

AMENDED IN SENATE APRIL 5, 2000

AMENDED IN SENATE MARCH 28, 2000

**SENATE BILL**

**No. 1939**

**Introduced by Senator Alarcon**

February 24, 2000

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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 *investments in* 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 a specified percentage of charge revenues to be invested in programs servicing low-income electricity customers. 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  $\frac{2}{3}$  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 that is governed under that law to sell, dispose of, and distribute electric power for use outside its boundaries.~~

~~This bill would require the Public Utilities Commission to approve the sale of electricity by an irrigation district in the service area territory 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. The bill would prohibit a district from providing electric service to a retail customer of an electrical corporation or a publicly owned utility, unless the customer first confirms in writing an obligation to pay to the electrical corporation or publicly owned utility currently providing service, a nonpassable public purpose charge imposed by the regulatory body for that electrical corporation or publicly owned utility. 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)–~~

(3) 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:  $\frac{2}{3}$  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 385 of the Public Utilities Code  
2 is amended to read:

3 385. (a) Except as provided in subdivision (b), each  
4 local publicly owned electric utility shall establish a  
5 nonbypassable, usage based charge on local distribution  
6 service of not less than the lowest expenditure level of the  
7 three largest electrical corporations in California on a  
8 percent of revenue basis, calculated from each utility's  
9 total revenue requirement for the year ended December  
10 31, 1994, and each utility's total annual expenditure under  
11 paragraphs (1), (2), and (3) of subdivision (c) of Section  
12 381 and Section 382, to fund investments by the utility and  
13 other parties *in the low-income programs described in*  
14 *subdivision (b), and* in any or all of the following:

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

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

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

25 (b) ~~(1) Each local publicly owned electric utility shall~~  
26 ~~establish a nonbypassable, usage based charge on local~~  
27 ~~distribution service of not less than the highest~~  
28 ~~expenditure level of the three largest electrical~~  
29 ~~corporations in California for low-income programs,~~  
30 ~~calculated on a percent of revenue basis, using the~~  
31 ~~utility's total revenue requirement in the highest~~  
32 ~~low-income program expenditure year during the period~~  
33 ~~from 1996 through 2000.~~

34 ~~(2) The nonbypassable charge set forth in subdivision~~  
35 ~~(a) shall be used to fund services for low-income~~  
36 ~~electricity customers, including, but not limited to,~~  
37 ~~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. establish and fund programs servicing low-income electricity customers. Those programs shall include, but are not limited to, targeted energy efficiency services and rate discounts. The percentage of the nonbypassable, usage based charge allocated to the low-income programs shall be not less than the percentage required for investor-owned utilities in Section 382 and shall be based on an assessment of customer need.~~

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, *without the prior approval of the commission*, construct, lease, acquire, or operate facilities

1 for the distribution of electricity in the service territory  
2 of an electrical corporation providing electric  
3 distribution services as that territory existed on January  
4 1, 2000, or in the service territory of a local publicly owned  
5 electric utility providing electric distribution services as  
6 of January 1, 2000, ~~without the approval of the~~  
7 ~~commission.~~

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

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

14 ~~(2)–~~

15 ~~(1) Service by the district within the service territory~~  
16 ~~is consistent with the policies of the state to prevent or~~  
17 ~~eliminate economic waste.~~

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

23 ~~(4) Service by the district within the service territory~~  
24 ~~does not shift costs to other customers, investors, or~~  
25 ~~taxpayers of the entity currently providing distribution~~  
26 ~~service.~~

27 ~~(5)–, as set forth in Section 8101.~~

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

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

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

38 ~~(2) The district shall provide universal service to all~~

1 (3) *The district has provided universal service to all*  
2 *customers who request service at the published tariff*  
3 *rates within the territory to be served.*

4 ~~(3) The district shall adopt consumer protection and~~

5 (4) *The district has adopted consumer protection and*  
6 *direct transaction provisions comparable to those*  
7 *established by the Public Utilities Commission for*  
8 *electrical corporations.*

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

15 (d) *A district may not provide partial or full electric*  
16 *service to a retail customer of an electrical corporation or*  
17 *a publicly owned utility, unless the customer of that*  
18 *electrical corporation or publicly owned utility first*  
19 *confirms in writing an obligation to pay, through tariff or*  
20 *otherwise, to the electrical corporation or publicly owned*  
21 *utility currently providing service, a nonbypassable*  
22 *public purpose charge imposed by the regulatory body*  
23 *for that electrical corporation or publicly owned utility.*  
24 *The charge shall be paid directly to the electrical*  
25 *corporation or publicly owned utility providing*  
26 *electricity in the service territory in which the customer*  
27 *is located.*

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

30 22120. ~~(a)~~ Except as provided in Section 9607 of the  
31 Public Utilities Code, a district may sell, dispose of, and  
32 distribute electric power for use outside of its boundaries.

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

~~(e) (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.