders, as applicable, based on its determination of the degree to which the electrical corporation acted negligently.~~

~~This bill would authorize the board to take specified actions, including to issue bonds payable from, and secured by, a pledge of the board of all or any part of the contributions to the authority to finance claims by participating entities, as specified, and to sell those bonds at public or private sale. To pay a participating entity's claim, the bill would require the board, if it determines it to be just and reasonable to do so, to secure a bond by a pledge of all or any part of the participating entity's annual contributions. The bill would require the commission to deem those pledged contributions just and reasonable for the duration of the bond if the relevant costs underlying the claim meet specified requirements. The bill would require the interest earned on these bonds to be free from state personal income tax and corporate income tax, and would require the board, if necessary, to apply to the Internal Revenue Service to obtain an exemption from all federal taxes on the interest on the bonds. The bill would require the authority, before January 1, 2022, and annually thereafter, to report to the Legislature on its operations in the prior fiscal year.~~

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 451.1 of the Public Utilities Code is
- 2 amended to read:
- 3 451.1. (a) In an application by an electrical corporation to
- 4 recover costs and expenses arising from a catastrophic wildfire
- 5 occurring on or after January 1, 2019, the commission may allow
- 6 cost recovery if the costs and expenses are just and reasonable,
- 7 after consideration of the conduct of the utility. In evaluating the
- 8 reasonableness of the costs and expenses, the commission shall
- 9 consider the conduct of the electrical corporation and relevant
- 10 information submitted into the commission record, which may
- 11 include, but is not limited to, all of the following:

1 (1) The nature and severity of the conduct of the electrical
2 corporation and its officers, employees, contractors, and other
3 entities with which the electrical corporation forms a contractual
4 relationship, including systemic corporate defects.

5 (2) Whether the electrical corporation disregarded indicators of
6 wildfire risk.

7 (3) Whether the electrical corporation failed to design its assets
8 in a reasonable manner.

9 (4) Whether the electrical corporation failed to operate its assets
10 in a reasonable manner.

11 (5) Whether the electrical corporation failed to maintain its
12 assets in a reasonable manner.

13 (6) Whether the electrical corporation's practices to monitor,
14 predict, and anticipate wildfires, and to operate its facilities in a
15 reasonable manner based on information gained from its monitoring
16 and predicting of wildfires, were reasonable.

17 (7) The extent to which the costs and expenses were in part
18 caused by circumstances beyond the electrical corporation's
19 control.

20 (8) Whether extreme climate conditions at the location of the
21 wildfire's ignition, including humidity, temperature, or winds
22 occurring during the wildfire, contributed to the fire's ignition or
23 exacerbated the extent of the damages. The electrical corporation
24 shall provide the commission with specific evidence and data
25 demonstrating the impact of climate conditions on the severity of
26 the wildfire.

27 (9) The electrical corporation's compliance with regulations,
28 laws, commission orders, and its wildfire mitigation plans prepared
29 pursuant to Section 8386, including its history of compliance.

30 (10) Official findings of state, local, or federal government
31 offices summarizing statutory, regulatory, or ordinance violations
32 by any actor that contributed to the extent of the damages.

33 (11) Whether the costs and expenses were caused by a single
34 violation or multiple violations of relevant rules.

35 (12) Other factors the commission finds necessary to evaluate
36 the reasonableness of the costs and expenses, including factors
37 traditionally relied upon by the commission in its decisions.

38 *(b) Notwithstanding subdivision (a), when determining recovery*
39 *by an electrical corporation for costs and expenses arising from*
40 *a catastrophic wildfire occurring on or after January 1, 2019, the*

1 *commission may consider the electrical corporation's financial*
2 *status and determine the maximum amount the corporation can*
3 *pay without harming ratepayers or materially impacting the*
4 *electrical corporation's ability to provide adequate and safe*
5 *service.*

6 ~~(b)~~

7 (c) Notwithstanding Section 451, this section shall direct the
8 commission's evaluation of applications for recovery of costs and
9 expenses arising from a catastrophic wildfire. This section shall
10 not apply to any other applications for cost recovery.

11 ~~(e)~~

12 (d) This section shall not affect any civil action, appeal, or other
13 action or proceeding.

14 ~~SECTION 1. The Legislature finds and declares all of the~~
15 ~~following:~~

16 ~~(a) The effects of climate change are happening now and will~~
17 ~~continue to increase both around the world and in California,~~
18 ~~creating a new climate norm that must be addressed.~~

19 ~~(b) These changing conditions have significantly increased both~~
20 ~~the likelihood and severity of wildfires in California, with each~~
21 ~~fire season entering into new and uncharted territory.~~

22 ~~(c) Eleven of the 20 most destructive fires in California's history~~
23 ~~have occurred since 2015, with five occurring in 2017 alone.~~

24 ~~(d) Wildfires related to climate change affect all Californians,~~
25 ~~with the state's large population and economy significantly~~
26 ~~heightening the risk of catastrophic damage due to a wildfire.~~

27 ~~(e) Catastrophic fires cause loss of life, tremendous property~~
28 ~~damage, public health impacts, environmental degradation,~~
29 ~~including that caused by reduced progress towards the state's goals~~
30 ~~for reducing the emissions of greenhouse gases, and damage to~~
31 ~~local economies.~~

32 ~~(f) To mitigate the economic impacts of catastrophic events on~~
33 ~~society as a whole, it is important to explore sources of funding~~
34 ~~that can be available to compensate for losses. The California~~
35 ~~Wildfire Catastrophe Fund Authority will quickly and adequately~~
36 ~~reimburse victims of wildfires.~~

37 ~~(g) This funding should provide coverage when wildfire costs~~
38 ~~exceed available insurance.~~

39 ~~(h) Climate change is a significant contributor to the severity~~
40 ~~of California's wildfires. In extreme cases, utilities and ratepayers~~

1 cannot shoulder the financial burden alone. The State of California
2 has a role to play in combating climate change’s impact on wildfire
3 severity.

4 (i) Risk reduction and mitigation standards should be established
5 that reduce the impact and cost of wildfires.

6 (j) Preventing and mitigating property and infrastructure damage
7 and injuries from catastrophic fires and other major events is much
8 safer, better for local economies, and far less expensive than
9 emergency repair and reconstruction.

10 SEC. 2. It is the intent of the Legislature in enacting this act
11 to do all of the following:

12 (a) Create a means for electrical corporations and local publicly
13 owned electric utilities to use alternative risk financing when
14 traditional insurance is unavailable or uneconomic to mitigate
15 extraordinary costs arising from wildfires in California.

16 (b) Provide a tax-free means for those utilities to make capital
17 contributions towards those purposes.

18 (c) Continue to require those utilities to purchase commercial
19 insurance that is economically feasible and within the guidelines
20 set by the California Wildfire Catastrophe Fund Authority’s board
21 of directors and to take all reasonable steps to mitigate against
22 wildfires. The authority created pursuant to this act will serve as
23 an additional risk financing instrument to mitigate against wildfires
24 and will not replace measures currently being undertaken by those
25 utilities.

26 (d) Require those utilities participating in the authority to
27 provide initial contributions and annual contributions to the
28 authority, and for those contributions to be held in trust for those
29 utilities to insure the costs of wildfires.

30 (e) Authorize the authority’s board of directors to purchase
31 reinsurance, issue bonds, and pursue other risk financing
32 instruments to insulate and protect the fiscal health of the authority
33 and the utilities making contributions to be managed and disbursed
34 by the authority.

35 SEC. 3. Chapter 7 (commencing with Section 8400) is added
36 to Division 4.1 of the Public Utilities Code, to read:

~~CHAPTER 7. CALIFORNIA WILDFIRE CATASTROPHE FUND ACT~~

~~8400. This chapter shall be known, and may be cited, as the California Wildfire Catastrophe Fund Act.~~

~~8401. For purposes of this chapter, all of the following definitions shall apply:~~

~~(a) "Authority" means the California Wildfire Catastrophe Fund Authority created pursuant to Section 8405.~~

~~(b) "Board" means the California Wildfire Catastrophe Fund Board of Directors created pursuant to Section 8410.~~

~~(c) "Electric utility" means an electrical corporation or a local publicly owned electric utility.~~

~~(d) "Electrical corporation" has the same meaning as defined in Section 218.~~

~~(e) "Large electrical corporation" means an electrical corporation with more than 100,000 service connections in California.~~

~~(f) "Local publicly owned electric utility" has the same meaning as defined in Section 224.3.~~

~~8405. There is hereby created the California Wildfire Catastrophe Fund Authority, to be governed by the board.~~

~~8410. (a) There is hereby created the California Wildfire Catastrophe Fund Board of Directors.~~

~~(b) The board shall be composed of nine members as follows:~~

~~(1) The Governor shall appoint seven members as follows:~~

~~(A) Two members to represent electrical corporations.~~

~~(B) Two members to represent local publicly owned electric utilities.~~

~~(C) One member with a background and expertise in insurance.~~

~~(D) One member with a background and expertise in commercial investing.~~

~~(E) One member to represent electrical ratepayers.~~

~~(2) The Speaker of the Assembly shall appoint one member with a background and expertise in wildfire mitigation.~~

~~(3) The Senate Committee on Rules shall appoint one member to represent electrical ratepayers.~~

~~(c) The Governor shall appoint a member of the board as chairperson.~~

~~(d) Board members shall serve staggered three-year terms, and those members serving an initial term of less than three years shall be members appointed by the Governor, who shall determine which~~

1 of the Governor's seven appointees shall serve initial one-year
2 terms and two-year terms.

3 (e) Board members may be reappointed for additional terms,
4 without limitation.

5 (f) The authority shall reimburse board members for their
6 reasonable expenses incurred in attending meetings and conducting
7 the business of the authority.

8 (g) In making these appointments, the appointing authorities
9 shall not knowingly appoint a person with a conflict of interest.
10 Notwithstanding any other law, the employment of an employee
11 of an electrical corporation or local publicly owned electric utility
12 appointed pursuant to subparagraph (A) or (B) of paragraph (1)
13 of subdivision (b) shall not be considered a conflict of interest.

14 8415. In administering the authority, the board shall do all of
15 the following:

16 (a) (1) Accept notice from an electric utility that has elected to
17 participate in the authority.

18 (2) Require the shareholders of a large electrical corporation
19 that has chosen to participate in the authority to make an initial
20 contribution of, at a minimum, \$ _____ to the authority.

21 (b) Accept moneys appropriated from the Greenhouse Gas
22 Reduction Fund created pursuant to Section 16428.8 of the
23 Government Code.

24 (c) (1) Before January 1, 2021, determine the amount of the
25 initial contribution that each participating electric utility shall
26 contribute based upon actuarial principles and modeling accepted
27 in the insurance industry.

28 (2) Accept the initial contribution from each electric utility and
29 deposit that contribution into an account dedicated to receiving
30 contributions from that electric utility or into an account dedicated
31 to receiving contributions from those electric utilities with which
32 it is sharing limits pursuant to Section 8423.

33 (d) (1) Annually determine the amount of the contribution that
34 each participating electric utility shall contribute during the
35 subsequent year to the authority based upon actuarial principles
36 and modeling accepted in the insurance industry.

37 (2) Accept the annual contribution from each participating
38 electric utility and deposit that contribution into the account
39 dedicated to receiving contributions from that electric utility or
40 into the account dedicated to receiving contributions from those

1 electric utilities with which it is sharing limits pursuant to Section
2 8423.

3 ~~(e) Establish a target for total contributions from each electric~~
4 ~~utility in an amount equal to between five and fifteen times the~~
5 ~~electric utility's total underlying wildfire liability insurance limits,~~
6 ~~and revise that target as necessary in response to changes to those~~
7 ~~limits.~~

8 ~~(f) (1) (A) Upon a participating electric utility incurring costs~~
9 ~~relating to a wildfire and submitting a claim for those costs to the~~
10 ~~board, reimburse the electric utility for those costs pursuant to this~~
11 ~~paragraph.~~

12 ~~(B) Reimburse the electric utility for a claim if it is for an~~
13 ~~amount equal to between five and fifteen times the electric utility's~~
14 ~~total underlying wildfire liability insurance limits.~~

15 ~~(C) Reimburse the electric utility for a claim only if the claim~~
16 ~~would otherwise be recoverable under the terms and conditions of~~
17 ~~the electric utility's excess liability insurance policy issued by an~~
18 ~~insurance provider.~~

19 ~~(D) The board shall not reimburse the electric utility for a claim~~
20 ~~unless the electric utility purchased insurance applicable to wildfire~~
21 ~~liability in amounts within the limits required by the commission,~~
22 ~~or its governing board, as applicable, the electric utility recovered~~
23 ~~the majority of proceeds available pursuant to its underlying~~
24 ~~wildfire liability insurance policies, and the claim is in excess of~~
25 ~~the electric utility's total underlying wildfire liability insurance~~
26 ~~limits.~~

27 ~~(2) (A) Upon reimbursing an electric utility for a claim,~~
28 ~~determine if the electric utility shall make increased annual~~
29 ~~contributions over a specified period of years to make the~~
30 ~~authority's applicable contribution pool whole.~~

31 ~~(B) Determine, in consultation with the commission, how to~~
32 ~~apportion an electrical corporation's increased annual contribution~~
33 ~~between its ratepayers and shareholders, as applicable, based on~~
34 ~~its determination of the degree to which the electrical corporation~~
35 ~~acted negligently.~~

36 ~~(3) An electric utility subject to increased annual contributions~~
37 ~~shall not withdraw from the authority until its obligations to the~~
38 ~~authority have been fully satisfied.~~

39 ~~8416. (a) Before July 1, 2020, an electric utility shall notify~~
40 ~~the authority if it has chosen to participate in the authority.~~

1 ~~(b) A participating electric utility may withdraw from the~~
2 ~~authority by providing 12 months' written notice to the board. An~~
3 ~~electric utility that withdraws from the authority shall be entitled~~
4 ~~to a reimbursement of its contributions, except for the electric~~
5 ~~utility's portion of the authority's administrative costs, purchased~~
6 ~~reinsurance, and other risk financing instruments. However, an~~
7 ~~electric utility that has elected to share its limits pursuant to Section~~
8 ~~8423 shall not be entitled to any reimbursement of its contributions,~~
9 ~~except by providing 18 months' written notice to the board to cover~~
10 ~~potential incurred but not reported losses, and the remaining~~
11 ~~contribution pool is adequately funded following this~~
12 ~~reimbursement as determined by an actuary retained by the board.~~

13 ~~8417. (a) Except when electric utilities have elected to share~~
14 ~~limits pursuant to Section 8423, contributions made by each electric~~
15 ~~utility shall be held by the authority in a separate account and shall~~
16 ~~not be available to fund the claims of another electric utility.~~

17 ~~(b) Contributions in an account for an individual electric utility~~
18 ~~shall be held in trust for the electric utility that made the~~
19 ~~contribution, except when that electric utility has withdrawn from~~
20 ~~the authority.~~

21 ~~(c) Contributions to the authority, unless reimbursed to the~~
22 ~~contributor, shall be exempt from all state taxes. An electrical~~
23 ~~corporation's contributions shall be immediately deductible on its~~
24 ~~state tax return.~~

25 ~~(d) The board may use contributions to pay all costs arising~~
26 ~~from this chapter, including, but not limited to, a premium payable~~
27 ~~by the authority under a contract of reinsurance, an electric utility's~~
28 ~~claim for costs incurred relating to a wildfire, and reasonable~~
29 ~~operating and other expenses of the authority.~~

30 ~~(e) The commission shall deem an electrical corporation's initial~~
31 ~~or annual contribution in an amount determined pursuant to Section~~
32 ~~8415, except an increased annual contribution, just and reasonable~~
33 ~~pursuant to Section 451.~~

34 ~~8420. (a) The board shall have the power to conduct the affairs~~
35 ~~of the authority and may perform all acts necessary or convenient~~
36 ~~in the exercise of that power.~~

37 ~~(b) Without limitation, the board may do all of the following:~~

38 ~~(1) Employ or contract with staff and professionals the board~~
39 ~~deems necessary for the authority's efficient administration,~~
40 ~~including bond counsel, financial consultants, actuarial~~

1 professionals, fire experts, insurance experts, and investment
2 professionals.

3 (2) Invest and reinvest contributions in a fiscally responsible
4 manner.

5 (3) Obtain reinsurance and financing.

6 (4) Enter into other obligations relating to the operation of the
7 authority.

8 (e) The authority may sue or be sued.

9 (d) The authority may contract for the services of a chief
10 executive officer, a chief financial officer, and an operations
11 manager, and may contract for the services of reinsurance
12 intermediaries, financial market underwriters, modeling firms,
13 computer firms, actuaries, insurance claims consultants, counsel,
14 and private money managers.

15 (e) The board shall apply to the Internal Revenue Service to
16 obtain an exemption from all federal taxes on the authority and its
17 holdings and for the deductibility of contributions on each electrical
18 corporation's federal tax return.

19 (f) The Bagley-Keene Open Meeting Act (Article 9
20 commencing with Section 11120) of Chapter 1 of Part 1 of
21 Division 3 of Title 2 of the Government Code) applies to meetings
22 of the board. However, this subdivision shall not require the
23 disclosure of confidential settlement negotiations regarding the
24 payment of claims.

25 8421. (a) The board may issue bonds payable from, and
26 secured by, a pledge of the board of all or any part of the
27 contributions to the authority to finance electric utility claims and
28 sell those bonds at public or private sale.

29 (b) Interest earned on any bonds issued by the authority shall
30 at all times be free from state personal income tax and corporate
31 income tax. If necessary, the board shall apply to the Internal
32 Revenue Service to obtain an exemption from all federal taxes on
33 the interest on the bonds.

34 (e) To pay a participating electric utility's claim, the board shall,
35 if it determines it to be just and reasonable to do so, secure a bond
36 by a pledge of all or any part of the electric utility's annual
37 contributions, or the contributions of the electric utilities with
38 whom it shares limits pursuant to Section 8423. The commission
39 shall deem those pledged contributions just and reasonable pursuant
40 to Section 451 for the duration of the bond if the relevant costs

1 underlying the claim were otherwise recoverable under the terms
2 and conditions of the electrical corporation's applicable insurance
3 policy.

4 ~~8423. The board shall authorize the sharing of limits when an~~
5 ~~electric utility, in its sole discretion, determines that the sharing~~
6 ~~of limits furthers its risk financing objectives. The board may~~
7 ~~promulgate rules for the sharing of limits based on actuarial~~
8 ~~principles and modeling.~~

9 ~~8430. The State of California shall have no liability for payment~~
10 ~~of claims or costs pursuant to this chapter.~~

11 ~~8439. (a) Before January 1, 2022, and annually thereafter, the~~
12 ~~authority shall report to the Legislature on its operations in the~~
13 ~~prior fiscal year.~~

14 ~~(b) The report shall be posted on the authority's internet website.~~

15 ~~(c) Copies of the report shall be made available to the public.~~

16 ~~(d) A report to be submitted pursuant to this section shall be~~
17 ~~submitted in compliance with Section 9795 of the Government~~
18 ~~Code.~~