

AMENDED IN ASSEMBLY AUGUST 25, 2002

AMENDED IN ASSEMBLY JUNE 30, 2002

AMENDED IN ASSEMBLY JUNE 24, 2002

AMENDED IN SENATE MAY 20, 2002

AMENDED IN SENATE APRIL 30, 2002

**SENATE BILL**

**No. 1755**

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**Introduced by Senator Soto**

(Principal coauthor: Assembly Member Negrete McLeod)

**(Coauthors: Senators Costa and Vincent)**

(Coauthors: Assembly Members Calderon, Correa, Frommer, and Oropeza)

February 21, 2002

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An act to add Sections 31149.7 and 71663.5 to the Water Code, relating to electric power.

LEGISLATIVE COUNSEL'S DIGEST

SB 1755, as amended, Soto. County water districts and municipal water districts: electric power.

The

(1) *The County Water District Law and the Municipal Water District Law of 1911* grant to county water districts and municipal water districts, respectively, prescribed powers relating to water and other services.

This bill would authorize those districts to provide, generate, and deliver ~~electric power~~ *electricity*, and to construct, operate, and maintain works, facilities, improvements, and property for that

generation and delivery. The bill would prohibit those districts from acquiring property employed in the generation or delivery of ~~electric power~~ *electricity*, except by mutual agreement between the district and the property owner. If a district elects to provide for its own ~~power~~, ~~this bill would set forth the formula for reimbursement to the Department of Water Resources and the electrical corporation that previously serviced the district~~ *generation of electricity, the bill would require the Public Utilities Commission to determine a cost-recovery mechanism to be imposed through a nonbypassable charge, for reimbursement of the Department of Water Resources and the electrical corporation for certain electricity purchase costs, to prevent a shifting of costs to an electrical corporation's bundled customers. Because a violation of an order or decision of the commission is a crime, the bill would impose a state-mandated local program.*

(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.*

*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: ~~no~~ yes.

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

1 SECTION 1. Section 31149.7 is added to the Water Code, to  
2 read:

3 31149.7. (a) A district may provide, generate, and deliver  
4 electric power, and may construct, operate, and maintain any and  
5 all works, facilities, improvements, and property, or portion  
6 thereof, necessary or convenient for that generation and delivery.

7 (b) The electric powerplant or plants and transmission lines  
8 constructed pursuant to this section may be leased for operation.  
9 The power generated shall be used by a district for its own  
10 purposes. A district may sell surplus power to a public or private  
11 entity that is engaged in the distribution or sale of electricity. For  
12 purposes of this section, "for its own purposes" means a district  
13 performing only functions in its capacity as a water district,  
14 including, but not be limited to, any of the following:

15 (1) Pumping operations.

1 (2) Water treatment operations.

2 (3) Barrier intrusion operations.

3 (4) Desalination operations.

4 (c) Nothing in this section grants to a district the authority to  
5 provide, sell, or deliver electric power at retail.

6 (d) A district may not acquire property employed in the  
7 generation or delivery of electric power for public or private utility  
8 purposes, except by mutual agreement between the district and the  
9 owner of that property.

10 ~~(e) A district that elects to provide for its own power pursuant~~  
11 ~~to this section shall reimburse the department for all costs incurred~~  
12 ~~by the department as a result of the provision of this power, if these~~  
13 ~~costs are established by the Public Utilities Commission for~~  
14 ~~self-generation customers. In determining what costs, if any, are~~  
15 ~~reimbursable, the commission may take into consideration any or~~  
16 ~~all of the following:~~

17 ~~(1) The department's unrecovered actual cost of power~~  
18 ~~procurement, including any financing and administrative costs,~~  
19 ~~attributable to the district, as determined by the Public Utilities~~  
20 ~~Commission. The department's actual cost shall be calculated as~~  
21 ~~the difference, if any, between the department's total actual~~  
22 ~~procurement costs attributable to the district and the revenues~~  
23 ~~collected by the department from the district during the district's~~  
24 ~~term of service with the department. The Public Utilities~~  
25 ~~Commission shall publish, and update as necessary, a formula for~~  
26 ~~calculation of unrecovered costs that are due pursuant to this~~  
27 ~~subdivision.~~

28 ~~(2) Any additional costs of the department, equal to the~~  
29 ~~district's proportionate share of the department's estimated net~~  
30 ~~unavoidable power purchase contract costs, for the period~~  
31 ~~commencing with the district's self-provision of electricity,~~  
32 ~~through the expiration of all power purchase contracts entered into~~  
33 ~~by the department existing at the time the district elects to provide~~  
34 ~~for its own power. The proportionate share and unavoidable costs~~  
35 ~~shall be determined by the Public Utilities Commission.~~

36 ~~(f) A district that elects to provide for its own power pursuant~~  
37 ~~to this section shall reimburse the electrical corporation that~~  
38 ~~previously served the district for any costs incurred by the~~  
39 ~~electrical corporation as a result of the provision of this power, if~~  
40 ~~these costs are established by the Public Utilities Commission for~~

1 self-generation customers. In determining what costs, if any, are  
2 reimbursable, the commission may take into consideration any or  
3 all of the following:

4 (1) ~~The electrical corporation's unrecovered actual cost of~~  
5 ~~power procurement, including any financing and administrative~~  
6 ~~costs, attributable to the district, as determined by the Public~~  
7 ~~Utilities Commission. The electrical corporation's actual cost~~  
8 ~~shall be calculated as the difference, if any, between its total actual~~  
9 ~~procurement costs attributable to the district and the revenues~~  
10 ~~collected by the electrical corporation from the district during the~~  
11 ~~district's term of service with the electrical corporation.~~

12 (2) ~~Any additional costs of the electrical corporation, equal to~~  
13 ~~the district's proportionate share of the electrical corporation's~~  
14 ~~estimated net unavoidable power purchase contract costs, for the~~  
15 ~~period commencing with the district's self-provision of electricity,~~  
16 ~~through the expiration of all power purchase contracts entered into~~  
17 ~~by the electrical corporation existing at the time the district elects~~  
18 ~~to provide for its own power. The proportionate share and~~  
19 ~~unavoidable costs shall be determined by the Public Utilities~~  
20 ~~Commission.~~

21 (e) (1) *It is the intent of the Legislature, that each district that*  
22 *has purchased electricity from an electrical corporation on or after*  
23 *February 1, 2001, regardless of whether the district thereafter*  
24 *generates its own electricity, bear a pro rata share of the*  
25 *Department of Water Resources' electricity purchase costs, that*  
26 *are recoverable from electrical corporation customers in*  
27 *commission-approved rates. It is the further intent of the*  
28 *Legislature to prevent any shifting of recoverable costs from*  
29 *districts that generate their own electricity pursuant to this*  
30 *section, to electrical corporation bundled customers.*

31 (2) *To the extent that any shifting of recoverable costs would*  
32 *occur, in the determination of the commission, those costs shall be*  
33 *recovered from districts that generate their own electricity,*  
34 *pursuant to this section.*

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

39 (f) *A district that generates its own electricity pursuant to this*  
40 *section shall be responsible for paying the following:*

(1) A charge equivalent to the charges that would otherwise be imposed on the district by the commission to recover bond related costs pursuant to any agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, which charges shall be payable until all obligations of the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code are fully paid or otherwise discharged. All bond charges are the property of the Department of Water Resources.

(2) If a district generates new off-site power, it shall be responsible for the additional costs of the Department of Water Resources, equal to the share of the Department of Water Resources' estimated net unavoidable electricity purchase contract costs attributable to the district as determined by the commission, for the period commencing with the district's initial generation of its off-site electricity, through the expiration of all then existing electricity purchase contracts entered into by the Department of Water Resources.

(g) A district generating its own electricity pursuant to this section shall reimburse the electrical corporation that previously served the district for all of the following:

(1) The electrical corporation's unrecovered past undercollections for electricity purchases, including any financing costs, attributable to that district, that the commission lawfully determines may be recovered in rates.

(2) Any additional costs of the electrical corporation recoverable in commission approved rates, equal to the share of the electrical corporation's estimated net unavoidable electricity purchase contract costs attributable to the district, as determined by the commission, for the period commencing with the district's initial generation of electricity pursuant to this section, through the expiration of all then existing electricity purchase contracts entered into by the electrical corporation.

(h) (1) Any charges imposed pursuant to subdivision (f) shall be the property of the Department of Water Resources. Any charges imposed pursuant to subdivision (g) shall be the property of the particular electrical corporation. The commission shall establish sufficient mechanisms, including agreements with, or orders with respect to, electrical corporations as are necessary to ensure that

1 *charges payable pursuant to this section shall be promptly remitted*  
2 *to the party entitled to the payment.*

3 *(2) Charges imposed pursuant to this section shall be*  
4 *nonbypassable.*

5 *(i) Prior to implementing this section, the commission shall*  
6 *submit a report certifying its satisfaction of the provisions of this*  
7 *section to the Senate Energy, Utilities and Communications*  
8 *Committee, or its successor; and the Assembly Committee on*  
9 *Utilities and Commerce, or its successor.*

10 SEC. 2. Section 71663.5 is added to the Water Code, to read:

11 71663.5. (a) A district may provide, generate, and deliver  
12 electric power, and may construct, operate, and maintain any and  
13 all works, facilities, improvements, and property, or portion  
14 thereof, necessary or convenient for that generation and delivery.

15 (b) The electric powerplant or plants and transmission lines  
16 constructed pursuant to this section may be leased for operation.  
17 The power generated shall be used by a district for its own  
18 purposes. A district may sell surplus power to a public or private  
19 entity that is engaged in the distribution or sale of electricity. For  
20 purposes of this section, “for its own purposes” means a district  
21 performing only functions in its capacity as a water district,  
22 including, but not be limited to, any of the following:

23 (1) Pumping operations.

24 (2) Water treatment operations.

25 (3) Barrier intrusion operations.

26 (4) Desalination operations.

27 (c) Nothing in this section grants to a district the authority to  
28 provide, sell, or deliver electric power at retail.

29 (d) A district may not acquire property employed in the  
30 generation or delivery of electric power for public or private utility  
31 purposes, except by mutual agreement between the district and the  
32 owner of that property.

33 ~~(e) A district that elects to provide for its own power pursuant~~  
34 ~~to this section shall reimburse the department for all costs incurred~~  
35 ~~by the department as a result of the provision of this power, if these~~  
36 ~~costs are established by the Public Utilities Commission for~~  
37 ~~self-generation customers. In determining what costs, if any, are~~  
38 ~~reimbursable, the commission may take into consideration any or~~  
39 ~~all of the following:~~

~~(1) The department's unrecovered actual cost of power procurement, including any financing and administrative costs, attributable to the district, as determined by the Public Utilities Commission. The department's actual cost shall be calculated as the difference, if any, between the department's total actual procurement costs attributable to the district and the revenues collected by the department from the district during the district's term of service with the department. The Public Utilities Commission shall publish, and update as necessary, a formula for calculation of unrecovered costs that are due pursuant to this subdivision.~~

~~(2) Any additional costs of the department, equal to the district's proportionate share of the department's estimated net unavoidable power purchase contract costs, for the period commencing with the district's self-provision of electricity, through the expiration of all power purchase contracts entered into by the department existing at the time the district elects to provide for its own power. The proportionate share and unavoidable costs shall be determined by the Public Utilities Commission.~~

~~(f) A district that elects to provide for its own power pursuant to this section shall reimburse the electrical corporation that previously served the district for any costs incurred by the electrical corporation as a result of the provision of this power, if these costs are established by the Public Utilities Commission for self-generation customers. In determining what costs, if any, are reimbursable, the commission may take into consideration any or all of the following:~~

~~(1) The electrical corporation's unrecovered actual cost of power procurement, including any financing and administrative costs, attributable to the district, as determined by the Public Utilities Commission. The electrical corporation's actual cost shall be calculated as the difference, if any, between its total actual procurement costs attributable to the district and the revenues collected by the electrical corporation from the district during the district's term of service with the electrical corporation.~~

~~(2) Any additional costs of the electrical corporation, equal to the district's proportionate share of the electrical corporation's estimated net unavoidable power purchase contract costs, for the period commencing with the district's self-provision of electricity, through the expiration of all power purchase contracts entered into~~



~~by the electrical corporation existing at the time the district elects to provide for its own power. The proportionate share and unavoidable costs shall be determined by the Public Utilities Commission.~~

*(e) (1) It is the intent of the Legislature, that each district that has purchased electricity from an electrical corporation on or after February 1, 2001, regardless of whether the district thereafter generates its own electricity, bear a pro rata share of the Department of Water Resources' electricity purchase costs, that are recoverable from electrical corporation customers in commission-approved rates. It is the further intent of the Legislature to prevent any shifting of recoverable costs from districts that generate their own electricity pursuant to this section, to electrical corporation bundled customers.*

*(2) To the extent that any shifting of recoverable costs would occur, in the determination of the commission, those costs shall be recovered from districts that generate their own electricity, pursuant to this section.*

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

*(f) A district that generates its own electricity pursuant to this section shall be responsible for paying the following:*

*(1) A charge equivalent to the charges that would otherwise be imposed on the district by the commission to recover bond related costs pursuant to any agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, which charges shall be payable until all obligations of the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code are fully paid or otherwise discharged. All bond charges are the property of the Department of Water Resources.*

*(2) If a district generates new off-site power, it shall be responsible for the additional costs of the Department of Water Resources, equal to the share of the Department of Water Resources' estimated net unavoidable electricity purchase contract costs attributable to the district as determined by the commission, for the period commencing with the district's initial generation of its off-site electricity, through the expiration of all*



1 *then existing electricity purchase contracts entered into by the*  
2 *Department of Water Resources.*

3 *(g) A district generating its own electricity pursuant to this*  
4 *section shall reimburse the electrical corporation that previously*  
5 *served the district for all of the following:*

6 *(1) The electrical corporation's unrecovered past*  
7 *undercollections for electricity purchases, including any financing*  
8 *costs, attributable to that district, that the commission lawfully*  
9 *determines may be recovered in rates.*

10 *(2) Any additional costs of the electrical corporation*  
11 *recoverable in commission approved rates, equal to the share of*  
12 *the electrical corporation's estimated net unavoidable electricity*  
13 *purchase contract costs attributable to the district, as determined*  
14 *by the commission, for the period commencing with the district's*  
15 *initial generation of electricity pursuant to this section, through*  
16 *the expiration of all then existing electricity purchase contracts*  
17 *entered into by the electrical corporation.*

18 *(h) (1) Any charges imposed pursuant to subdivision (f) shall*  
19 *be the property of the Department of Water Resources. Any charges*  
20 *imposed pursuant to subdivision (g) shall be the property of the*  
21 *particular electrical corporation. The commission shall establish*  
22 *sufficient mechanisms, including agreements with, or orders with*  
23 *respect to, electrical corporations as are necessary to ensure that*  
24 *charges payable pursuant to this section shall be promptly remitted*  
25 *to the party entitled to the payment.*

26 *(2) Charges imposed pursuant to this section shall be*  
27 *nonbypassable.*

28 *(i) Prior to implementing this section, the commission shall*  
29 *submit a report certifying its satisfaction of the provisions of this*  
30 *section to the Senate Energy, Utilities and Communications*  
31 *Committee, or its successor, and the Assembly Committee on*  
32 *Utilities and Commerce, or its successor.*

33 *SEC. 3. No reimbursement is required by this act pursuant to*  
34 *Section 6 of Article XIII B of the California Constitution because*  
35 *the only costs that may be incurred by a local agency or school*  
36 *district will be incurred because this act creates a new crime or*  
37 *infraction, eliminates a crime or infraction, or changes the penalty*  
38 *for a crime or infraction, within the meaning of Section 17556 of*  
39 *the Government Code, or changes the definition of a crime within*

- 1 *the meaning of Section 6 of Article XIII B of the California*
- 2 *Constitution.*

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