

SENATE BILL

No. 13

**Introduced by Senators Polanco and Alarcon
(Coauthors: Senators Escutia and Murray)**

May 17, 2001

An act to add Chapter 9 (commencing with Section 15399.30) to Part 6.7 of Division 3 of Title 2 of the Government Code, relating to public utilities, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 13, as introduced, Polanco. Security assessment: state-purchased electric power on behalf of public utilities.

Existing law provides for various charges and assessments upon real property, and provides, in certain instances, for the collection of those amounts at the same time, and in the same manner, as is provided for ad valorem property taxes upon the subject real property.

This bill would, pursuant to legislative findings and declarations, provide for the levy of an assessment upon the real property of public utilities in amounts equivalent to the state's cost of purchasing power on behalf of those utilities. This bill would, in accordance with specified procedures, require these assessments to be collected in the same manner as property tax assessments on state-assessed property, and would also specify that these assessment amounts are a lien upon public utility real property with the same priority as a lien for ad valorem property taxes. By imposing new collection duties upon local tax officials, this bill would impose a state-mandated local program.

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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Chapter 9 (commencing with Section
2 15399.30) is added to Part 6.7 of Division 3 of Title 2 of the
3 Government Code, to read:

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5 CHAPTER 9. SPECIAL ASSESSMENTS FOR POWER PURCHASES BY
6 THE STATE ON BEHALF OF PUBLIC UTILITIES

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8 15399.30. (a) It is the intent of the Legislature in enacting this
9 chapter to provide an alternative means of securing payment or
10 obtaining payment, or both of those, for the costs of purchasing
11 power on behalf of the Pacific Gas and Electric Company, the
12 Southern California Edison Corporation, or any other public
13 utility. It is further the intent of the Legislature that nothing in this
14 chapter preclude the state from using other methods of securing
15 payment or obtaining payment for that power, including, but not
16 limited to, any other lawful method of placing liens on real
17 property, civil suits, discontinuance of purchases, or any
18 combination thereof.

19 (b) The provisions of this chapter are severable. If any
20 provision of this chapter or its application is held invalid, that
21 invalidity shall not affect other provisions or applications that can
22 be given effect without the invalid provision or application.

23 15399.31. (a) The state’s cost of purchasing power on behalf
24 of Pacific Gas and Electric Company, Southern California Edison,
25 or any other public utility may be assessed by the state agency
26 purchasing that power (hereafter referred to as the purchasing state
27 agency) upon the benefiting real property of that public utility
28 when it appears that the public utility is unable or unwilling to
29 make payments for those purchases immediately upon the billing



1 for that power. The billing for that power shall be concurrent with
2 its purchase and designation to a particular utility for fulfillment
3 of the utility’s public service obligations.

4 (b) The Legislature finds and declares that the need for the state
5 to purchase power on behalf of a utility is conclusive evidence that
6 the public utility is unable or unwilling to make payments for those
7 purchases immediately upon the billing for that power.

8 (c) The Legislature further finds and declares that any power
9 purchases by the state on behalf of a public utility benefits the
10 public utility’s real property, and can be assessed against that
11 property because the public utility, through the use of that real
12 property, is required to provide service to all its customers, and the
13 state’s purchases on the utility’s behalf enable the utility to use its
14 real property to fulfill its legal mandate.

15 (d) The Legislature further finds and declares that taxpayer
16 funds that are used to purchase power must be protected in the
17 event of utility company defaults. Almost 30 percent of the
18 households and businesses in California are customers of
19 municipal utility districts such as the Los Angeles Department of
20 Water and Power. These customers, who are also taxpayers, have
21 an especially strong claim to requiring protection from utility
22 company defaults for state funds used to purchase power for other
23 Californians.

24 (e) The amount of any assessment made pursuant to this
25 chapter shall become a lien upon the public utility’s real property,
26 and shall be apportioned among all the unitary parcels assessed to
27 the public utility on the state-assessed property tax roll.

28 (f) An assessment under this chapter is made, and the lien
29 arises, concurrent with the determination by the purchasing state
30 agency that the public utility is unable or unwilling to immediately
31 pay for power purchased by the state on the utility’s behalf. A
32 notice of the assessment shall be mailed to the public utility at its
33 address as shown on the last state-assessed property tax roll listing
34 the property to be assessed, within 10 days after the assessment is
35 made. Failure to receive that notice does not invalidate the
36 assessment.

37 (g) The notice of assessment shall do all of the following:

38 (1) Identify the amount of the assessment.

39 (2) Identify the power purchase for which the assessment is
40 levied.



1 (3) Identify the parcels against which the assessment is levied.

2 (4) Contain a statement that the public utility appeared to be
3 unable or unwilling to immediately pay the billing for the power
4 purchase giving rise to the assessment.

5 (5) Contain an estimate of the reasonable additional cost to the
6 state to make and collect the assessment, which reasonable cost
7 shall be included in the amount of the assessment.

8 15399.32. (a) By the last day of the month following each
9 month in which assessments for power purchases were made
10 pursuant to this chapter, the State Board of Equalization, in
11 consultation with the purchasing state agency, shall prepare an
12 assessment roll for each county listing the names of each public
13 utility and the descriptions of the real properties to be assessed, and
14 the assessment amount for each of those properties.

15 (b) The State Board of Equalization shall transmit the
16 assessment roll to the respective county auditor for inclusion on
17 the next property tax bill to be mailed to the public utility.

18 15399.33. The amount of assessment shall be collected upon
19 the county property tax bill, and the purchasing state agency is
20 authorized to enter into an agreement with each of the respective
21 counties, of the type described in Section 51800 of the
22 Government Code, for the collection and enforcement by the
23 county of the assessments levied pursuant to this chapter. If the
24 assessments are not paid prior to delinquency, those assessments
25 shall bear interest and carry penalties to the same extent and on the
26 same conditions as ad valorem property taxes bear interest and
27 carry penalties.

28 15399.34. The amount of any assessment and any interest or
29 penalties thereon, less any sums charged by the county to
30 administer and collect the assessments, shall be credited to a fund
31 in the State Treasury to be known as the "Power Purchase
32 Repayment Fund," which is hereby created. The state shall
33 determine from the records maintained by the counties the real
34 properties for which assessments were made, and shall
35 consecutively credit from the amounts deposited in the Power
36 Purchase Repayment Fund, as of the date of payment, the billings
37 for power purchases made on behalf of the public utility, beginning
38 with the earliest in time.

39 15399.35. An assessment under this chapter shall have the
40 same priority as a lien for real property taxes, and shall be prior to



1 and superior to all other encumbrances and liens upon the real
2 property except for liens of special assessments separately billed,
3 and as to those special assessments, it shall be on a parity.

4 15399.36. Nothing in this chapter may be interpreted to make
5 any assessment levied pursuant to this chapter a recoverable cost
6 to the public utility for ratemaking purposes. Assessments under
7 this chapter may be a recoverable costs for ratemaking purposes
8 only to the extent they are so classified independent of the
9 provisions of this chapter and the actions of the state in making and
10 collecting the assessments pursuant to this chapter.

11 SEC. 2. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 a local agency or school district has the authority to levy service
14 charges, fees, or assessments sufficient to pay for the program or
15 level of service mandated by this act, within the meaning of
16 Section 17556 of the Government Code.

17 SEC. 3. This act is an urgency statute necessary for the
18 immediate preservation of the public peace, health, or safety
19 within the meaning of Article IV of the Constitution and shall go
20 into immediate effect. The facts constituting the necessity are:

21 In order to provide on a timely basis a vital and necessary
22 measure of security for the state's expenditure of those sums
23 required to ensure a reliable and adequate supply of electricity to
24 California's public utilities, it is necessary that this act take effect
25 immediately.

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