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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 687**

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**Introduced by Assembly Member Roger Hernández**

February 21, 2013

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An act to amend Section 365.1 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 687, as amended, Roger Hernández. Electricity.

The Public Utilities Act requires the Public Utilities Commission, pursuant to electrical restructuring, to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. Statutes enacted during the energy crisis of 2000–01, authorized the Department of Water Resources, until January 1, 2003, to enter into contracts for the purchase of electricity, and to sell electricity to retail end-use customers at not more than the department's acquisition costs and to recover those costs through the issuance of bonds to be repaid by ratepayers. That law suspended the right of retail end-use customers, other than community choice aggregators and a qualifying direct transaction customer, as defined, to acquire service through a direct transaction until the Department of Water Resources no longer supplies electricity under that law. Existing law continues the suspension of direct transactions except as expressly authorized, until the Legislature,

by statute, repeals the suspension or otherwise authorizes direct transactions. Existing law requires the commission to authorize direct transactions for nonresidential end-use customers subject to a reopening schedule that will phase in over a period of not less than 3 years and not more than 5 years, and is subject to an annual maximum allowable total kilowatthour limit established, as specified, for each electrical corporation.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

This bill would additionally require the commission, when authorizing additional direct transactions for retail nonresidential end-use customers, to provide the highest priority to acquire electric services from other providers to entities treating and remediating groundwater that a federal, state, or local agency identifies as contaminated if ~~either the treatment or remediation is on a site listed as a Superfund site by the United States Environmental Protection Agency and is located in a disadvantaged community or severely disadvantaged community, as defined, or~~ the entity is a public drinking water system serving a disadvantaged or severely disadvantaged community. The bill would require the entity treating and remediating contaminated groundwater to use moneys saved as a result of the direct transaction for activities related to the treatment and remediation of the groundwater. Because a violation of this requirement is a crime, this bill would impose a state-mandated local program. *The bill would correct a statutory reference to a reporting requirement of the commission.*

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: yes.

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

- 1 SECTION 1. Section 365.1 of the Public Utilities Code is
- 2 amended to read:
- 3 365.1. (a) Except as expressly authorized by this section, and
- 4 subject to the limitations in subdivisions (b) and (c), the right of

1 retail end-use customers pursuant to this chapter to acquire service  
2 from other providers is suspended until the Legislature, by statute,  
3 lifts the suspension or otherwise authorizes direct transactions. For  
4 purposes of this section, “other provider” means any person,  
5 corporation, or other entity that is authorized to provide electric  
6 service within the service territory of an electrical corporation  
7 pursuant to this chapter, and includes an aggregator, broker, or  
8 marketer, as defined in Section 331, and an electric service  
9 provider, as defined in Section 218.3. “Other provider” does not  
10 include a community choice aggregator, as defined in Section  
11 331.1, and the limitations in this section do not apply to the sale  
12 of electricity by “other providers” to a community choice  
13 aggregator for resale to community choice aggregation electricity  
14 consumers pursuant to Section 366.2.

15 (b) The commission shall allow individual retail nonresidential  
16 end-use customers to acquire electric service from other providers  
17 in each electrical corporation’s distribution service territory, up to  
18 a maximum allowable total kilowatthours annual limit. The  
19 maximum allowable annual limit shall be established by the  
20 commission for each electrical corporation at the maximum total  
21 kilowatthours supplied by all other providers to distribution  
22 customers of that electrical corporation during any sequential  
23 12-month period between April 1, 1998, and the effective date of  
24 this section. Within six months of the effective date of this section,  
25 or by July 1, 2010, whichever is sooner, the commission shall  
26 adopt and implement a reopening schedule that commences  
27 immediately and will phase in the allowable amount of increased  
28 kilowatthours over a period of not less than three years, and not  
29 more than five years, raising the allowable limit of kilowatthours  
30 supplied by other providers in each electrical corporation’s  
31 distribution service territory from the number of kilowatthours  
32 provided by other providers as of the effective date of this section,  
33 to the maximum allowable annual limit for that electrical  
34 corporation’s distribution service territory. The commission shall  
35 review and, if appropriate, modify its currently effective rules  
36 governing direct transactions, but that review shall not delay the  
37 start of the phase-in schedule.

38 (c) Once the commission has authorized additional direct  
39 transactions pursuant to subdivision (b), it shall do both of the  
40 following:

1 (1) Ensure that other providers are subject to the same  
2 requirements that are applicable to the state's three largest electrical  
3 corporations under any programs or rules adopted by the  
4 commission to implement the resource adequacy provisions of  
5 Section 380, the renewables portfolio standard provisions of Article  
6 16 (commencing with Section 399.11), and the requirements for  
7 the electricity sector adopted by the State Air Resources Board  
8 pursuant to the California Global Warming Solutions Act of 2006  
9 (Division 25.5 (commencing with Section 38500) of the Health  
10 and Safety Code). This requirement applies notwithstanding any  
11 prior decision of the commission to the contrary.

12 (2) (A) Ensure that, in the event that the commission authorizes,  
13 in the situation of a contract with a third party, or orders, in the  
14 situation of utility-owned generation, an electrical corporation to  
15 obtain generation resources that the commission determines are  
16 needed to meet system or local area reliability needs for the benefit  
17 of all customers in the electrical corporation's distribution service  
18 territory, the net capacity costs of those generation resources are  
19 allocated on a fully nonbypassable basis consistent with departing  
20 load provisions as determined by the commission, to all of the  
21 following:

22 (i) Bundled service customers of the electrical corporation.

23 (ii) Customers that purchase electricity through a direct  
24 transaction with other providers.

25 (iii) Customers of community choice aggregators.

26 (B) If the commission authorizes or orders an electrical  
27 corporation to obtain generation resources pursuant to subparagraph  
28 (A), the commission shall ensure that those resources meet a system  
29 or local reliability need in a manner that benefits all customers of  
30 the electrical corporation. The commission shall allocate the costs  
31 of those generation resources to ratepayers in a manner that is fair  
32 and equitable to all customers, whether they receive electric service  
33 from the electrical corporation, a community choice aggregator,  
34 or an electric service provider.

35 (C) The resource adequacy benefits of generation resources  
36 acquired by an electrical corporation pursuant to subparagraph (A)  
37 shall be allocated to all customers who pay their net capacity costs.  
38 Net capacity costs shall be determined by subtracting the energy  
39 and ancillary services value of the resource from the total costs  
40 paid by the electrical corporation pursuant to a contract with a

1 third party or the annual revenue requirement for the resource if  
2 the electrical corporation directly owns the resource. An energy  
3 auction shall not be required as a condition for applying this  
4 allocation, but may be allowed as a means to establish the energy  
5 and ancillary services value of the resource for purposes of  
6 determining the net costs of capacity to be recovered from  
7 customers pursuant to this paragraph, and the allocation of the net  
8 capacity costs of contracts with third parties shall be allowed for  
9 the terms of those contracts.

10 (D) It is the intent of the Legislature, in enacting this paragraph,  
11 to provide additional guidance to the commission with respect to  
12 the implementation of subdivision (g) of Section 380, as well as  
13 to ensure that the customers to whom the net costs and benefits of  
14 capacity are allocated are not required to pay for the cost of  
15 electricity they do not consume.

16 (d) (1) In authorizing additional direct transactions pursuant to  
17 subdivision (b), the commission shall ensure that entities that are  
18 currently treating and remediating groundwater that a federal, state,  
19 or local agency previously identified as contaminated have the  
20 highest priority in acquiring electric service by direct transactions  
21 if either of the following apply: *the entity is a public drinking water*  
22 *system serving a disadvantaged community or severely*  
23 *disadvantaged community as those terms are defined in subdivision*  
24 *(g) of Section 75005 of the Public Resources Code.*

25 ~~(A) The treatment or remediation is at a site that is listed by the~~  
26 ~~United States Environmental Protection Agency on the National~~  
27 ~~Priorities List pursuant to the Comprehensive Environmental~~  
28 ~~Response, Compensation, and Liability Act of 1980 (42 U.S.C.~~  
29 ~~Sec. 9601 et seq.) and is located in a disadvantaged community or~~  
30 ~~severely disadvantaged community as those terms are defined in~~  
31 ~~subdivision (g) of Section 75005 of the Public Resources Code.~~

32 ~~(B) The entity is a public drinking water system serving a~~  
33 ~~disadvantaged community or severely disadvantaged community~~  
34 ~~as those terms are defined in subdivision (g) of Section 75005 of~~  
35 ~~the Public Resources Code.~~

36 (2) An entity that is authorized to engage in a direct transaction  
37 pursuant to this subdivision and subdivision (b) shall use moneys  
38 saved as a result of the direct transaction for activities related to  
39 treating or remediating contaminated groundwater at the site.

1 (3) An entity that is authorized to engage in a direct transaction  
 2 pursuant to this subdivision and subdivision (b) shall electronically  
 3 report to the Energy Division of the commission the total yearly  
 4 savings resulting from the direct transaction and the expenditure  
 5 of those savings. The commission may include this information  
 6 in the annual report required pursuant to Section ~~316~~. 321.6.

7 (e) (1) If the commission approves a centralized resource  
 8 adequacy mechanism pursuant to subdivisions (h) and (i) of Section  
 9 380, upon the implementation of the centralized resource adequacy  
 10 mechanism the requirements of paragraph (2) of subdivision (c)  
 11 shall be suspended. If the commission later orders that electrical  
 12 corporations cease procuring capacity through a centralized  
 13 resource adequacy mechanism, the requirements of paragraph (2)  
 14 of subdivision (c) shall again apply.

15 (2) If the use of a centralized resource adequacy mechanism is  
 16 authorized by the commission and has been implemented as set  
 17 forth in paragraph (1), the net capacity costs of generation resources  
 18 that the commission determines are required to meet urgent system  
 19 or urgent local grid reliability needs, and that the commission  
 20 authorizes to be procured outside of the Section 380 or Section  
 21 454.5 processes, shall be recovered according to the provisions of  
 22 paragraph (2) of subdivision (c).

23 (3) This subdivision does not supplant the resource adequacy  
 24 requirements of Section 380 or the resource procurement  
 25 procedures established in Section 454.5.

26 (f) The commission may report to the Legislature on the efficacy  
 27 of authorizing individual retail end-use residential customers to  
 28 enter into direct transactions, including appropriate consumer  
 29 protections.

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

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