

AMENDED IN SENATE MAY 26, 2004

AMENDED IN SENATE JULY 16, 2003

AMENDED IN SENATE JULY 3, 2003

AMENDED IN ASSEMBLY MAY 29, 2003

AMENDED IN ASSEMBLY APRIL 30, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 425

Introduced by Assembly Member Richman Campbell
(Principal coauthor: Senator Johnson)

February 14, 2003

~~An act to amend Section 743.1 of the Public Utilities Code, relating to public utilities. An act to amend Section 2 of Chapter 317 of the Statutes of 1997, relating to public trust lands.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 425, as amended, Richman. ~~Electric service rates; interruptible programs~~ *City of Newport Beach: public trust lands.*

Existing law grants in trust to the City of Newport Beach all tide and submerged lands, whether filled or unfilled, bordering upon and under the Pacific Ocean or Newport Bay, as described, subject to specified conditions. Existing law specifies that, for purposes of provisions related to the City of Newport Beach establishment of a Tideland Capital Fund, acquisition or improvement of real property by the city for purposes of enhancing the public trust lands administered by the

Department of Fish and Game shall be deemed to be authorized by, and be in furtherance of, the trust created pursuant to existing law.

This bill would provide that, for purposes of those provisions, those tide and submerged lands shall be considered to be public trust lands whether or not those lands are acquired by the state as sovereign tide and submerged lands, or are otherwise acquired.

~~(1) The Public Utilities Act authorizes the Public Utilities Commission to establish rates for public utilities regulated by the commission, including electrical corporations. The act requires electrical corporations to continue the availability to qualified heavy industrial customers, until March 31, 2002, of optional interruptible or curtailable service wherein the heavy industrial customer is charged a rate that reflects a pricing incentive for electing to operate under the optional or curtailable service.~~

~~This bill would instead require an electrical corporation to continue the availability to qualified customers, as defined, of optional interruptible or curtailable service until January 1, 2009, and would require the effective rate for that service to be cost effective compared to other resource options. The bill would require a customer electing to operate under the interruptible or curtailable service option to comply with the commitment to shed load in excess of the customer's firm service level within the time period provided for in the tariff, if called upon to do so by the electrical corporation. The bill would require the commission to establish a penalty for noncompliance. The bill would require an electrical corporation to remove from the rate option any customer who voluntarily elects not to comply substantially with any two requests to shed load in any 12-month period. The bill would require an electrical corporation to eliminate by a certain date any incentive not described above that is included in an optional interruptible or curtailable service rate of that electrical corporation as of January 1, 2004. The bill would require the commission to require each electrical corporation to adopt and implement a plan for certification by a participating customer of the manner in which the participating customer will comply with the terms of the interruptible or curtailable service option.~~

~~Because a violation of the act is a crime, this bill, by continuing to require electrical corporations to offer optional interruptible or curtailable service and by imposing new requirements, would change the definition of a crime, thereby imposing 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~~ *no*. State-mandated local program: ~~yes~~ *no*.

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

1 ~~SECTION 1. Section 743.1 of the Public Utilities Code is~~

2 ~~SECTION 1. The Legislature finds and declares all of the~~
3 ~~following:~~

4 ~~(a) Subdivision (h) of Section 1 of Chapter 415 of the Statutes~~
5 ~~of 1975 directed the County of Orange and the State Lands~~
6 ~~Commission to grant certain described lands, which are a portion~~
7 ~~of the tide and submerged lands granted in trust to the county by~~
8 ~~that act, to the Department of Fish and Game for creation of an~~
9 ~~ecological reserve in Upper Newport.~~

10 ~~(b) Subdivision (h) of Section 1 of Chapter 74 of the Statutes of~~
11 ~~1978 authorized the City of Newport Beach to transfer portions of~~
12 ~~its public trust lands to the State Lands Commission to thereafter~~
13 ~~be leased to the Department of Fish and Game for inclusion in the~~
14 ~~Upper Newport Bay Ecological Reserve. Subdivision (c) of~~
15 ~~Section 2 of Chapter 74 of the Statutes of 1978 further authorized~~
16 ~~the City of Newport Beach to acquire real property for purposes of~~
17 ~~enhancing tide and submerged lands leased to the Department of~~
18 ~~Fish and Game by the State Lands Commission.~~

19 ~~(c) Chapter 715 of the Statutes of 1984 authorizes the County~~
20 ~~of Orange and the City of Newport Beach to expend revenues from~~
21 ~~leases of the tide and submerged lands surrounding Harbor Island~~
22 ~~in lower Newport Bay for purposes of enhancing the Upper~~
23 ~~Newport Bay Ecological Reserve.~~

24 ~~(d) Section 2 of Chapter 317 of the Statutes of 1997 authorizes~~
25 ~~the expenditure of certain public trust revenues by the City of~~
26 ~~Newport Beach on public trust lands administered by the~~
27 ~~Department of Fish and Game in Upper Newport Bay.~~

28 ~~(e) In addition to the public trust lands granted by the~~
29 ~~Legislature to the County of Orange pursuant to Chapter 415 of~~

1 *the Statutes of 1975 (Chapter 415), the County has acquired*
2 *additional lands adjacent to Upper Newport Bay Ecological*
3 *Reserve and desires to make them assets of the public trust and the*
4 *legislative trust created by that act. The State Lands Commission*
5 *has approved the inclusion of these lands to be held as assets of*
6 *those trusts and desires legislative adoption of the lands as trust*
7 *assets.*

8 *(f) Certain lands described in Section 2 of Chapter 415*
9 *included lands for which issues of title and boundary were*
10 *unresolved at the time of enactment of Chapter 415 and some*
11 *remain unresolved today. The state acquired, by purchase, certain*
12 *interests of the Irvine Company in and adjacent to those lands*
13 *subsequent to passage of Chapter 415. Those lands are included*
14 *in the Upper Newport Bay Ecological Reserve operated by the*
15 *Department of Fish and Game. Some of those lands are subject to*
16 *the public trust and others are not. These lands are integral to the*
17 *operation of the Ecological Reserve and provide support to the*
18 *adjacent tide and submerged lands.*

19 *(g) In order to clarify the Legislature's intent and authorize the*
20 *trustees, the County of Orange, and the City of Newport Beach to*
21 *expend revenues generated from public trust lands that the county*
22 *and city hold pursuant to Chapter 317 of the Statutes of 1997, and*
23 *Chapter 415 of the Statutes of 1975, those statutes need to be*
24 *amended.*

25 *SEC. 2. Section 2 of Chapter 317 of the Statutes of 1997 is*
26 *amended to read*

27 *Sec. 2. (a) The City of Newport Beach shall establish a*
28 *Tideland Capital Fund as one of the funds required by subdivision*
29 *(i) of Section 1 of this act. The money in the Tideland Capital Fund*
30 *shall be used by the city in conformity with the following terms*
31 *and conditions:*

32 *(1) Expenditures from the fund may be made for the acquisition*
33 *of real property that will further the purposes of the trust created*
34 *by this act or for capital improvements for those purposes.*

35 *(2) The city may make acquisitions of real property by*
36 *purchase, gift, or other conveyance, including, but not limited to,*
37 *the transfer of city-owned property held in a municipal capacity to*
38 *the trust created by this act. All such real property shall be held by*
39 *the city in trust pursuant to this act.*

(3) For purposes of this ~~subdivision~~ *section*, acquisition or improvement of real property by the city for purposes of enhancing the public trust lands administered by the Department of Fish and Game pursuant to Chapter 415 of the Statutes of 1975 shall be deemed to be authorized by, and to be in furtherance of, the trust created by this act. *For purposes of this section, all the lands described in subdivision (a) of Section 2 of Chapter 415 of the Statutes of 1975 shall be considered to be public trust lands whether or not those lands are acquired by the state as sovereign tide and submerged lands, or are otherwise acquired.*

(4) The city may expend municipal funds to acquire real property for purposes specified in this subdivision. The city may transfer amounts from the Tideland Capital Fund to reimburse municipal funds for any such expenditures, together with an appropriate amount of interest on the municipal funds advanced, if the State Lands Commission gives advance approval of the transaction.

(b) The city shall establish a Tideland Operation and Maintenance Fund as one of the funds required by subdivision (i) of Section 1 of this act. The money in the Tideland Operation and Maintenance Fund shall be used by the city for the operation and maintenance of the tide and submerged lands granted by this act and any additional lands and assets that are made subject to the public trust pursuant to this act in furtherance of the purposes of the trust created by this act.

(c) The city shall establish an Upper Newport Bay Restoration Fund as one of the funds required by subdivision (i) of Section 1 of this act. The money in the Upper Newport Bay Restoration Fund shall be used by the city for Upper Newport Bay environmental restoration and improvement on tide and submerged lands described in paragraph (3) of subdivision (a) or otherwise made subject to the public trust pursuant to this act and located in Upper Newport Bay, to do both of the following:

(1) Construct improvements to, or otherwise physically alter, those public trust lands if the construction or alteration directly benefits those lands.

(2) Fund environmental documents, planning studies, or scientific analyses, or experiments directly related to the improvement or enhancement of the habitat values of those lands and the water quality of the overlying waters.

(d) (1) Eighty percent of the money received by the city pursuant to subdivision (g) of Section 1 of this act shall be deposited in the Tideland Capital Fund described in subdivision (a) and in the Tideland Operation and Maintenance Fund described in subdivision (b), the allocation between those funds to be determined by the city.

(2) Ten percent of the money received by the city pursuant to subdivision (g) of Section 1 of this act shall be deposited in the Upper Newport Bay Restoration Fund described in subdivision (c).

(3) Ten percent of the money received by the city pursuant to subdivision (g) of Section 1 of this act shall be deposited in the Land Bank Fund created in the State Treasury pursuant to Section 8610 of the Public Resources Code, available for expenditure by the State Lands Commission as described in subparagraph (B) of paragraph (1) of subdivision (f) of Section 4.5 of this act.

(4) The city may deposit in the city funds established pursuant to subdivisions (a), (b), and (c) any other income from the tide and submerged lands granted to the city pursuant to this act or from lands otherwise held in the public trust pursuant to this act that the city determines to be appropriate and consistent with this act and the public trust.

~~amended to read:~~

~~743.1. (a) Electrical corporations shall continue the availability to qualified customers of optional interruptible or curtailable service until January 1, 2009. The effective rate for interruptible or curtailable service to qualified customers shall be cost effective compared to other resource options.~~

~~(b) A customer electing to operate under the interruptible or curtailable service option shall comply with the commitment to shed load in excess of the customer's firm service level within the time period provided for in the tariff, if called upon to do so by the electrical corporation. The commission shall establish a noncompliance penalty of at least nine dollars and thirty cents (\$9.30) per kilowatthour for excess power taken. The commission may subsequently adopt a higher noncompliance penalty, if the commission makes a determination that the penalty level is insufficient to ensure compliance with the program. In addition to the noncompliance penalty, the electrical corporation shall remove from the rate option any customer who voluntarily elects not to~~

1 ~~comply substantially with any two requests to shed load in any~~
2 ~~12-month period.~~

3 ~~(c) The commission shall require an electrical corporation to~~
4 ~~eliminate any incentive not authorized pursuant to subdivision (a)~~
5 ~~that is included in an optional interruptible or curtailable service~~
6 ~~rate of that electrical corporation as of January 1, 2004, before the~~
7 ~~earlier of the following dates:~~

8 ~~(1) January 1, 2005.~~

9 ~~(2) The date of the next final commission decision in the~~
10 ~~allocation of revenue requirement and rate design phase of the~~
11 ~~electrical corporation's general rate case proceeding.~~

12 ~~(d) In order to further ensure the value of the interruptible or~~
13 ~~curtailable service option, the commission shall require each~~
14 ~~electrical corporation to adopt and implement plans for~~
15 ~~certification by the participating customer of the manner in which~~
16 ~~a participating customer will comply with the terms of the~~
17 ~~interruptible or curtailable service option.~~

18 ~~(e) As used in this section, the term "qualified customers"~~
19 ~~includes all customers with demand at, or in excess of, 500~~
20 ~~kilowatts. The commission, by order or decision, may exclude~~
21 ~~from this definition any category of customer for which firm~~
22 ~~service is essential for public health and safety. A prior~~
23 ~~interruptible or curtailable service customer with a historical~~
24 ~~record of compliance of less than 90 percent, as measured by hours~~
25 ~~interrupted divided by hours called, shall be ineligible for~~
26 ~~interruptible or curtailable service.~~

27 ~~SEC. 2.—No reimbursement is required by this act pursuant to~~
28 ~~Section 6 of Article XIII B of the California Constitution because~~
29 ~~the only costs that may be incurred by a local agency or school~~
30 ~~district will be incurred because this act creates a new crime or~~
31 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
32 ~~for a crime or infraction, within the meaning of Section 17556 of~~
33 ~~the Government Code, or changes the definition of a crime within~~
34 ~~the meaning of Section 6 of Article XIII B of the California~~
35 ~~Constitution.~~