

AMENDED IN SENATE AUGUST 21, 2001

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

---

---

An act to amend Section 335 of, and to add 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~~ authorize the Oversight Board 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, ~~including provisions for the inspection and reproduction of certain information.~~ *The bill would delete a provision relating to the authority of the Oversight Board to exercise the exclusive right to decline to confirm the appointments of the governing board of the Independent System Operator.*

*The bill, until January 1, 2003, or the occurrence of a specified event, whichever is earlier, would authorize the Oversight Board to direct the inspection or reproduction of records of the Independent System Operator or the Power Exchange. The bill would authorize the Oversight Board to direct the Independent System Operator to report to the Oversight Board, as specified. The bill would enact confidentiality requirements and procedures applicable to information provided in this regard. The bill would require the Public Utilities Commission to treat specified information received from the Oversight Board in accordance with a prescribed confidentiality provision, the violation of which provision would make certain commission officers or employees guilty of a misdemeanor. By creating a new crime, the bill would impose a state-mandated local program.*

The bill ~~would~~, until January 1, 2003, or the occurrence of a specified event, *whichever is earlier, would require that electric generation and transmission facilities be subject to various 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~~ *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~~ *Oversight 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 units to provide reports on a monthly basis to the Independent System Operator that identify any periods the 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, *until January 1, 2003, or the occurrence of a specified event, whichever is earlier*, 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.~~

*The bill would provide that its provisions shall become operative only if SB 39 of the Second Extraordinary Session of 2001–02 is enacted and becomes effective.*

(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:*

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

~~(2)~~

(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 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 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) 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

1 reasonably related to the public interest of the people of California,  
2 including, but not limited to, the reliability, availability, and cost  
3 of electric service to California consumers.

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

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

12 ~~(d)~~

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

19 ~~(e)~~

20 (d) (1) Whenever the Oversight Board receives a request to  
21 publicly disclose unaggregated information, notice of the request  
22 or proposal shall be provided to the person submitting the  
23 information to the Oversight Board through the Independent  
24 System Operator. The notice shall indicate the form in which the  
25 information is to be released. Upon receipt of notice, the person  
26 submitting the information shall have 10 working days in which  
27 to respond to the notice to justify the claim of confidentiality on  
28 each specific item of information covered by the notice on the  
29 basis that public disclosure of the specific information would  
30 result in unfair competitive disadvantage to the person supplying  
31 the information.

32 (2) The Oversight Board shall consider the respondent's  
33 submittal in determining whether to publicly disclose the  
34 information submitted to it for which a claim of confidentiality is  
35 made. The Oversight Board shall issue a written decision that sets  
36 forth its reasons for making the determination whether each item  
37 of information for which a claim of confidentiality is made shall  
38 remain confidential or shall be publicly disclosed.

39 ~~(f)~~

(e) The Oversight Board may not make public disclosure of information submitted to it pursuant to this section until 10 working days after the Oversight Board has issued its written decision required in this section.

~~(g)~~

(f) No information submitted to the Oversight Board pursuant to this section shall be deemed confidential if the person submitting the information or data has made it public.

~~(h) Information submitted by the Independent System Operator to the Oversight Board pursuant to this section that has been determined to be confidential by the Federal Energy Regulatory Commission pursuant to federal law shall be deemed confidential by the Oversight Board.~~

~~(i)~~

(g) With respect to information submitted by the Independent System Operator to the Oversight Board pursuant to this section, neither the Oversight Board nor any employee of the Oversight Board shall do any of the following:

(1) Use the information furnished to the Oversight Board for any purpose other than the purpose for which it is supplied.

(2) Make any publication whereby the information furnished by any particular entity or individual to the Independent System Operator can be identified.

(3) Permit anyone other than members or employees of the Oversight Board to examine the information.

~~(j)~~

(h) The Oversight Board shall disclose to the commission any information requested by the commission ~~if the commission agrees to keep the information confidential for the purpose of implementing this division. The commission shall treat information received pursuant to this section in accordance with Section 583 and shall specifically provide for the confidentiality of records and protection of propriety information.~~ With respect to the information it receives from the Oversight Board, the commission shall be subject to all the pertinent provisions of this section.

~~(k)~~

(i) The Oversight Board may adopt emergency regulations to implement this section in accordance with the Administrative 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.

~~(i) (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.~~

~~(j) This section shall remain in effect until the earlier of either of the following occurs, and as of that date is repealed:~~

~~(1) (A) A determination is made and notice thereof is provided pursuant to subparagraph (B).~~

~~(B) 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 Attorney General 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.~~

~~(2) January 1, 2003.~~

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



1 Operator, shall prepare and adopt protocols for the scheduling of  
2 transmission and generation equipment outages for the purposes  
3 of maintenance, repair, or upgrade.

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

8 (f) The Oversight Board shall direct the Independent System  
9 Operator to develop and submit to the Oversight Board and the  
10 commission proposed generation facility maintenance, operating,  
11 and availability standards for generator units with a rated  
12 maximum capacity of 10 megawatts or greater. The Oversight  
13 Board shall adopt and may, as necessary, make revisions to, the  
14 standards. In developing standards, the Oversight Board and the  
15 Independent System Operator shall take into consideration  
16 generation facilities scheduled for retirement and valid warranties  
17 on generation facilities. The commission may adopt these  
18 standards and ensure compliance with these standards of owners  
19 and operators of generation facilities subject to its jurisdiction.  
20 Nothing in this subdivision shall be construed to limit the  
21 commission's authority to develop facility maintenance,  
22 operating, and availability standards for generation facilities under  
23 the commission's jurisdiction.

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

36 (h) The Independent System Operator shall maintain records of  
37 generation facility outages and shall provide those records, and  
38 any additional information as determined by the Oversight Board,  
39 to the Oversight Board and the commission on a daily basis. Each  
40 entity that owns or operates an electric generating unit in



California with a rated maximum capacity of 10 megawatts or greater, shall provide a monthly report to the Independent System Operator that identifies any periods during the preceding month when the unit was unavailable to produce electricity or was available only at reduced capacity. The report shall identify the reasons for any such unscheduled unavailability or reduced capacity. The Independent System Operator shall immediately transmit the information to the Oversight Board and the commission.

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

~~(j) Upon request of the Oversight Board, the commission may~~

*(j) The Oversight Board may request the commission to undertake proceedings related to assessing monetary penalties for noncompliance. Nothing in this subdivision shall be construed to limit the commission's authority to initiate its own action for noncompliance.*

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

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

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

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

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

(2) The owner or operator of a nuclear powered generating facility shall file with the Oversight Board and the commission an annual schedule of maintenance, including repairs and upgrades,

1 updated quarterly, for each generating facility. The owner or  
2 operator of a nuclear powered generating facility shall make good  
3 faith efforts to conduct its maintenance in compliance with its filed  
4 plan and shall report to the Oversight Board any significant  
5 variations from its filed plan.

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

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

23 (2) An electrical corporation that has a contract with a  
24 qualifying small power production facility, or a qualifying  
25 cogeneration facility, with a name plate rating of 10 megawatts or  
26 greater shall report to the Oversight Board and the commission  
27 maintenance schedules for each facility, including all actual  
28 planned and unplanned outages of the facility and the daily  
29 operational status and availability of the facility. Each facility with  
30 a name plate rating of 10 megawatts or greater shall be responsible  
31 for directly reporting to the Oversight Board maintenance  
32 schedules for each facility, including all actual planned and  
33 unplanned outages of the facility and the daily operational status  
34 and availability of the facility, if that information is not provided  
35 to the electrical corporation pursuant to a contract.

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

39 ~~(2) Upon a determination by the Attorney General that the~~  
40 ~~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.

(o) This section shall remain in effect until the earlier of either of the following occurs, and as of that date is repealed:

(1) (A) A determination is made and notice thereof is provided pursuant to subparagraph (B).

(B) 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 Attorney General 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.

(2) January 1, 2003.

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~~ wastewater 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~~ wastewater treatment, 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, or public agency that may generate electricity incidental to the provision of water or ~~water~~ wastewater treatment that owns or operates generation units with a rated maximum 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 generating units and transmission facilities during the preceding month.

(c) Each local publicly owned electric utility, or public agency that may generate electricity incidental to the provision of water

1 or ~~water~~ wastewater treatment, that owns or operates generation  
2 units with a rated maximum of 10 megawatts or greater or  
3 transmission facilities shall adopt standards for the maintenance of  
4 those generating units and transmission facilities. Each local  
5 publicly owned electric utility, or public agency that may generate  
6 electricity incidental to the provision of water or ~~water~~ wastewater  
7 treatment, shall file its standards with the Oversight Board. Each  
8 local publicly owned electric utility, or public agency that may  
9 generate electricity incidental to the provision of water or ~~water~~  
10 wastewater treatment, shall report the daily operational status and  
11 availability of its generation units with a rated maximum of 10  
12 megawatts and its transmission facilities to the Oversight Board on  
13 a daily basis.

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

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

24 ~~(d) This section shall remain in effect until the earlier of either~~  
25 ~~of the following occurs, and as of that date is repealed:~~

26 ~~(1) (A) A determination is made and notice thereof is provided~~  
27 ~~pursuant to subparagraph (B).~~

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

35 ~~(2) January 1, 2003.~~

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

1 owners of generating and transmission facilities, and wholesale  
2 price fluctuations.

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

12 However, notwithstanding Section 17610 of the Government  
13 Code, if the Commission on State Mandates determines that this  
14 act contains other costs mandated by the state, reimbursement to  
15 local agencies and school districts for those costs shall be made  
16 pursuant to Part 7 (commencing with Section 17500) of Division  
17 4 of Title 2 of the Government Code. If the statewide cost of the  
18 claim for reimbursement does not exceed one million dollars  
19 (\$1,000,000), reimbursement shall be made from the State  
20 Mandates Claims Fund.

21 SEC. 7. *This act shall become operative only if Senate Bill 39*  
22 *of the Second Extraordinary Session of 2001–02 is enacted and*  
23 *becomes effective.*

O

