

AMENDED IN SENATE JULY 12, 2001

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

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An act to amend Section 335 of, and to add Sections 341.6, 342, and 342.5 to and repeal Sections 341.6, 342, and 9613 of, 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, *until the occurrence of a specified event*, 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 related to the wholesale market for electricity to ensure that the interests of California's citizens and consumers are served, protected, and represented in relation to the availability of electric transmission grid and generation system, and related costs, during periods of peak demand, including provisions for the production inspection and reproduction of certain information. The bill would enact confidentiality requirements and procedures applicable to information provided in this regard.~~

The bill would, *until the occurrence of a specified event*, require that electric generation and transmission facilities be subject to various ~~prescribed availability~~ standards *related to their availability*. The bill would, *until the occurrence of a specified event*, require the Oversight Board, in consultation with the *Public Utilities Commission and 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 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, operating, and availability standards *for generator units with a certain capacity*. The bill would 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~~ *units* to provide reports on a monthly basis to the Independent System Operator that identify any periods the ~~facilities~~ *units* 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 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 *and the commission* on a daily basis. The bill would 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 *and certain other local public entities* relative to maintenance of *certain* generation and transmission facilities, and reporting of actual planned and nonplanned outages of facilities, thereby imposing a state-mandated local program.

*The bill would require the Oversight Board to report to the Legislature in writing on a quarterly basis on its progress in implementing the provisions of this bill.*

*The bill would enact other related provisions.*

(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, 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:

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

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

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

(2) 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 board of the Power Exchange.

(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 Power Exchange governing board 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.

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

~~(f) To investigate any matter and otherwise act consistent with this chapter 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.~~

*(e) To investigate any matter related to the wholesale market for electricity to ensure that the interests of California's citizens and consumers are served, protected, and represented in relation to the availability of electric transmission and generation and related costs, during periods of peak demand.*

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

341.6. (a) ~~With the consent of the Oversight Board, an authorized officer of the Oversight Board may direct the inspection or production~~ *The Oversight Board may direct the inspection or reproduction* of records, data, accounts, books, or documents of the Independent System Operator or the Power Exchange that are reasonably related to the public interest of the people of California, including, but not limited to, the reliability, 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)~~

*(b) 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.*

*(c) Any person required to present information pursuant to this section to the Independent System Operator that may be requested by the Oversight Board may request that specific information be held in confidence.*

*(d) Information received by the Oversight Board pursuant to this section shall be held in confidence by the Oversight Board or aggregated to the extent necessary to assure confidentiality if public disclosure of the specific information or data would result in unfair competitive disadvantage to the person supplying the information.*

*(e) (1) Whenever the Oversight Board receives a request to publicly disclose unaggregated information, notice of the request or proposal shall be provided to the person submitting the information to the Oversight Board through the Independent System Operator. The notice shall indicate the form in which the information is to be released. Upon receipt of notice, the person submitting the information shall have 10 working days in which to respond to the notice to justify the claim of confidentiality on each specific item of information covered by the notice on the basis that*

- 1 public disclosure of the specific information would result in unfair  
2 competitive disadvantage to the person supplying the information.
- 3 (2) The Oversight Board shall consider the respondent's  
4 submittal in determining whether to publicly disclose the  
5 information submitted to it for which a claim of confidentiality is  
6 made. The Oversight Board shall issue a written decision that sets  
7 forth its reasons for making the determination whether each item  
8 of information for which a claim of confidentiality is made shall  
9 remain confidential or shall be publicly disclosed.
- 10 (f) The Oversight Board may not make public disclosure of  
11 information submitted to it pursuant to this section until 10  
12 working days after the Oversight Board has issued its written  
13 decision required in this section.
- 14 (g) No information submitted to the Oversight Board pursuant  
15 to this section shall be deemed confidential if the person submitting  
16 the information or data has made it public.
- 17 (h) Information submitted by the Independent System Operator  
18 to the Oversight Board pursuant to this section that has been  
19 determined to be confidential by the Federal Energy Regulatory  
20 Commission pursuant to federal law shall be deemed confidential  
21 by the Oversight Board.
- 22 (i) With respect to information submitted by the Independent  
23 System Operator to the Oversight Board pursuant to this section,  
24 neither the Oversight Board nor any employee of the Oversight  
25 Board shall do any of the following:
- 26 (1) Use the information furnished to the Oversight Board for  
27 any purpose other than the purpose for which it is supplied.
- 28 (2) Make any publication whereby the information furnished by  
29 any particular entity or individual to the Independent System  
30 Operator can be identified.
- 31 (3) Permit anyone other than members or employees of the  
32 Oversight Board to examine the information.
- 33 (j) The Oversight Board shall disclose to the commission any  
34 information requested by the commission if the commission agrees  
35 to keep the information confidential. With respect to the  
36 information it receives, the commission shall be subject to all  
37 pertinent provisions of this section.
- 38 (k) The Oversight Board may adopt emergency regulations to  
39 implement this section in accordance with the Administrative  
40 Procedure Act (Chapter 3.5 (commencing with Section 11340) of



*Part 1 of Division 3 of Title 2 of the Government Code). The adoption of emergency regulations pursuant to this section shall be deemed an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, and safety, or general welfare.*

*(l) (1) This section shall remain in effect only until a determination is made and notice thereof is provided pursuant to paragraph (2), and as of that date is repealed.*

*(2) Upon a determination by the Attorney General that the Oversight Board has been abolished, or merged with, or replaced by, another agency, or that the functions of the Oversight Board have been duplicated by statute, executive order, or otherwise, the chairperson of the commission shall submit a notice of that determination to the Secretary of State, and this section shall be repealed upon the receipt of that notice by the Secretary of State.*

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

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

(f) The Oversight Board shall direct the Independent System Operator to develop and submit to the Oversight Board and the commission proposed generation facility maintenance, operating, and availability standards *for generator units with a rated maximum capacity of 10 megawatts or greater.* The Oversight

1 Board shall adopt and may, as necessary, make revisions to, the  
2 standards. In developing standards, the Oversight Board and the  
3 Independent System Operator shall take into consideration  
4 generation facilities scheduled for retirement and valid warranties  
5 on generation facilities. The commission may adopt these  
6 standards and ensure compliance with these standards of owners  
7 and operators of generation facilities subject to its jurisdiction.  
8 *Nothing in this subdivision shall be construed to limit the*  
9 *commission's authority to develop facility maintenance,*  
10 *operating, and availability standards for generation facilities*  
11 *under the commission's jurisdiction.*

12 ~~(g) Nothing in this section is intended to modify or delay~~  
13 ~~retrofit of electrical generating facilities pursuant to Chapter 7~~  
14 ~~(commencing with Section 39910) of Part 2 of Division 26 of the~~  
15 ~~Health and Safety Code.~~

16 (g) *Nothing in this section shall result in the modification,*  
17 *delay, or abrogation of any deadline, standard, rule, or regulation*  
18 *adopted by a federal, state, or local agency for the purposes of*  
19 *protecting public health or the environment, including, but not*  
20 *limited to, any requirements imposed by the State Air Resources*  
21 *Board or by an air pollution control district or an air quality*  
22 *management district pursuant to Division 26 (commencing with*  
23 *Section 39000) of the Health and Safety Code.* The Oversight  
24 Board shall consult with the State Air Resources Board and the  
25 appropriate local air pollution control districts and air quality  
26 management districts to coordinate scheduled outages to provide  
27 for compliance with those retrofits.

28 (h) The Independent System Operator shall maintain records of  
29 generation facility outages and shall provide those records, and  
30 any additional information as determined by the Oversight Board,  
31 to the Oversight Board *and the commission* on a daily basis. Each  
32 entity that owns or operates an electric generating ~~facility~~ *unit* in  
33 California with a rated maximum ~~combined~~ capacity of 10  
34 megawatts or greater ~~for all units at a single location~~, shall provide  
35 a monthly report to the Independent System Operator that  
36 identifies any periods during the preceding month when the  
37 ~~facility~~ *unit* was unavailable to produce electricity or was available  
38 only at reduced capacity. The report shall identify the reasons for  
39 any such unscheduled unavailability or reduced capacity. The



1 Independent System Operator shall immediately transmit the  
2 information to the Oversight Board and the commission.

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

6 (j) Upon request of the Oversight Board, the commission may  
7 undertake proceedings related to assessing monetary penalties for  
8 noncompliance. *Nothing in this subdivision shall be construed to*  
9 *limit the commission's authority to initiate its own action for*  
10 *noncompliance.*

11 ~~(k) A court may provide injunctive relief to compel compliance~~  
12 ~~with plans, standards, or protocols established pursuant to this~~  
13 ~~section.~~

14 ~~(l) This section does not apply to a local publicly owned electric~~  
15 ~~utility, as defined in subdivision (d) of Section 9604, or a city and~~  
16 ~~county operating as a public utility, furnishing electric service as~~  
17 ~~provided in Section 10001.~~

18 (k) The Oversight Board, in consultation with the commission,  
19 may seek an injunction from a court of competent jurisdiction to  
20 require compliance with this section. This subdivision shall not  
21 limit any authority of the commission to seek injunctions within its  
22 jurisdiction.

23 (l) Except as provided in Section 9613, notwithstanding any  
24 other provision of law, neither the provisions of this section, nor  
25 any rules, regulations, standards, or protocols issued in  
26 furtherance of this section, nor the penalties described in  
27 subdivisions (i) and (j), shall apply to any of the following:

28 (1) A local publicly owned electric utility, as defined in  
29 subdivision (d) of Section 9604.

30 (2) Any public agency that may generate electricity incidental  
31 to the provision of water or water treatment.

32 (m) (1) Except as otherwise provided in this subdivision, this  
33 section shall not apply to nuclear powered generating facilities that  
34 are federally regulated and subject to standards developed by the  
35 Nuclear Regulatory Commission, and that participate as members  
36 of the Institute of Nuclear Power Operations.

37 (2) The owner or operator of a nuclear powered generating  
38 facility shall file with the Oversight Board *and the commission* an  
39 annual schedule of maintenance, including repairs and upgrades,  
40 updated quarterly, for each generating facility. The owner or

operator of a nuclear powered generating facility 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.

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

(n) (1) Except as otherwise provided in this subdivision, this section shall not apply to a qualifying small power production facility or a qualifying cogeneration facility within the meaning of Sections 201 and 210 of Title II of the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C.A. Secs. 796(17), 796(18), and 824a-3), and the regulations adopted pursuant to those sections by the Federal Energy Regulatory Commission (18 C.F.R. Secs. 292.101 to 292.602, inclusive), *nor shall this section apply to other generation units installed, operated, and maintained at a customer site exclusively to serve that customer's load.*

(2) An electrical corporation that has a contract with a qualifying small power production facility, or a qualifying cogeneration facility, *with a name plate rating of 10 megawatts or greater* shall report to the Oversight Board *and the commission* 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 *with a name plate rating of 10 megawatts or greater* 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 preceeding 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.~~

~~(o) (1) This section shall remain in effect only until a determination is made and notice thereof is provided pursuant to paragraph (2), and as of that date is repealed.~~

~~(2) Upon a determination by the Attorney General that the Oversight Board has been abolished, or merged with, or replaced by, another agency, or that the functions of the Oversight Board have been duplicated by statute, executive order, or otherwise, the chairperson of the commission shall submit a notice of that determination to the Secretary of State, and this section shall be repealed upon the receipt of that notice by the Secretary of State.~~

~~SEC. 4. Section 9613 is added to the Public Utilities Code, to read:~~

~~9613. (a) Each local publicly owned electric utility, or public agency that may generate electricity incidental to the provision of water or water treatment, shall file with the Oversight Board an annual schedule of maintenance, updated quarterly, for all generation units with a rated maximum capacity of 10 megawatts or greater and all transmission facilities. A local publicly owned electric utility, or public agency that may generate electricity incidental to the provision of water or water treatment, shall make good faith efforts to conduct its maintenance in compliance with~~

1 *its filed plan and shall report to the Oversight Board any*  
2 *significant variations from its filed plan.*

3 *(b) Each local publicly owned electric utility, or public agency*  
4 *that may generate electricity incidental to the provision of water*  
5 *or water treatment that owns or operates generation units with a*  
6 *rated maximum of 10 megawatts or greater or transmission*  
7 *facilities shall report on a monthly basis to the Oversight Board all*  
8 *actual planned and unplanned outages of those generating units*  
9 *and transmission facilities during the preceding month.*

10 *(c) Each local publicly owned electric utility, or public agency*  
11 *that may generate electricity incidental to the provision of water*  
12 *or water treatment, that owns or operates generation units with a*  
13 *rated maximum of 10 megawatts or greater or transmission*  
14 *facilities shall adopt standards for the maintenance of those*  
15 *generating units and transmission facilities. Each local publicly*  
16 *owned electric utility, or public agency that may generate*  
17 *electricity incidental to the provision of water or water treatment,*  
18 *shall file its standards with the Oversight Board. Each local*  
19 *publicly owned electric utility, or public agency that may generate*  
20 *electricity incidental to the provision of water or water treatment,*  
21 *shall report the daily operational status and availability of its*  
22 *generation units with a rated maximum of 10 megawatts and its*  
23 *transmission facilities to the Oversight Board on a daily basis.*

24 *(d) (1) This section shall remain in effect only until a*  
25 *determination is made and notice thereof is provided pursuant to*  
26 *paragraph (2), and as of that date is repealed.*

27 *(2) Upon a determination by the Attorney General that the*  
28 *Oversight Board has been abolished, or merged with, or replaced*  
29 *by, another agency, or that the functions of the Oversight Board*  
30 *have been duplicated by statute, executive order, or otherwise, the*  
31 *chairperson of the commission shall submit a notice of that*  
32 *determination to the Secretary of State, and this section shall be*  
33 *repealed upon the receipt of that notice by the Secretary of State.*

34 *SEC. 5. The Oversight Board shall report in writing to the*  
35 *appropriate policy committees of the Legislature on a quarterly*  
36 *basis on its progress in implementing this act. The report shall*  
37 *include, but need not be limited to, information concerning outage*  
38 *scheduling and coordination, compliance with standards by*  
39 *owners of generating and transmission facilities, and wholesale*  
40 *price fluctuations.*

1     *SEC. 6.* No reimbursement is required by this act pursuant to  
2 Section 6 of Article XIII B of the California Constitution for  
3 certain costs that may be incurred by a local agency or school  
4 district because in that regard this act creates a new crime or  
5 infraction, eliminates a crime or infraction, or changes the penalty  
6 for a crime or infraction, within the meaning of Section 17556 of  
7 the Government Code, or changes the definition of a crime within  
8 the meaning of Section 6 of Article XIII B of the California  
9 Constitution.

10     However, notwithstanding Section 17610 of the Government  
11 Code, if the Commission on State Mandates determines that this  
12 act contains other costs mandated by the state, reimbursement to  
13 local agencies and school districts for those costs shall be made  
14 pursuant to Part 7 (commencing with Section 17500) of Division  
15 4 of Title 2 of the Government Code. If the statewide cost of the  
16 claim for reimbursement does not exceed one million dollars  
17 (\$1,000,000), reimbursement shall be made from the State  
18 Mandates Claims Fund.

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