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**SENATE COMMITTEE ON ENERGY, UTILITIES AND  
COMMUNICATIONS**  
**Senator Ben Hueso, Chair**  
**2019 - 2020 Regular**

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**Bill No:** SB 506 **Hearing Date:** 4/2/2019  
**Author:** Hueso  
**Version:** 2/21/2019 As Introduced  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Nidia Bautista

**SUBJECT:** Energy crisis litigation

**DIGEST:** This bill reinstates the authority of the Attorney General (AG) to represent the Department of Finance (Finance) and to exercise the powers of the now-defunct Electricity Oversight Board (EOB) in litigation related to the 2000-02 energy crisis.

**ANALYSIS:**

Existing law:

- 1) Required, until January 1, 2018, the AG to represent Finance and to succeed to all rights, claims, powers, and entitlements of the EOB in any litigation or settlement to obtain ratepayer recovery for the effects of the 2000-02 energy crisis. Prohibited, until January 1, 2018, the AG from expending the proceeds of any settlements of those claims, except as specified. (*formerly* Public Utilities Code §343)
- 2) Establishes the EOB in statute as a five-member board to oversee the California Independent System Oversight Board (CAISO) and the Power Exchange (PX), with specified duties, and, specifically, tasks the EOB to investigate any matter related to the wholesale market for electricity to ensure that interests of California's citizens and consumers are served, protected, and represented. (Public Utilities Code §§§335, 336, 338)
- 3) Establishes the Office of the AG with specified duties and responsibilities, including as the head of the Department of Justice, and the explicit duty to exercise any powers authorized by statute or ordered by the court. (Government Code §12500, et seq.)
- 4) Establishes the Ratepayer Relief Fund (RRF) in the State Treasury for the purposes of benefiting electricity and natural gas ratepayers and to fund investigation and litigation costs of the state in pursuing allegations of

overcharges and unfair business practices against generators, suppliers, or marketers of electricity or natural gas. (Government Code §§16428.1, 16428.15)

- 5) Directs the AG when negotiating recoveries in energy settlement litigation to: recover or finance state litigation costs; reduce rates for ratepayers harmed by the settling of the parties; or deposit the funds in the RRF. (Government Code §16428.3)
- 6) Requires that funds recovered on behalf of the Department of Water Resources (DWR), after deduction of litigation and investigation expenses, to be deposited in the DWR Electric Power Fund and applied pursuant to Division 27 (commencing with §80000) of the Water Code. (Government Code §16428.4)
- 7) Requires the Legislature to appropriate funds in the RRF to benefit ratepayers through specified purposes: finance ongoing energy litigation; reduce rates for ratepayers; or reduce bond debt service on the DWR' electricity bonds. (Government Code §16428.5)

This bill:

- 1) Includes findings and declarations concerning the intent of the Legislature to affirm the AG's uninterrupted authority to continue acting on behalf of the EOB for cases involving the 2000-02 energy crisis.
- 2) Requires the AG to represent Finance and to succeed all rights, claims, powers, and entitlements of the EOB in any litigation or settlement to obtain ratepayer recovery for the effects of the 2000-02 energy crisis.
- 3) Prohibits the AG from expending the proceeds of any settlements of those claims, except as specified.

## **Background**

*Electricity Oversight Board (EOB).* The EOB was created by statute in 1996 with the intent to address issues arising from the restructured electricity industry and markets in California. Statute provides the EOB with specified powers to oversee the CAISO and the, now defunct, PX. Specifically, statute provides the EOB with the authority to serve as an appeal board for the decisions of the CAISO, to appoint and confirm specified members of the PX, and to investigate any matter related to the market for electricity to protect the interests of the state's consumers. The EOB was ultimately defunded in 2008 but the Legislature did not assign a successor agency to assume its responsibilities. However, legislation was adopted,

AB 1338 (Committee on Budget, Chapter 760, Statutes of 2008), to establish the authority of the AG to represent Finance and to succeed the EOB in any litigation or settlement to obtain electricity ratepayer relief as a result of the 2000-2002 energy crisis.

*Energy crisis cases.* EOB was one of the complainants in several cases stemming from the energy crisis, along with the California Public Utilities Commission (CPUC), AG, Pacific, Gas & Electric (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E) (collectively, the "Cal Parties"). The AG has taken a lead role in pursuing a series of cases at the Federal Energy Regulatory Commission (FERC) and on appeal seeking refunds from all of the energy sellers who manipulated the market or benefitted from inflated prices during the energy crisis. In 2002, the CPUC and the EOB each filed a complaint with the FERC seeking to abrogate multiple long-term contracts between energy sellers and the DWRs' California Energy Resources Scheduling (CERS) Division. The DWR CERS Division was the state agency authorized by emergency legislation in January 2001 to enter into long-term energy contracts after skyrocketing energy prices during the crisis pushed the state's investor-owned electrical corporations into insolvency and limited their ability to purchase electricity for delivery to consumers in California. Through these cases and settlements reached with energy sellers, the AG and affiliated parties have recovered \$8.7 billion for the state and California ratepayers, including \$1.523 billion from Enron Corporation.

*Existing cases.* Due to a number of reasons, many of the energy crisis cases before the FERC are still pending, including the long-term contract proceeding in which the AG, who continues to act on behalf of the EOB, is seeking approximately \$2.8 billion in cost recovery for the state and California ratepayers. The AG is seeking approximately another \$200 million from sellers in the other cases before the FERC who have yet to settle.

*Sunset date?* All previous bills that extend the AG's statutory authority to represent the EOB have included a two or three-year sunset date. Since the statute first established the AG's authority to represent the EOB, the sunset dates have lapsed twice, including in 2011 and the present lapse in 2018. This bill expresses the intent of the Legislature to affirm the AG's uninterrupted authority to continue acting on behalf of the EOB for cases involving the 2000–02 energy crisis and does not include a sunset date. With a number of cases remaining active and the potential for significant ratepayer benefits from those cases, it seems both reasonable and beneficial to maintain the AG's standing without a sunset date, so as to avoid any unnecessary legal uncertainty from any future lapse. Furthermore, the existing protections in the statute to direct where and how settlement funds can

be deposited and used, provides safeguards against any concerns that settlement funds may be mishandled.

**Prior/Related Legislation**

AB 1524 (Committee on Utilities and Commerce, Chapter 382, Statutes of 2015) extended, by two years, from January 1, 2016 to January 1, 2018, the authority of AG to represent Finance and to exercise the powers of the now-defunct EOB in any litigation related to the 2000-02 energy crisis.

SB 1533 (Padilla, Chapter 226, Statutes of 2012) extended, from January 1, 2013 to January 1, 2016, the authority of the AG to represent Finance and to succeed the EOB in any litigation or settlement to obtain electricity ratepayer relief as a result of the 2000-2002 energy crisis.

AB 1457 (Huber, 2012) would have eliminated the EOB from statute and provided the AG with the authority extended by this bill. The bill died in the Assembly Committee on Appropriations.

AB 1390 (Committee on Utilities & Commerce, Chapter 179, Statutes of 2011) re-established, until January 1, 2013, the authority of the AG to represent Finance and to succeed the EOB in any litigation or settlement to obtain electricity ratepayer relief as a result of the 2000-2002 energy crisis.

AB 1338 (Committee on Budget, Chapter 760, Statutes of 2008) required, until January 1, 2010, the AG to represent Finance and to succeed to all rights, claims, powers, and entitlements of the EOB in any litigation or settlement to obtain ratepayer recovery for the effects of the 2000–02 energy crisis. The bill prohibited the AG from expending the proceeds of any of settlements of those claims, except as specified.

AB 1756 (Committee on Budget, Chapter 228, Statutes of 2003) establishes the RRF in the State Treasury to benefit electricity and natural gas ratepayers and to fund investigation and litigation costs of the state in relation to the energy crisis. The bill also directs the AG to deposit settlement funds in specified funds for specified purposes.

ABX1-1 (Keeley, Chapter 4, Statutes of 2001) authorized DWR, until January 2, 2003, to enter into contracts for the purchase of electricity and to sell that electricity to retail end-use customers and, with specified exceptions, to local publicly owned electric utilities at not more than the department's acquisition costs. The bill also authorized DWR to issue revenue bonds not to exceed a certain

amount upon authorization by written determination of the department and with the approval of the Director of Finance and the Treasurer. The bill also establishes in the State Treasury the DWR Electric Power Fund, requires all revenues payable to the department under those electricity purchase provisions to be deposited in the Electric Power Fund.

AB 28 (Migden, Chapter 16, Statutes of 2001) authorized the EOB to investigate any matter related to the wholesale market for electricity to ensure that the interests of California's citizens and consumers are served, protected, and represented in relation to the availability of electric transmission and generation, and related costs, during periods of peak demand.

SB 47(Bowen, Chapter 766, Statutes of 2001) gave EOB broad authority to investigate and initiate proceedings at FERC in response to market manipulation by electricity market participants.

AB 1890 (Brulte, Chapter 854, Statutes of 1996) authorized the restructuring of the state's wholesale electricity market, and, among its provisions, established the EOB with authority to oversee the CAISO and PX.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

**SUPPORT:**

State of California Attorney General (Sponsor)

**OPPOSITION:**

None received

**ARGUMENTS IN SUPPORT:** According to the AG, the sponsor of the bill:

“The Attorney General is pleased to sponsor SB 506, which would allow the Department of Justice (DOJ) to continue litigating the state's pending energy crisis cases at the Federal Regulatory Energy Commission (FERC) on behalf of the now-defunct Electricity Oversight Board (EOB). Since 2002, the Attorney General and various state agencies and electric utilities have already recovered \$8.7 billion on behalf of California and its electricity consumers for the unjust and unreasonable energy contracts the state was forced to enter into during the energy crisis. SB 506 is necessary to ensure the Attorney General can bring the remaining energy crisis cases to a close and recover the billions of dollars still owed to Californians.”

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