

AMENDED IN SENATE JUNE 25, 2002

AMENDED IN SENATE APRIL 8, 2002

AMENDED IN ASSEMBLY MAY 31, 2001

AMENDED IN ASSEMBLY APRIL 30, 2001

AMENDED IN ASSEMBLY MARCH 27, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 80**

**Introduced by Assembly Member Havice**

*(Principal coauthor: Senator Karnette)*

*(Coauthor: Senator Soto)*

*(Coauthors: Assembly Members Correa, Lowenthal, Robert  
Pacheco, and Wesson)*

January 4, 2001

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An act to add Section 366.1 to the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 80, as amended, Havice. Aggregation: Magnolia Power Project.

Existing law suspends the right of retail end-use customers to acquire direct access service from certain electricity suppliers after a period of time to be determined by the Public Utilities Commission until the Department of Water Resources no longer supplies electricity under a certain provision of law.

This bill would provide that, notwithstanding the above provision of law, a city with rights and obligations to the Magnolia Power Project, as defined, may serve as a community aggregator on behalf of all retail end-use customers within its jurisdiction. ~~The bill would also prohibit customers receiving community aggregation service from a city with rights and obligations to the Magnolia Power Project from bearing any greater share of the Department of Water Resources revenue requirement than customers receiving service under an existing contract for direct access between a retail end-use customer and an electric service provider that was executed and effective after January 17, 2001, and on or before July 1, 2001., if the Magnolia Power Project has been constructed and is otherwise capable of beginning deliveries of electricity to the existing project participants. This provision would not become operative until the commission implements a cost-recovery mechanism applicable to customers electing to purchase electricity from an alternate provider beginning February 1, 2001, in accordance with specified criteria that are declared to be declaratory of existing law, and submits a report on that implementation to specified committees of the the Legislature. The bill would require retail end-use customers purchasing power from a community aggregator to reimburse the department and the electrical corporation that previously serviced the customer, for specified costs, as determined by the commission.~~ Because under the Public Utilities Act a violation of an order or decision of the commission is a crime, this bill would impose a state-mandated local program by expanding the definition of a crime.

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.

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. (a) It is the intent of the Legislature, in enacting
- 2 the act adding this section, to recognize contributions made in
- 3 response to California's need for the expedited investment in and



1 development of new environmentally superior electrical  
2 generation projects.

3 (b) It is further the intent of the Legislature to avoid the  
4 potential delay in adding new electrical generating capacity that  
5 might be caused if certain project participants are not allowed to  
6 utilize community aggregation to deliver their share of the project  
7 output to customers within their jurisdiction.

8 SEC. 2. Section 366.1 is added to the Public Utilities Code, to  
9 read:

10 366.1. (a) As used in this section, the following terms have  
11 the following meanings:

12 (1) "Department" means the Department of Water Resources  
13 with respect to its power program described in Chapter 2  
14 (commencing with Section 80100) of Division 27 of the Water  
15 Code.

16 (2) "Existing project participant" means a city with rights and  
17 obligations to the Magnolia Power Project under ~~that certain the~~  
18 Magnolia Power Project Planning Agreement, dated May 1, 2001.

19 (3) "Magnolia Power Project" means a proposed natural  
20 gas-fired electric generating facility to be located at an existing site  
21 in Burbank and for which an application for certification has been  
22 filed with the State Energy Resources Conservation and  
23 Development Act (Docket No. 00-SIT-1) and deemed data  
24 adequate pursuant to the expedited six-month licensing process  
25 established under Section 25550 of the Public Resources Code.

26 ~~(4) "Existing direct access contract" means a contract for~~  
27 ~~direct access between a retail end-use customer and an electric~~  
28 ~~service provider that was executed and made effective after~~  
29 ~~January 17, 2001, and on or before July 1, 2001.~~

30 (b) Notwithstanding Section 80110 of the Water Code or  
31 commission Decision 01-09-060, *if the Magnolia Power Project*  
32 *has been constructed and is otherwise capable of beginning*  
33 *deliveries of electricity to the existing project participants*, an  
34 existing project participant may serve as a community aggregator  
35 on behalf of all retail end-use customers within its jurisdiction.

36 ~~(c) In determining cost responsibility for a share of the~~  
37 ~~department's revenue requirement pursuant to Section 80110 of~~  
38 ~~the Water Code, customers receiving community aggregation~~  
39 ~~service from an existing project participant shall bear no greater~~

1 ~~share of the department's costs than customers receiving service~~  
2 ~~under an existing direct access contract.~~

3 (c) Subdivision (b) shall not become operative until both of the  
4 following occur:

5 (1) The commission implements a cost-recovery mechanism,  
6 consistent with subdivision (d), that is applicable to customers that  
7 elected to purchase electricity from an alternate provider between  
8 February 1, 2001, and the effective date of the act adding this  
9 section.

10 (2) The commission submits a report certifying its satisfaction  
11 of paragraph (1) to the Senate Energy, Utilities and  
12 Communications Committee, or its successor, and the Assembly  
13 Committee on Utilities and Commerce, or its successor.

14 (d) (1) It is the intent of the Legislature that each retail end-use  
15 customer that has purchased power from an electrical corporation  
16 on or after February 1, 2001, regardless of whether the customer  
17 thereafter takes service from an alternate provider, including a  
18 community aggregator, bear a pro rata share of the department's  
19 power purchase costs, as well as power purchase contract  
20 obligations incurred as of the effective date of this subdivision, that  
21 are recoverable from electrical corporation customers in  
22 commission-approved rates. It is the further intent of the  
23 Legislature to prevent any shifting of recoverable costs from  
24 customers who take service from an alternate provider, including  
25 a community aggregator, to electrical corporation customers.

26 (2) To the extent that any shifting of recoverable costs would  
27 occur, in the determination of the commission, those costs shall be  
28 recovered from each customer class in proportion to the load of  
29 each class that is served by alternate providers, including  
30 community aggregators.

31 (3) The Legislature finds and declares that the revisions of this  
32 subdivision are consistent with the requirements of Chapter 4 of the  
33 Statutes of 2001, First Extraordinary Session, and do not  
34 constitute a change in, but are declaratory of, existing law.

35 (e) A retail end-use customer purchasing power from a  
36 community aggregator pursuant to subdivision (b) shall reimburse  
37 the department for all of the following:

38 (1) A charge equivalent to the charge which would otherwise  
39 be imposed on the customer by the commission to recover bond  
40 related costs pursuant to an agreement between the commission

1 *and the Department of Water Resources pursuant to Section 80110*  
2 *of the Water Code, which charge shall be payable until all*  
3 *obligations of the Department of Water Resources pursuant to*  
4 *Division 27 of the Water Code are fully paid or otherwise*  
5 *discharged.*

6 *(2) The costs of the department, equal to the share of the*  
7 *department's estimated net unavoidable power purchase contract*  
8 *costs attributable to the customer, as determined by the*  
9 *commission, for the period commencing with the customer's*  
10 *purchases of electricity from a community aggregator, through the*  
11 *expiration of all then existing power purchase contracts entered*  
12 *into by the department.*

13 *(f) A retail end-use customer purchasing power from a*  
14 *community aggregator pursuant to subdivision (b) shall reimburse*  
15 *the electrical corporation that previously served the customer for*  
16 *all of the following:*

17 *(1) The electrical corporation's unrecovered past*  
18 *undercollections, including all financing costs attributable to that*  
19 *customer; that the commission lawfully determines may be*  
20 *recovered in rates.*

21 *(2) The costs of the electrical corporation recoverable in*  
22 *commission-approved rates, equal to the share of the electrical*  
23 *corporation's estimated net unavoidable power purchase contract*  
24 *costs attributable to the customer, as determined by the*  
25 *commission, for the period commencing with the customer's*  
26 *purchases of electricity from the community aggregator, through*  
27 *the expiration of all then existing power purchase contracts*  
28 *entered into by the electrical corporation.*

29 *(g) (1) A charge or cost imposed pursuant to subdivision (e),*  
30 *and all revenues received to pay the charge or cost, shall be the*  
31 *property of the Department of Water Resources. A charge or cost*  
32 *imposed pursuant to subdivision (f), and all revenues received to*  
33 *pay the charge or cost, shall be the property of the particular*  
34 *electrical corporation. The commission shall establish*  
35 *mechanisms, including agreements with, or orders with respect to,*  
36 *electrical corporations necessary to assure that the revenues*  
37 *received to pay a charge or cost payable pursuant to this section*  
38 *are promptly remitted to the party entitled to those revenues.*

39 *(2) A charge or cost imposed pursuant to this section shall be*  
40 *nonbypassable.*

1 SEC. 3. The Legislature finds and declares that, because of the  
2 unique circumstances applicable only to the Magnolia Power  
3 Project and a city with rights and obligations to the Magnolia  
4 Power Project under the Magnolia Power Project Planning  
5 Agreement dated May 1, 2001, a statute of general applicability  
6 cannot be enacted within the meaning of subdivision (b) of Section  
7 16 of Article IV of the California Constitution. Therefore, this  
8 special statute is necessary.

9 SEC. 4. No reimbursement is required by this act pursuant to  
10 Section 6 of Article XIII B of the California Constitution because  
11 the only costs that may be incurred by a local agency or school  
12 district will be incurred because this act creates a new crime or  
13 infraction, eliminates a crime or infraction, or changes the penalty  
14 for a crime or infraction, within the meaning of Section 17556 of  
15 the Government Code, or changes the definition of a crime within  
16 the meaning of Section 6 of Article XIII B of the California  
17 Constitution.

