

**RESOLUTION 10-07-2018**

**DIGEST**

Electrical Corporations: Prohibits Recovery of Uninsured Expenses in Certain Situations  
Adds Public Utilities Code section 748 to prohibit recovery of uninsured expenses for damages caused by failure to reasonably construct, maintain, manage, control, or operate the facility.

**STATEMENT OF REASONS**

The Problem: 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. 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.

The Solution: This bill would prohibit an electrical corporation from recovering through a rate approved by the commission an uninsured expense resulting from damages caused by the electrical corporation, or its agent’s, commission-regulated facility if the commission determines that the electrical corporation, or its agent, did not reasonably construct, maintain, manage, control, or operate the facility.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to add to Public Utilities Code section 748 to read as follows:

- 1 § 748
- 2 (a) An electrical corporation shall not recover through a rate approved by the commission
- 3 either of the following:
- 4 (1) A fine or penalty.
- 5 (2) An uninsured expense resulting from damages caused by the electrical corporation’s
- 6 or its agent’s, commission-regulated facility if the commission determines that the electrical
- 7 corporation, or its agent, did not reasonably construct, maintain, manage, control, or operate the
- 8 facility. The commission’s determination of whether those damages were caused by the facility
- 9 shall not be admissible in a court action for damages brought against the electrical corporation or
- 10 its agent.
- 11 (b) It is the intent of the Legislature that this section not limit or alter the commission’s
- 12 authority or obligations under the Public Utilities Act, including to require that all charges be just
- 13 and reasonable and that each electrical corporation demonstrate to the commission that all costs
- 14 that the electrical corporation seeks to recover from customers through a rate approved by the
- 15 commission have been reasonably and prudently incurred.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bay Area Lawyers for Individual Freedom

## **IMPACT STATEMENT**

The resolution does not affect any other law, statute or rule other than those expressly identified.

## **CURRENT AND PRIOR LEGISLATION**

Identical to SB 819 introduced on January 3, 2018.

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## **RESOLUTIONS COMMITTEE RECOMMENDATION**

### **DISAPPROVE**

#### History:

No similar resolutions found.

#### Reasons:

This resolution adds Public Utilities Code section 748 to prohibit recovery of uninsured expenses for damages caused by failure to reasonably construct, maintain, manage, control, or operate the facility. This resolution should be disapproved because it would improperly extend to municipally-owned utility companies, not governed by the Public Utility Commission, which need to retain autonomy to protect their fiscal and functional integrity.

The Public Utilities Commission has regulatory and supervisory authority over privately- or investor-owned utility companies. It does not have jurisdiction over publicly-owned entities or utilities of chartered city and county municipalities, such as the Los Angeles Department of Water and Power and the Sacramento Municipal Utilities Department. The constitutional doctrine of “home rule” precludes application of the proposed rule to utilities established and overseen by chartered cities and counties; this is not a matter of statewide concern. The unlimited reach of the proposed resolution disregards that jurisdictional limitation.

A municipally-owned or chartered utility company must have the ability to operate, set rates and protect against loss and liability, both foreseeable and unforeseeable catastrophic loss, in order to maintain expected level of services and fiscal integrity, subject to municipality oversight and regulation.

This resolution is similar to Sen. Bill 819, which was vetoed by Governor Brown as inconsistent with SB 901, which, among other things, establishes specific cost recovery rules for catastrophic wildfire damages incurred by electric corporations and ensures neither electric corporations nor gas corporations can recover fines and penalties from ratepayers.