

AMENDED IN SENATE JANUARY 29, 2001
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, *and to add Section 360.5 to, and to repeal Section 355.1 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. *Power exchanges*: Department of Water Resources: electric power.

(1) *The Public Utilities Act establishes the Power Exchange to provide an efficient competitive auction, open on a nondiscriminatory basis to all electric power suppliers, that meets the loads of all exchange customers at efficient prices. Existing law authorizes the Public Utilities Commission to investigate issues associated with multiple qualified exchanges, and requires the commission, if it determines that allowing electrical corporations to purchase from multiple qualified exchanges is in the public interest, to prepare and submit findings and recommendations to the Legislature on or before June 1, 2001. Existing law prohibits the implementation by the commission of certain commission decisions regarding other exchanges, as specified.*

This bill would repeal those provisions, regarding multiple qualified exchanges.

(2) 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)~~

(3) 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 authorize the department to sell power to retail end use customers and to local publicly owned electric utilities at not more than the department's acquisition costs, as specified.* The bill would prohibit 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. 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 authorize the department to issue revenue bonds not to exceed a certain amount, containing specified terms and conditions, upon authorization by written determination of the department and with the approval of the Director of Finance, as specified.

The bill would establish in the State Treasury the Department of Water Resources Electric ~~Purchases~~ 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~~ \$500,000,000 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 permit the Department of Finance to authorize the creation of deficiencies for this appropriation.*

This bill would require the Public Utilities Commission to calculate the California Procurement Adjustment and would further require the commission to determine the amount of the adjustment payable to the department for deposit into the fund.

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

(3)

(4) 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 355.1 of the Public Utilities Code is*
2 *repealed.*

3 ~~355.1. The commission may investigate issues associated~~
4 ~~with multiple qualified exchanges. If the commission determines~~
5 ~~that allowing electrical corporations to purchase from multiple~~
6 ~~qualified exchanges is in the public interest, the commission shall~~
7 ~~prepare and submit findings and recommendations to the~~
8 ~~Legislature on or before June 1, 2001. Prior to June 1, 2001, the~~
9 ~~commission may not implement the part of any decision~~
10 ~~authorizing electrical corporations to purchase from exchanges~~
11 ~~other than the Power Exchange. That portion of any decision of the~~
12 ~~commission adopted prior to January 1, 2001, but after June 1,~~
13 ~~2000, authorizing electrical corporations to purchase from~~
14 ~~multiple qualified exchanges, may not be implemented.~~

15 SEC. 2. *Section 360.5 is added to the Public Utilities Coded,*
16 *to read:*

17 360.5. *The commission shall determine that portion of each*
18 *existing electrical corporation's retail rate effective on January 5,*
19 *2001, that is equal to the difference between the retail rate and the*
20 *sum of the costs of the utility's own generation, qualified facility*
21 *contracts, bilateral contracts, and transmission and distribution.*
22 *That portion of the retail rate shall be known as the California*

Procurement Adjustment. The commission shall further determine the amount of the California Procurement Adjustment that is allocable to the power sold by the department. That amount shall be payable to the department for deposit in the Department of Water Resources Electric Power Fund, established by Section 80200 of the Water Code. The amount determined pursuant to this subdivision shall be known as the Fixed Department of Water Resources Set-Aside.

SEC. 3. Section 366.5 of the Public Utilities Code is amended to read:

366.5. (a) No change in the aggregator or supplier of electric power for any small commercial customer may be made until one of the following means of confirming the change has been completed:

(1) Independent third-party telephone verification.

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

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

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

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

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

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

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

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

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

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

5 (3) The third-party verification company shall obtain the
6 customer's oral confirmation regarding the change, and shall
7 record that confirmation by obtaining appropriate verification
8 data. The record shall be available to the customer upon request.
9 Information obtained from the customer through confirmation
10 shall not be used for marketing purposes. Any unauthorized
11 release of this information is grounds for a civil suit by the
12 aggrieved resident against the entity or its employees who are
13 responsible for the violation.

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

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

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

30 "I acknowledge that in entering this transaction I am voluntarily
31 choosing to change the entity that supplies me with my electric
32 power."

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

35 (d) (1) No change in the aggregator or provider of electric
36 power for any residential customer may be made via a written
37 transaction unless the change has been confirmed, as provided in
38 this subdivision. In order to comply with this subdivision, in
39 addition to any other information gathered in the course of the
40 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 10-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 electric power offering electricity services previously selected by the customer in an amount equal to all charges paid by the customer after the violation and shall refund to the customer any amount in excess of the amount that the customer would have been obligated to pay had the customer not been switched.

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

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

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

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

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

~~SEC. 1.5.~~

SEC. 4. Division 27 (commencing with Section 80000) is added to the Water Code, to read:

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. 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.

(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.

80002. *Nothing in this division shall be construed to reduce or modify any electrical corporation's obligation to serve. The commission shall issue orders it determines are necessary to carry out this section.*

80002.5. *It is the intent of the Legislature that power acquired by the department under this division shall be sold to all retail end use customers being served by electrical corporations, and to those local publicly owned electric utilities requesting such power. Power sold by the department to retail end use customers shall be allocated pro rata among all classes of customers to the extent practicable.*

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~~ *to protect the public peace, health, and safety, and constitutes an essential governmental purpose.*

(b) This division shall be construed in a manner so as to effectuate the purposes and objectives thereof.

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 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) *“Bonds” means bonds, notes, or other evidences of indebtedness issued solely for the purposes of paying the cost of electric power and transmission, scheduling, and other related expenses incurred by the department on and after the effective date of this division, or to reimburse expenditures from the fund for those purposes; repaying to the General Fund any advances made to the department from appropriations made to the fund pursuant hereto or hereafter for purposes of this division, any advances made to the department from the Water Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor’s Emergency Proclamation dated January 17, 2001; establishing or maintaining reserves in connection with the bonds; costs of issuance of bonds or incidental to their payment or security; capitalized interest; or to renew or refund any bonds.*

(b) *“Commission” means the Public Utilities Commission.*

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

~~(b)~~

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

~~(e)~~

(e) *“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)~~

(f) *“Power” means electric power and energy, including, but not limited to, capacity and output, or any of them.*

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

3 80012. The department shall do those things necessary and
4 authorized under Chapter 2 (commencing with Section 80100) to
5 make power available directly or indirectly to electric consumers
6 in California. Except as otherwise stated, nothing in this division
7 authorizes the department to take ownership of the transmission,
8 generation, or distribution assets of any electrical corporation in
9 this state.

10 80014. (a) The department *and commission* may adopt
11 regulations for purposes of this division as emergency regulations
12 in accordance with Chapter 3.5 (commencing with Section 11340)
13 of Part 1 of Division 3 of Title 2 of the Government Code. For
14 purposes of that Chapter 3.5, including Section 11349.6 of the
15 Government Code, the adoption of the regulations shall be
16 considered by the Office of Administrative Law to be necessary
17 for the immediate preservations of the public peace, health and
18 safety, and general welfare. Notwithstanding subdivision (e) of
19 Section 11346.1 of the Government Code, the regulations shall be
20 repealed 180 days after their effective date, unless the adopting
21 authority or agency complies with that Chapter 3.5, as provided in
22 subdivision (e) of Section 11346.1 of the Government Code.

23 (b) Unless the department determines that application of any
24 such provision to such contracts is detrimental to accomplishing
25 the purposes of this division, the provisions of the Government
26 Code and Public Contract Code applicable to state contracts,
27 including, but not limited to, advertising and competitive bidding
28 requirements and prompt payment requirements, apply to
29 contracts entered into under this division.

30 80016. All state agencies and other official state
31 organizations, and all persons connected therewith, shall and are
32 hereby authorized to, at the request of the department, give the
33 department reasonable assistance or other cooperation in carrying
34 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~~ *contract* with any person, local publicly owned electric utility, or other entity for the purchase of power on such terms and for such periods as the department 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 *reliable service at 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 local publicly owned electric utilities and electrical corporations in the state and such other entities in the state as the department determines are appropriate. *The department may also enter into options or forward contracts with respect to the foregoing, and contract with any person, local publicly owned electric utility, or other entity for transmission, scheduling, and other related power services necessary or desirable to accomplish the purposes of this division.*

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

~~(3) In addition, contracts~~

80102. (a) *Contracts* under this division may provide for the assignment thereof on any terms and conditions as the contracts may specify.

~~(4)~~

(b) Any contract for the *purchase or sale* of electric power shall contain any contractual terms and security provisions as are determined by the department to be necessary or appropriate *and the department may enter into such arrangements as may be necessary or appropriate to implement the foregoing.*

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

(c) *Notwithstanding any other provision of law, the department may pay or provide for the payment of power or use of transmission or distribution facilities and other related services prior to the delivery or utilization thereof, provided that the department determines that prepayment is beneficial to ratepayers and that adequate provision has been made for the security of the department.*

80104. *Upon the delivery of power to them, the retail end use customers shall be deemed to have purchased that power from the department. Payment for any sale shall be a direct obligation of the retail end use customer to the department.*

80106. (a) *The department may contract with the related electrical corporation or its successor in the performance of related service, for the electrical corporation or its successor in the performance of related service, to transmit or provide for the transmission of, and distribute the power and provide billing,*

1 collection, and other related services, as agent of the department,
2 on terms and conditions that reasonably compensate the electrical
3 corporation for its services.

4 (b) At the request of the department, the commission shall order
5 the related electrical corporation or its successor in the
6 performance of related service, to transmit or provide for the
7 transmission of, and distribute the power and provide billing,
8 collection, and other related services, as agent of the department,
9 on terms and conditions that reasonably compensate the electrical
10 corporation for its services.

11 80108. The commission may issue rules regulating the
12 enforcement of the agency function pursuant this division,
13 including collection and payment to the department.

14 80110. The department shall retain title to all power sold by
15 it to the retail end use customers. The department shall be entitled
16 to recover, as a revenue requirement, amounts and at the times
17 necessary to enable it to comply with Section 80134, and shall
18 advise the commission as the department determines to be
19 appropriate. Such revenue requirements may also include any
20 advances made to the department hereunder or hereafter for
21 purposes of this division, or from the Department of Water
22 Resources Electric Power Fund, and General Fund moneys
23 expended by the department pursuant to the Governor's
24 Emergency Proclamation dated January 17, 2001. For purposes
25 of this division and except as otherwise provided in this section, the
26 Public Utility Commission's authority as set forth in Section 451
27 of the Public Utilities Code shall apply, except any just and
28 reasonable review under Section 451 shall be conducted and
29 determined by the department. The commission may enter into an
30 agreement with the department with respect to charges under
31 Section 451 for purposes of this division, and that agreement shall
32 have the force and effect of a financing order adopted in
33 accordance with Article 5.5 (commencing with Section 840) of
34 Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, as
35 determined by the commission. In no case shall the commission
36 increase the electricity charges in effect on the date that the act that
37 adds this section becomes effective for residential customers for
38 existing baseline quantities or usage by those customers of up to
39 130 percent of existing baseline quantities. After the passage of
40 such period of time after the effective date of this section as shall

1 *be determined by the commission, the right of retail end use*
2 *customers pursuant to Article 6 (commencing with Section 360) of*
3 *Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code to*
4 *be served by other providers shall be suspended until the*
5 *department no longer supplies power hereunder. The department*
6 *shall have the same rights with respect to the payment by retail end*
7 *use customers for power sold by the department as do providers of*
8 *power to such customers.*

9 *80112. All money collected with respect to any power*
10 *acquired and sold pursuant to this division and the Governor's*
11 *Emergency Proclamation dated January 17, 2001, and all money*
12 *paid directly or indirectly to or for the account of the department*
13 *with respect to any sale, exchange, transfer, or disposition of power*
14 *acquired pursuant hereto, shall constitute property of the*
15 *department and shall be deposited in the fund in accordance with*
16 *subdivision (b) of Section 80200. To the extent any moneys are held*
17 *by an electrical corporation pursuant to Section 80106 in the*
18 *process of collection, and pending their payment to the*
19 *department, they shall be held in trust for the benefit of the*
20 *department.*

21 *80114. The commission shall take those actions necessary to*
22 *ensure that all, or a portion of, the component rates that are*
23 *available to electrical corporations for the purchase of their net*
24 *short position of electricity are used to recover the revenue*
25 *requirements established pursuant to this division.*

26 *80116. The department may sell any power acquired by the*
27 *department pursuant to this division to retail end use customers,*
28 *and to local publicly owned electric utilities, at not more than the*
29 *department's acquisition costs, including transmission,*
30 *scheduling, and other related costs, plus other costs as provided*
31 *in Section 80200, or exchange power with any person or public or*
32 *private entity. However, to the extent that any acquired power is not*
33 *required for use within the state, if it is otherwise advantageous*
34 *and necessary, the power may be sold, transferred, or otherwise*
35 *disposed of, or an option may be granted with respect to the power,*
36 *to any person or public or private entity. Except to maintain system*
37 *integrity, the department shall sell the power that is to be delivered*
38 *to retail end use customers within the service area of the electrical*
39 *corporations that purchase power from the electrical corporations*
40 *directly to the retail end use customers.*

1 ~~(c) Fix~~

2 80120. *The department may fix and establish the procedure*
3 *and charges for the sale or other disposal of power purchased by*
4 *the department. With respect to electricity made available to*
5 *customers of electrical corporations, those customers shall be*
6 *responsible for costs at no more than the rates established by the*
7 *Public Utilities Commission in effect on the date the electricity is*
8 *made available to the customers.*

9 ~~(d)~~

10 80122. The department may do any of the following as may
11 be, in the determination of the department, necessary for the
12 purposes of this division:

13 ~~(1)~~

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

22 ~~(2)~~

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

26 ~~(3)~~

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

28 (d) *The State Personnel Board and the Department of*
29 *Personnel Administration shall assist the department in*
30 *expediting the hiring of personnel necessary and desirable for the*
31 *timely and successful implementation and administration of the*
32 *department's duties and responsibilities pursuant to this division.*

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

CHAPTER 2.5. BONDS

80130. *The department may incur indebtedness and issue bonds as evidence thereof, provided that bonds may not be issued in an amount the debt service on which, to the extent payable from the fund, is expected by the department to exceed the amounts expected to be available in the fund for their payment. In no event shall the department authorize the issuance of bonds (excluding notes issued in anticipation of the issuance of bonds and retired from the proceeds of those bonds) in an aggregate amount greater than the amount calculated by multiplying by a factor of four the annual revenues generated by the California Procurement Adjustment, as determined by the commission pursuant to subdivision (a) of Section 360.5.*

80132. (a) *Bonds may be issued by the department upon authorization by written determination of the director of the department with the approval of the Director of Finance. The bonds shall be sold at such prices and in such manner, and on such terms and conditions, as shall be specified in such determination, and such determination may contain or authorize any other provision, condition, or limitation not inconsistent herewith and such provisions as may be deemed reasonable and proper for the security of the bondholders. Bonds may mature at such time or times, and bear interest at such rate or rates, which may be fixed or variable and be determined by reference to an index or such other method, as shall be specified in such determination. Neither the person executing the determination to issue bonds nor any person executing bonds shall be personally liable therefor or be subject to any personal liability or accountability by reason of the issuance thereof.*

(b) *In the discretion of the department, any bonds may be secured by a trust agreement by and between the department and a corporate trustee, which may be any trust company or bank having trust powers within or without the state, or the State Treasurer. Notwithstanding any other provision of law, the State Treasurer shall not be deemed to have a conflict of interest by reason of acting as such trustee. The department may enter into such contracts or arrangements as it shall deem to be necessary or appropriate for the issuance and further security of the bonds.*

1 (c) Bonds shall be legal investments for all trust funds, the
2 funds of all insurance companies, banks both commercial and
3 savings, trust companies, executors, administrators, trustees, and
4 other fiduciaries, for state school funds, pension funds, and, for
5 any funds that may be invested in county, school, or municipal
6 bonds.

7 (d) Notwithstanding that bonds may be payable from a special
8 fund, they shall be deemed to be negotiable instruments for all
9 purposes.

10 (e) Any and all bonds, their transfer and the income therefrom
11 shall at all times be free from taxation of every kind by the state and
12 by all political subdivisions of the state.

13 (f) Bonds shall not be deemed to constitute a debt or liability of
14 the state or of any political subdivision thereof, other than the
15 department, or a pledge of the faith and credit of the state or of any
16 such political subdivision, other than the department, but shall be
17 payable solely from the funds herein provided for. All bonds shall
18 contain a statement to the following effect: "Neither the faith and
19 credit nor the taxing power of the State of California is pledged to
20 the payment of the principal of or interest on this bond." The
21 issuance of bonds shall not directly or indirectly or contingently
22 obligate the state or any political subdivision thereof to levy or to
23 pledge any form of taxation whatever therefor or to make any
24 appropriation for their payment.

25 (g) The department may pledge or assign any revenues under
26 any obligation entered into, and rights to receive the same, and
27 moneys on deposit in the fund and income or revenue derived from
28 the investment thereof, as security for the department's obligations
29 hereunder. It is the intention of the Legislature that any pledge of
30 moneys, revenues, or property made by the department shall be
31 valid and binding from the time when the pledge is made; that the
32 moneys, revenues, or property so pledged and thereafter collected
33 from retail end use customers, or paid directly or indirectly to or
34 for the account of the department, is hereby made, and shall
35 immediately be, subject to the lien of such pledge without any
36 physical delivery thereof or further act; that the lien of any such
37 pledge shall be valid and binding as against all parties having
38 claims of any kind in tort, contract, or otherwise against the
39 department irrespective of whether such parties have notice
40 thereof, and that no resolution or instrument by which such pledge

or lien created pursuant to this subdivision is expressed, confirmed, or approved need be filed or recorded in order to perfect such pledge or lien. The provisions hereof shall in all respects govern the creation, perfection, priority, and enforcement of any lien created hereby or hereunder.

80134. The department shall, and in any obligation entered into pursuant to this division may covenant to, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the fund, to provide all of the following:

(a) The amounts necessary to pay the principal of and premium, if any, and interest on all bonds as and when the same shall become due.

(b) The amounts necessary to pay for power purchased by it and to deliver it to purchasers, or to make payments under any other contracts, agreements, or obligations entered into by it pursuant hereto, in the amounts and at the times the same shall become due.

(c) Reserves in such amount as may be determined by the department from time to time to be necessary or desirable.

CHAPTER 3. DEPARTMENT OF WATER RESOURCES ELECTRIC PURCHASES FUND

80200. (a) There is hereby established in the State Treasury the Department of Water Resources Electric ~~Purchases~~ Power 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. *It is the intent of the Legislature that this fund be a continuation of the fund created in Chapter 3 of the Statutes of 2001 (SB 7 of the First 2001–02 Extraordinary Session).*

(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~~ *and transmission, scheduling, and other related expenses incurred 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 bonds or other contractual obligations authorized by this division.*

~~(3)~~

(4) ~~Repayment to the General Fund of any advances made to the department from that fund.~~ *appropriations made to the fund pursuant hereto or hereafter for purposes of this division, appropriations made to the Department of Water Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's Emergency Proclamation dated January 17, 2001. It is the intent of the Legislature that such repayment be made as soon as practicable.*

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

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

~~(d)~~

(c) 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) *While any obligations of the department incurred under this division remain outstanding and not fully performed or discharged, the powers, duties, and existence of the department shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of or parties to such obligations. The department may include this pledge and undertaking of the state in the department's obligations.*

CHAPTER 4. REPORTING

~~80300.~~

80250. The department shall make quarterly and annual reports to the Governor and the Legislature regarding its activities pursuant to this division .

CHAPTER 5. TERMINATION OF AUTHORITY TO CONTRACT

~~80310.~~

80260. 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.~~

80270. 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.~~

SEC. 5. The sum up to ~~four hundred million dollars (\$400,000,000)~~ *five hundred million dollars (\$500,000,000)* is hereby transferred from the General Fund to the Department of Water Resources Electric ~~Purchases~~ *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~~ *Code. The five* ~~hundred million dollars (\$400,000,000) shall be~~ *hundred million dollars (\$500,000,000) shall be* repaid from the fund to the General Fund at the earliest possible time.

~~SEC. 3.—~~

SEC. 6. *The Department of Finance may authorize the creation of deficiencies for the appropriation made by Section 5 of the act adding this section. No deficiency may be approved under this section any sooner than 10 days after written notification of the proposed deficiency is given to the Chairperson of the Joint Legislative Budget Committee.*

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety

1 within the meaning of Article IV of the Constitution and shall go
2 into immediate effect. The facts constituting the necessity are:

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

O

