

Senate Bill No. 31

CHAPTER 9

An act to amend Section 1731 of, and to add Section 1768 to, the Public Utilities Code, and to amend Sections 80106, 80130, 80132, and 80200 of, and to repeal Section 80114 of, the Water Code, and to amend and repeal Section 6 of Chapter 4 of the Statutes of 2001 of the First Extraordinary Session, relating to energy, and making an appropriation therefor.

[Approved by Governor May 10, 2001. Filed with
Secretary of State May 10, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 31, Burton. Electric power.

(1) Under existing law, after any order or decision has been made by the Public Utilities Commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing.

This bill would prohibit a cause of action arising out of any order or decision of the commission construing, applying, or implementing the provisions of Chapter 4 of the Statutes of 2001–02 First Extraordinary Session (AB 1) from accruing in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 10 days after the date of issuance, and the commission would be required to issue its decision and order on rehearing within 20 days after the filing of that application.

This bill would also set forth a specific procedure with regard to judicial review of an order or decision of the commission interpreting, implementing, or applying the provisions of the above referenced Chapter 4.

(2) Existing law authorizes the Department of Water Resources to contract with an electrical corporation to transmit or provide for the transmission of, and distribute the power and provide billing, collection, and other related services, as the agent of the department, on terms and conditions that reasonably compensate the electrical corporation for its services, and requires the commission, at the request of the department, to order such actions. Under existing law, upon the delivery of power to them, the retail end-use customers are deemed to have purchased that power from the department.

This bill would modify the existing transmission, distribution, and related service provisions to authorize the department to contract with an electrical corporation to transmit or provide for the transmission of, and distribute all power made available by the department, and provide, as the agent of the department, billing, collection, and other related services on terms and conditions that reasonably compensate the electrical corporation for its services and adequately secure payment to the department, and would make corresponding changes to the commission's requirement to order that service at the request of the department.

(3) Existing law authorizes the department to enter into contracts for the purchase of electric power and to sell power to retail end-use customers and to local publicly owned electric utilities. Existing law requires the commission to take necessary action to ensure that all, or a portion of, the component rates that are available to electrical corporations for the purchase of their net short position of electricity are used to recover the revenue requirements for the purchase and sale functions described in this paragraph.

This bill would repeal that commission requirement.

(4) Existing law authorizes the department to issue revenue bonds for purposes described in (3) not to exceed a certain amount, containing specified terms and conditions, upon authorization by written determination of the department and with the approval of the Director of Finance and the Treasurer.

This bill would, instead, authorize the issuance of the bonds in an aggregate amount up to the greater of \$13,423,000,000 or the amount calculated by multiplying by a factor of 4 the annual revenues generated by the California Procurement Adjustment; provided the aggregate amount shall not exceed \$13,423,000,000. By increasing the amount of proceeds from the issuance of revenue bonds that may be expended from a continuously appropriated fund, the bill would make an appropriation.

(5) This bill would make other related clarifying and technical changes.

Appropriation: yes.

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

SECTION 1. Section 1731 of the Public Utilities Code is amended to read:

1731. (a) The commission shall set an effective date when issuing an order or decision. The commission may set the effective date of an order or decision prior to the date of issuance of the order or decision.



(b) After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing. The commission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear. No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 30 days after the date of issuance or within 10 days after the date of issuance in the case of an order issued pursuant to either Article 5 (commencing with Section 816) or Article 6 (commencing with Section 851) of Chapter 4 relating to security transactions and the transfer or encumbrance of utility property. For purposes of this article, “date of issuance” means the date when the commission mails the order or decision to the parties to the action or proceeding.

(c) No cause of action arising out of any order or decision of the commission construing, applying, or implementing the provisions of Chapter 4 of the Statutes of 2001–02 First Extraordinary Session shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 10 days after the date of issuance of the order or decision. The commission shall issue its decision and order on rehearing within 20 days after the filing of that application.

SEC. 2. Section 1768 is added to the Public Utilities Code, to read:

1768. The following procedures shall apply to judicial review of an order or decision of the commission interpreting, implementing, or applying the provisions of Chapter 4 of the Statutes of 2001–02 First Extraordinary Session:

(a) Within 30 days after the commission issues its order or decision denying the application for a rehearing, or, if the application is granted, then within 30 days after the commission issues its decision on rehearing, any aggrieved party may petition for a writ of review in the California Supreme Court for the purpose of determining the lawfulness of the original order or decision or of the order or decision on rehearing. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the commission to certify its record in the case to the court within the time specified. No order of the commission interpreting, implementing, or applying the provisions of Chapter 4 of the Statutes of 2001–02 First Extraordinary Session shall be subject to review in the courts of appeal.

(b) The petition for review shall be served upon the executive director of the commission either personally or by service at the office of the commission.

(c) For purposes of this section, the issuance of a decision or the granting of an application shall be construed to have occurred on the date when the commission mails the decision or grant to the parties to the action or proceeding.

(d) All actions and proceedings under this section and all actions or proceedings to which the commission or the people of the State of California are parties in which any question arises under this section, or under or concerning any order or decision of the commission under this section, shall be preferred over, and shall be heard and determined in preference to, all other civil business except election causes, irrespective of position on the calendar.

(e) The provisions of this article apply to actions under this section to the extent that those provisions are not in conflict with this section.

SEC. 3. Section 80106 of the Water Code is amended to read:

80106. (a) The department may contract with the related electrical corporation or its successor in the performance of related service, for the electrical corporation or its successor in the performance of related service, to transmit or provide for the transmission of, and distribute all power made available by the department, and, as agent of the department, provide billing, collection, and other related services on terms and conditions that reasonably compensate the electrical corporation for its services, and adequately secure payment to the department.

(b) At the request of the department, the commission shall order the related electrical corporation or its successor in the performance of related service, to transmit or provide for the transmission of, and distribute all power made available by the department, and, as agent of the department, provide billing, collection, and other related services on terms and conditions that reasonably compensate the electrical corporation for its services, and adequately secure payment to the department.

SEC. 4. Section 80114 of the Water Code, as added by Chapter 4 of the Statutes of 2001, is repealed.

SEC. 5. Section 80130 of the Water Code is amended to read:

80130. The department may incur indebtedness and issue bonds as evidence thereof, provided that bonds may not be issued in an amount the debt service on which, to the extent payable from the fund, is estimated by the department to exceed the amounts estimated to be available in the fund for their payment. The department may authorize the issuance of bonds (excluding notes issued in anticipation of the

issuance of bonds and retired from the proceeds of those bonds) in an aggregate amount up to the greater of thirteen billion four hundred twenty-three million dollars (\$13,423,000,000) or the amount calculated by multiplying by a factor of four the annual revenues generated by the California Procurement Adjustment, as determined by the commission pursuant to Section 360.5 of the Public Utilities Code; provided, such aggregate amount shall not exceed thirteen billion four hundred twenty-three million dollars (\$13,423,000,000). Nothing in this section shall prohibit the department from issuing bonds prior to the effective date of this bill based upon the authorization granted to the department by the provisions of Chapter 4 of the Statutes of 2001–02 First Extraordinary Session. Refunding of bonds to obtain a lower interest rate shall not be included in the calculation of the aggregate amount. In addition, before the issuance of bonds in a public offering, the department shall establish a mechanism to ensure that the bonds will be sold at investment grade ratings and repaid on a timely basis from pledged revenues. This mechanism may include, but is not limited to, an agreement between the department and the commission as described in Section 80110.

SEC. 6. Section 80132 of the Water Code is amended to read:

80132. (a) Bonds may be issued by the department upon authorization by written determination of the director of the department with the approval of the Director of Finance and the State Treasurer. The Department of Finance shall notify the Chairperson of the Joint Legislative Budget Committee and the chairperson of the committee in each house that considers appropriations of its written determination. The bonds shall be sold at such prices and in such manner, and on such terms and conditions, as shall be specified in such determination, and such determination may contain or authorize any other provision, condition, or limitation not inconsistent herewith and such provisions as may be deemed reasonable and proper for the security of the bondholders. Bonds may mature at such time or times, and bear interest at such rate or rates, which may be fixed or variable and be determined by reference to an index or such other method, as shall be specified in such determination. Neither the person executing the determination to issue bonds nor any person executing bonds shall be personally liable therefor or be subject to any personal liability or accountability by reason of the issuance thereof.

(b) In the discretion of the department, any bonds may be secured by a trust agreement by and between the department and a corporate trustee, which may be any trust company or bank having trust powers within or without the state, or the State Treasurer. Notwithstanding any other provision of law, the State Treasurer shall not be deemed to have a



conflict of interest by reason of acting as such trustee. The department may enter into such contracts or arrangements as it shall deem to be necessary or appropriate for the issuance and further security of the bonds.

(c) Bonds shall be legal investments for all trust funds, the funds of all insurance companies, banks both commercial and savings, trust companies, executors, administrators, trustees, and other fiduciaries, for state school funds, pension funds, and, for any funds that may be invested in county, school, or municipal bonds.

(d) Notwithstanding that bonds may be payable from a special fund, they shall be deemed to be negotiable instruments for all purposes.

(e) Any and all bonds, their transfer and the income therefrom shall at all times be free from taxation of every kind by the state and by all political subdivisions of the state.

(f) Bonds shall not be deemed to constitute a debt or liability of the state or of any political subdivision thereof, other than the department, or a pledge of the faith and credit of the state or of any such political subdivision but shall be payable solely from the funds herein provided for. All bonds shall contain a statement to the following effect: "Neither the faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of or interest on this bond." The issuance of bonds shall not directly or indirectly or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

(g) The department may pledge or assign any revenues under any obligation entered into, and rights to receive the same, and moneys on deposit in the fund and income or revenue derived from the investment thereof, as security for the department's obligations hereunder. It is the intention of the Legislature that any pledge of moneys, revenues, or property made by the department shall be valid and binding from the time when the pledge is made; that the moneys, revenues, or property so pledged and thereafter collected from retail end use customers, or paid directly or indirectly to or for the account of the department, is hereby made, and shall immediately be, subject to the lien of such pledge without any physical delivery thereof or further act; that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the department irrespective of whether such parties have notice thereof, and that no resolution or instrument by which such pledge or lien created pursuant to this subdivision is expressed, confirmed, or approved need be filed or recorded in order to perfect such pledge or lien. The provisions hereof



shall in all respects govern the creation, perfection, priority, and enforcement of any lien created hereby or hereunder.

SEC. 7. Section 80200 of the Water Code is amended to read:

80200. (a) There is hereby established in the State Treasury the Department of Water Resources Electric Power Fund. Notwithstanding Section 13340 of the Government Code, all moneys in the fund are continuously appropriated, without regard to fiscal year, to the department, and shall be available for the purposes of this division. It is the intent of the Legislature that this fund be a continuation of the fund created in Chapter 3 of the Statutes of 2001 (SB 7 of the First 2001–02 Extraordinary Session).

(b) All revenues payable to the department under this division shall be deposited in the fund. Notwithstanding any other provision of law, interest accruing on money in the fund shall remain in the fund and shall be used for the purposes of this division. Payments from the fund may be made only for the purposes authorized by this division, including, but not limited to, payments for any of the following:

(1) The cost of electric power and transmission, scheduling, and other related expenses incurred by the department.

(2) The pooled money investment rate on funds advanced for electric power purchases prior to the receipt of payment for those purchases by the purchasing entity.

(3) Payment of any bonds or other contractual obligations authorized by this division.

(4) Repayment to the General Fund of appropriations made to the fund pursuant hereto or hereafter for purposes of this division, appropriations made to the Department of Water Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's Emergency Proclamation dated January 17, 2001. That repayment shall be made as soon as practicable.

(c) Except as provided in subdivision (b) of Section 5 of the statute adding this section, the administrative costs of the department incurred in administering this division shall be provided in the annual Budget Act.

(d) Obligations authorized by this division shall be payable solely from the fund. Neither the full faith and credit nor the taxing power of the state are or may be pledged for any payment under any obligation authorized by this division.

(e) While any obligations of the department incurred under this division remain outstanding and not fully performed or discharged, the rights, powers, duties, and existence of the department and the commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of or parties to such

obligations. The department may include this pledge and undertaking of the state in the department's obligations.

SEC. 8. Section 6 of Chapter 4 of the Statutes of 2001, First Extraordinary Session, is amended to read:

Sec. 6. (a) The Department of Finance may authorize the creation of deficiencies for the appropriation made by Section 5 of Chapter 4 of the Statutes of 2001, which added this section. No deficiency may be approved under this section any sooner than 10 days after written notification of the proposed deficiency is given to the Chairperson of the Joint Legislative Budget Committee and the chairperson of the committee in each house that considers appropriations. After November 15, 2001, such deficiency shall be limited to amounts required for short-term cash-flow purposes of no more than five hundred million dollars (\$500,000,000) in the aggregate and shall be repaid from the Department of Water Resources Electric Power Fund within 180 days. The Director of Finance shall certify to the Joint Legislative Budget Committee and the Appropriations Committees as to the need for a short-term cash-flow loan not less than 10 days prior to the written notification.

(b) This section shall be repealed as of January 1, 2003, unless a later enacted statute that is enacted before January 1, 2003, deletes or extends the date on which it is repealed.

SEC. 9. The provisions of Division 27 (commencing with Section 80000) of the Water Code, including amendments made thereto in this act, and the provisions of Section 360.5 of the Public Utilities Code, are severable. If any provision of Division 27 (commencing with Section 80000) of the Water Code, including amendments made thereto in this act, or the provisions of Section 360.5 of the Public Utilities Code or application thereof, are held to be invalid, such invalidity shall not affect other provisions of either Division 27 (commencing with Section 80000) of the Water Code or the provisions of Section 360.5.

SEC. 10. No revenues of the Department of Water Resources Electric Power Fund established pursuant to Section 80200 of the Water Code may be used to pay for any undercollected amount due to any electrical corporation or to any entity to which the amount has been assigned.

