

## Senate Bill No. 39

### CHAPTER 19

An act to amend Section 362 of, to add Section 761.3 to, and to repeal Section 342, as added by Chapter 16 of the Statutes of 2001, Second Extraordinary Session, of, the Public Utilities Code, relating to public utilities.

[Approved by Governor April 25, 2002. Filed with  
Secretary of State April 26, 2002.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 39, Burton. Public utilities.

(1) Under existing law, the Public Utilities Act, the Public Utilities Commission is authorized to supervise and regulate every public utility in the state, and is authorized to do all things that are necessary and convenient in the exercise of that power and jurisdiction. Existing law also provides for the establishment of an Independent System Operator (ISO), a nonprofit, public benefit corporation, to ensure efficient use and reliable operation of the electrical transmission grid and an Electricity Oversight Board (Oversight Board) to oversee the ISO.

This bill would establish the California Electricity Generation Facilities Standards Committee, to adopt and revise standards for the maintenance and operation of facilities for the generation of electricity located in California. The committee would consist of three members, one appointed by the commission, one appointed by the ISO, and a 3rd member with expertise regarding electric generation facilities jointly appointed by the commission and the ISO. The bill would make these provisions inoperative as of January 1, 2005.

This bill would require the commission to implement and enforce the standards adopted by the committee for the maintenance and operation of facilities for the generation of electricity located in the state, or owned by an electrical corporation, to ensure their reliable operation. The bill would require the commission to enforce the protocols for the scheduling of powerplant outages of the ISO. Since a violation of an order of the commission is a crime under existing provisions of law, the bill would impose a state-mandated local program by expanding the definition of a crime.

This bill would exempt from the above provisions nuclear powered generating facilities that are federally regulated and subject to standards developed by the Nuclear Regulatory Commission, but would require the owner or operator of nuclear generating facilities to file with the



Oversight Board and the commission an annual schedule of maintenance for each generating facility and require a good faith effort to conduct maintenance in compliance with the plan and to report any significant variations from the plan to the Oversight Board and the ISO. The owner and operator would be required to report on a monthly basis, to the Oversight Board and the commission, all actual planned and unplanned outages of each nuclear facility during the prior month and to report on a daily basis, to the Oversight Board and the ISO, the daily operational status and availability of each facility for the production of electricity. The bill would exempt from the above provisions facilities that generate electricity using cogeneration and qualifying small power production facilities, as defined. The bill would require an electrical corporation that has a contract with a cogeneration or small qualifying facility with a name plate rating of 10 megawatts or greater to report to the Oversight Board and the commission maintenance schedules. The bill would require each facility with a name plate rating of 10 megawatts or greater to directly report to the Oversight Board and the ISO maintenance schedules.

This bill would require that its provisions not result in the modification, delay, or abrogation of any deadline, standard, rule, or regulation adopted by a federal, state, or local agency for purposes of protecting public health or the environment. The bill would require the ISO to consult with the State Air Resources Board and appropriate local air pollution control districts and air quality management districts to coordinate scheduled outages.

This bill would require the ISO to maintain records of generation facility outages and to provide those records to the Oversight Board and the commission on a daily basis. The bill would require certain entities that own or operate electric generating units in the state to provide a monthly report to the ISO that identifies when, during the preceding month, the unit was unavailable or was only available at reduced capacity, and the reasons therefor. The bill would require the ISO to immediately transmit the information to the Oversight Board and the commission. Since a violation of the act is a crime under existing provisions of law, the bill would create a state-mandated local program by expanding the definition of a crime.

This bill would exempt from the above provisions facilities owned by a local publicly owned electric utility, as defined, any public agency that may generate electricity incidental to the provision of water or wastewater treatment, and facilities owned by a city and county operating as a public utility furnishing electric service.

(2) Existing law requires the Public Utilities Commission, in proceedings, to ensure that facilities needed to maintain the reliability



of the electricity supply remain available and operational, consistent with maintaining open competition and avoiding an overconcentration of market power.

This bill would require the commission to require that generation facilities located in California that have been disposed of pursuant to specified provisions of existing law are operated by the persons or corporations who own or control them in a manner that ensures their availability to maintain the reliability of the electric supply system.

(3) Under provisions that would be added by Chapter 16 of the Statutes of 2001, Second Extraordinary Session, until January 1, 2003, or the occurrence of a specified event, whichever is earlier, electric generation and transmission facilities would be subject to various standards related to their availability. The Oversight Board, in consultation with the commission and the ISO, would be required to prepare and adopt protocols for the scheduling of transmission and generation equipment outages for the purpose of maintenance, repair, or upgrade and to prepare and adopt a schedule of outages in accordance with those protocols.

This bill would repeal those provisions.

(4) Under other provisions that would be added by Chapter 16 of the Statutes of 2001, Second Extraordinary Session, until January 1, 2003, or the occurrence of a specified event, whichever is earlier, the Oversight Board would be required to direct the ISO to develop and submit to the Oversight Board and the commission proposed generation facility maintenance, operating, and availability standards for generator units with a certain capacity. The commission would be authorized to adopt those standards and ensure compliance with those standards. Entities that own or operate certain electric generating units would be required to provide reports on a monthly basis to the ISO that identify any periods the units were unavailable to produce electricity or were available at reduced capacity. The ISO would be required to transmit that information to the Oversight Board and the commission. Electrical corporations having contracts with certain qualifying facilities or cogeneration facilities would be required to report the operational status and availability of the facilities to the Oversight Board and the commission on a daily basis.

This bill would recodify those provisions.

(5) 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.



(6) This bill would provide that its provisions shall become operative only if AB 28 of the 2001–02 Second Extraordinary Session is enacted and becomes effective.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Electric generating facilities and powerplants in California are essential facilities for maintaining and protecting the public health and safety of California residents and businesses.

(b) It is in the public interest to ensure that electric generating facilities and powerplants located in California are effectively and appropriately maintained and efficiently operated.

(c) Owners and operators of electric generating facilities and powerplants provide a critical and essential good to California residents. It is in the public interest that the Public Utilities Commission seek enforcement capability from the Federal Energy Regulatory Commission regarding the private generator agreement to provide for broader state control of operational activities of generation facilities in the state.

(d) To protect the public health and safety and to ensure electrical service reliability and adequacy, the Public Utilities Commission and the Independent System Operator shall work collaboratively to develop clearly articulated, uniform operating practices and procedures. The commission shall enforce compliance with those practices and procedures.

SEC. 2. Section 342 of the Public Utilities Code, as added by Section 3 of Chapter 16 of the Statutes of 2001, Second Extraordinary Session, is repealed.

SEC. 3. Section 362 of the Public Utilities Code is amended to read:

362. (a) In proceedings pursuant to Section 455.5, 851, or 854, the commission shall ensure that facilities needed to maintain the reliability of the electric supply remain available and operational, consistent with maintaining open competition and avoiding an overconcentration of market power. In order to determine whether the facility needs to remain available and operational, the commission shall utilize standards that are no less stringent than the Western Systems Coordinating Council and North American Electric Reliability Council standards for planning reserve criteria.

(b) The commission shall require that generation facilities located in the state that have been disposed of in proceedings pursuant to Section 851, are operated by the persons or corporations who own or control



them in a manner that ensures their availability to maintain the reliability of the electric supply system.

SEC. 4. Section 761.3 is added to the Public Utilities Code, to read:

761.3. (a) Notwithstanding subdivision (g) of Section 216 and subdivisions (c) and (d) of Section 228.5, the commission shall implement and enforce standards adopted pursuant to subdivision (b) for the maintenance and operation of facilities for the generation of electric energy owned by an electrical corporation or located in the state to ensure their reliable operation. The commission shall enforce the protocols for the scheduling of powerplant outages of the Independent System Operator.

(b) (1) The commission and the Independent System Operator shall jointly establish the California Electricity Generation Facilities Standards Committee. The committee shall consist of three members, one a member of the commission appointed by the commission, one a member of the Independent System Operator board appointed by that board, and one individual with expertise regarding electric generation facilities and jointly appointed by the commission and the Independent System Operator board. The committee, within 90 days of the effective date of this section and after providing notice and opportunity for public comment, shall adopt, and may thereafter revise, standards for the maintenance and operation of facilities for the generation of electric energy located in the state. The standards shall be consistent with subdivision (d) of this section.

(2) The committee shall be supported by a reasonable amount of staff time, which shall be provided proportionally by the agencies represented on the committee.

(3) This subdivision shall be operative only until January 1, 2005.

(c) Nothing in this section authorizes the commission to establish rates for wholesale sales in interstate commerce from those facilities, or to approve the sale or transfer of control of facilities that have been certified as exempt wholesale generators by the Federal Energy Regulatory Commission pursuant to Section 79z-5a(1) of Title 15 of the United States Code.

(d) (1) (A) Except as otherwise provided in this subdivision, this section shall not apply to nuclear powered generating facilities that are federally regulated and subject to standards developed by the Nuclear Regulatory Commission, and that participate as members of the Institute of Nuclear Power Operations.

(B) The owner or operator of a nuclear powered generating facility shall file with the Oversight Board and the commission an annual schedule of maintenance, including repairs and upgrades, updated quarterly, for each generating facility. The owner or operator of a nuclear



powered generating facility shall make good faith efforts to conduct its maintenance in compliance with its filed plan and shall report to the Oversight Board and the Independent System Operator any significant variations from its filed plan.

(C) The owner or operator of a nuclear powered generating facility shall report on a monthly basis to the Oversight Board and the commission all actual planned and unplanned outages of each facility during the preceding month. The owner or operator of a nuclear powered generating facility shall report on a daily basis to the Oversight Board and the Independent System Operator the daily operational status and availability of each facility.

(2) (A) Except as otherwise provided in this subdivision, this section shall not apply to a qualifying small power production facility or a qualifying cogeneration facility within the meaning of Sections 201 and 210 of Title 11 of the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Secs. 796(17), 796(18), and 824a-3), and the regulations adopted pursuant to those sections by the Federal Energy Regulatory Commission (18 C.F.R. Secs. 292.101 to 292.602, inclusive), nor shall this section apply to other generation units installed, operated, and maintained at a customer site, exclusively to serve that customer's load.

(B) An electrical corporation that has a contract with a qualifying small power production facility, or a qualifying cogeneration facility, with a name plate rating of 10 megawatts or greater, shall report to the Oversight Board and the commission maintenance schedules for each facility, including all actual planned and unplanned outages of the facility and the daily operational status and availability of the facility. Each facility with a name plate rating of ten megawatts or greater shall be responsible for directly reporting to the Oversight Board and the Independent System Operator maintenance schedules for each facility, including all actual planned and unplanned outages of the facility and the daily operational status and availability of the facility, if that information is not provided to the electrical corporation pursuant to a contract.

(e) In developing the standards pursuant to subdivision (b), the committee shall take into consideration generation facilities scheduled for retirement, valid warranties on generation facilities, and the operational authority of the Independent System Operator as prescribed in the standard Participating Generator Agreement and applicable sections of the Federal Energy Regulatory Commission's approved Independent System Operator tariff.

(f) Nothing in this section shall result in the modification, delay, or abrogation of any deadline, standard, rule, or regulation adopted by a federal, state, or local agency for the purposes of protecting public health



or the environment, including, but not limited to, any requirements imposed by the State Air Resources Board or by an air pollution control district or an air quality management district pursuant to Division 26 (commencing with Section 39000) of the Health and Safety Code. The Independent System Operator shall consult with the State Air Resources Board and the appropriate local air pollution control districts and air quality management districts to coordinate scheduled outages to provide for compliance with those retrofits.

(g) The Independent System Operator shall maintain records of generation facility outages and shall provide those records to the Oversight Board and the commission on a daily basis. Each entity that owns or operates an electric generating unit in California with a rated maximum capacity of 10 megawatts or greater, shall provide a monthly report to the Independent System Operator that identifies any periods during the preceding month when the unit was unavailable to produce electricity or was available only at reduced capacity. The report shall identify the reasons for any such unscheduled unavailability or reduced capacity. The Independent System Operator shall immediately transmit the information to the Oversight Board and the commission.

(h) This section does not apply to any of the following:

(1) Facilities owned by a local publicly owned electric utility as defined in subdivision (d) of Section 9604.

(2) Any public agency that may generate electricity incidental to the provision of water or wastewater treatment.

(3) Facilities owned by a city and county operating as a public utility, furnishing electric service as provided in Section 10001.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

SEC. 6. This act shall become operative only if Assembly Bill 28 of the 2001–02 Second Extraordinary Session is enacted and becomes effective.

