

1978

Public Utilities Commission

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Official Title and Summary Prepared by the Attorney General

PUBLIC UTILITIES COMMISSION. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Deletes constitutional authorization for the Public Utilities Commission to designate a commissioner to hold a hearing or investigation or issue an order subject to Commission approval. Financial impact: No direct effect on state spending or revenues; however, legislative implementation of this measure might result in relatively minor increase in state spending.

FINAL VOTE CAST BY LEGISLATURE ON ACA 34 (PROPOSITION 2)

Assembly—Ayes, 77
Noes, 0

Senate—Ayes, 27
Noes, 2

Analysis by Legislative Analyst

Background:

Unlike most state administrative agencies, the five-member Public Utilities Commission was established by the State Constitution rather than by an act of the Legislature. The Constitution provides that any commissioner, as designated by the commission, may conduct a hearing or investigation, or issue an order subject to final approval by the commission. This constitutional provision may not be changed by legislation.

Using this existing constitutional authority, the commission generally assigns all hearings and investigations to one or more commissioners who then issue individual orders subject to approval by a majority of the commission members. Approximately 1,000 formal administrative actions are allocated annually among the commissioners and processed in this manner.

Proposal:

This proposition would eliminate the commission's specific constitutional authority to designate any commissioner to hold a hearing or investigation, or issue an order subject to commission approval.

Fiscal Effect:

This proposition eliminates constitutional authority but does not *require* any change in existing procedures. Thus, it would not have a direct effect on state spending or revenues. The proposition, however, would allow the Legislature to change existing commission procedures for hearings, investigations and issuance of orders, and such changes could affect state spending. For example, if the Legislature enacted a law requiring the presence of more commissioners during hearings and investigations than the commission now requires, the result might be increased administrative costs. However, we believe any fiscal effect would be relatively minor.

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Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment No. 34 (Statutes of 1978, Resolution Chapter 6) expressly amends an existing section of the Constitution; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~.

PROPOSED AMENDMENT TO ARTICLE XII

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.~~

Argument in Favor of Proposition 2

Should one man, a political appointee accountable to no one, have effectively total power to determine how much you and I pay for utilities? Should this individual be allowed to operate behind closed doors, free to inject his own personal bias into any proposed decision to increase utility rates? Should five such individuals be left free to engage in "horsetrading," swapping favorable decisions on rate hikes in return for future favors?

Well, that's the way the State Public Utilities Commission could operate.

Right now, utility requests for rate hikes are divided up among the five members of the Public Utilities Commission, with each request becoming the "property" of one commissioner. Then, after a non-partisan, civil service Administrative Law Judge has conducted an investigation and proposed a decision, that one commissioner is free to make any changes he wishes in the proposed decision—before the public, the other commissioners or anyone else has a chance to see it.

This system perverts good decision making. It gives each commissioner a proprietary interest in "his" cases. It enables him to substitute his views for those of the impartial Administrative Law Judge and to bias the proposed decision. It could lead to "horsetrading" between the various commissioners, as each tries to win approval for "his" proposal.

There *is* a better way.

Proposition 2 would eliminate the constitutional authority for the PUC to divide up utility rate hike requests among the individual commissioners. It would force the commission to consider and act on all rate hike requests as a body, without giving any one commission-

er the power or opportunity to change or bias any proposed decision.

There could be no "horsetrading" between commissioners. It would reduce their individual power and proprietary interest.

Proposition 2 would also lay the groundwork for other needed improvements in the PUC's decision-making process. These improvements would have the Administrative Law Judge's nonpartisan decision made public for all to see, and would require that the public be given the opportunity to make their feelings known to the commission before any final decision could be made. By opening up the decision-making process, we could go a long way toward insuring that all PUC decisions are fair, unbiased and in the best interests of all concerned parties.

But these improvements can only be made if Proposition 2 passes. The Legislature tried to enact these improvements once already, but Governor Brown vetoed them at the request of his political appointees on the PUC. The commissioners simply did not want their operations made open to the public nor their immense individual powers lessened in any way, and the Governor went along.

Passage of Proposition 2 would tell the Governor and his appointees on the PUC that the public demands open, unbiased decision making. By voting for Proposition 2, the people will make the Governor think twice about vetoing these necessary reforms when the Legislature votes again to enact them next session.

GORDON W. DUFFY
Member of the Assembly, 32nd District

Rebuttal to Argument in Favor of Proposition 2

The wild allegations which the proponent makes on behalf of Proposition 2 are false. He seeks to prevail not by logic, but by mud-slinging.

In reality, the Commission's proceedings are open to full public participation. Like the courts, Commission decisions are available once they are rendered. Moreover, when requested, the Commission often issues a "proposed report". In such a case the parties are afforded additional comment before the Commission renders its final decision. Further, there is a guaranteed right for parties to request Commission and judicial review of any decision. Not even the Legislature operates under such conditions of scrutiny.

The people of California directly established the Public Utilities Commission by constitutional initiative. The people provided for sufficient political accountability in that the Governor appoints each Commissioner *with the consent of the Senate*. The people provided for regulatory independence by setting a definite term of

office over which neither the governor nor any other political figure has control. This was to ensure that Commission decisions *not* be influenced by the blowing of political winds.

Proposition 2 would lead to an isolation of decision-makers from the hearing process in which the public participates. It is the Commissioners, not the staff, who should make the decisions and bear the responsibilities for the actions of the Public Utilities Commission.

Don't be misled by *claims* of impropriety. It's an easy allegation to make. The Public Utilities Commission exists to protect the public. Beware of curtailing that protection. Vote no on Proposition 2.

ROBERT BATINOVICH
President, Public Utilities Commission

WILLIAM SYMONS, JR.
Commissioner, Public Utilities Commission

CLAIRE T. DEDRICK
Commissioner, Public Utilities Commission

Arguments Against Proposition 2

On its surface Proposition 2 merely removes one sentence from the Constitution, and seems a slight matter. *But it is not!* This amendment strikes away a constitutional grant-of-power. In California, this power has fostered a tradition where each of our five public utility Commissioners exercises an individual and active involvement in day-to-day public utility regulation. This is appropriate. The five officials who have ultimate responsibility to the public for reasonable utility regulation should not be assigned a passive role. Moreover, passage of this measure will ultimately cost the taxpayers of the State additional tax dollars by diminishing the ability of the Commissioners of the Public Utilities Commission to participate in and direct the affairs of the Commission.

The Commission and its Commissioners are the most active and effective protection that the people of California have against unreasonable utility and transportation charges and practices. The Commissioners currently are actively engaged in all regulatory affairs of the Commission. If approved, Proposition 2 would allow the Legislature to enact laws which weaken the Commission's vigor, such as prohibiting individual Commissioners from undertaking investigations. It could require investigation and hearing work to be turned over exclusively to Commission hearing officers. It could require participation of a majority of the Commissioners in all these proceedings. These alternatives have been proposed in the Legislature several times. Each time they have either failed to pass or were vetoed by the

Governor.

All decisions of the Commission are made by a majority of the Commissioners in an open, public decision-making process. Making all Commissioners attend each and every hearing and investigation would attach needless delay and additional costs to the more than one thousand formal applications, complaints and investigations annually filed with the Commission. Delay is costly to everyone—consumer and utility. On behalf of all the Commissioners we urge you to vote no on Proposition 2 for continued effective regulation and better use of your tax dollars.

ROBERT BATINOVICH
President, Public Utilities Commission

WILLIAM SYMONS, JR.
Commissioner, Public Utilities Commission

I have been a member of the Public Utilities Commission for one year. During that time I have found it is extremely difficult for a Commissioner to hear directly from the public. The best opportunity a Commissioner has is when conducting hearings.

Proposition 2 would remove the constitutional authority for a Commissioner to conduct hearings. It is a serious step backward for public participation and a blow against openness in government.

I urge your NO vote on Proposition 2.

CLAIRE T. DEDRICK
Commissioner, Public Utilities Commission

Rebuttal to Arguments Against Proposition 2

Exactly! The three members of the Public Utilities Commission ask you to vote no "on behalf of all the commissioners". I ask you to vote yes on behalf of the public.

Of course they don't want to lose their power to make individual private decisions on "their case". But, wise public policy dictates that the PUC should operate as an

appellate board reviewing the evidence and publicly making a decision.

A yes vote will insure public decision making and is in the best interest of all consumers.

GORDON W. DUFFY
Member of the Assembly, 32nd District