

ASSEMBLY BILL

No. 5

Introduced by Assembly Member Keeley

January 9, 2001

An act to amend Sections 335 and 341.2 of, to add Section 352 to, and to repeal and add Sections 337 and 338 of, the Public Utilities Code, relating to public utilities, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 5, as introduced, Keeley. Electrical restructuring: Oversight Board: Independent System Operator: Power Exchange.

(1) The existing restructuring of the electrical services industry within the Public Utilities Act provides for the authorization of direct transactions between electricity suppliers and end use customers and for the establishment of an Independent System Operator and a Power Exchange as separately incorporated public benefit, nonprofit corporations. An Electricity Oversight Board is also established to oversee the Independent System Operator and the Power Exchange. The Oversight Board has the exclusive right to approve procedures for the election, submission for confirmation, and qualification for Independent System Operator and Power Exchange governing board members, all of whom are required to be electricity consumers in the area served by the Independent System Operator and the Power Exchange. The governing boards are required to include representatives of investor-owned utility transmission owners, publicly owned utility transmission owners, nonutility electricity sellers, public buyers and sellers, private buyers and sellers, industrial end users, commercial end users, residential end users, agricultural end users,

public interest groups, and nonmarket participant representatives. A simple majority of each board is required to consist of persons who are themselves unaffiliated with electric generation, transmission, or distribution corporations. The structural composition of the governing boards existing on July 1, 1999, is required to remain in effect until an agreement with a participating state is legally in effect. However, prior to that agreement, the state retains the right to change each governing board into a nonstakeholder board. If that legislative change occurs, revised bylaws are required to be filed with the Federal Energy Regulatory Commission under a specified provision of federal law.

This bill, instead, would require that, within 90 days of the effective date of the bill, the existing Independent System Operator and Power Exchange governing boards be replaced by 3-member independent governing boards of directors appointed by the Governor.

The bill would prohibit a member of the independent governing board appointed by the Governor from being affiliated with any actual or potential participant in any market administered by the Independent System Operator or the Power Exchange.

The bill would prohibit the Independent System Operator from entering into a multistate entity or a regional organization unless that entry is approved by the board. Since a violation of the act is a crime, this bill would impose a state-mandated local program by establishing a new crime.

The bill would require the board to require the articles of incorporation and bylaws of the Independent System Operator and the Power Exchange to be revised, and to make filings with the Federal Energy Regulatory Commission as the board determines to be necessary.

The bill would make other, conforming changes in existing law.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



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

SECTION 1. Section 335 of the Public Utilities Code is amended to read:

335. In order to ensure that the interests of the people of California are served, a five-member Electricity Oversight Board is hereby created as provided in Section 336. For purposes of this chapter, any reference to the Oversight Board shall mean the Electricity Oversight Board. Its functions shall be all of the following:

(a) To oversee the Independent System Operator and the Power Exchange.

~~(b) To determine the composition and terms of service and to exercise the exclusive right to decline to confirm the appointments of specific members of the governing boards of the Independent System Operator and the Power Exchange, as specified in subdivision (d).~~

(c) To serve as an appeal board for majority decisions of the Independent System Operator governing board, as they relate to matters subject to exclusive state jurisdiction, as specified in Section 339.

~~(d) Those members of the Independent System Operator and Power Exchange governing boards whose appointments the Oversight Board has the exclusive right to decline to confirm include proposed governing board members representing agricultural end-users, industrial end-users, commercial end-users, residential end-users, end-users at large, nonmarket participants, and public interest groups.~~

SEC. 2. Section 337 of the Public Utilities Code is repealed:

~~337. The Oversight Board shall have the exclusive right to approve procedures for the election and submission for confirmation and the qualifications for Independent System Operator governing board members specified in subdivision (d) of Section 335, all of whom shall be required to be electricity consumers in the area served by the Independent System Operator. The Independent System Operator governing board shall include, but not be limited to, representatives of investor-owned utility transmission owners, publicly owned utility transmission owners, nonutility electricity sellers, public buyers and sellers, private buyers and sellers, industrial end-users, commercial end-users,~~

~~residential end-users, agricultural end-users, public interest groups, and nonmarket participant representatives. A simple majority of the board shall consist of persons who are themselves unaffiliated with electric generation, transmission or distribution corporations. The structural composition of the Independent System Operator governing board existing on July 1, 1999, shall remain in effect until an agreement with a participating state is legally in effect. However, prior to such an agreement, California shall retain the right to change the Independent System Operator governing board into a nonstakeholder board. In the event of such a legislative change, revised bylaws shall be filed with the Federal Energy Regulatory Commission under Section 205 of the Federal Power Act (16 U.S.C.A. Sec. 824d).~~

SEC. 3. Section 337 is added to the Public Utilities Code, to read:

337. (a) Within 90 days of the effective date of the act adding this section, the existing Independent System Operator governing board shall be replaced by a three-member independent governing board of directors appointed by the Governor. Any reference in this chapter or in any other provision of law to the Independent System Operator governing board means the independent governing board appointed under this subdivision.

(b) A member of the independent governing board appointed under subdivision (a) may not be affiliated with any actual or potential participant in any market administered by the Independent System Operator.

(c) (1) All appointments shall be for one-year terms.

(2) There is no limit on the number of terms that may be served by any member.

(d) The Oversight Board shall require the articles of incorporation and bylaws of the Independent System Operator to be revised in accordance with this section, and shall make filings with the Federal Energy Regulatory Commission as the Oversight Board determines to be necessary.

SEC. 4. Section 338 of the Public Utilities Code is repealed:

~~338. The Oversight Board shall have the exclusive right to approve procedures and the qualifications for Power Exchange governing board members specified in subdivision (d) of Section 335, all of whom shall be required to be electricity customers in the area served by the Power Exchange. The Power Exchange~~

~~governing board shall include, but not be limited to, representatives of investor-owned electric distribution companies, publicly owned electric distribution companies, nonutility generators, public buyers and sellers, private buyers and sellers, industrial end-users, commercial end-users, residential end-users, agricultural end-users, public interest groups, and nonmarket participant representatives. The structural composition of the Power Exchange governing board existing on July 1, 1999, shall remain in effect until an agreement with a participating state is legally in effect. However, prior to such an agreement, California shall retain the right to change the Power Exchange governing board into a nonstakeholder board. In the event of such a legislative change, revised bylaws shall be filed with the Federal Energy Regulatory Commission under Section 205 of the Federal Power Act (16 U.S.C.A. Sec. 824d).~~

SEC. 5. Section 338 is added to the Public Utilities Code, to read:

338. (a) Within 90 days of the effective date of the act adding this section, the existing Power Exchange governing board shall be replaced by a three-member independent governing board of directors appointed by the Governor. Any reference in this chapter or in any other provision of law to the Power Exchange governing board means the independent governing board appointed under this subdivision.

(b) A member of the independent governing board appointed under subdivision (a) may not be affiliated with any actual or potential participant in any market administered by the Power Exchange.

(c) (1) All appointments shall be for one-year terms.

(2) There is no limit on the number of terms that may be served by any member.

(d) The Oversight Board shall require the articles of incorporation and bylaws of the Power Exchange to be revised in accordance with this section, and shall make such filings with the Federal Energy Regulatory Commission as the Oversight Board determines to be necessary.

SEC. 6. Section 341.2 of the Public Utilities Code is amended to read:

341.2. The Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of

1 Division 3 of Title 2 of the Government Code) applies to meetings
2 of the Oversight Board. In addition to the allowances of that act,
3 the Oversight Board may hold a closed session to consider the
4 appointment of one or more candidates to the governing board of
5 the Independent System Operator or the Power Exchange;
6 ~~deliberate on matters involving the removal of a member of the~~
7 ~~governing board of the Independent System Operator or the Power~~
8 ~~Exchange~~, or to consider a matter based on information that has
9 received a grant of confidential status pursuant to regulations of
10 the Oversight Board, provided that any action taken on ~~any of these~~
11 ~~matters such a matter shall be taken by vote in an open session.~~

12 SEC. 7. Section 352 is added to the Public Utilities Code, to
13 read:

14 352. The Independent System Operator may not enter into a
15 multistate entity or a regional organization as authorized in Section
16 359 unless that entry is approved by the Oversight Board.

17 SEC. 8. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.

26 SEC. 9. This act is an urgency statute necessary for the
27 immediate preservation of the public peace, health, or safety
28 within the meaning of Article IV of the Constitution and shall go
29 into immediate effect. The facts constituting the necessity are:

30 In order to make the Independent System Operator and the
31 Power Exchange more accountable to the people of this state by
32 eliminating stakeholder governing boards, thereby acting to
33 mitigate the state's current energy crisis, it is necessary for this act
34 to take effect immediately.

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