

AMENDED IN ASSEMBLY MAY 11, 2006

AMENDED IN ASSEMBLY JULY 5, 2005

AMENDED IN SENATE APRIL 12, 2005

SENATE BILL

No. 423

Introduced by Senator Simitian
(Coauthor: Assembly Member Pavley)

February 17, 2005

~~An act to add Article 10.2.2 (commencing with Section 25214.8.5) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste. An act to add Sections 395.5 and 745 to the Public Utilities Code, and to amend Section 80110 of the Water Code, relating to electricity.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 423, as amended, Simitian. ~~Hazardous waste: mercury relays and switches: exemption.~~ *Electricity: charges: charitable organizations.*

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law provides that whenever the commission, after a hearing, finds that the rates charged by a public utility for service are insufficient, discriminatory, or preferential, the commission shall determine and fix, by order, the just, reasonable, or sufficient rates to be thereafter observed and in force.

This bill would authorize an electrical corporation to provide a nonprofit charitable organization, as defined, with free electrical service or service at a reduced rate.

(2) Existing law defines an “electric service provider” as an entity that offers electrical service to customers within the service territory of an electrical corporation, excluding electrical corporations, local publicly owned electric utilities, and certain cogenerators. Provisions of the existing Public Utilities Act restructuring the electrical services industry require that electric service providers register with the commission, and provide for the authorization of direct transactions between electric service providers and retail end-use customers.

This bill would authorize an electric service provider to provide a nonprofit charitable organization, as defined, with free electrical service or service at a reduced rate.

(3) The existing Public Utilities Act requires the commission pursuant to electrical restructuring, to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. However, other existing law suspends the right of retail end-use customers other than community aggregators, as defined, to acquire service from certain electricity suppliers, after a period of time to be determined by the commission, until the Department of Water Resources no longer supplies electricity under that law. Existing law requires a retail end-use customer electing to purchase electricity from a community choice aggregator to pay for certain Department of Water Resources costs and electrical corporation costs, as specified.

This bill would establish an exception to the suspension of direct transactions limited to nonprofit charitable organizations. The bill would require a nonprofit charitable organization that acquires electric service pursuant to this authorization to pay for certain Department of Water Resources costs and electrical corporation costs, as specified.

~~(1) Existing law prohibits, on and after January 1, 2006, a person from selling, offering to sell, or distributing for promotional purposes, in this state, a mercury-added thermostat, as defined, unless the mercury-added thermostat meets specified criteria. A violation of the hazardous waste control laws is a crime.~~

~~Assembly Bill 1415 of the 2005-06 Regular Session of the Legislature, if enacted, would generally prohibit a person from selling,~~

offering to sell, or distributing for promotional purposes in this state, a mercury switch or mercury relay, as defined.

~~This bill would define the terms “mercury relay” and “mercury switch” and would authorize a manufacturer selling a mercury switch or mercury relay, or a person selling a product that contains a mercury switch or a mercury relay, to apply to the Department of Toxic Substances Control for an exemption from the prohibition on the sale or distribution of a mercury switch or mercury relay proposed by AB 1415. The bill would specify the information required to be included in the exemption application and would require the manufacturer to pay a fee set by the department pursuant to a specified procedure to pay for the costs of reviewing and approving an exemption, including requiring the manufacturer to pay the fee on behalf of a seller who applies for on an exemption. The bill would prohibit the department from granting an exemption until specified conditions are met with regard to the review of the fee by the Department of Finance. The bill would require the department to deposit the fee revenues received in the Hazardous Waste Control Account in the General Fund and would authorize the department to expend the fee revenues, upon appropriation by the Legislature, to review and approve exemption requests.~~

~~The bill would authorize the department to grant an exemption for a mercury switch or mercury relay if the department makes specified findings, including that a system exists for the proper collection, transportation, and processing of the product that contains the mercury switch or mercury relay at the end of its useful life. The bill would also authorize the department to renew an exemption, as specified, for a period no longer than 2 years.~~

~~The bill would also exempt, from that proposed prohibition, a mercury switch or a mercury relay that contains less than 1 milligram of mercury, is hermetically sealed by the manufacturer, and is intended for industrial use in test and measurement instruments or systems for monitoring and control applications. The bill would also exempt, from the proposed prohibition, the resale of an imaging and therapy system utilized for medical diagnostic purposes that includes a mercury switch or relay switch integrated in, and not physically separate from, other components of the larger product, if the mercury switch or mercury relay is manufactured prior to December 31, 2006.~~

~~The bill would impose a state-mandated local program by imposing new requirements upon a manufacturer of a mercury relay or switch,~~

with regard to the payment of fees, the violations of which would be a crime pursuant to other provisions of law.

~~The bill would only become operative if AB 1415 of the 2005-06 Regular Session of the Legislature is enacted and becomes effective on or before January 1, 2006, and adds Section 25214.8.4 to the Health and Safety Code.~~

~~(2) 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.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes-no~~.

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

1 SECTION 1. Section 395.5 is added to the Public Utilities
2 Code, to read:
3 395.5. (a) For purposes of this section, “nonprofit charitable
4 organization” means any charitable organization described in
5 Section 501(c)(3) of the federal Internal Revenue Code that has
6 among its primary purposes serving the needs of the poor or
7 elderly.
8 (b) An electric service provider may provide a nonprofit
9 charitable organization with free electrical service or service at
10 a reduced rate.
11 (c) Notwithstanding Section 80110 of the Water Code, a
12 nonprofit charitable organization may acquire electric service
13 through a direct transaction with an electric service provider if
14 electric service is provided for free or at a reduced rate pursuant
15 to subdivision (b).
16 (d) A nonprofit charitable organization that acquires electric
17 service through a direct transaction pursuant to this section shall
18 be responsible for paying all of the following:
19 (1) Those charges and surcharges that would be imposed upon
20 a retail end-use customer of a community aggregator pursuant to
21 subdivisions (d), (e), (f), and (g) of Section 366.2.

1 (2) *The transmission and distribution charges of an electrical*
2 *corporation or a local publicly owned electric utility, as defined*
3 *in Section 9604.*

4 (3) *A nonbypassable charge imposed pursuant to Article 7*
5 *(commencing with Section 381), Article 8 (commencing with*
6 *Section 385), or Article 15 (commencing with Section 399).*

7 SEC. 2. *Section 745 is added to the Public Utilities Code, to*
8 *read:*

9 745. *An electrical corporation may provide a nonprofit*
10 *charitable organization with free electrical service or service at*
11 *a reduced rate. For purposes of this section, “nonprofit*
12 *charitable organization” means any charitable organization*
13 *described in Section 501(c)(3) of the federal Internal Revenue*
14 *Code that has among its primary purposes serving the needs of*
15 *the poor or elderly.*

16 SEC. 3. *Section 80110 of the Water Code is amended to read:*

17 80110. (a) *The department shall retain title to all ~~power~~*
18 *electricity sold by it to the retail end use customers. ~~The~~*

19 (b) *The department shall be entitled to recover, as a revenue*
20 *requirement, amounts and at the times necessary to enable it to*
21 *comply with Section 80134, and shall advise the commission as*
22 *the department determines to be appropriate. ~~Such Those~~ revenue*
23 *requirements may ~~also~~ include any advances made to the*
24 *department ~~hereunder or hereafter~~ for purposes of this division,*
25 *or from the Department of Water Resources Electric Power*
26 *Fund, and General Fund moneys expended by the department*
27 *pursuant to the Governor’s Emergency Proclamation dated*
28 *January 17, 2001. ~~For~~*

29 (c) *For purposes of this division and except as otherwise*
30 *provided in this section, the ~~Public-Utility~~ Utilities Commission’s*
31 *authority as set forth in Section 451 of the Public Utilities Code*
32 *shall apply, except that any just and reasonable review under*
33 *Section 451 shall be conducted and determined by the*
34 *department. The commission may enter into an agreement with*
35 *the department with respect to charges under Section 451 for*
36 *purposes of this division, and that agreement shall have the force*
37 *and effect of a financing order adopted in accordance with*
38 *Article 5.5 (commencing with Section 840) of Chapter 4 of Part*
39 *1 of Division 1 of the Public Utilities Code, as determined by the*
40 *commission. In no case shall the commission increase the*

1 electricity charges in effect on the date that the act that adds this
 2 section becomes effective *February 1, 2001*, for residential
 3 customers for existing baseline quantities or usage by those
 4 customers of up to 130 percent of existing baseline quantities,
 5 until such time as the department has recovered the costs of
 6 ~~power~~ *electricity* it has procured for the electrical corporation's
 7 retail end use customers as provided in this division. After

8 (d) After the passage of such a period of time after the
 9 effective date of this section as shall be determined by the
 10 commission, the right of retail end use customers pursuant to
 11 Article 6 (commencing with Section 360) of Chapter 2.3 of Part
 12 1 of Division 1 of the Public Utilities Code to acquire service
 13 from other providers shall be suspended until the department no
 14 longer supplies power hereunder. The *electricity pursuant to this*
 15 *division. A nonprofit charitable organization serving the needs of*
 16 *the poor or elderly may enter into a direct transaction pursuant*
 17 *to Section 395.5.*

18 (e) The department shall have the same rights with respect to
 19 the payment by retail end use customers for ~~power~~ *electricity*
 20 sold by the department as do providers of ~~power~~ *electricity* to
 21 such those customers.

22 SEC. 4. *The Legislature finds and declares that the exception*
 23 *to the suspension of direct transactions in Section 395.5 of the*
 24 *Public Utilities Code and Section 80110 of the Water Code is to*
 25 *be strictly limited to nonprofit charitable organizations serving*
 26 *the needs of the poor or elderly and shall not provide*
 27 *authorization or precedent for any additional direct transactions.*

28 SECTION 1. ~~Article 10.2.2 (commencing with Section~~
 29 ~~25214.8.5) is added to Chapter 6.5 of Division 20 of the Health~~
 30 ~~and Safety Code, to read:~~

31
 32 Article 10.2.2. Mercury Switches and Relays Exemption
 33 Procedure
 34

35 25214.8.5. ~~For purposes of this article, the following~~
 36 ~~definitions shall apply:~~

37 (a) ~~“Mercury relay” means a mercury-added product or device~~
 38 ~~that opens or closes electrical contacts to effect the operation of~~
 39 ~~other devices in the same or another electrical circuit “mercury~~

1 relay” includes, but is not limited to, a mercury displacement
2 relays, mercury wetted reed relays, or mercury contact relay.

3 (b) (1) “Mercury switch” means a mercury-added product or
4 device that opens or closes an electrical circuit or gas valve.

5 (2) A mercury switch includes, but is not limited to, mercury
6 float switches actuated by rising or falling liquid levels, mercury
7 tilt switches actuated by a change in the switch position, mercury
8 pressure switches actuated by a change in pressure, mercury
9 temperature switches actuated by a change in temperature, and
10 mercury flame sensors.

11 25214.8.6. (a) (1) A manufacturer selling a mercury switch
12 or mercury relay, or a person selling a product that contains a
13 mercury switch or a mercury relay, may apply to the department
14 pursuant to this section for an exemption from Section 25214.8.4.

15 (2) An application for an exemption pursuant to this section
16 shall include all of the following information:

17 (A) Documentation for the basis for the requested exemption
18 or renewal of exemption, based on criteria described in
19 subdivision (e).

20 (B) A description of how the manufacturer will ensure that a
21 system exists for the proper collection, transportation, and
22 processing of the switch or relay containing mercury at the end of
23 its useful life.

24 (C) Documentation of the readiness of all necessary parties to
25 perform as intended in the planned system.

26 (3) A manufacturer who applies for an exemption pursuant to
27 this section, or a manufacturer who manufactures a mercury
28 switch or relay for which a person who sells that product has
29 applied for an exemption pursuant to this section, shall pay a fee
30 set by the department to pay for the costs of reviewing and
31 approving the exemption filed by the manufacturer, or by the
32 person who sells that product. The department shall set the fee at
33 a level that is reasonably related to the actual costs incurred by
34 the department in conducting the review, in accordance with all
35 of the following:

36 (A) On or before March 1, 2006, the department shall submit a
37 fee proposal to the Department of Finance. The Department of
38 Finance shall review the fee proposal to determine whether the
39 fee fairly represents the department’s actual costs and shall
40 respond with the results of this review within 30 days after

1 receiving the fee proposal. If the Department of Finance does not
2 respond within 30 days after receiving the fee proposal, the fee
3 shall be deemed adopted.

4 (B) If the fee is rejected by the Department of Finance, the
5 department and the Department of Finance shall meet within 30
6 days of the denial and either adopt a new fee or affirm the
7 original fee submitted by the department.

8 (C) The department shall not grant an exemption pursuant to
9 this section until the Department of Finance provides a written
10 confirmation to the department that the fee is reasonable pursuant
11 to subparagraph (A), the fee is deemed adopted pursuant to
12 subparagraph (A), or a fee is adopted or affirmed pursuant to
13 subparagraph (B).

14 (b) The department shall deposit the fee revenues received
15 pursuant to this section in the Hazardous Waste Control Account
16 and may expend the fee revenues, upon appropriation by the
17 Legislature, to review and approve exemption requests pursuant
18 to this section.

19 (e) The department may grant an exemption pursuant to this
20 section, with any modification or condition deemed necessary by
21 the department, for a mercury switch or mercury relay, if the
22 department makes both of the following findings:

23 (1) The department finds that a system exists for the proper
24 collection, transportation, and processing of the product that
25 contains the mercury switch or mercury relay at the end of its
26 useful life. This system may include, but is not limited to, a direct
27 return of a waste product to the manufacturer, an industry or
28 trade group supported collection and recycling system, or another
29 similar private or public sector effort.

30 (2) The department finds both of the following criteria are
31 met:

32 (A) The use of the mercury switch or mercury relay is
33 protective of public health, public safety, and the environment.

34 (B) There is no technically feasible alternative to the use of
35 mercury in the switch or relay that is available at a reasonable
36 cost.

37 (d) Before issuing an exemption pursuant to this section, the
38 department shall consult with other states to promote
39 consistency. The department shall avoid, to the extent feasible,
40 inconsistency in the implementation of this section.

1 ~~(e) (1) An exemption issued pursuant to this section shall be~~
2 ~~for a period that does not exceed two years from the date of~~
3 ~~issuance of the exemption.~~

4 ~~(2) The department may renew an exemption issued pursuant~~
5 ~~to this section, upon the reapplication by the manufacturer or a~~
6 ~~person selling a product containing a mercury switch or mercury~~
7 ~~relay, upon a finding by the department that the mercury switch~~
8 ~~or mercury relay meets the eligibility criteria specified in~~
9 ~~subdivisions (a) and (c) and a finding that the applicant is in~~
10 ~~compliance with the conditions of the original exemption.~~

11 ~~(3) The department may renew an exemption one or more~~
12 ~~times and each renewal may be for a period not longer than two~~
13 ~~years from the date of renewal of the exemption.~~

14 ~~25214.8.7. (a) Section 25214.8.4 does not apply to a mercury~~
15 ~~switch or a mercury relay that contains less than 1 milligram of~~
16 ~~mercury, is hermetically sealed by the manufacturer, and is~~
17 ~~intended for industrial use in test and measurement instruments~~
18 ~~or in systems for monitoring and control applications.~~

19 ~~(b) The exemption specified in this section applies only if the~~
20 ~~mercury relay or mercury switch is sold to a person operating in~~
21 ~~compliance with this chapter.~~

22 ~~25214.8.8. (a) Section 25214.8.4 does not apply to the resale~~
23 ~~of an imaging and therapy system utilized for medical diagnostic~~
24 ~~purposes that includes a mercury switch or relay switch~~
25 ~~integrated in, and not physically separate from, other components~~
26 ~~of the larger product, if the mercury switch or mercury relay is~~
27 ~~manufactured prior to December 31, 2006.~~

28 ~~(b) The exemption specified in this section applies only if the~~
29 ~~mercury relay or mercury switch is sold to a person operating in~~
30 ~~compliance with this chapter.~~

31 ~~SEC. 2. This act shall become operative only if AB 1415 of~~
32 ~~the 2005-06 Regular Session of the Legislature is enacted and~~
33 ~~becomes effective on or before January 1, 2006, and adds Section~~
34 ~~25214.8.4 to the Health and Safety Code to prohibit a person~~
35 ~~from selling, offering to sell, or distributing for promotional~~
36 ~~purposes in this state, a mercury switch or mercury relay, except~~
37 ~~as specified in that section.~~

38 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
39 ~~Section 6 of Article XIII B of the California Constitution because~~
40 ~~the only costs that may be incurred by a local agency or school~~

1 ~~district will be incurred because this act creates a new crime or~~
2 ~~infraction, eliminates a crime or infraction, or changes the~~
3 ~~penalty for a crime or infraction, within the meaning of Section~~
4 ~~17556 of the Government Code, or changes the definition of a~~
5 ~~crime within the meaning of Section 6 of Article XIII B of the~~
6 ~~California Constitution.~~

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