

AMENDED IN ASSEMBLY JANUARY 16, 2001

CALIFORNIA LEGISLATURE—2001–02 FIRST EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 1

Introduced by Assembly Member Members Keeley and Migden

January 3, 2001

~~An act relating to public utilities. An act to add Division 27 (commencing with Section 80000) to the Water Code, relating to electric power, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1, as amended, ~~Migden-Keeley. Public utilities: electricity: Independent System Operator Department of Water Resources: electric power.~~

(1) Under existing law relating to the Central Valley Project, the Department of Water Resources has the authority to fix and establish the prices, rates, and charges at which the resources and facilities made available by the project are sold and disposed of, and to enter into contracts and agreements and do any and all things that the department determines to be necessary, convenient, or expedient for the accomplishment of the purposes and objectives of that existing law.

This bill would authorize the department to enter into contracts and agreements for the purchase and sale of electric power and to fix and establish the procedure and charges for the sale or other disposal of power purchased by the department. The bill would prohibit state ownership of transmission or distribution facilities of investor-owned utilities in this state. The bill would prohibit the department from entering into or engaging in a transmission or distribution enterprise

for purposes of the act, and would prohibit the state from taking ownership of transmission or distribution assets of an investor-owned utility in this state. The bill would also authorize the department to hire and appoint additional employees and contract for the services of public and private entities.

The bill would establish in the State Treasury the Department of Water Resources Electric Power Fund, to be continuously appropriated to the department, and available for the purposes described above. The bill would require all revenues payable to the department under the bill to be deposited in the fund. The bill would require that payments from the fund be made only for certain purposes. The bill would transfer up to \$400,000,000 from the General Fund to the fund for the purposes described above and require repayment to the General Fund at the earliest possible time.

The bill would provide for a sunset review of the program effective January 1, 2006.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law requires the establishment and operation of an Independent System Operator to ensure efficient use and reliable operation of the state's electricity transmission grid.~~

~~This bill would require the Independent System Operator to submit a report to the Legislature not later than January 1, 2002, regarding the operator's success in coordinating maintenance in advance to maintain system reliability, minimize the quantity and effect of congestion on the grid and connections controlled by the operator, and preserve price stability for electricity.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~-yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. The Independent System Operator shall submit~~
- 2 *SECTION 1. Division 27 (commencing with Section 80000) is*
- 3 *added to the Water Code, to read:*
- 4

*DIVISION 27. PURCHASE AND SALE OF ELECTRIC
POWER*

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

80000. The Legislature hereby finds and declares all of the following:

(a) The furnishing of reliable reasonably priced electric service is essential for the safety, health, and well-being of the people of California.

(b) Private entities who furnish electric service to the people of California are public utilities subject to the control of the Legislature.

(c) That the construction of insufficient generation capacity in recent years, transmission constraints, increased demand for electricity, and other factors have resulted in a rapid, unforeseen shortage of electric power and energy available in the state and rapid and substantial increases in wholesale energy costs and retail energy rates, with statewide impact, to such a degree that it constitutes an immediate peril to the health, safety, life and property of the inhabitants of the state, and the public interest, welfare, convenience and necessity require the state to participate in markets for the purchase and sale of power and energy, but not to own the transmission or distribution assets of any investor-owned utility in this state.

(d) In order for the department to adequately and expeditiously undertake and administer the critical responsibilities established in this division, it must be able to obtain, in a timely manner, additional and sufficient personnel with the requisite expertise and experience in energy marketing, energy scheduling, and accounting.

80003. (a) The development and operation of a program as provided in this division is in all respects for the welfare and the benefit of the people of the state, for the improvement of their prosperity and their living conditions.

(b) This division shall be liberally construed to effectuate the purposes and objectives thereof.

(c) To the extent this division is inconsistent with any general, special, or local law, this division shall control.

1 80004. (a) *The powers and responsibilities of the department*
2 *established under this division are within the scope of the primary*
3 *duties of the department, but are not governed by the provisions*
4 *relating to the State Water Resources Development System.*

5 (b) *The Department of Water Resources Electric Power Fund,*
6 *established by Section 80200, and the money in that fund are*
7 *separate and distinct from any other fund and money administered*
8 *by the department.*

9 80010. *As used in this division, unless the context otherwise*
10 *requires, the following terms have the following meanings:*

11 (a) *“Electrical corporation” has the same meaning as that*
12 *term is defined in Section 218 of the Public Utilities Code.*

13 (b) *“Fund” means the Department of Water Resources Electric*
14 *Power Fund established by Section 80200.*

15 (c) *“Public utility” has the same meaning as that term is*
16 *defined in Section 216 of the Public Utilities Code.*

17 80012. *The department shall do those things necessary and*
18 *authorized under Chapter 2 (commencing with Section 80100) to*
19 *make power available directly or indirectly to electric consumers*
20 *in California. The state may not take ownership of the transmission*
21 *or distribution assets of any investor-owned utilities in this state.*

22 80014. (a) *The department may adopt regulations for*
23 *purposes of this division as emergency regulations in accordance*
24 *with Chapter 3.5 (commencing with Section 11340) of Part 1 of*
25 *Division 3 of Title 2 of the Government Code. For purposes of that*
26 *Chapter 3.5, including Section 11349.6 of the Government Code,*
27 *the adoption of the regulations shall be considered by the Office*
28 *of Administrative Law to be necessary for the immediate*
29 *preservations of the public peace, health and safety, and general*
30 *welfare. Notwithstanding subdivision (e) of Section 11346.1 of the*
31 *Government Code, the regulations shall be repealed 180 days after*
32 *their effective date, unless the adopting authority or agency*
33 *complies with that Chapter 3.5, as provided in subdivision (e) of*
34 *Section 11346.1 of the Government Code.*

35 (b) *Unless the department determines that application of any*
36 *such provision to such contracts is detrimental to accomplishing*
37 *the purposes of this division, the provisions of the Government*
38 *Code and Public Contract Code applicable to state contracts,*
39 *including, but not limited to, advertising and competitive bidding*

requirements and prompt payment requirements, apply to contracts entered into under this division.

80016. All state agencies and other official state organizations, and all persons connected therewith, shall and are hereby authorized to, at the request of the department, give the department reasonable assistance or other cooperation in carrying out the purposes of this division.

CHAPTER 2. POWER PROGRAM

Article 1. Powers of the Department

80100. Upon those terms, limitations, and conditions as it prescribes, the department may do any of the following:

(a) (1) Contract with any person or entity for the purchase of power on such terms and for such periods as the department determines for a price of not more than 5.5 cents per kilowatt hour. Prior to commencement of the program described in this division, the department shall assess the need for power in the state in consultation with the Public Utilities Commission and public and private utilities in the state and such other entities in the state as the department determines are appropriate. Nothing in this division authorizes the department to enter into or engage in a transmission or distribution enterprise.

(2) Sell, exchange, transfer, or otherwise dispose of, or grant options with respect to any power acquired pursuant to this division, directly or indirectly, whichever results in the lowest cost to consumers, at the department's acquisition costs plus those costs as provided in paragraphs (2) to (5), inclusive, of subdivision (b) of Section 80200, to electric consumers in California; however, to the extent any acquired power is not required for use within the state, or if it is otherwise advantageous or necessary, the power may be sold, exchanged, transferred, or otherwise disposed of to any person or entity.

(3) A contract or agreement pursuant to this section may include provisions for the indemnification of parties with whom the department contracts as the department determines to be necessary to accomplish the purposes of this division. However, a contract or agreement pursuant to this section may not include provisions for the indemnification, including indemnification for

1 any costs of defense, of any party to the contract or agreement for
2 acts or omissions involving negligence, gross negligence,
3 recklessness, or willful misconduct by that party or by the party's
4 employees, agents, or contractors.

5 (4) In addition, contracts under this division may provide for
6 the assignment thereof to public or private entities on any terms
7 and conditions as the contracts may specify.

8 (5) Any contract for the sale of electric power shall contain any
9 contractual terms and security provisions as are determined by the
10 department to be necessary or appropriate.

11 (b) Fix and establish the procedure and charges for the sale or
12 other disposal of power purchased by the department.

13 (c) The department may do any of the following as may be, in
14 the determination of the department, necessary for the purposes of
15 this division:

16 (1) Hire and appoint employees as required, at salary levels
17 determined by the director to be competitive to attract and retain
18 persons with the necessary expertise and skills. Prior to hiring or
19 appointing an employee at a salary in excess of a salary approved
20 by the Department of Personnel Administration, the director shall
21 submit the proposed salary to the Director of Finance who shall
22 submit it to the Legislature in accordance with Section 27.00 of the
23 annual Budget Act.

24 (2) Engage the services of private parties to render
25 professional and technical assistance and advice in carrying out
26 the purposes of this division.

27 (3) Contract for the services of other public agencies.

28 (d) Borrow money in anticipation of the receipt of revenues or
29 for cash flow management, and for such purpose issue notes or
30 other evidence of indebtedness and provide for repayment with
31 respect thereto, and to renew or refund any such notes or other
32 evidence of indebtedness. However, any such notes or other
33 evidence of indebtedness shall be payable solely from the fund and
34 shall mature within 90 days of issuance.

35
36 CHAPTER 3. DEPARTMENT OF WATER RESOURCES ELECTRIC POWER
37 FUND
38

39 80200. (a) There is hereby established in the State Treasury
40 the Department of Water Resources Electric Power Fund.

1 *Notwithstanding Section 13340 of the Government Code, all*
2 *moneys in the fund are continuously appropriated, without regard*
3 *to fiscal year, to the department, and shall be available for the*
4 *purposes of this division.*

5 *(b) All revenues payable to the department under this division*
6 *shall be deposited in the fund. Notwithstanding any other*
7 *provision of law, interest accruing on money in the fund shall*
8 *remain in the fund and shall be used for the purposes of this*
9 *division. Payments from the fund may be made only for the*
10 *purposes authorized by this division, including, but not limited to,*
11 *payments for any of the following:*

12 *(1) The cost of electric power purchased by the department.*

13 *(2) The pooled money investment rate on funds advanced for*
14 *electric power purchases prior to the receipt of payment for those*
15 *purchases by the purchasing entity.*

16 *(3) Payment of any other obligation incurred by the*
17 *department.*

18 *(4) Repayment to the General Fund of any advances made to*
19 *the department from that fund.*

20 *(5) The administrative costs of the department incurred in*
21 *administering this division.*

22 *(c) Obligations authorized by this division shall be payable*
23 *solely from the fund. Neither the full faith and credit nor the taxing*
24 *power of the state are or may be pledged for any payment under*
25 *any obligation authorized by this division.*

26 *(d) Solely with regard to the issue of the fulfillment of the*
27 *department's obligation under contracts for the purchase or sale*
28 *or both of electricity, the state pledges and agrees with parties to*
29 *and holders of obligations of the department entered into pursuant*
30 *to this division that the state will not do, until such obligations are*
31 *fully performed and discharged on the part of the department, any*
32 *of the following:*

33 *(1) Limit, alter, or restrict the rights vested in the department*
34 *under this division.*

35 *(2) Impair the terms of any obligations of the department*
36 *entered into pursuant to this division.*

37 *(3) Impair the rights or remedies of the holders of or other*
38 *parties to any such obligations.*

CHAPTER 4. REPORTING

80300. The department shall make quarterly and annual reports to the Governor and the Legislature regarding its activities pursuant to this division during the respective reporting periods.

CHAPTER 5. SUNSET REVIEW

80310. This division, and in particular the provisions of Chapter 2 (commencing with Section 80100) which authorize the purchase of electrical energy by the Department of Water Resources, shall be subject to sunset review effective January 1, 2006.

SEC. 2. The sum up to four hundred million dollars (\$400,000,000) is hereby transferred from the General Fund to the Department of Water Resources Electric Power Fund, established by Section 80200 of the Water Code, for the purposes of Division 27 (commencing with Section 80000) of the Water Code. The four hundred million dollars (\$400,000,000) shall be repaid from the fund to the General Fund at the earliest possible time.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address the rapid, unforeseen shortage of electric power and energy available in the state and rapid and substantial increases in wholesale energy costs and retail energy rates, that endanger the health, welfare, and safety of the people of this state, it is necessary for this act to take effect immediately.

~~a report to the Legislature not later than January 1, 2002, regarding the operator's success in coordinating maintenance in advance to do all of the following:~~

~~(a) Maintain system reliability.~~

~~(b) Minimize the quantity and effect of congestion on the transmission grid and connections controlled by the Independent System Operator.~~

~~(c) Preserve price stability for electricity.~~

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