

AMENDED IN SENATE JANUARY 25, 2001
AMENDED IN ASSEMBLY JANUARY 16, 2001

CALIFORNIA LEGISLATURE—2001–02 FIRST EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 1

Introduced by Assembly Members Keeley and Migden

January 3, 2001

An act to *amend Section 366.5 of the Public Utilities Code, and 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, Keeley. Department of Water Resources: electric power.

(1) *Existing law prohibits any change in the aggregator or supplier of electric power for certain customers from being made until the change has been verified.*

This bill would provide that electric power sold to customers pursuant to the bill is not subject to those provisions.

(2) 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 department from contracting for the purchase of electrical power on and after January 2, 2003.* 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~~ *Purchases* 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.~~

The bill would require the Bureau of State Audits to conduct a financial and performance audit of the department's implementation of the bill.

(2)

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

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. *Section 366.5 of the Public Utilities Code is*
2 *amended to read:*

3 366.5. (a) No change in the aggregator or supplier of electric
4 power for any small commercial customer may be made until one

1 of the following means of confirming the change has been
2 completed:

3 (1) Independent third-party telephone verification.

4 (2) Receipt of a written confirmation received in the mail from
5 the consumer after the consumer has received an information
6 package confirming the agreement.

7 (3) The customer signs a document fully explaining the nature
8 and effect of the change in service.

9 (4) The customer's consent is obtained through electronic
10 means, including, but not limited to, computer transactions.

11 (b) No change in the aggregator or provider of electric power
12 for any residential customer may be made over the telephone until
13 the change has been confirmed by an independent third-party
14 verification company, as follows:

15 (1) The third-party verification company shall meet each of the
16 following criteria:

17 (A) Be independent from the entity that seeks to provide the
18 new service.

19 (B) Not be directly or indirectly managed, controlled, or
20 directed, or owned wholly or in part, by an entity that seeks to
21 provide the new service or by any corporation, firm, or person who
22 directly or indirectly manages, controls, or directs, or owns more
23 than 5 percent of the entity.

24 (C) Operate from facilities physically separate from those of
25 the entity that seeks to provide the new service.

26 (D) Not derive commission or compensation based upon the
27 number of sales confirmed.

28 (2) The entity seeking to verify the sale shall do so by
29 connecting the resident by telephone to the third-party verification
30 company or by arranging for the third-party verification company
31 to call the customer to confirm the sale.

32 (3) The third-party verification company shall obtain the
33 customer's oral confirmation regarding the change, and shall
34 record that confirmation by obtaining appropriate verification
35 data. The record shall be available to the customer upon request.
36 Information obtained from the customer through confirmation
37 shall not be used for marketing purposes. Any unauthorized
38 release of this information is grounds for a civil suit by the
39 aggrieved resident against the entity or its employees who are
40 responsible for the violation.

(4) Notwithstanding paragraphs (1), (2), and (3), an aggregator or provider of electric power shall not be required to comply with these provisions when the customer directly calls an aggregator or provider of electric power to change service providers. However, an aggregator or provider of electric power shall not avoid the verification requirements by asking a customer to contact an aggregator or provider of electric power directly to make any change in the service provider.

(c) No change in the aggregator or provider of electric power for any residential customer may be made via an Internet transaction, in which the customer accesses the website of the aggregator or provider, unless both of the following occur with respect to confirming the change:

(1) In addition to any other information gathered in the course of the transaction, the customer shall be asked to read and respond to a separate screen that states, in easily legible text, the following:

“I acknowledge that in entering this transaction I am voluntarily choosing to change the entity that supplies me with my electric power.”

(2) The separate screen shall offer the customer the option to complete or terminate the transaction.

(d) (1) No change in the aggregator or provider of electric power for any residential customer may be made via a written transaction unless the change has been confirmed, as provided in this subdivision. In order to comply with this subdivision, in addition to any other information gathered in the course of the transaction, and in addition to any other signature required, the customer shall be asked to sign and date a document separate from that written transaction, containing the following words printed in ten point type or larger:

“I acknowledge that in signing this contract or agreement, I am voluntarily choosing to change the entity that supplies me with electric power.”

(2) The acknowledgment document described in paragraph (1) may not be included with a check or in connection with a sweepstakes solicitation.

(e) Any aggregator or provider of electric power offering electricity service to residential and small commercial customers that switches the electric service of a customer without the customer’s consent shall be liable to the aggregator or provider of

1 electric power offering electricity services previously selected by
2 the customer in an amount equal to all charges paid by the
3 customer after the violation and shall refund to the customer any
4 amount in excess of the amount that the customer would have been
5 obligated to pay had the customer not been switched.

6 (f) An aggregator or provider of electric power shall keep a
7 record of the confirmation of a change pursuant to subdivision (b),
8 (c), or (d) for two years from the date of that confirmation, and
9 shall make those records available, upon request, to the customer
10 and to the commission in the course of a commission investigation
11 of a customer complaint or an investigation pursuant to
12 subdivision (c) of Section 394.2.

13 (g) Public agencies are exempt from this section to the extent
14 they are serving customers within their jurisdiction.

15 (h) Notwithstanding subdivisions (c) and (d), the commission
16 may require third-party verification for all residential changes to
17 electric service providers if it finds that the application of
18 subdivisions (c) and (d) results in the unauthorized changing of a
19 customer's electric service provider.

20 (i) An electrical corporation is exempt from this section for
21 customers that default to the service of the electrical corporation.

22 (j) *Electric power sold to customers pursuant to Section 80100*
23 *of the Water Code is not subject to this section.*

24 SEC. 1.5. Division 27 (commencing with Section 80000) is
25 added to the Water Code, to read:

26
27 DIVISION 27. PURCHASE AND SALE OF ELECTRIC
28 POWER
29

30 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS
31

32 80000. The Legislature hereby finds and declares all of the
33 following:

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

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

~~(c) That the construction of insufficient generation capacity in recent years, transmission constraints, increased demand for electricity, and other~~ A number of 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)~~

(b) 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~~ *construed in a manner so as* 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.~~

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

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

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

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

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

(c) “*Local publicly owned electric utility*” includes the entities defined in subdivision (d) of Section 9604 of the Public Utilities Code and publicly owned utilities that provide electricity.

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

80012. The department shall do those things necessary and authorized under Chapter 2 (commencing with Section 80100) to make power available directly or indirectly to electric consumers in California. ~~The state may not~~ *Except as otherwise stated, nothing in this division authorizes the department to take ownership of the transmission, generation, or distribution assets of any investor-owned utilities electrical corporation in this state.*

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

(b) Unless the department determines that application of any such provision to such contracts is detrimental to accomplishing the purposes of this division, the provisions of the Government Code and Public Contract Code applicable to state contracts, 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, local publicly owned electric utility, or other 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.~~ *determines and at such prices the department deems appropriate taking into account all of the following:*

(a) The intent of the program described in this division is to achieve an overall portfolio of contracts for energy resulting in the lowest possible price per kilowatthour.

(b) The need to have contract supplies to fit each aspect of the overall energy load profile.

(c) The desire to secure as much low-cost power as possible under contract.

(d) The duration and timing of contracts made available from sellers.

(e) The length of time sellers of electricity offer to sell such electricity.

(f) The desire to secure as much firm and nonfirm renewable energy as possible. 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~~ *local publicly owned electric utilities and electrical corporations* 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 *by the department* pursuant to this division, directly or indirectly, whichever results in the lowest cost to ~~consumers~~ *retail end-use customers*, at the department's acquisition costs plus those costs as provided in paragraphs (2) to (5), inclusive, of subdivision (b) of Section 80200, *either to electric consumers of electrical corporations, or to any local publicly owned electric utility in California; however,*

1 to the extent any acquired power is not required for use within the
2 state, ~~or~~ and if it is otherwise advantageous or necessary, the power
3 may be sold, exchanged, transferred, or otherwise disposed of
4 *outside California* to any person or entity.

5 ~~(3) A contract or agreement pursuant to this section may~~
6 ~~include provisions for the indemnification of parties with whom~~
7 ~~the department contracts as the department determines to be~~
8 ~~necessary to accomplish the purposes of this division. However,~~
9 ~~a contract or agreement pursuant to this section may not include~~
10 ~~provisions for the indemnification, including indemnification for~~
11 ~~any costs of defense, of any party to the contract or agreement for~~
12 ~~acts or omissions involving negligence, gross negligence,~~
13 ~~recklessness, or willful misconduct by that party or by the party's~~
14 ~~employees, agents, or contractors.~~

15 ~~(4)~~

16 (3) In addition, contracts under this division may provide for
17 the assignment thereof to public or private entities on any terms
18 and conditions as the contracts may specify.

19 ~~(5)~~

20 (4) Any contract for the sale of electric power shall contain any
21 contractual terms and security provisions as are determined by the
22 department to be necessary or appropriate.

23 (b) *A contract with an electric corporation for the utility to*
24 *purchase electric power from the department shall include a*
25 *provision giving the department an enforceable security interest in*
26 *assets of the utility to secure the payment for the power sold to the*
27 *utility. If the utility defaults on the contract, the department is*
28 *authorized to take possession of those assets, including*
29 *transmission, distribution, and generation assets, and to operate*
30 *those assets.*

31 (c) Fix and establish the procedure and charges for the sale or
32 other disposal of power purchased by the department. *With respect*
33 *to electricity made available to customers of electrical*
34 *corporations, those customers shall be responsible for costs at no*
35 *more than the rates established by the Public Utilities Commission*
36 *in effect on the date the electricity is made available to the*
37 *customers.*

38 ~~(e)~~

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

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

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

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

~~(d)~~

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

CHAPTER 3. DEPARTMENT OF WATER RESOURCES ELECTRIC ~~POWER~~ PURCHASES FUND

80200. (a) There is hereby established in the State Treasury the Department of Water Resources Electric ~~Power~~ Purchases Fund. Notwithstanding Section 13340 of the Government Code, all moneys in the fund are continuously appropriated, without regard to fiscal year, to the department, and shall be available for the purposes of this division.

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

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

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

~~(3) Payment of any other obligation incurred by the department.~~

~~(4)–~~

(3) Repayment to the General Fund of any advances made to the department from that fund.

~~(5) The administrative costs of the department incurred in administering this division.~~

~~(e)–~~

(c) The administrative costs of the department incurred in administering this division shall be provided in the annual Budget Act.

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

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

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

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

~~(3) Impair the rights or remedies of the holders of or other 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.~~

CHAPTER 5. *TERMINATION OF AUTHORITY TO CONTRACT*

80310. The department shall not contract for the purchase of electrical power on and after January 1, 2003. This section does not effect the authority of the department to administer contracts entered into prior to that date or the department's authority to sell electricity.

CHAPTER 6. *AUDIT*

80320. The Bureau of State Audits shall conduct a financial and performance audit of the department's implementation of this division. The audit shall be completed before December 31, 2001. The bureau shall issue a final report on or before March 31, 2003.

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~~ *Purchases* 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

- 1 endanger the health, welfare, and safety of the people of this state,
- 2 it is necessary for this act to take effect immediately.

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