

**ASSEMBLY BILL**

**No. 2145**

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**Introduced by Assembly Member Bradford**

February 20, 2014

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An act to amend Section 366.2 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 2145, as introduced, Bradford. Electricity: community choice aggregation.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined. Existing law authorizes a community choice aggregator, as defined, to aggregate the electrical load of interested electricity consumers within its boundaries and requires a community choice aggregator to file an implementation plan with the commission and requires that the plan include disclosures of certain information and describe other matter. Existing law requires an electrical corporation to cooperate fully with any community choice aggregator that investigates, pursues, or implements community choice aggregation programs, including providing appropriate billing and electrical load data. Existing law requires an electrical corporation, when requested by, and at the expense of, a community choice aggregator, to install, maintain, and calibrate metering devices at mutually agreeable locations within or adjacent to the community choice aggregator's political boundaries. Existing law requires a community choice aggregator to register with the commission, which may require additional information to ensure compliance with basic consumer protection rules and other procedural matters.

This bill would require that the implementation plan filed by a community choice aggregator make full disclosure of certain information and completely describe other matter. The bill would authorize the commission to require that a community choice aggregator, when registering with the commission, provide additional information to ensure compliance with basic consumer protection and other rules and other procedural matters. The bill would make other technical, nonsubstantive revisions to the community choice aggregator provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
 State-mandated local program: no.

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

1 SECTION 1. Section 366.2 of the Public Utilities Code is  
 2 amended to read:  
 3 366.2. (a) (1) Customers shall be entitled to aggregate their  
 4 electric loads as members of their local community with  
 5 community choice aggregators.  
 6 (2) Customers may aggregate their loads through a public  
 7 process with community choice aggregators, if each customer is  
 8 given an opportunity to opt out of his or her community's  
 9 aggregation program.  
 10 (3) If a customer opts out of a community choice aggregator's  
 11 program, or has no community choice aggregation program  
 12 available, that customer shall have the right to continue to be served  
 13 by the existing electrical corporation or its successor in interest.  
 14 (4) The implementation of a community choice aggregation  
 15 program shall not result in a shifting of costs between the customers  
 16 of the community choice aggregator and the bundled service  
 17 customers of an electrical corporation.  
 18 (5) A community choice aggregator shall be solely responsible  
 19 for all generation procurement activities on behalf of the  
 20 community choice aggregator's customers, except where other  
 21 generation procurement arrangements are expressly authorized by  
 22 statute.  
 23 (b) If a public agency seeks to serve as a community choice  
 24 aggregator, it shall offer the opportunity to purchase electricity to  
 25 all residential customers within its jurisdiction.  
 26 (c) (1) Notwithstanding Section 366, a community choice  
 27 aggregator is hereby authorized to aggregate the electrical load of

1 interested electricity consumers within its boundaries to reduce  
2 transaction costs to consumers, provide consumer ~~protections~~  
3 *protection*, and leverage the negotiation of contracts. However,  
4 the community choice aggregator may not aggregate electrical  
5 load if that load is served by a local publicly owned electric utility.  
6 A community choice aggregator may group retail electricity  
7 customers to solicit bids, broker, and contract for electricity and  
8 energy services for those customers. The community choice  
9 aggregator may enter into agreements for services to facilitate the  
10 sale and purchase of electricity and other related services. Those  
11 service agreements may be entered into by an entity authorized to  
12 be a community choice aggregator, as defined in Section 331.1.

13 (2) Under community choice aggregation, customer participation  
14 may not require a positive written declaration, but each customer  
15 shall be informed of his or her right to opt out of the community  
16 choice aggregation program. If no negative declaration is made  
17 by a customer, that customer shall be served through the  
18 community choice aggregation program. If an existing customer  
19 moves the location of his or her electric service within the  
20 jurisdiction of the community choice aggregator, the customer  
21 shall retain the same subscriber status as prior to the move, unless  
22 the customer affirmatively changes his or her subscriber status. If  
23 the customer is moving from outside to inside the jurisdiction of  
24 the community choice aggregator, customer participation shall not  
25 require a positive written declaration, but the customer shall be  
26 informed of his or her right to elect not to receive service through  
27 the community choice aggregator.

28 (3) A community choice aggregator establishing electrical load  
29 aggregation pursuant to this section shall develop an  
30 implementation plan detailing the process and consequences of  
31 aggregation. The implementation plan, and any subsequent changes  
32 to it, shall be considered and adopted at a duly noticed public  
33 hearing. The implementation plan shall contain all of the following:

34 (A) An organizational structure of the program, its operations,  
35 and its funding.

36 (B) Ratesetting and other costs to participants.

37 (C) Provisions for *full* disclosure and due process in setting rates  
38 and allocating costs among participants.

39 (D) The methods for entering and terminating agreements with  
40 other entities.

1 (E) The rights and responsibilities of program participants,  
 2 including, but not limited to, consumer protection procedures,  
 3 credit issues, and shutoff procedures.

4 (F) Termination of the program.

5 (G) A description of the third parties that will be supplying  
 6 electricity under the program, including, but not limited to,  
 7 *complete* information about financial, technical, and operational  
 8 capabilities.

9 (4) A community choice aggregator establishing electrical load  
 10 aggregation shall prepare a statement of intent with the  
 11 implementation plan. Any community choice load aggregation  
 12 established pursuant to this section shall provide for the following:

13 (A) Universal access.

14 (B) Reliability.

15 (C) Equitable treatment of all classes of customers.

16 (D) Any requirements established by state law or by the  
 17 commission concerning aggregated service, including, *but not*  
 18 *limited to*, those rules adopted by the commission pursuant to  
 19 paragraph (3) of subdivision (b) of Section 8341 for the application  
 20 of the greenhouse gases emission performance standard to  
 21 community choice aggregators.

22 (5) In order to determine the cost-recovery mechanism to be  
 23 imposed on the community choice aggregator pursuant to  
 24 subdivisions (d), (e), and (f) that shall be paid by the customers of  
 25 the community choice aggregator to prevent shifting of costs, the  
 26 community choice aggregator shall file the implementation plan  
 27 with the commission, and any other information requested by the  
 28 commission that the commission determines is necessary to develop  
 29 the cost-recovery mechanism in subdivisions (d), (e), and (f).

30 (6) The commission shall notify any electrical corporation  
 31 serving the customers proposed for aggregation that an  
 32 implementation plan initiating community choice aggregation has  
 33 been filed, within 10 days of the filing.

34 (7) Within 90 days after the community choice aggregator  
 35 establishing load aggregation files its implementation plan, the  
 36 commission shall certify that it has received the implementation  
 37 plan, including any additional information necessary to determine  
 38 a cost-recovery mechanism. After certification of receipt of the  
 39 implementation plan and any additional information requested,  
 40 the commission shall then provide the community choice

1 aggregator with its findings regarding any cost recovery that must  
2 be paid by customers of the community choice aggregator to  
3 prevent a shifting of costs as provided for in subdivisions (d), (e),  
4 and (f).

5 (8) No entity proposing community choice aggregation shall  
6 act to furnish electricity to electricity consumers within its  
7 boundaries until the commission determines the cost recovery that  
8 must be paid by the customers of that proposed community choice  
9 aggregation program, as provided for in subdivisions (d), (e), and  
10 (f). The commission shall designate the earliest possible effective  
11 date for implementation of a community choice aggregation  
12 program, taking into consideration the impact on any annual  
13 procurement plan of the electrical corporation that has been  
14 approved by the commission.

15 (9) ~~All~~ *An electrical corporation shall cooperate*  
16 *fully with any community choice aggregators that investigate,*  
17 *pursue, or implement community choice aggregation programs.*  
18 *Cooperation shall include providing the entities with appropriate*  
19 *billing and electrical load data, including, but not limited to,*  
20 *electrical consumption data as defined in Section 8380 and other*  
21 *data detailing electricity needs and patterns of usage, as determined*  
22 *by the commission, and in accordance with procedures established*  
23 *by the commission. The commission shall exercise its authority*  
24 *pursuant to Chapter 11 (commencing with Section 2100) to enforce*  
25 *the requirements of this paragraph when it finds that the*  
26 *requirements of this paragraph have been violated. Electrical*  
27 *corporations shall continue to provide all metering, billing,*  
28 *collection, and customer service to retail customers that participate*  
29 *in community choice aggregation programs. Bills sent by the*  
30 *electrical corporation to retail customers shall identify the*  
31 *community choice aggregator as providing the electrical energy*  
32 *component of the bill. The commission shall determine the terms*  
33 *and conditions under which the electrical corporation provides*  
34 *services to community choice aggregators and retail customers.*

35 (10) If the commission finds that an electrical corporation has  
36 violated this section, the commission shall consider the impact of  
37 the violation upon community choice aggregators.

38 (11) The commission shall proactively expedite the complaint  
39 process for disputes regarding an electrical corporation's violation  
40 of its obligations pursuant to this section in order to provide for

1 timely resolution of complaints made by community choice  
2 aggregation programs, so that all complaints are resolved in no  
3 more than 180 days following the filing of a complaint by a  
4 community choice aggregation program concerning the actions of  
5 the incumbent electrical corporation. This deadline may only be  
6 extended under either of the following circumstances:

7 (A) Upon agreement of all of the parties to the complaint.

8 (B) The commission makes a written determination that the  
9 deadline cannot be met, including findings for the reason for this  
10 determination, and issues an order extending the deadline. A single  
11 order pursuant to this subparagraph shall not extend the deadline  
12 for more than 60 days.

13 (12) (A) An entity authorized to be a community choice  
14 aggregator, as defined in Section 331.1, that elects to implement  
15 a community choice aggregation program within its jurisdiction  
16 pursuant to this chapter, shall do so by ordinance. A city, county,  
17 or city and county may request, by affirmative resolution of its  
18 governing council or board, that another entity authorized to be a  
19 community choice aggregator act as the community choice  
20 aggregator on its behalf. If a city, county, or city and county, by  
21 resolution, requests another authorized entity be the community  
22 choice aggregator for the city, county, or city and county, that  
23 authorized entity shall be responsible for adopting the ordinance  
24 to implement the community choice aggregation program on behalf  
25 of the city, county, or city and county.

26 (B) Two or more entities authorized to be a community choice  
27 aggregator, as defined in Section 331.1, may participate as a group  
28 in a community choice aggregation program pursuant to this  
29 chapter, through a joint powers agency established pursuant to  
30 Chapter 5 (commencing with Section 6500) of Division 7 of Title  
31 1 of the Government Code, if each entity adopts an ordinance  
32 pursuant to subparagraph (A). Pursuant to Section 6508.1 of the  
33 Government Code, members of a joint powers agency that is a  
34 community choice aggregator may specify in their joint powers  
35 agreement that, unless otherwise agreed by the members of the  
36 agency, the debts, liabilities, and obligations of the agency shall  
37 not be the debts, liabilities, and obligations, either jointly or  
38 severally, of the members of the agency. The commission shall  
39 not, as a condition of registration or otherwise, require an agency's  
40 members to voluntarily assume the debts, liabilities, and obligations

1 of the agency to the electrical corporation unless the commission  
2 finds that the agreement by the agency's members is the only  
3 reasonable means by which the agency may establish its  
4 creditworthiness under the electrical corporation's tariff to pay  
5 charges to the electrical corporation under the tariff.

6 (13) Following adoption of aggregation through the ordinance  
7 described in paragraph (12), the program shall allow any retail  
8 customer to opt out and to continue to be served as a bundled  
9 service customer by the existing electrical corporation, or its  
10 successor in interest. Delivery services shall be provided at the  
11 same rates, terms, and conditions, as approved by the commission,  
12 for community choice aggregation customers and customers that  
13 have entered into a direct transaction where applicable, as  
14 determined by the commission. Once enrolled in the aggregated  
15 entity, any ratepayer that chooses to opt out within 60 days or two  
16 billing cycles of the date of enrollment may do so without penalty  
17 and shall be entitled to receive default service pursuant to paragraph  
18 (3) of subdivision (a). Customers that return to the electrical  
19 corporation for procurement services shall be subject to the same  
20 terms and conditions as are applicable to other returning direct  
21 access customers from the same class, as determined by the  
22 commission, as authorized by the commission pursuant to this  
23 code or any other provision of law, except that those customers  
24 shall be subject to no more than a 12-month stay requirement with  
25 the electrical corporation. Any reentry fees to be imposed after the  
26 opt-out period specified in this paragraph, shall be approved by  
27 the commission and shall reflect the cost of reentry. The  
28 commission shall exclude any amounts previously determined and  
29 paid pursuant to subdivisions (d), (e), and (f) from the cost of  
30 reentry.

31 (14) Nothing in this section shall be construed as authorizing  
32 any city or any community choice retail load aggregator to restrict  
33 the ability of retail electricity customers to obtain or receive service  
34 from any authorized electric service provider in a manner consistent  
35 with law.

36 (15) (A) The community choice aggregator shall fully inform  
37 participating customers at least twice within two calendar months,  
38 or 60 days, in advance of the date of commencing automatic  
39 enrollment. Notifications may occur concurrently with billing  
40 cycles. Following enrollment, the aggregated entity shall fully

1 inform participating customers for not less than two consecutive  
2 billing cycles. Notification may include, but is not limited to, direct  
3 mailings to customers, or inserts in water, sewer, or other utility  
4 bills. Any notification shall *fully* inform customers of both of the  
5 following:

6 (i) That they are to be automatically enrolled and that the  
7 customer has the right to opt out of the community choice  
8 aggregator without penalty.

9 (ii) ~~The~~ *All* terms and conditions of the services offered.

10 (B) The community choice aggregator may request the  
11 commission to approve and order the electrical corporation to  
12 provide the notification required in subparagraph (A). If the  
13 commission orders the electrical corporation to send one or more  
14 of the notifications required pursuant to subparagraph (A) in the  
15 electrical corporation's normally scheduled monthly billing  
16 process, the electrical corporation shall be entitled to recover from  
17 the community choice aggregator all reasonable incremental costs  
18 it incurs related to the notification or notifications. The electrical  
19 corporation shall fully cooperate with the community choice  
20 aggregator in determining the feasibility and costs associated with  
21 using the electrical corporation's normally scheduled monthly  
22 billing process to provide one or more of the notifications required  
23 pursuant to subparagraph (A).

24 (C) Each notification shall also include a mechanism by which  
25 a ratepayer may opt out of community choice aggregated service.  
26 The opt out may take the form of a self-addressed return postcard  
27 indicating the customer's election to remain with, or return to,  
28 electrical energy service provided by the electrical corporation, or  
29 another straightforward means by which the customer may elect  
30 to derive electrical energy service through the electrical corporation  
31 providing service in the area.

32 (16) A community choice aggregator shall have an operating  
33 service agreement with the electrical corporation prior to furnishing  
34 electric service to consumers within its jurisdiction. The service  
35 agreement shall include performance standards that govern the  
36 business and operational relationship between the community  
37 choice aggregator and the electrical corporation. The commission  
38 shall ensure that any service agreement between the community  
39 choice aggregator and the electrical corporation includes equitable  
40 responsibilities and remedies for all parties. The parties may

1 negotiate specific terms of the service agreement, provided that  
2 the service agreement is consistent with this chapter.

3 (17) The community choice aggregator shall register with the  
4 commission, which may require additional information to ensure  
5 compliance with basic consumer protection *and other* rules and  
6 other procedural matters.

7 (18) Once the community choice aggregator's contract is signed,  
8 the community choice aggregator shall notify the applicable  
9 electrical corporation that community choice service will  
10 commence within 30 days.

11 (19) Once notified of a community choice aggregator program,  
12 the electrical corporation shall transfer all applicable accounts to  
13 the new supplier within a 30-day period from the date of the close  
14 of the electrical corporation's normally scheduled monthly  
15 metering and billing process.

16 (20) An electrical corporation shall recover from the community  
17 choice aggregator any costs reasonably attributable to the  
18 community choice aggregator, as determined by the commission,  
19 of implementing this section, including, but not limited to, all  
20 business and information system changes, except for  
21 transaction-based costs as described in this paragraph. Any costs  
22 not reasonably attributable to a community choice aggregator shall  
23 be recovered from ratepayers, as determined by the commission.  
24 All reasonable transaction-based costs of notices, billing, metering,  
25 collections, and customer communications or other services  
26 provided to an aggregator or its customers shall be recovered from  
27 the aggregator or its customers on terms and at rates to be approved  
28 by the commission.

29 (21) At the request and expense of any community choice  
30 aggregator, ~~an electrical corporation~~ *corporation* shall install,  
31 maintain, and calibrate metering devices at mutually agreeable  
32 locations within or adjacent to the community choice aggregator's  
33 political boundaries. The electrical corporation shall read the  
34 metering devices and provide the data collected to the community  
35 choice aggregator at the aggregator's expense. To the extent that  
36 the community choice aggregator requests a metering location that  
37 would require alteration or modification of a circuit, the electrical  
38 corporation shall only be required to alter or modify a circuit if  
39 ~~such~~ *that* alteration or modification does not compromise the safety,  
40 reliability, or operational flexibility of the electrical corporation's

1 facilities. All costs incurred to modify circuits pursuant to this  
2 paragraph, shall be borne by the community choice aggregator.

3 (d) (1) It is the intent of the Legislature that each retail end-use  
4 customer that has purchased power from an electrical corporation  
5 on or after February 1, 2001, should bear a fair share of the  
6 Department of Water Resources' electricity purchase costs, as well  
7 as electricity purchase contract obligations incurred as of the  
8 effective date of the act adding this section, that are recoverable  
9 from electrical corporation customers in commission-approved  
10 rates. It is further the intent of the Legislature to prevent any  
11 shifting of recoverable costs between customers.

12 (2) The Legislature finds and declares that this subdivision is  
13 consistent with the requirements of Division 27 (commencing with  
14 Section 80000) of the Water Code and Section 360.5 of this code,  
15 and is therefore declaratory of existing law.

16 (e) A retail end-use customer that purchases electricity from a  
17 community choice aggregator pursuant to this section shall pay  
18 both of the following:

19 (1) A charge equivalent to the charges that would otherwise be  
20 imposed on the customer by the commission to recover  
21 bond-related costs pursuant to any agreement between the  
22 commission and the Department of Water Resources pursuant to  
23 Section 80110 of the Water Code, which charge shall be payable  
24 until any obligations of the Department of Water Resources  
25 pursuant to Division 27 (commencing with Section 80000) of the  
26 Water Code are fully paid or otherwise discharged.

27 (2) Any additional costs of the Department of Water Resources,  
28 equal to the customer's proportionate share of the Department of  
29 Water Resources' estimated net unavoidable electricity purchase  
30 contract costs as determined by the commission, for the period  
31 commencing with the customer's purchases of electricity from the  
32 community choice aggregator, through the expiration of all then  
33 existing electricity purchase contracts entered into by the  
34 Department of Water Resources.

35 (f) A retail end-use customer purchasing electricity from a  
36 community choice aggregator pursuant to this section shall  
37 reimburse the electrical corporation that previously served the  
38 customer for all of the following:

39 (1) The electrical corporation's unrecovered past  
40 undercollections for electricity purchases, including any financing

1 costs, attributable to that customer, that the commission lawfully  
2 determines may be recovered in rates.

3 (2) Any additional costs of the electrical corporation recoverable  
4 in commission-approved rates, equal to the share of the electrical  
5 corporation's estimated net unavoidable electricity purchase  
6 contract costs attributable to the customer, as determined by the  
7 commission, for the period commencing with the customer's  
8 purchases of electricity from the community choice aggregator,  
9 through the expiration of all then existing electricity purchase  
10 contracts entered into by the electrical corporation.

11 (g) Estimated net unavoidable electricity costs paid by the  
12 customers of a community choice aggregator shall be reduced by  
13 the value of any benefits that remain with bundled service  
14 customers, unless the customers of the community choice  
15 aggregator are allocated a fair and equitable share of those benefits.

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

24 (2) Charges imposed pursuant to subdivisions (d), (e), and (f)  
25 shall be nonbypassable.

26 (i) The commission shall authorize community choice  
27 aggregation only if the commission imposes a cost-recovery  
28 mechanism pursuant to subdivisions (d), (e), (f), and (h). Except  
29 as provided by this subdivision, this section shall not alter the  
30 suspension by the commission of direct purchases of electricity  
31 from alternate providers other than by community choice  
32 aggregators, pursuant to Section 365.1.

33 (j) (1) The commission shall not authorize community choice  
34 aggregation until it implements a cost-recovery mechanism,  
35 consistent with subdivisions (d), (e), and (f), that is applicable to  
36 customers that elected to purchase electricity from an alternate  
37 provider between February 1, 2001, and January 1, 2003.

38 (2) The commission shall not authorize community choice  
39 aggregation until it has adopted rules for implementing community  
40 choice aggregation.

1 (k) (1) Except for nonbypassable charges imposed by the  
2 commission pursuant to subdivisions (d), (e), (f), and (h), and  
3 programs authorized by the commission to provide broader  
4 statewide or regional benefits to all customers, electric service  
5 customers of a community choice aggregator shall not be required  
6 to pay nonbypassable charges for goods, services, or programs  
7 that do not benefit either, or where applicable, both, the customer  
8 and the community choice aggregator serving the customer.

9 (2) The commission, Energy Commission, electrical corporation,  
10 or third-party administrator shall administer any program funded  
11 through a nonbypassable charge on a nondiscriminatory basis so  
12 that the electric service customers of a community choice  
13 aggregator may participate in the program on an equal basis with  
14 the customers of an electrical corporation.

15 (3) Nothing in this subdivision is intended to modify, or prohibit  
16 the use of, charges funding programs for the benefit of low-income  
17 customers.

18 (l) (1) An electrical corporation shall not terminate the services  
19 of a community choice aggregator unless authorized by a vote of  
20 the full commission. The commission shall ensure that prior to  
21 authorizing a termination of service, that the community choice  
22 aggregator has been provided adequate notice and a reasonable  
23 opportunity to be heard regarding any electrical corporation  
24 contentions in support of termination. If the contentions made by  
25 the electrical corporation in favor of termination include factual  
26 claims, the community choice aggregator shall be afforded an  
27 opportunity to address those claims in an evidentiary hearing.

28 (2) Notwithstanding paragraph (1), if the Independent System  
29 Operator has transferred the community choice aggregator's  
30 scheduling coordination responsibilities to the incumbent electrical  
31 corporation, an administrative law judge or assigned commissioner,  
32 after providing the aggregator with notice and an opportunity to  
33 respond, may suspend the aggregator's service to customers  
34 pending a full vote of the commission.

35 (m) Any meeting of an entity authorized to be a community  
36 choice aggregator, as defined in Section 331.1, for the purpose of  
37 developing, implementing, or administering a program of  
38 community choice aggregation shall be conducted in the manner  
39 prescribed by the Ralph M. Brown Act (Chapter 9 (commencing

1 with Section 54950) of Part 1 of Division 2 of Title 5 of the  
2 Government Code).

O