Assembly Bill No. 2006

Passed the Assembly August 27, 2004

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Chief Clerk of the Assembly

Passed the Senate August 26, 2004

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Secretary of the Senate

This bill was received by the Governor this _________ day of

________________________, 2004, at _______ o’clock __M.

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Private Secretary of the Governor

CHAPTER ________

An act to amend Sections 301 and 303 of, to add Sections 250, 303.5, 454.05, and 1001.7 to, to add Chapter 2.4 (commencing with Section 400) to Part 1 of Division 1 of, and to repeal Section 330 of, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2006, Nunez. Electrical restructuring: Public Utility Commission procedures.

(1) Section 1 of Article XII of the California Constitution prescribes the membership, method of appointment, the term for which vacancies are filled, and the method of removal of, members of the Public Utilities Commission.

This bill would reiterate these provisions in statute.

(2) Existing law requires the Public Utilities Commission to adopt an updated conflict-of-interest code and statement of incompatible activities by February 28, 1998.

This bill would require the Public Utilities Commission to adopt an updated conflict-of-interest code and statement of incompatible activities by February 28, 2005.

(3) Existing law prohibits members of the Public Utilities Commission from holding an official relationship with, or having a financial interest in, any person or corporation subject to commission regulation.

This bill would additionally preclude membership on the commission by any person who, during the 2 years preceding appointment, received a substantial portion of his or her income from any person or corporation subject to commission regulation. The bill would prohibit commission members from being employed by a person or corporation subject to commission regulation, while a member of the commission or within 2 years thereafter. The bill would prohibit commission members from holding other public offices or positions. The bill would require commission members to comply with provisions respecting conflicts of officers and employees appointed within the state civil service. The bill would prohibit members and employees of the commission from participating personally and substantially in matters in which the person knows that the person, his or her spouse or minor child, partner, any organization he or she serves or has served as an officer, director, trustee, partner, or employee has a direct or indirect financial interest or has had such an interest during the two years prior to his or her appointment as a member of the commission. The bill would prohibit any person who is a partner, employer, or employee of a member or employee of the commission from acting as an attorney, agent, or employee for any person other than the state in connection with any matter in which the commission is a party or has a direct or substantial interest.

(4) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law authorizes the commission to fix just and reasonable rates and charges. Under existing law, a public utility has a duty to serve, including furnishing and maintaining adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons and the public.

This bill would require that, prior to adopting any settlement agreement that is contested by any person or entity and involves a ratepayer obligation over $10,000,000, the Public Utilities Commission hold a hearing to review the settlement and any alternative proposed by any person or entity, to ensure that the proposed settlement achieves specified purposes. The bill would require electrical corporations, commencing January 1, 2006, to prepare and file at least every 3 years, and for the commission to approve, a long-term integrated resource plan, as specified. The bill would provide for the recovery of initial capital investment made by an electrical corporation in generation resources specified, if the investment is found to be reasonable and is approved by the commission in the certificate of public convenience and necessity, and the investment complies with the conditions specified by the commission in the certificate of public convenience and necessity at the time the investment is approved. The bill would also provide for the recovery of an electrical corporation’s full cost of contracting for generation resources with another entity, as specified.

The bill would require the commission, by July 1, 2005, to prepare and submit to the Governor and the Legislature, a comprehensive plan to streamline the transmission siting process, and, on or before December 31, 2005, to submit a prescribed report concerning siting and authorization of upgrades, improvements, and additions to each electrical corporation's transmission system infrastructure. The bill would require the commission, in consultation with the Independent System Operator, to establish resource adequacy requirements to ensure that adequate physical generating capacity, dedicated to serve all load requirements, is available to meet peak demand plus requisite planning and operating reserves, and would require the commission to implement and enforce these resource adequacy requirements in a nondiscriminatory manner on all load serving entities, excluding a local publicly owned electric utility, the State Water Project, and customer generation, as defined. The bill would require that the cost of meeting resource adequacy requirements, including the costs associated with system reliability and local area reliability found reasonable by the commission, be fully recoverable from all customers taking service from the electrical corporation on a nonbypassable basis at the time the commitment to incur the cost is made or thereafter.

The bill, with a certain exception, would require a majority vote of the commission membership at a public meeting in order to approve any change in rates or alteration of any utility classification, contract, practice, project, or rule that affects rates directly or indirectly or to approve the settlement of any judicial or administrative proceeding that would result in any of those consequences. The bill would require that, prior to approving an electrical corporation application for a certificate of public convenience and necessity for the proposed construction of generation resources, the commission include in the proceeding an opportunity for any creditworthy party to submit, and the commission consider, alternative proposals meeting specified criteria. The bill would require the commission to reject the certificate of public convenience and necessity for generation resources proposed to be constructed by an applicant electrical corporation if the commission makes a specified determination.

(5) Existing law states the intent of the Legislature and makes various findings and declarations with respect to electrical restructuring.

This bill would repeal that statement of intent and the legislative findings and declarations.

(6) A violation of the Public Utilities Act or an order of the commission is a crime under existing law.

Because a violation of the bill's provisions would be a violation of the act, the bill would impose a state-mandated local program by creating new crimes.

(7) 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.

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

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

(a) An adequate and reliable supply of electricity is essential to the health, safety, and welfare of all California consumers.

(b) Safe, reliable, and affordable electric service is of utmost importance to the consumers of this state and its economy.

(c) Electrical corporations have an obligation to provide their customers with reliable electric service at just and reasonable rates.

(d) In order to provide safe, reliable, and affordable electric service to consumers, electrical corporations must provide needed resources, including cost-effective energy efficiency and other demand reduction measures, utility-owned and procured generation, new and repowered generation, cogeneration, renewable generation, transmission, distribution, and an adequately sized, well-trained workforce, in a manner that produces the best value for ratepayers at just and reasonable rates.

(e) In order to ensure that investments in resources are made in a manner that produces the best value for ratepayers, electrical corporations should prepare a long-term integrated resource plan for commission review and approval, that achieves a diversified portfolio of efficient, cost-effective, environmentally responsible supply and demand resources.

(f) In order to ensure that a long-term integrated resource plan will result in investments in physical generating capacity dedicated to serving all load requirements, that is available to meet peak demand and planning and operating reserves, at or deliverable to locations and at times as may be necessary to ensure local area reliability and system reliability, the commission shall adopt resource adequacy requirements that apply equally to all load serving entities.

(g) In order to ensure that the long-term integrated resource plan achieves a diversified portfolio of efficient, cost-effective, environmentally responsible, supply and demand resources, resource adequacy requirements shall be met first through cost-effective energy efficiency and other demand reduction measures.

(h) In order to attract sufficient capital to make investments in needed resources, there must be assurance that reasonable costs and investments, including a return of and on direct investments, and payments made to third parties under contract with an electrical corporation for non-utility-owned generation, are recoverable in rates.

(i) California consumers will not receive reliable and affordable electric service, nor will consumers avoid repetition of past problems with excessive wholesale electricity prices, rolling blackouts, and long-term supply contracts that threaten consumers with billions of dollars in above-market electricity costs, unless a durable framework is enacted to provide regulatory certainty and market stability in support of investment in needed efficient, cost-effective, environmentally responsible resources at just and reasonable rates.

(j) Protecting the interests of consumers by ensuring that investments made to provide safe, reliable electric service are prudent and cost effective, should be the highest priority of California regulatory policy and action.

(k) The Public Utilities Commission has an obligation to provide an open regulatory forum where all persons affected by public utility service and rates or otherwise affected by decisions made by the commission, can observe and participate in the decisionmaking process.

SEC. 1.5. Section 250 is added to the Public Utilities Code, to read:

250. Prior to adopting any settlement agreement, including any settlement of a judicial or administrative proceeding to which the commission is a party or all incumbent commissioners are parties, that is contested by any person or entity and that involves

a ratepayer obligation of greater than ten million dollars ($10,000,000) per ratemaking district, in addition to any other requirement applicable to settlements, the commission shall not approve the settlement before it has held a hearing to review the settlement and any alternative proposed by any affected person or entity, in order to ensure that the proposed settlement agreement resolves the dispute at the lowest reasonable cost to ratepayers, while balancing other public interest objectives, including protection of public health and safety, promotion of a sound economy, conservation of resources, preservation of environmental quality, and promotion of adequate, just, and reasonable service.

SEC. 2. Section 301 of the Public Utilities Code is amended to read:

301. As provided in Section 1 of Article XII of the Constitution of this state, the Public Utilities Commission consists of five members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for staggered six-year terms. A vacancy is filled for the remainder of the term. The Legislature may remove a member for incompetence, neglect of duty, or corruption, two-thirds of the membership of each house concurring.

SEC. 2.3. Section 303 of the Public Utilities Code is amended to read:

303. (a) A public utilities commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission. If any commissioner acquires a financial interest in a corporation or person subject to regulation by the commission other than voluntarily, his or her office shall become vacant unless within a reasonable time he or she divests himself or herself of the interest.

(b) The commission shall adopt an updated Conflict of Interest Code and Statement of Incompatible Activities, by February 28, 2005, in a manner consistent with applicable law.

SEC. 2.5. Section 303.5 is added to the Public Utilities Code, to read:

303.5. (a) No person shall be a member of the commission who, during the two years prior to appointment to the commission, received any substantial portion of his or her income directly or indirectly from any person or corporation subject to regulation by the commission. No member of the commission shall be employed by any person or corporation subject to regulation by the commission during the term he or she is a member of the commission, or within two years after he or she ceases to be a member of the commission.

(b) The members of the commission shall not hold any other elected or appointed public office or position.

(c) The members of the commission and all employees of the commission shall comply with all applicable provisions of Section 19990 of the Government Code.

(d) No person who is a member or employee of the commission shall participate personally and substantially as a member or employee of the commission, in any matter in which, to his or her knowledge, he or she, his or her spouse, minor child, or partner, or any organization in which he or she is serving, or has served as officer, director, trustee, partner, or employee while serving as a member or employee of the commission or within two years prior to her or his appointment as a member of the commission, has a direct or indirect financial interest.

(e) No person who is a partner, employer, or employee of a member or employee of the commission shall act as an attorney, agent, or employee for any person other than the state in connection with any matter in which the commission is a party or has a direct and substantial interest.

SEC. 2.7. Section 330 of the Public Utilities Code is repealed.

SEC. 3. Chapter 2.4 (commencing with Section 400) is added to Part 1 of Division 1 of the Public Utilities Code, to read:

Chapter 2.4. Reliable Electric Service Act of 2004

400. This chapter shall be known, and may be cited, as the Reliable Electric Service Act of 2004.

400.1. (a) An electrical corporation has an obligation to, and shall, plan for and provide its customers with reliable electric service at just and reasonable rates, pursuant to Section 451, including those customers that take standby service from the electrical corporation on a commission-approved rate schedule.

(b) For purposes of this chapter, ‘‘electric service’’ includes providing adequate and efficient resources, including cost-effective energy efficiency and other demand reduction resources, utility-owned and procured generation resources, such as new and repowered generation resources, cogeneration, and renewable generation resources, transmission and distribution resources, metering, billing, and employing an adequately sized, well-trained utility workforce, including contracting for maintenance of generation facilities.

(c) Notwithstanding subdivisions (a) and (b), an electrical corporation has no obligation to plan for or procure electricity or meet resource adequacy requirements for any customer that has entered into a direct transaction.

400.5. (a) To ensure that adequate investments are made in resources necessary to provide customers with reliable electric service, the commission shall authorize an electrical corporation to provide efficient, cost-effective resources, including cost-effective energy efficiency and demand reduction resources, utility-owned and procured generation resources, which may include, among other resources, new and repowered generation resources, cogeneration, and renewable generation resources, consistent with the electrical corporation's long-term integrated resource plan approved pursuant to Section 400.11 and its procurement plan adopted pursuant to Section 454.5.

(b) The commission shall, after public hearing, approve and thereafter maintain just and reasonable rates sufficient to ensure that the electrical corporation fully recovers both of the following:

(1) The electrical corporation's initial capital investment in generation resources specified, found reasonable, and approved in the certificate of public convenience and necessity if the investment complies with the conditions specified by the commission in the certificate of public convenience and necessity at the time the investment is approved.

(2) The electrical corporation's full cost of contracting for generation resources with another entity found reasonable pursuant to Sections 454.5 and Article 16 (commencing with Section 399.11) of Chapter 2.3, taking into account any collateral requirements and debt equivalence associated with the contract, in a manner determined by the commission to provide the best value to ratepayers.

(c) Nothing in this chapter alters the requirements of Section 451, 454.5, 455.5, 463, or 1005.5.

(d) It is the intent of the Legislature in enacting this section to reaffirm California's traditional regulatory doctrine, under which an electrical corporation has the obligation to provide reliable electric service at just and reasonable rates, and the commission ensures that the electrical corporation is afforded the means to carry out this obligation, specifically including a reasonable opportunity to fully recover from all customers of the electrical corporation, in a manner determined by the commission pursuant to this code, a return of, and a reasonable return on, reasonable investments in utility-owned generation, transmission, and distribution resources that are necessary to meet the utility's obligation, the utility's reasonable costs to operate and maintain those resources, and the utility's reasonable costs for nonutility generation resources procured in accordance with Section 454.5 and Article 16 (commencing with Section 399.11).

400.10. (a) To ensure that adequate investments necessary to meet the electrical corporation's obligation to provide reliable electric service are made, every electrical corporation shall, commencing on January 1, 2006, and at least every three years thereafter, prepare and file with the commission a long-term integrated resource plan.

(b) The long-term integrated resource plan shall accomplish all of the following:

(1) Ensure that adequate resources are identified to serve the utility's customers reliably.

(2) Provide for investments in, or procurement of, resources proposed pursuant to Section 454.5 and Article 16 (commencing with Section 399.11).

(3) Be consistent with Section 701.1 and Chapter 4 (commencing with Section 25300) of Division 15 of the Public Resources Code.

(4) Achieve a diversified portfolio of efficient, cost-effective, and environmentally responsible supply and demand resources to serve the utility's customers.

(5) Provide for funding of all practicable and cost-effective energy efficiency and load management resources.

(6) Provide for investments in, or procurement of, necessary generation resources, and may include extensions, renewals, or renegotiations of contracts for existing generation resources, new or repowered generation, and cogeneration projects.

(7) Provide that an electrical corporation meets resource adequacy requirements established by the commission pursuant to Section 400.22, for the electric load served by the electrical corporation. For purposes of this chapter, ‘‘electric load served by the electrical corporation, including load served under a standby tariff,’’ does not include the electrical load of customers who have entered into a direct transaction.

(8) Include demand and supply forecasts for 5- and 10-year periods. The demand forecasts shall reflect all energy efficiency and load management programs approved by the commission.

(c) The long-term integrated resource plan may provide for investments in distributed generation that would improve electrical system reliability, thereby deferring or eliminating investments in distribution facilities that would otherwise be needed to improve system reliability, by either direct investment by the electrical corporation or under contract with a retail customer or a third party, if the commission finds that the investment in distributed generation would accomplish both of the following:

(1) Result in overall cost savings for ratepayers due to deferral or elimination of electric distribution projects.

(2) Provide the required reliability and operational characteristics to support adequate service reliability to customers in the affected area.

(d) If the distributed generation is provided under contract with a retail customer or a third party to reduce distribution system loads, the retail customer or third party shall maintain physical assurance that the contracted load reduction will be available during all required time periods.

400.11. The commission shall, after public hearing, review and approve a long-term integrated resource plan for every electrical corporation, including those revisions to the plan that the commission determines are necessary to meet the requirements of Section 400.10 and achieve best value for utility customers.

400.15. In accordance with an electrical corporation’s long-term integrated resource plan approved pursuant to Section 400.11, and consistent with Sections 454.5 and 701.1 and Article 16 (commencing with Section 399.11), to meet resource adequacy requirements, each electrical corporation shall manage a diversified, efficient, cost-effective, environmentally responsible portfolio of non-utility-owned generation under contract with the utility, and utility-owned generation, combining the potential benefits of a competitive wholesale market, including operating efficiencies and lower prices, with the stability of cost-based generation resources, to achieve best value for ratepayers at just and reasonable rates.

400.18. (a) The commission shall, on or before July 1, 2005, prepare and submit to the Governor and the Legislature, a comprehensive plan to streamline the transmission siting process. The plan shall, at a minimum, include recommendations to eliminate regulatory overlap and duplication, and recommendations to reduce the time needed to process a request for transmission improvements. The commission shall consult with the State Energy Resources Conservation and Development Commission, the Independent System Operator, electrical corporations, and interested parties in the development and preparation of the plan.

(b) On or before December 31, 2005, the commission shall prepare and transmit a report to the Legislature summarizing the status of proceedings for each site for authorization of construction of all upgrades, improvements, or additions to the transmission system infrastructure determined by the electrical corporation to be necessary to ensure reliability and for which the electrical corporation has filed an application for a certificate of public convenience and necessity. The report shall include action that the commission has taken or proposes to take to facilitate the siting and authorization of those facilities and the schedule for completion in order to address the reliability needs identified by the electrical corporation. To the extent that the commission determines that the transmission upgrade, improvement, or addition is not needed, the commission shall identify the alternative it intends to pursue in order to ensure reliability. The commission shall annually update its report as part of its annual workplan.

400.22. (a) All electrical load serving entities, including nonutility electric service providers and community choice aggregators, shall be subject to the same requirements for resource adequacy, resource diversity, cost-effective energy efficiency, and the renewable portfolio standard, that are applicable to electrical corporations pursuant to this section, or otherwise as required by law, or by order or decision of the commission.

(b) The commission, in consultation with the Independent System Operator, shall establish resource adequacy requirements to ensure that adequate physical generating capacity dedicated to serving all load requirements is available to meet peak demand and planning and operating reserves, at or deliverable to locations and at times as may be necessary to ensure local area reliability and system reliability, at just and reasonable rates.

(c) The commission shall implement and enforce these resource adequacy requirements in a nondiscriminatory manner as to all load serving entities. The electrical corporation's costs of meeting those resource adequacy requirements, including the costs associated with system reliability and local area reliability, that are found reasonable by the commission, shall be fully recoverable from those customers taking service from the electrical corporation, at the time the commitment to incur the cost is made or thereafter, on a fully nonbypassable basis pursuant to rates that are just and reasonable, as determined by the commission.

(d) Resource adequacy requirements established by the commission shall provide for, and ensure, all of the following:

(1) System-wide and local area grid reliability.

(2) Adequate physical generating capacity dedicated to serve all load requirements, including planning and operating reserves, where and when it is needed.

(3) Adequate and timely investment in new generating capacity to meet future load requirements, including planning and operating reserves.

(4) Market power mitigation.

(5) Deliverability.

(6) In order to ensure that new resources can be constructed if necessary to meet the need, resource commitments by load serving entities shall be made sufficiently far in advance, and no less than three years in advance of need.

(e) Load serving entities may procure physical generating capacity through a market-based mechanism, provided that the commission, after a hearing, determines that there is convincing factual evidence that the mechanism will achieve all of the following:

(1) Adequate physical generating capacity dedicated to serve all load requirements when and where the electricity is needed,

including planning and operating reserves to ensure local area reliability and system reliability.

(2) Adequate and timely investment in new generating capacity to meet future load requirements, including planning and operating reserves.

(3) Electricity that is purchased through the market is deliverable to the load for which it is purchased.

(4) Reliability of the electrical grid is not impaired.

(5) A prospective market monitoring process and market power mitigation measures are in place that are sufficient to ensure a well-functioning wholesale electricity market.

(f) The commission shall adopt rules and regulations necessary to enforce resource adequacy requirements established pursuant to this section uniformly among all load serving entities, including establishing a uniform accounting mechanism to identify, count, track, and verify all capacity needed to meet these resource adequacy requirements for each load serving entity. Pursuant to its authority to revoke or suspend registration pursuant to Section 394.25, the commission shall suspend the registration for a specified period, or revoke the registration, of an electric service provider that fails to comply with the rules and regulations adopted by the commission to enforce resource adequacy requirements.

(g) For purposes of this chapter, "load serving entity" does not include a local publicly owned electric utility as defined in Section 9604, the State Water Resources Development System commonly known as the State Water Project, or customer generation, if the customer generation (1) takes standby service from the electrical corporation on a commission-approved rate schedule that requires the customer's load serving entity to provide for adequate backup planning and operating reserves for that customer generation or (2) is not physically interconnected to the transmission grid, so that if the customer generation fails, backup power is not supplied from the electricity grid.

400.30. To ensure that the obligation to provide customers with reliable electric service at just and reasonable rates is met by an electrical corporation, the commission shall adopt rules and regulations consistent with the policies and provisions of this chapter.

400.40. Nothing in this chapter shall alter or affect any outcome of a competitive procurement process conducted by an electrical corporation pursuant to any other law, including Section 454.5, prior to January 1, 2005.

400.50. Nothing in this chapter shall alter or affect the implementation of the California Renewables Portfolio Standard Program pursuant to Article 16 (commencing with Section 399.11).

400.60. (a) Nothing in this chapter limits the ability of any customer to participate in a community choice aggregation program pursuant to Section 366.2.

(b) In designating the earliest possible date for implementation of a community choice aggregation program, the commission shall ensure that there will be no cost-shifting or stranding of investments made pursuant to a long-term integrated resource plan of the electrical corporation that has been approved by the commission pursuant to Section 400.11. In considering approval of the electrical corporation's long-term integrated resource plan, the commission shall also ensure that the plan includes a reasonable estimate of the customer load departure through community choice aggregation, as such estimate is provided for by a community choice aggregator pursuant to Section 366.2.

400.70. On or before June 30, 2006, the commission shall prepare and submit to the Legislature a report describing the extent to which existing rate allocations for each customer class reflect cost of service and describing how the continuing costs resulting from the energy crisis of 2000–01, including, but not limited to, bond charges and above-market contract costs incurred by the Department of Water Resources, are being recovered from each customer class.

SEC. 4. Section 454.05 is added to the Public Utilities Code, to read:

454.05. Except as provided in Section 455, every decision of the commission pursuant to Section 454 that approves a change in rates or an alteration of any utility classification, contract, practice, project, or rule that affects rates directly or indirectly pursuant to Section 454, or the settlement of any judicial or administrative proceeding to which the commission is a party and that results in a change in rates or a change in a utility classification, contract, practice, project, or rule that affects rates directly or indirectly, shall be made by vote of a majority of the commission membership in a public meeting of the commission. A decision made in violation of this section is void.

SEC. 5. Section 1001.7 is added to the Public Utilities Code, to read:

1001.7. (a) Prior to approving a certificate of public convenience and necessity for generation resources proposed to be constructed by an applicant electrical corporation, the commission shall do all of the following:

(1) Include in the proceeding a timely opportunity for any other creditworthy party to submit a proposal for construction of alternative generation resources if the proposal meets the same or higher standards for cost to ratepayers and local area and system-wide reliability as the proposal of the applicant electrical corporation.

(2) Evaluate and determine whether a proposal for an alternative generation resources project submitted pursuant to subdivision (a), other than the proposal of the applicant electrical corporation, would provide the same or lower cost to ratepayers, same or better local area and system-wide reliability, and the same or superior environmental benefits.

(b) The commission shall reject the certificate of public convenience and necessity for generation resources proposed to be constructed by an applicant electrical corporation if the commission determines that an alternative generation resources project submitted pursuant to subdivision (a) provides all of the following:

(1) The same or superior local area and systemwide reliability than the generation resource proposed to be constructed by an applicant electrical corporation.

(2) The same or superior environmental benefits than the generation resource proposed to be constructed by an applicant electrical corporation.

(3) A lower cost to ratepayers than the generation resource proposed to be constructed by an applicant electrical corporation.

SEC. 6. 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.

Approved ______________________________, 2004

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Governor