AMENDED IN SENATE MARCH 28, 2000

SENATE BILL No. 1939

Introduced by Senator Alarcon

February 24, 2000

An act to amend Section 385 of, and to add Section 9607 to, the Public Utilities Code, and *to* amend Section 22120 of the Water Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1939, as amended, Alarcon. Public utilities: electric power.

(1) Existing law requires each local publicly owned utility to establish a nonbypassable usage based charge to fund specified *public purpose* programs, including providing services for low-income electricity customers. The charge is required to be not less than the lowest expenditure of the 3 largest electrical corporations in California based on a percentage of revenue.

This bill would require that the nonbypassable usage based charge that funds low-income electricity customers be based on the highest expenditure level of the 3 largest electrical corporations in California, as prescribed. *The bill would require revenues that are not used to fund specified public purpose investments during the fiscal year in which those revenues were collected to be transferred at the end of that fiscal year to a subaccount of the Energy Resources Programs Account of the California Energy Resources Conservation and Development Commission. The bill would require revenues that are not used to fund low-income services during the fiscal* *year in which those revenues were collected to be transferred at the end of that fiscal year to a county energy low-income programs fund in the county in which the revenues were collected. The bill would require each county to establish and administer an energy low-income programs fund for that purpose and to use energy low-income program funds to provide grants for specified low-income purposes, thereby imposing a state-mandated local program.* Because a violation of this provision would be a crime, this bill would *also* impose a state-mandated local program by creating a new crime.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $^{2}/_{3}$ of the membership of each house of the Legislature.

(2) The Irrigation District Law authorizes an irrigation district to be governed by a board of directors.

This bill would require the Public Utilities Commission to approve the sale of electricity by an irrigation district in the service area of specified entities. Prior to granting approval, the commission would be required to make findings, as prescribed. The commission would also require that the district meet specified conditions prior to the commission granting approval of the sale of electricity, as prescribed. Because this bill would increase the duties of local entities by requiring them to obtain commission approval and meet conditions in order to sell electricity, it would impose a state-mandated local program.

(3) The Irrigation District Law authorizes an irrigation district that is governed under that law to sell, dispose of, and distribute electric power for use outside its boundaries.

This bill would provide that any income derived by a district from the distribution of electric power outside the boundaries of a district, and within the service territory of specified entities shall be subject to tax as if it were income earned as unrelated business taxable income by an exempt organization. The bill would also provide that any facility that is constructed or acquired outside the boundaries of a district, for the purposes of distributing electric power outside its boundaries, and within the service territory of specified entities is subject to property taxes. The bill would require the construction or acquisition of that facility to be financed without tax exempt financing or the issuance of bonds.

(4) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: $^{2}/_{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. Section 385 of the Public Utilities Code is amended to read:

385. (a) Except as provided in subdivision (b), each local publicly owned electric utility shall establish a nonbypassable, usage based charge on local distribution service of not less than the lowest expenditure level of the three largest electrical corporations in California on a percent of revenue basis, calculated from each utility's total revenue requirement for the year ended December 31, 1994, and each utility's total annual expenditure under paragraphs (1), (2), and (3) of subdivision (c) of Section 381 and Section 382, to fund investments by the utility and other parties in any or all of the following:

(1) Cost-effective demand-side management services to promote energy-efficiency and energy conservation.

(2) New investment in renewable energy resources and technologies consistent with existing statutes and regulations which promote those resources and technologies.

(3) Research, development and demonstration programs for the public interest to advance science or technology which is not adequately provided by competitive and regulated markets.

(b) (1) Each local publicly owned electric utility shall establish a nonbypassable, usage based charge on local distribution service of not less than the highest expenditure level of the three largest electrical corporations in California for low-income programs ~~based on the greater of the of the following:~~

~~(A) A percent of revenue basis, calculated from the utility's total revenue requirement during the two years prior to the year ending on December 31, 2000.~~

~~(B) A percent of revenue basis, calculated from the utility's total revenue requirement during the year ended December 31, 1996.~~*, calculated on a percent of revenue basis, using the utility's total revenue requirement in the highest low-income program expenditure year during the period from 1996 through 2000.*

(2) The nonbypassable charge set forth in subdivision (a) shall be used to fund services for low-income electricity customers, including, but not limited to, targeted energy efficiency services and rate discounts.

(c) (1) Revenues collected pursuant to subdivision (a) that are not used to fund the investments described in subdivision (a) during the fiscal year in which those revenues were collected, shall be transferred at the end of that fiscal year to the subaccount of the Energy Resources Programs Account of the California Energy Resources Conservation and Development Commission created pursuant to subdivision (a) of Section 383.

(2) Revenues collected pursuant to subdivision (b) that are not used to fund the services described in subdivision (b) during the fiscal year in which those revenues were collected, shall be transferred at the end of that fiscal year to an energy low-income programs fund

in the county in which the revenues were collected, which fund shall be established and administered by the county. A county shall use energy low-income program funds to provide grants to local agencies and nonprofit community-based organizations to provide targeted energy efficiency programs or electricity bill payment assistance to low-income electricity customers residing in the county and to pay the county's administrative costs related to the fund.

SEC. 2. Section 9607 is added to the Public Utilities Code, to read:

9607. (a) Notwithstanding Section 9604, for purposes of this section, ''district'' means an irrigation district furnishing electric services formed pursuant to the Irrigation District Law as set forth in Division 11 (commencing with Section 20500) of the Water Code.

(b) Notwithstanding any other provision of law, a district may not construct, lease, acquire, or operate facilities for the distribution of electricity in the service territory of an electrical corporation providing electric distribution services as that territory existed on January 1, 2000, or in the service territory of a local publicly owned electric utility providing electric distribution services as of January 1, 2000, without the approval of the commission.

(c) The commission may not approve the request of a district to provide distribution of electricity in the service territory of an entity as set forth in subdivision (a) unless the commission determines all of the following:

(1) Service by the district within the service territory is in the public interest.

(2) Service by the district within the service territory is consistent with the policies of the state to prevent or eliminate economic waste.

(3) Service by the district within the service territory does not adversely impact the ability of the electrical corporation or local publicly owned electric utility to provide adequate service at reasonable rates within the remainder of its service ~~area~~ *territory.*

(4) Service by the district within the service territory ~~does not reduce in value or render useless any facilities previously constructed by the electrical corporation or local publicly owned electric utility.~~ *does not shift costs to other customers, investors, or taxpayers of the entity currently providing distribution service.*

(5) The district has established and funded public purpose and low-income programs in accordance with subdivisions (a) and (b) of Section 385.

(d) The commission shall require, as conditions to approval for a district to provide electric service within the service territory of an electrical corporation or local publicly owned electric utility, all of the following:

(1) The district shall adopt line extension rules comparable to those in place within the territory to be served.

(2) The district shall provide universal service to all customers who request service at the published tariff rates within the territory to be served.

(3) The district shall adopt consumer protection *and direct transaction* provisions comparable to those established by the Public Utilities Commission for electrical corporations.

(4) The district shall transmit the nonbypassable public purpose and low-income charges collected from a customer in the territory pursuant to Section 385 to the utility that provided electric distribution service to the customer immediately prior to approval pursuant to this section.

SEC. 3. Section 22120 of the Water Code is amended to read:

22120. (a) Except as provided in Section 9607 of the Public Utilities Code, a district may sell, dispose of, and distribute electric power for use outside of its boundaries.

(b) Any income derived by a district from the distribution of electric power outside the boundaries of a district, and within the service territory of an electrical corporation as that territory existed on January 1, 2000, shall be subject to tax as if it were income earned as unrelated business taxable income by an exempt organization.

(c) (1) Any facility that is constructed or acquired outside the boundaries of a district, for the purposes of distributing electric power outside its boundaries, and within the service territory of an electrical corporation as that territory existed on January 1, 2000, or within the territory of a local publicly owned electric utility providing electric distribution services as of January 1, 2000, is subject to property taxes.

(2) The construction or acquisition of a facility that is described in paragraph (1) shall be financed without tax exempt financing.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard 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.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

O