

Senate Bill No. 920

Passed the Senate August 26, 2004

Secretary of the Senate

Passed the Assembly August 25, 2004

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

└

CHAPTER _____

An act to amend Sections 352 and 372 of, to add Section 345.3 to, to repeal Section 350 of, to repeal Article 4 (commencing with Section 355) and Article 5 (commencing with Section 359) of, and to repeal and add Article 2 (commencing with Section 334) of Chapter 2.3 of Part 1 of, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 920, Bowen. Electricity Oversight Board: Independent System Operator: Power Exchange.

(1) The existing restructuring of the electrical services industry within the Public Utilities Act provides for the establishment of an Independent System Operator ISO and a Power Exchange as separately incorporated public benefit nonprofit corporations. An Electricity Oversight Board (Oversight Board) is also established to oversee the ISO and the Power Exchange in order to ensure the success of electric industry restructuring and to ensure a reliable supply of electricity in the transition to a new market structure. Pursuant to an order of the Federal Energy Regulatory Commission, the Power Exchange has ceased to function. The Oversight Board is granted various powers including, but not limited to, requiring the revision of the bylaws of the ISO and the approval of the entry of the ISO into a multistate entity or a regional organization. Existing law requires the ISO to adopt certain inspection, maintenance, repair, and replacement standards for the transmission facilities under its control and to make a related report to the Oversight Board. Existing law authorizes the ISO and the Power Exchange to enter into a regional compact or other comparable agreement to become western states regional organizations.

This bill would repeal those provisions establishing, and granting powers to, the Oversight Board, would transfer the existing nonlitigation powers and responsibilities of the Oversight Board to a successor agency designated by the Governor. The bill would assign any litigation of the Oversight Board to the Attorney General and would authorize the Attorney General to initiate, pursue, or settle any claim of the Oversight Board, except where



the Attorney General has a conflict. The bill would require the Governor to assign a litigation claim of the Oversight Board where the Attorney General has a conflict to a successor agency, including a specified claim pending before the Federal Energy Regulatory Commission. The bill would make certain conforming changes to existing law. The bill would require the ISO to revise its own bylaws, would require the Legislature to approve by concurrent resolution the entry of the ISO into a multistate regional transmission organization, and would provide that the corporate powers of directors of the ISO under state law, may only be exercised by members of the independent governing board appointed under state law. Because any violation of the Public Utilities Act is a crime, the bill, by establishing new duties for the ISO, would impose a state-mandated local program by changing the definition of a crime. The bill would repeal certain provisions relating to the Power Exchange. The bill would repeal the regional compact provision.

(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.

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

SECTION 1. Article 2 (commencing with Section 334) of Chapter 2.3 of Part 1 of the Public Utilities Code is repealed.

SEC. 2. Article 2 (commencing with Section 334) is added to Chapter 2.3 of Part 1 of the Public Utilities Code, to read:

Article 2. Transfer of Oversight Board Responsibilities and Powers

334. (a) It is the intent of the Legislature to abolish the Electricity Oversight Board as an agency of the state and to preserve the state's interest in any litigation where the Electricity Oversight Board is a party, by assigning litigation claims to the Attorney General.



(b) Notwithstanding any other provision of law, the Attorney General succeeds to, and may exercise, all rights, claims, powers or entitlements of the Electricity Oversight Board in any litigation. The Attorney General may initiate, pursue to final conclusion or settle any claim of the Electricity Oversight Board.

(c) The Governor shall designate a successor for the Electricity Oversight Board's nonlitigation duties, including monitoring and investigating wholesale electricity markets, and for any litigation claim where the Attorney General has a conflict, including *California Electricity Oversight Board v. Sellers of Energy and Capacity under Long-term Contracts with the California Department of Water Resources*, Federal Energy Regulatory Commission Docket Nos. EL02-62-000 and EL02-62-003.

335. This article shall be liberally construed to preserve any claims and jurisdiction of the state and to carry out the intent of this article.

SEC. 3. Section 345.3 is added to the Public Utilities Code, to read:

345.3. (a) The Independent System Operator governing board shall be composed of a five-member independent governing board of directors appointed by the Governor and subject to confirmation by the Senate. Any reference in this chapter or in any other provision of law to the Independent System Operator governing board means the independent governing board appointed under this subdivision.

(b) A member of the independent governing board appointed under subdivision (a) may not be affiliated with any actual or potential participant in any market administered by the Independent System Operator.

(c) (1) All appointments shall be for three-year terms.

(2) There is no limit on the number of terms that may be served by any member.

(d) The Independent System Operator shall revise its articles of incorporation and bylaws in accordance with this section, and shall make filings with the Federal Energy Regulatory Commission as it determines to be necessary.

(e) For the purposes of the initial appointments to the Independent System Operator governing board, as provided in subdivision (a), the Governor shall appoint one member to a



one-year term, two members to a two-year term, and two members to a three-year term.

(f) The corporate powers of directors of the Independent System Operator under the Corporations Code, may only be exercised by members of the independent governing board appointed pursuant to this section.

SEC. 4. Section 350 of the Public Utilities Code is repealed.

SEC. 5. Section 352 of the Public Utilities Code is amended to read:

352. The Independent System Operator may not enter into a multistate regional transmission organization unless that entry is approved by the Legislature by concurrent resolution.

SEC. 6. Article 4 (commencing with Section 355) of Chapter 2.3 of Part 1 of the Public Utilities Code is repealed.

SEC. 7. Article 5 (commencing with Section 359), of Chapter 2.3 of Part 1 of the Public Utilities Code is repealed.

SEC. 8. Section 372 of the Public Utilities Code is amended to read:

372. (a) It is the policy of the state to encourage and support the development of cogeneration as an efficient, environmentally beneficial, competitive energy resource that will enhance the reliability of local generation supply, and promote local business growth. Subject to the specific conditions provided in this section, the commission shall determine the applicability to customers of uneconomic costs as specified in Sections 367, 368, 375, and 376. Consistent with this state policy, the commission shall provide that these costs shall not apply to any of the following:

(1) To load served onsite or under an over the fence arrangement by a nonmobile self-cogeneration or cogeneration facility that was operational on or before December 20, 1995, or by increases in the capacity of such a facility to the extent that the increased capacity was constructed by an entity holding an ownership interest in or operating the facility and does not exceed 120 percent of the installed capacity as of December 20, 1995, provided that prior to June 30, 2000, the costs shall apply to over the fence arrangements entered into after December 20, 1995, between unaffiliated parties. For the purposes of this subdivision, “affiliated” means any person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or



is under common control with, another specified entity. “Control” means either of the following:

(A) The possession, directly or indirectly, of the power to direct or to cause the direction of the management or policies of a person or entity, whether through an ownership, beneficial, contractual, or equitable interest.

(B) Direct or indirect ownership of at least 25 percent of an entity, whether through an ownership, beneficial or equitable interest.

(2) To load served by onsite or under an over the fence arrangement by a nonmobile self-cogeneration or cogeneration facility for which the customer was committed to construction as of December 20, 1995, provided that the facility was substantially operational on or before January 1, 1998, or by increases in the capacity of the facility to the extent that the increased capacity was constructed by an entity holding an ownership interest in or operating the facility and does not exceed 120 percent of the installed capacity as of January 1, 1998, provided that prior to June 30, 2000, the costs shall apply to over the fence arrangements entered into after December 20, 1995, between unaffiliated parties.

(3) To load served by existing, new, or portable emergency generation equipment used to serve the customer’s load requirements during periods when utility service is unavailable, provided that emergency generation is not operated in parallel with the integrated electric grid, except on a momentary parallel basis.

(4) After June 30, 2000, to any load served onsite or under an over the fence arrangement by any nonmobile self-cogeneration or cogeneration facility.

(b) Further, consistent with state policy, with respect to self-cogeneration or cogeneration deferral agreements, the commission shall do the following:

(1) Provide that a utility shall execute a final self-cogeneration or cogeneration deferral agreement with any customer that, on or before December 20, 1995, had executed a letter of intent (or similar documentation) to enter into the agreement with the utility, provided that the final agreement shall be consistent with the terms and conditions set forth in the letter of intent and the commission shall review and approve the final agreement.



(2) Provide that a customer that holds a self-cogeneration or cogeneration deferral agreement that was in place on or before December 20, 1995, or that was executed pursuant to paragraph (1) in the event the agreement expires, or is terminated, may do any of the following:

(A) Continue through December 31, 2001, to receive utility service at the rate and under terms and conditions applicable to the customer under the deferral agreement that, as executed, includes an allocation of uneconomic costs consistent with subdivision (e) of Section 367.

(B) Engage in a direct transaction for the purchase of electricity and pay uneconomic costs consistent with Sections 367, 368, 375, and 376.

(C) Construct a self-cogeneration or cogeneration facility of approximately the same capacity as the facility previously deferred, provided that the costs provided in Sections 367, 368, 375, and 376 shall apply consistent with subdivision (e) of Section 367, unless otherwise authorized by the commission pursuant to subdivision (c).

(3) Subject to the fire wall described in subdivision (e) of Section 367 provide that the ratemaking treatment for self-cogeneration or cogeneration deferral agreements executed prior to December 20, 1995, or executed pursuant to paragraph (1) shall be consistent with the ratemaking treatment for the contracts approved before January 1995.

(c) The commission shall authorize, within 60 days of the receipt of a joint application from the serving utility and one or more interested parties, applicability conditions as follows:

(1) The costs identified in Sections 367, 368, 375, and 376 shall not, prior to June 30, 2000, apply to load served onsite by a nonmobile self-cogeneration or cogeneration facility that became operational on or after December 20, 1995.

(2) The costs identified in Sections 367, 368, 375, and 376 shall not, prior to June 30, 2000, apply to any load served under over the fence arrangements entered into after December 20, 1995, between unaffiliated entities.

(d) For the purposes of this subdivision, all onsite or over the fence arrangements shall be consistent with Section 218 as it existed on December 20, 1995.



(e) To facilitate the development of new microcogeneration applications, electrical corporations may apply to the commission for a financing order to finance the transition costs to be recovered from customers employing the applications.

(f) To encourage the continued development, installation, and interconnection of clean and efficient self-generation and cogeneration resources, to improve system reliability for consumers by retaining existing generation and encouraging new generation to connect to the electric grid, and to increase self-sufficiency of consumers of electricity through the deployment of self-generation and cogeneration, both of the following shall occur:

(1) The commission shall determine if any policy or action undertaken by the Independent System Operator, directly or indirectly, unreasonably discourages the connection of existing self-generation or cogeneration or new self-generation or cogeneration to the grid.

(2) If the commission finds that any policy or action of the Independent System Operator unreasonably discourages, the connection of existing self-generation or cogeneration or new self-generation or cogeneration to the grid, the commission shall undertake all necessary efforts to revise, mitigate, or eliminate that policy or action of the Independent System Operator.

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



Approved _____, 2004

Governor

