

AMENDED IN SENATE AUGUST 27, 2001
AMENDED IN SENATE AUGUST 20, 2001
AMENDED IN SENATE JULY 11, 2001
AMENDED IN ASSEMBLY JUNE 20, 2001
AMENDED IN ASSEMBLY JUNE 13, 2001

CALIFORNIA LEGISLATURE—2001–02 SECOND EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 57

**Introduced by Assembly Members Wiggins, Alquist, and
Thomson**

May 24, 2001

An act to amend Section 11652 of the ~~Public Utilities Code~~, to add Section 9618 to, the *Public Utilities Code*, to amend Sections 22475 and 22476 of, to add Section 24252.1 to, and to add Article 9 (commencing with Section 22200) to Chapter 1 of Part 5 of Division 1 of, the *Water Code*, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 57, as amended, Wiggins. Municipal utility districts *and irrigation districts*: public agencies.

(1) *Existing law relating to the restructuring of the electrical services industry regulates local publicly owned electric utilities.*

The bill would establish procedures under which a local publicly owned utility may provide retail electric or gas service, or both, within city limits or in the unincorporated portions of a county, including the acquisition of public utility assets.

The bill would provide that if the electrical or gas corporation providing service is under the jurisdiction of a federal bankruptcy court, an offer by a local publicly owned utility to purchase its assets at book value, as defined, or greater is in the best interests of the electrical or gas corporation's shareholders, its rate payers, and the public.

(2) Existing law authorizes any public agency together with unincorporated territory, or 2 or more public agencies, with or without unincorporated territory, to organize and incorporate as a municipal utility district by filing a resolution or petition. Existing law requires the board of supervisors to whom the resolution or petition is presented to call an election within the proposed district and to canvass the returns of each public agency and each parcel of unincorporated territory. The board of supervisors is required to order and declare the district created and established of the public agencies and territory in which a majority of those who voted did so in favor of the creation of the district if the total number of voters in the approving public agencies and territory is not less than $\frac{2}{3}$ the number of voters within the district as first proposed, according to the register used at the election.

This bill would recast and reorganize these provisions. The bill would require that the number of registered voters in the approving public agencies and territory be not less than $\frac{2}{3}$ the number of registered voters within the district as proposed to the voters, in order to declare the district created where a majority of those who voted did so in favor of the district. The bill would provide that those public agencies and parcels of unincorporated territory in which a majority of those persons voting did not vote in favor of the creation of the district shall be excluded from the district.

~~(2)~~

(3) *The Irrigation District Law provides for the formation of irrigation districts and grants powers to those districts relating to, among other things, water, electric power, flood control, and sewage disposal. The district law specifically authorizes a district to construct and operate electric light and power lines, but prohibits a district from doing so within any city unless permission granted by the governing body of the city.*

This bill would authorize irrigation districts to purchase or otherwise acquire natural gas from any agency or entity and to provide for the acquisition, operation, leasing, and control of equipment and facilities for the exploration, development, production, distribution, sale, lease,



or other disposition of natural gas for its own use, and to certain other entities.

The bill would authorize an irrigation district to enter into any futures contract, put, call, or swap agreement for electricity, natural gas, coal, weather, or other related financial product determined to be necessary by the board of that district for any of the uses or purposes of the district.

The bill would also authorize an irrigation district to construct and operate gas lines but would prohibit a district from doing so within any city unless permission granted by the governing body of the city.

(4) This bill would incorporate changes to Section 11652 of the Public Utilities Code, proposed by SB 23 2X, to be operative, as specified, only if SB 23 2X and this bill are both chaptered and become effective, and this bill is chaptered last.

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

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

1 SECTION 1. Section 9618 is added to the Public Utilities
2 Code, to read:
3 9618. (a) Upon the resolution of the city council of a city or
4 the board of supervisors of a county that requests that a local
5 publicly owned utility provide retail electric or gas service, or
6 both, within the city limits, in the case of a council, or the
7 unincorporated portions of the county, in the case of a board, the
8 local publicly owned utility shall undertake actions as it
9 determines to be prudent to determine if the provision of service is
10 economically feasible and in the utility's best interests. If the local
11 publicly owned utility determines that service is economically
12 feasible and in its best interests, it shall immediately commence
13 negotiations with the electric or gas corporation then providing
14 that service for the purchase of its utility facilities. This section
15 only applies in any city, or in unincorporated areas of a county, in
16 which retail electric or gas service, or both, is provided by an
17 electrical corporation or gas corporation.
18 (b) Once a local publicly owned utility has commenced service
19 pursuant to the request of a city or county pursuant to subdivision
20 (a), unless the local publicly owned utility and the city or county
21 have agreed to a specific term, the local publicly owned utility's
22 authority to provide electric or gas service shall endure in full force



1 and effect until the local publicly owned utility voluntarily
2 surrenders or abandons its authority, or a public agency purchases
3 by voluntary agreement or condemns and takes under the power
4 of eminent domain, all property actually used and useful in the
5 provision of service by the local publicly owned utility, or until the
6 local publicly owned utility's authority is forfeited for
7 noncompliance with the terms of that authority.

8 (c) If the electrical or gas corporation providing service is
9 under the jurisdiction of a federal bankruptcy court, there shall be
10 a presumption that an offer by a local publicly owned utility to
11 purchase utility assets at book value or greater is in the best
12 interests of the electrical or gas corporation's shareholders, its
13 ratepayers, and the public. For the purposes of this section, "book
14 value" means an amount equal to the arithmetic average of the
15 amounts determined using the "original cost less depreciation"
16 and "replacement cost new less depreciation" methodologies. To
17 the extent that the approval of the commission under Section 851
18 is required for the purchase or sale, either the electrical or gas
19 corporation or the local publicly owned utility may apply to the
20 commission for approval of the purchase of the public utility
21 assets, and the commission shall expeditiously review the
22 application.

23 SEC. 2. Section 11652 of the Public Utilities Code is amended
24 to read:

25 11652. (a) The board of supervisors shall canvass, separately,
26 the returns of each public agency and each parcel of
27 unincorporated territory, if any.

28 (b) Subject to subdivision (c), the board of supervisors shall
29 declare a district created and established of those public agencies
30 and parcels of unincorporated territory in which a majority of
31 those persons who voted did so in favor of the creation of the
32 district. Those public agencies and parcels of unincorporated
33 territory in which a majority of those persons voting did not vote
34 in favor of the creation of the district shall be excluded from the
35 district.

36 (c) A district may be created and established pursuant to
37 subdivision (b) only if the number of registered voters in the
38 approving public agencies and parcels of unincorporated territory
39 is two-thirds or more of the total number of registered voters
40 within the district as proposed to the voters.



1 ~~SEC. 2.—~~

2 SEC. 3. Section 11652 of the Public Utilities Code is amended
3 to read:

4 11652. The board of supervisors shall canvass the returns of
5 each public agency and each parcel of unincorporated territory, if
6 any, separately, and shall order and declare the district created and
7 established of only the public agencies and territory in which a
8 majority of those who voted on the proposition voted in favor of
9 the creation of the district.

10 ~~SEC. 3.—~~

11 SEC. 4. Article 9 (commencing with Section 22200) is added
12 to Chapter 1 of Part 5 of Division 11 of the Water Code, to read:

13
14 Article 9. Natural Gas

15
16 22200. (a) Any district may purchase or otherwise acquire
17 natural gas from any agency or entity, public or private, and may
18 provide for the acquisition, operation, leasing, and control of
19 equipment and facilities for the exploration, development,
20 production, distribution, sale, lease, or other disposition of
21 natural gas, for its own use, to municipalities, public entities, and
22 gas corporations, and to industrial customers whose individual
23 average monthly use, at the time gas sales from a district
24 commenced, exceeded 5,000 therms using a 12-month average
25 calculated for the previous 12 months excluding any months in
26 which gas use was 200 therms or less.

27 (b) An irrigation district must procure or produce natural gas
28 in order to construct distribution facilities or provide for the
29 distribution and sale of natural gas subject to this section.

30 22201. Any power granted by this division to a district may be
31 used by the district to carry out this article.

32 22202. The board and the officers, agents, and employees of
33 a district may undertake all necessary and proper acts for the
34 construction and operation of its natural gas works.

35 SEC. 5. Section 24252.1 is added to the Water Code, to read:

36 24252.1. An irrigation district may enter into any futures
37 contract, put, call, or swap agreement for electricity, natural gas,
38 coal, weather, or other related financial product determined to be
39 necessary by the board of that district for any of the uses or
40 purposes of the district and by the futures contract, put, call, or



1 swap agreement to bind the district for the payment of the
2 consideration specified therein.

3 SEC. 6. Section 22475 of the Water Code is amended to read:

4 22475. ~~There is granted to every~~ A district ~~the right to~~ may
5 construct and operate in a manner affording security for life and
6 property electric light and power lines, *or gas lines*, along, over,
7 under, or upon any road or across any railway or conduit which the
8 route of the lines intersects or runs along.

9 SEC. 7. Section 22476 of the Water Code is amended to read:

10 22476. A district may not construct and operate electric light
11 and power lines, *or gas lines*, along, over, under, or upon any road
12 within any city unless permission to do so is granted by the
13 governing body of the city, which in so doing may impose
14 reasonable conditions upon the proposed use.

15 SEC. 8. Section ~~± 2~~ of this bill amends Section 11652 of the
16 Public Utilities Code. Section ~~± 3~~ of this bill amends Section 11652
17 of the Public Utilities Code as proposed by SB 23 2X. If both this
18 bill and SB 23 2X are enacted and become effective, and each bill
19 amends Section 11652 of the Public Utilities Code, and this bill is
20 enacted after SB 23 2X, Section ~~± 3~~ of this bill shall be operative
21 from the effective date of this bill until January 1, 2007, and shall
22 become inoperative on January 1, 2007, and Section ~~± 2~~ of this bill
23 shall become operative on January 1, 2007. If this bill is enacted
24 and becomes effective, and SB 23 2X is not enacted and does not
25 become effective, then Section ~~± 2~~ of this bill shall become
26 operative on the effective date of this bill, and Section ~~± 3~~ of this
27 bill shall not become operative.

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