

AMENDED IN SENATE JUNE 21, 2001

CALIFORNIA LEGISLATURE—2001–02 SECOND EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 28

**Introduced by Assembly Members Migden, Oropeza, and Diaz
(Coauthor: Assembly Member Cohn)**

May 17, 2001

An act to amend Section 335 of, and to add ~~Section 342~~ *Sections 341.6, 342, and 342.5* to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 28, as amended, Migden. Electrical restructuring: Oversight Board: Independent System Operator.

(1) The existing restructuring of the electrical services industry within the Public Utilities Act provides for the establishment of an Independent System Operator and a Power Exchange as separately incorporated public benefit, nonprofit corporations. An Electricity Oversight Board (Oversight Board) is also established to oversee the Independent System Operator and the Power Exchange in order to ensure the success of electric industry restructuring and to ensure a reliable supply of electricity in the transition to a new market structure. The Oversight Board is granted various powers in order to carry out these purposes.

This bill would expand the authority of the Oversight Board to act on any matters made subject to the approval or determination by the Oversight Board under law, and to investigate any matter and otherwise act consistent with these provisions to ensure that the interests of California's citizens and consumers are served, protected, and

represented in relation to the electric transmission grid and generation system and related costs, *including provisions for the production of information.*

The bill would require that electric generation and transmission facilities be subject to various prescribed availability standards. The bill would require the ~~Independent System Operator to annually prepare and submit to the~~ Oversight Board ~~a proposed protocol, in consultation with the Independent System Operator, to prepare and adopt protocols~~ for the scheduling of transmission and generation equipment outages for the purpose of maintenance, repair, or upgrade, ~~that is required to be reviewed, approved or revised by the Oversight Board after notice and public hearing.~~ The bill would require the Independent System Operator to ~~utilize the approved protocol for the purpose of scheduling maintenance or other planned outages of equipment and to submit a coordinated outage plan to the Oversight Board and to prepare and adopt a schedule of outages in accordance with those protocols.~~ The bill would require the Oversight Board to ~~direct the~~ Independent System Operator to develop and submit ~~to the board and the commission~~ proposed generation facility maintenance ~~criteria for approval by the Oversight Board after notice and public hearing, operating, and availability standards.~~ The bill would ~~require the Independent System Operator to maintain records of generation facility outages and provide those records to the Oversight Board on a daily basis~~ *authorize the commission to adopt those standards and ensure compliance with those standards.* The bill would require entities that own or operate certain electric generating facilities to provide reports on a monthly basis to the ~~Oversight Board~~ *Independent System Operator* that identify any periods the facilities were unavailable to produce electricity or were available at reduced capacity. *The bill would require the Independent System Operator to transmit that information to the Oversight Board and the commission.* ~~The bill would authorize the Independent System Operator and the Oversight Board to engage in audits or inspection of facilities that fail to comply with procedures, criteria, or standards established pursuant to these provisions. The bill would require owners or operators of generation or transmission facilities to provide the Independent System Operator and the Oversight Board with information and access to the facilities as necessary to accomplish reasonable audits and inspections.~~

The bill would also impose certain requirements on electrical corporations having contracts with certain qualifying facilities or



cogeneration facilities. The bill would require a report of the operational status and availability of the facility to be provided to the Oversight Board on a daily basis. The bill would ~~authorize the Oversight Board to assess a monetary penalty against an owner or operator of a facility found to have failed to comply with criteria, standards, or procedures established pursuant to these provisions. Since~~ provide for the assessment of penalties by the commission for violations of these provisions. Because a violation of the Public Utilities Act is a crime under existing provisions of law, the bill would create a state-mandated local program by expanding the definition of a crime.

The bill would impose various duties on local publicly owned electric utilities relative to maintenance of generation and transmission facilities, and reporting of actual planned and nonplanned outages of facilities, thereby imposing a state-mandated local program.

(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.~~ 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

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

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

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

9 (b) (1) To exercise the exclusive right to decline to confirm the
10 appointments of members of the governing board of the
11 Independent System Operator.

12 (2) To determine the composition and terms of service and to
13 exercise the exclusive right to decline to confirm the appointments
14 of specific members of the governing board of the Power
15 Exchange.

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

20 (d) Those members of the Power Exchange governing board
21 whose appointments the Oversight Board has the exclusive right
22 to decline to confirm include proposed governing board members
23 representing agricultural end users, industrial end users,
24 commercial end users, residential end users, end users at large,
25 nonmarket participants, and public interest groups.

26 (e) To act on any matters made subject to approval or
27 determination by the Oversight Board under law.

28 (f) To investigate any matter and otherwise act consistent with
29 this chapter to ensure that the interests of California's citizens and
30 consumers are served, protected, and represented in relation to the
31 electric transmission grid and generation system and related costs.

32 SEC. 2. *Section 341.6 is added to the Public Utilities Code,*
33 *to read:*

34 341.6. (a) *With the consent of the Oversight Board, an*
35 *authorized officer of the Oversight Board may direct the inspection*
36 *or production of records, data, accounts, books, or documents of*
37 *the Independent System Operator or the Power Exchange that are*
38 *reasonably related to the public interest of the people of*
39 *California, including, but not limited to, the reliability,*
40 *availability, and cost of electric service to California consumers.*

(b) With the consent of the Oversight Board, an authorized officer of the Oversight Board may direct the production of information from an entity that owns or operates generation or transmission facilities located in California or that engages in the sale of electricity in California, related to the reliability, availability, or cost of electric service to California consumers.

(c) An entity providing information to the Oversight Board may request confidential treatment for specific information that it provides, which request shall be made at the time the request for information is received. The request for confidentiality shall specifically identify the information for which confidentiality is sought and the justification for that treatment. No information submitted under a request for confidentiality shall be open to public inspection or made public except pursuant to an order of the Oversight Board finding that confidential treatment is not warranted, which order shall be made after notice and opportunity for hearing. The Oversight Board may adopt orders governing the handling of information as appropriate to protect legitimate confidentiality.

(d) The Oversight Board may direct the Independent System Operator to report to the Oversight Board on those matters and at those times as the Oversight Board determines are necessary and appropriate to the exercise of its public oversight duties.

SEC. 3. Section 342 is added to the Public Utilities Code, to read:

342. (a) The Legislature finds and declares that electric generation and transmission facilities are critical infrastructure and their predictable availability is essential to the public welfare.

(b) Electric generation and transmission facilities shall be subject to ~~—availability standards~~ standards related to their availability, in accordance with this section.

(c) Owners or operators of electric generating facilities in the State of California shall comply with all protocols and standards approved or established pursuant to this chapter.

~~(d) The Independent System Operator shall prepare and submit to the Oversight Board, a proposed protocol for the scheduling of transmission and generation equipment outages for the purposes of maintenance, repair, or upgrade. The Independent System Operator shall resubmit this protocol, including any proposed revisions of the protocol, at least annually. The Oversight Board~~

~~1 shall review and approve or direct revision of the proposed
2 protocol as it determines is appropriate and necessary to protect the
3 public interest after notice and public hearing. The Independent
4 System Operator shall utilize an approved protocol for the purpose
5 of scheduling maintenance or other planned outages of equipment
6 including the preparation of a coordinated outage plan. The
7 Independent System Operator shall prepare and submit to the
8 Oversight Board, a coordinated outage plan that shall be updated
9 not less than once each quarter.~~

~~10 (e) The Independent System Operator shall develop and submit
11 to the Oversight Board proposed generation facility maintenance
12 criteria. The Oversight Board shall review the proposed
13 generation maintenance criteria and approve or direct revision of
14 the criteria as it determines necessary to protect the public interest
15 after notice and public hearing.~~

~~16 (f)–~~

*17 (d) On or before March 1, 2002, the Oversight Board, in
18 consultation with the Independent System Operator, shall prepare
19 and adopt protocols for the scheduling of transmission and
20 generation equipment outages for the purposes of maintenance,
21 repair, or upgrade.*

*22 (e) The Oversight Board, in consultation with the Independent
23 System Operator, shall prepare and adopt a schedule of
24 transmission and generation equipment outages according to the
25 protocols adopted pursuant to subdivision (d).*

*26 (f) The Oversight Board shall direct the Independent System
27 Operator to develop and submit to the Oversight Board and the
28 commission proposed generation facility maintenance, operating,
29 and availability standards. The Oversight Board shall adopt and
30 may, as necessary, make revisions to, the standards. In developing
31 standards, the Oversight Board and the Independent System
32 Operator shall take into consideration generation facilities
33 scheduled for retirement and valid warranties on generation
34 facilities. The commission may adopt these standards and ensure
35 compliance with these standards of owners and operators of
36 generation facilities subject to its jurisdiction.*

*37 (g) Nothing in this section is intended to modify or delay retrofit
38 of electrical generating facilities pursuant to Chapter 7
39 (commencing with Section 39910) of Part 2 of Division 26 of the
40 Health and Safety Code. The Oversight Board shall consult with*

1 *the State Air Resources Board and the appropriate local air*
 2 *pollution control districts and air quality management districts to*
 3 *coordinate scheduled outages to provide for compliance with those*
 4 *retrofits.*

5 (h) The Independent System Operator shall maintain records of
 6 generation facility outages and shall provide those records, *and*
 7 *any additional information as determined by the Oversight Board,*
 8 to the Oversight Board on a daily basis. Each entity that owns or
 9 operates an electric generating facility in California with a rated
 10 maximum combined capacity of ~~50~~ 10 megawatts or greater for all
 11 units at a single location, shall provide a monthly report to the
 12 Independent System Operator ~~and the Oversight Board~~ that
 13 identifies any periods during the preceding month when the
 14 facility was unavailable to produce electricity or was available
 15 only at reduced capacity. The report shall identify the reasons for
 16 any such *unscheduled* unavailability or reduced capacity:

17 ~~(g) The Independent System Operator and the Oversight Board~~
 18 ~~may engage in audits or inspection of facilities that fail to comply~~
 19 ~~with procedures, criteria, or standards established pursuant to this~~
 20 ~~section or for which compliance is in question. Owners or~~
 21 ~~operators of generation or transmission facilities shall provide~~
 22 ~~information and access to the Independent System Operator and~~
 23 ~~the Oversight Board as necessary to accomplish reasonable audit~~
 24 ~~or inspection. The Oversight Board may, on petition of the~~
 25 ~~Independent System Operator or acting on its own motion, and~~
 26 ~~after public notice and hearing, assess a monetary penalty against~~
 27 ~~the owner or operator of a facility found to have failed to comply~~
 28 ~~with criteria, standards, or procedures approved or established~~
 29 ~~pursuant to this section.~~

30 SEC. 3. ~~No reimbursement is required by this act pursuant to~~
 31 ~~Section 6 of Article XIII B of the California Constitution because~~
 32 ~~the only costs that may be incurred by a local agency or school~~
 33 ~~district will be incurred because this act creates a new crime or~~
 34 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
 35 ~~for a crime or infraction, within the meaning of Section 17556 of~~
 36 ~~the Government Code, or changes the definition of a crime within~~
 37 ~~the meaning of Section 6 of Article XIII B of the California~~
 38 ~~Constitution. The Independent System Operator shall~~
 39 ~~immediately transmit the information to the Oversight Board and~~
 40 ~~the commission.~~

1 (i) *The commission, in consultation with the Oversight Board,*
2 *shall adopt a penalty schedule applicable to any person or entity*
3 *who is in violation of any provision of this article.*

4 (j) *Upon request of the Oversight Board, the commission may*
5 *undertake proceedings related to assessing monetary penalties for*
6 *noncompliance.*

7 (k) *A court may provide injunctive relief to compel compliance*
8 *with plans, standards, or protocols established pursuant to this*
9 *section.*

10 (l) *This section does not apply to a local publicly owned electric*
11 *utility, as defined in subdivision (d) of Section 9604, or a city and*
12 *county operating as a public utility, furnishing electric service as*
13 *provided in Section 10001.*

14 (m) (1) *Except as otherwise provided in this subdivision, this*
15 *section shall not apply to nuclear powered generating facilities*
16 *that are federally regulated and subject to standards developed by*
17 *the Nuclear Regulatory Commission, and that participate as*
18 *members of the Institute of Nuclear Power Operations.*

19 (2) *The owner or operator of a nuclear powered generating*
20 *facility shall file with the Oversight Board an annual schedule of*
21 *maintenance, including repairs and upgrades, updated quarterly,*
22 *for each generating facility. The owner or operator of a nuclear*
23 *powered generating facility shall make good faith efforts to*
24 *conduct its maintenance in compliance with its filed plan and shall*
25 *report to the Oversight Board any significant variations from its*
26 *filed plan.*

27 (3) *The owner or operator of a nuclear powered generating*
28 *facility shall report on a monthly basis to the Oversight Board all*
29 *actual planned and unplanned outages of each facility during the*
30 *preceding month. The owner or operator of a nuclear powered*
31 *generating facility shall report on a daily basis to the Oversight*
32 *Board the daily operational status and availability of each facility.*

33 (n) (1) *Except as otherwise provided in this subdivision, this*
34 *section shall not apply to a qualifying small power production*
35 *facility or a qualifying cogeneration facility within the meaning of*
36 *Sections 201 and 210 of Title II of the federal Public Utility*
37 *Regulatory Policies Act of 1978 (16 U.S.C.A. Secs. 796(17),*
38 *796(18), and 824a-3), and the regulations adopted pursuant to*
39 *those sections by the Federal Energy Regulatory Commission (18*
40 *C.F.R. Secs. 292.101 to 292.602, inclusive).*

(2) *An electrical corporation that has a contract with a qualifying small power production facility, or a qualifying cogeneration facility, of 10 megawatts or greater shall report to the Oversight Board maintenance schedules for each facility, including all actual planned and unplanned outages of the facility and the daily operational status and availability of the facility. Each facility shall be responsible for directly reporting to the Oversight Board maintenance schedules for each facility, including all actual planned and unplanned outages of the facility and the daily operational status and availability of the facility, if that information is not provided to the electrical corporation pursuant to a contract.*

SEC. 4. Section 342.5 is added to the Public Utilities Code to read:

342.5. (a) Each local publicly owned electric utility that owns or operates generation or transmission facilities shall file with the Oversight Board an annual schedule of maintenance, updated quarterly, for all generation facilities of 10 megawatts or greater and all transmission facilities. A local publicly owned electric utility shall make good faith efforts to conduct its maintenance in compliance with its filed plan and shall report to the Oversight Board any significant variations from its filed plan.

(b) Each local publicly owned electric utility that owns or operates generation facilities of 10 megawatts or greater or transmission facilities shall report on a monthly basis to the Oversight Board all actual planned and unplanned outages of those facilities during the preceding month.

(c) Each local publicly owned electric utility that owns or operates generation facilities of 10 megawatts or greater or transmission facilities shall adopt standards for the maintenance of those facilities. Each local publicly owned electric utility shall file its standards with the Oversight Board. Each local publicly owned electric utility shall report the daily operational status and availability of its generation facilities to the Oversight Board on a daily basis.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty

1 *for a crime or infraction, within the meaning of Section 17556 of*
2 *the Government Code, or changes the definition of a crime within*
3 *the meaning of Section 6 of Article XIII B of the California*
4 *Constitution.*

5 *However, notwithstanding Section 17610 of the Government*
6 *Code, if the Commission on State Mandates determines that this*
7 *act contains other costs mandated by the state, reimbursement to*
8 *local agencies and school districts for those costs shall be made*
9 *pursuant to Part 7 (commencing with Section 17500) of Division*
10 *4 of Title 2 of the Government Code. If the statewide cost of the*
11 *claim for reimbursement does not exceed one million dollars*
12 *(\$1,000,000), reimbursement shall be made from the State*
13 *Mandates Claims Fund.*

O

