

1974

PUBLIC UTILITIES

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Ballot Title

PUBLIC UTILITIES. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Repeals and reenacts Article XII relating to regulation of public utilities. Transfers to Article XX certain provisions relating to franchises. Grants Legislature plenary power to confer additional authority on Public Utilities Commission. Permits Commission to establish own procedures subject to statute and due process. Gives Commission authority to fix rates, establish rules, do other things, and prescribe uniform system of accounts for all utilities. Deletes provisions authorizing Legislature to divide state into districts and other provisions relating to members of Commission; deletes provisions relating to rate discrimination. Declares no substantive changes intended by this amendment. Financial impact: None.

FINAL VOTE CAST BY LEGISLATURE ON ACA 36 (PROPOSITION 12):

ASSEMBLY—Ayes, 66	SENATE—Ayes, 27
Noes, 0	Noes, 1

Analysis by Legislative Analyst**PROPOSAL:**

This proposition would shorten, eliminate obsolete provisions, and simplify Article XII of the State Constitution relating to the Public Utilities Commission. The Public Utilities Commission, created in 1911, is responsible for regulating the rates and service standards of privately owned public utilities such as truck, bus, airline, pipeline, electric, telephone, gas and warehouse companies. The Legislature has broad authority under Article XII to give regulatory power to the commission. Many statutes have been enacted for this purpose.

In its present form, Article XII describes in considerable detail such matters as the creation of the commission, the division of the state into districts for the purpose of making appointments to the commission, the terms of office of persons originally appointed, designation of a quorum for purposes of conducting business, conflicts of interest of persons appointed to the commission, and prohibition against rate or fare discrimination by railroads and other transportation companies. This proposition deletes the obsolete provisions relating to the creation of the commission and restates in brief form the provisions relating to vacancies, conflicts of interest and rate discrimination. More detailed provisions on these and other matters will become a part of the statutory law under a measure enacted by the current Legislature (AB 4024, Chapter 489) which will become effective if the voters approve this proposition.

In describing the power of the Public Utilities Commission to fix rates of charges for public utilities, Article XII presently makes specific reference only to the rates charged by "railroads and other transportation companies." The rates charged by other types of utilities are subject to regulation under other provisions of Article XII and by statutes enacted by the Legislature. This proposition transfers from the statutes to the Constitution general authority for the commission to fix the rates, establish rules, and regulate all public utilities rather than just railroads and transportation companies. This proposition also transfers from the statutes to the Constitution a provision allowing the commission to establish its own regulatory procedures, subject to statutory requirements enacted by the Legislature and due process of law.

The net effect of this proposition is to shorten, modernize and clarify existing constitutional and statutory provisions relating to the procedures and powers of the commission. This is accomplished by retaining brief, general provisions in the Constitution and placing detailed provisions in the statutory law.

FISCAL EFFECT:

The proposition has no fiscal effect on state or local governments.

Argument in Favor of Proposition 12

NEED FOR A CHANGE

Proposition 12 is an important rewriting of Article XII of the State Constitution. That article created the Public Utilities Commission in 1911 and has unfortunately evolved through the years into an incomprehensible and tangled mass of words containing much unnecessary detail. There are provisions that are inconsistent with one another or so ambiguous that even lawyers cannot understand them and must go to court to have their meaning determined. How then can the average citizen hope to grasp the mechanisms through which his utility rates are set and to whom he should turn to resolve problems in his relationship with telephone, electric, gas, and water utilities, or with transportation companies?

STREAMLINING EFFECT OF PROPOSITION

Proposition 12 will decrease the number of words in Article XII by about 80% and will modernize the language so that people can read and understand its meaning. It will set forth with certainty the independent constitutional authority of the Public Utilities Commis-

sion to regulate public utilities and it will strengthen that authority by more clearly defining the Commission's powers and jurisdiction. Meaning will no longer be obscured by unnecessary complexity and detail.

WIDE RANGE OF SUPPORT

A "yes" vote on Proposition 12 will modernize Article XII of our State Constitution by making it much shorter and more readable. It will increase the independence and power of the Public Utilities Commission over the utilities under its jurisdiction. We know of no opposition. Proposition 12 is supported by the League of Women Voters and other good government groups. We urge your "yes" vote on Proposition 12.

BARRY KEENE

Assemblyman, 2nd District

JUDGE BRUCE SUMNER

Chairman, Constitution Revision Commission

W. CRAIG BIDDLE

Senator, 36th District

No argument against Proposition 12 was submitted

See Page 89 for the Text of Proposition 12

beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. Riparian rights in a stream or water course attach to, but to no more than so much of the flow thereof as may be required or used consistently with this provision, for the purposes for which such lands are, or may be made available, in view of such reasonable and beneficial uses; provided, however, that nothing herein contained shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which ~~his~~ *the owner's* land is riparian under reasonable methods of diversion and use, or of depriving any appropriator of water to which ~~he~~ *the appropriator* is lawfully entitled. This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained.

Twenty-ninth—That Section 10 of Article XX is amended to read:
SEC. 10. Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure ~~his~~ *personal* election or appointment.

Thirtieth—That Section 15 of Article XX is amended to read:
SEC. 15. Mechanics, ~~material men~~ *persons furnishing materials*, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.

Thirty-first—That Section 17 of Article XX is amended to read:
SEC. 17. Worktime of mechanics or ~~workmen~~ *workers* on public works may not exceed eight hours a day except in wartime or extraordinary emergencies that endanger life or property. The Legislature shall provide for enforcement of this section.

Thirty-second—That Section 21 of Article XX is amended to read:
SEC. 21. The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of ~~workmen's~~ *workers'* compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their ~~workmen~~ *workers* for injury or disability, and their dependents for death incurred or sustained by the said ~~workmen~~ *workers* in the course of their employment, irrespective of the fault of any party. A complete system of ~~workmen's~~ *workers'* compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all ~~workmen~~ *workers* and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by ~~workmen~~ *workers* in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such

insurance coverage in all its aspects, including the establishment and management of a State compensation insurance fund; full provision for otherwise securing the payment of compensation; and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the State government.

The Legislature is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this State. The Legislature may combine in one statute all the provisions for a complete system of ~~workmen's~~ *workers'* compensation, as herein defined.

The Legislature shall have power to provide for the payment of an award to the state in the case of the death, arising out of and in the course of the employment, of an employee without dependents, and such awards may be used for the payment of extra compensation for subsequent injuries beyond the liability of a single employer for awards to ~~his~~ *employees of the employer*.

Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the State compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed.

Thirty-third—That Section 25 of Article XX is amended to read:
SEC. 25. Any legislator whose term of office is reduced by operation of the amendment to subdivision (a) of Section 2 of Article IV adopted by the people in 1972 shall, notwithstanding any other provision of this Constitution, be entitled to retirement benefits and compensation as if ~~his~~ *the* term of office had not been so reduced.

Thirty-fourth—That Section 2 of Article XXIV is amended to read:
SEC. 2. (a) There is a Personnel Board of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for 10-year terms and until their successors are appointed and qualified. Appointment to fill a vacancy is for the unexpired portion of the term. A member may be removed by concurrent resolution adopted by each house, two-thirds of the membership of each house concurring.

(b) The board annually shall elect one of its members ~~chairman~~ *as presiding officer*.

(c) The board shall appoint and prescribe compensation for an executive officer who shall be a member of the civil service but not a member of the board.

TEXT OF PROPOSITION 12

This amendment proposed by Assembly Constitutional Amendment 36 (Statutes of 1974, Resolution Chapter 88) expressly repeals an existing article of the Constitution and adds a new article and a new section thereto; therefore, existing provisions proposed to be repealed are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type*.

PROPOSED AMENDMENTS TO ARTICLES XII AND XX

First—That Article XII is repealed.

ARTICLE XII CORPORATIONS

SEC. 10. The Legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise, or any of its privileges.

SEC. 17. All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control. Any association or corporation, organized for the purpose, under the laws of this State, shall have the right to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage,

and cars, without delay or discrimination.

SEC. 18. No president, director, officer, agent, or employee of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, nor in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company, except such interest in the business of transportation as lawfully flows from the ownership of stock therein.

SEC. 19. No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this State; and the acceptance of any such pass or ticket, by a member of the Legislature or any public officer, other than Railroad Commissioner, shall work a forfeiture of his office.

SEC. 20. No railroad or other transportation company shall raise any rate of charge for the transportation of freight or passengers or any charge connected therewith or incidental thereto, under any circumstances whatsoever, except upon a showing before the Railroad Commission provided for in this Constitution; that such increase is justified, and the decision of the said commission upon the showing so made shall not be subject to review by any court except upon the question whether such decision of the commission will result in confiscation of property.

SEC. 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this

State; it shall be unlawful for any railroad or other transportation company to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than for a longer distance over the same line or route in the same direction; the shorter being included within the longer distance; or to charge any greater compensation as a through rate than the aggregate of the intermediate rates.

Provided, however, that upon application to the Railroad Commission provided for in this Constitution such company may, in special cases, after investigation, be authorized by such commission to charge less for longer than for shorter distances for the transportation of persons or property; and the Railroad Commission may from time to time prescribe the extent to which such company may be relieved from the prohibition to charge less for the longer than for the shorter haul; the Railroad Commission shall have power to authorize the issuance of excursion and commutation tickets at special rates.

Nothing herein contained shall be construed to prevent the Railroad Commission from ordering and compelling any railroad or other transportation company to make repatriation to any shipper on account of the rates charged to said shipper being excessive or discriminatory; provided no discrimination will result from such repatriation.

Sec. 22. The Railroad Commission is continued in existence as the Public Utilities Commission; which shall consist of five members. The commission shall be appointed by the Governor from the State at large; provided that the Legislature, in its discretion, may divide the State into districts for the purpose of such appointment, said districts to be as nearly equal in population as practicable; and provided further that the three commissioners in office at the time this section takes effect shall serve out the term for which they were elected; and that two additional commissioners shall be appointed by the Governor immediately after the adoption of this section; to hold office during the same term. Upon the expiration of said term, the term of office of each commissioner thereafter shall be six years; except the commissioners first appointed hereunder after such expiration; one of whom shall be appointed to hold office until January 1, 1917, two until January 1, 1919, and two until January 1, 1921. Whenever a vacancy in the office of commissioner shall occur, the Governor shall forthwith appoint a qualified person to fill the same for the unexpired term. Every appointment made by the Governor to the commission shall be subject to the advice and consent of a majority of the members elected to the Senate; except that if a vacancy occurs when the Legislature is not in session, the Governor may issue an interim commission which shall expire on the last day of the next regular or special session of the Legislature. Commissioners appointed for regular terms shall, at the beginning of the term for which they are appointed, and those appointed to fill vacancies shall immediately upon their appointment, enter upon the duties of their office. The Legislature shall fix the salaries of the commissioners; their offices and employees shall remain as now fixed by law. The Legislature shall have the power, by a two-thirds vote of all members elected to each House, to remove any one or more of said commissioners from office for dereliction of duty or corruption or incompetency. All of said commissioners shall be qualified electors of this State; and no person in the employ of or holding any official relation to any person, firm or corporation, which said person, firm or corporation is subject to regulation by said Public Utilities Commission and no person owning stock or bonds of any such corporation or who is in any manner pecuniarily interested therein shall be appointed to or hold the office of Public Utilities Commissioner. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission. The act of a majority of the commissioners when in session as a board shall be deemed to be the act of the commission; but any investigation, inquiry or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner designated for the purpose by the commission; and every order made by a commissioner so designated pursuant to such inquiry, investigation or hearing, when approved or confirmed by the commission and ordered filed in its office, shall be deemed to be the order of the commission.

Said commission shall have the power to establish rates of charges for the transportation of passengers and freight by railroads and other transportation companies; and no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or freight, or for any service in connection therewith, between the points named in any tariff of rates, established by said commission than the rates, fares and charges which are specified in such tariff. The commission shall have the further power to examine books, records and papers of all railroad and other transportation companies;

to hear and determine complaints against railroad and other transportation companies; to issue subpoenas and all necessary process and send for persons and papers; and the commission and each of the commissioners shall have the power to administer oaths, take testimony and punish for contempt in the same manner and to the same extent as courts of record; the commission may presently uniform system of accounts to be kept by all railroad and other transportation companies.

No provision of this Constitution shall be construed as a limitation upon the authority of the Legislature to confer upon the Public Utilities Commission additional powers of the same kind or different from those conferred herein which are not inconsistent with the powers conferred upon the Public Utilities Commission in this Constitution; and the authority of the Legislature to confer such additional powers is expressly declared to be plenary and unlimited by any provision of this Constitution.

Whenever in this Constitution or the laws of this State "Railroad Commission" is used, it shall be deemed to refer to the Public Utilities Commission.

Sec. 23. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad; interurban (not railroad); street railroad; canal, pipe line, plant, or equipment; or any part of such railroad; canal, pipe line, plant or equipment within this State; for the transportation or conveyance of passengers; or express matter, or freight of any kind, including crude oil; or for the transmission of telephone or telegraph messages; or for the production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities; either directly or indirectly, to or for the public; and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the Legislature; and every class of private corporations, individuals, or associations of individuals heretofore declared by the Legislature to be public utilities shall likewise be subject to such control and regulation. The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities in the State of California; and to fix the rates to be charged for commodities furnished; or services rendered by public utilities as shall be conferred upon it by the Legislature; and the right of the Legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution. From and after the passage by the Legislature of laws conferring powers upon the Railroad Commission respecting public utilities, all powers respecting such public utilities vested in boards of supervisors; or municipal councils; or other governing bodies of the several counties, cities and counties, cities and towns, in this State; or in any commission created by law and existing at the time of the passage of such laws; shall cease so far as such powers shall conflict with the powers so conferred upon the Railroad Commission; provided, however, that this section shall not affect such powers of control over public utilities as relate to the making and enforcement of local police, sanitary and other regulations; other than the fixing of rates, vested in any city and county or incorporated city or town as; at an election to be held pursuant to law, a majority of the qualified electors of such city and county or incorporated city or town; voting thereon; shall vote to retain; and until such election such powers shall continue unimpaired; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the Railroad Commission as provided by law; and provided, further, that where any such city and county or incorporated city or town shall have elected to continue any of its powers to make and enforce such local police, sanitary and other regulations; other than the fixing of rates; it may, by vote of a majority of its qualified electors voting thereon; thereafter surrender such powers to the Railroad Commission in the manner prescribed by the Legislature; and provided, further, that this section shall not affect the right of any city and county or incorporated city or town to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law. Nothing in this section shall be construed as a limitation upon any power conferred upon the Railroad Commission by any provision of this Constitution now existing or adopted concurrently herewith.

Sec. 24. The Railroad Commission shall have and exercise such power and jurisdiction as shall be conferred upon it by the Legislature to fix the just compensation to be paid for the taking of any property of a public utility in eminent domain proceedings by the State or any county, city and county, incorporated city or town; municipal water district; irrigation district or other public corporation or district; and the right of the Legislature to confer such powers upon the Railroad Commission is hereby declared to be plenary and to be unlimited by any provision of this Constitution. All acts of the Legislature heretofore adopted which are in accordance herewith are hereby confirmed and declared valid.

Second—That Article XII is added, to read:

ARTICLE XII

PUBLIC UTILITIES

SECTION 1. The Public Utilities Commission consists of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for staggered 6-year terms. A vacancy is filled for the remainder of the term. The Legislature may remove a member for incompetence, neglect of duty, or corruption, two thirds of the membership of each house concurring.

SEC. 2. Subject to statute and due process, the commission may establish its own procedures. Any commissioner as designated by the commission may hold a hearing or investigation or issue an order subject to commission approval.

SEC. 3. Private corporations and persons that own, operate, control, or manage a line, plant, or system for the transportation of people or property, the transmission of telephone and telegraph messages, or the production, generation, transmission, or furnishing of heat, light, water, power, storage, or wharfage directly or indirectly to or for the public, and common carriers, are public utilities subject to control by the Legislature. The Legislature may prescribe that additional classes of private corporations or other persons are public utilities.

SEC. 4. The commission may fix rates and establish rules for the transportation of passengers and property by transportation companies, prohibit discrimination, and award reparation for the exaction of unreasonable, excessive, or discriminatory charges. A transportation company may not raise a rate or incidental charge except after a showing to and a decision by the commission that the increase is justified, and this decision shall not be subject to judicial review except as to whether confiscation of property will result.

SEC. 5. The Legislature has plenary power, unlimited by the other provisions of this constitution but consistent with this article, to

confer additional authority and jurisdiction upon the commission, to establish the manner and scope of review of commission action in a court of record, and to enable it to fix just compensation for utility property taken by eminent domain.

SEC. 6. The commission may fix rates, establish rules, examine records, issue subpoenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction.

SEC. 7. A transportation company may not grant free passes or discounts to anyone holding an office in this state; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office. A Public Utilities Commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission.

SEC. 8. A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the Commission. This section does not affect power over public utilities relating to the making and enforcement of police, sanitary, and other regulations concerning municipal affairs pursuant to a city charter existing on October 10, 1911, unless that power has been revoked by the city's electors, or the right of any city to grant franchises for public utilities or other businesses on terms, conditions, and in the manner prescribed by law.

SEC. 9. The provisions of this article restate all related provisions of the Constitution in effect immediately prior to the effective date of this amendment and make no substantive change.

Third—That Section 7 is added to Article XX, to read:

SEC. 7. The Legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee, or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.