

ASSEMBLY BILL

No. 976

Introduced by Assembly Member Hall

February 18, 2011

An act to amend Section 366.2 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 976, as introduced, Hall. Electricity: community choice aggregation.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined. Existing law authorizes a community choice aggregator to aggregate the electrical load of interested electricity consumers within its boundaries and requires a community choice aggregator to file an implementation plan with the commission. Existing law establishes various steps to be undertaken before a community choice aggregator may begin to provide electric service, including notifying the electrical corporation that it will commence providing community choice electric service within 30 days.

This bill would prohibit a community choice aggregator from procuring electricity or energy services from any entity that provided any analysis, advice, consultation or other services to the community choice aggregator prior to it providing notice to the electrical corporation that it will commence providing community choice electric service within 30 days.

Under existing law, every person who violates any provision of the Public Utilities Act is guilty of a crime.

Because the prohibitions of this bill are in the act, a violation of these provisions would impose a state-mandated local program by creating a new crime.

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.

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

1 SECTION 1. Section 366.2 of the Public Utilities Code is
2 amended to read:
3 366.2. (a) (1) Customers shall be entitled to aggregate their
4 electric loads as members of their local community with
5 community choice aggregators.
6 (2) Customers may aggregate their loads through a public
7 process with community choice aggregators, if each customer is
8 given an opportunity to opt out of their community's aggregation
9 program.
10 (3) If a customer opts out of a community choice aggregator's
11 program, or has no community choice program available, that
12 customer shall have the right to continue to be served by the
13 existing electrical corporation or its successor in interest.
14 (b) If a public agency seeks to serve as a community choice
15 aggregator, it shall offer the opportunity to purchase electricity to
16 all residential customers within its jurisdiction.
17 (c) (1) Notwithstanding Section 366, a community choice
18 aggregator is hereby authorized to aggregate the electrical load of
19 interested electricity consumers within its boundaries to reduce
20 transaction costs to consumers, provide consumer protections, and
21 leverage the negotiation of contracts. However, the community
22 choice aggregator may not aggregate electrical load if that load is
23 served by a local publicly owned electric utility. A community
24 choice aggregator may group retail electricity customers to solicit
25 bids, broker, and contract for electricity and energy services for
26 those customers. The community choice aggregator may enter into
27 agreements for services to facilitate the sale and purchase of

1 electricity and other related services. Those service agreements
2 may be entered into by a single city or county, a city and county,
3 or by a group of cities, cities and counties, or counties.

4 (2) Under community choice aggregation, customer participation
5 may not require a positive written declaration, but all customers
6 shall be informed of their right to opt out of the community choice
7 aggregation program. If no negative declaration is made by a
8 customer, that customer shall be served through the community
9 choice aggregation program.

10 (3) A community choice aggregator establishing electrical load
11 aggregation pursuant to this section shall develop an
12 implementation plan detailing the process and consequences of
13 aggregation. The implementation plan, and any subsequent changes
14 to it, shall be considered and adopted at a duly noticed public
15 hearing. The implementation plan shall contain all of the following:

16 (A) An organizational structure of the program, its operations,
17 and its funding.

18 (B) Ratesetting and other costs to participants.

19 (C) Provisions for disclosure and due process in setting rates
20 and allocating costs among participants.

21 (D) The methods for entering and terminating agreements with
22 other entities.

23 (E) The rights and responsibilities of program participants,
24 including, but not limited to, consumer protection procedures,
25 credit issues, and shutoff procedures.

26 (F) Termination of the program.

27 (G) A description of the third parties that will be supplying
28 electricity under the program, including, but not limited to,
29 information about financial, technical, and operational capabilities.

30 (4) A community choice aggregator establishing electrical load
31 aggregation shall prepare a statement of intent with the
32 implementation plan. Any community choice load aggregation
33 established pursuant to this section shall provide for the following:

34 (A) Universal access.

35 (B) Reliability.

36 (C) Equitable treatment of all classes of customers.

37 (D) Any requirements established by state law or by the
38 commission concerning aggregated service.

39 (5) In order to determine the cost-recovery mechanism to be
40 imposed on the community choice aggregator pursuant to

1 subdivisions (d), (e), and (f) that shall be paid by the customers of
2 the community choice aggregator to prevent shifting of costs, the
3 community choice aggregator shall file the implementation plan
4 with the commission, and any other information requested by the
5 commission that the commission determines is necessary to develop
6 the cost-recovery mechanism in subdivisions (d), (e), and (f).

7 (6) The commission shall notify any electrical corporation
8 serving the customers proposed for aggregation that an
9 implementation plan initiating community choice aggregation has
10 been filed, within 10 days of the filing.

11 (7) Within 90 days after the community choice aggregator
12 establishing load aggregation files its implementation plan, the
13 commission shall certify that it has received the implementation
14 plan, including any additional information necessary to determine
15 a cost-recovery mechanism. After certification of receipt of the
16 implementation plan and any additional information requested,
17 the commission shall then provide the community choice
18 aggregator with its findings regarding any cost recovery that must
19 be paid by customers of the community choice aggregator to
20 prevent a shifting of costs as provided for in subdivisions (d), (e),
21 and (f).

22 (8) ~~No~~ An entity proposing community choice aggregation shall
23 *not* act to furnish electricity to electricity consumers within its
24 boundaries until the commission determines the cost-recovery that
25 must be paid by the customers of that proposed community choice
26 aggregation program, as provided for in subdivisions (d), (e), and
27 (f). The commission shall designate the earliest possible effective
28 date for implementation of a community choice aggregation
29 program, taking into consideration the impact on any annual
30 procurement plan of the electrical corporation that has been
31 approved by the commission.

32 (9) All electrical corporations shall cooperate fully with any
33 community choice aggregators that investigate, pursue, or
34 implement community choice aggregation programs. Cooperation
35 shall include providing the entities with appropriate billing and
36 electrical load data, including, but not limited to, data detailing
37 electricity needs and patterns of usage, as determined by the
38 commission, and in accordance with procedures established by
39 the commission. Electrical corporations shall continue to provide
40 all metering, billing, collection, and customer service to retail

1 customers that participate in community choice aggregation
2 programs. Bills sent by the electrical corporation to retail customers
3 shall identify the community choice aggregator as providing the
4 electrical energy component of the bill. The commission shall
5 determine the terms and conditions under which the electrical
6 corporation provides services to community choice aggregators
7 and retail customers.

8 (10) (A) A city, county, or city and county that elects to
9 implement a community choice aggregation program within its
10 jurisdiction pursuant to this chapter shall do so by ordinance.

11 (B) Two or more cities, counties, or cities and counties may
12 participate as a group in a community choice aggregation pursuant
13 to this chapter, through a joint powers agency established pursuant
14 to Chapter 5 (commencing with Section 6500) of Division 7 of
15 Title 1 of the Government Code, if each entity adopts an ordinance
16 pursuant to subparagraph (A).

17 (11) Following adoption of aggregation through the ordinance
18 described in paragraph (10), the program shall allow any retail
19 customer to opt out and to continue to be served as a bundled
20 service customer by the existing electrical corporation, or its
21 successor in interest. Delivery services shall be provided at the
22 same rates, terms, and conditions, as approved by the commission,
23 for community choice aggregation customers and customers that
24 have entered into a direct transaction where applicable, as
25 determined by the commission. Once enrolled in the aggregated
26 entity, any ratepayer that chooses to opt out within 60 days or two
27 billing cycles of the date of enrollment may do so without penalty
28 and shall be entitled to receive default service pursuant to paragraph
29 (3) of subdivision (a). Customers that return to the electrical
30 corporation for procurement services shall be subject to the same
31 terms and conditions as are applicable to other returning direct
32 access customers from the same class, as determined by the
33 commission, as authorized by the commission pursuant to this
34 code or any other provision of law. Any reentry fees to be imposed
35 after the opt-out period specified in this paragraph, shall be
36 approved by the commission and shall reflect the cost of reentry.
37 The commission shall exclude any amounts previously determined
38 and paid pursuant to subdivisions (d), (e), and (f) from the cost of
39 reentry.

1 (12) ~~Nothing in this~~ This section shall *not* be construed as
2 authorizing any city or any community choice retail load aggregator
3 to restrict the ability of retail electricity customers to obtain or
4 receive service from any authorized electric service provider in a
5 manner consistent with law.

6 (13) (A) The community choice aggregator shall fully inform
7 participating customers at least twice within two calendar months,
8 or 60 days, in advance of the date of commencing automatic
9 enrollment. Notifications may occur concurrently with billing
10 cycles. Following enrollment, the aggregated entity shall fully
11 inform participating customers for not less than two consecutive
12 billing cycles. Notification may include, but is not limited to, direct
13 mailings to customers, or inserts in water, sewer, or other utility
14 bills. Any notification shall inform customers of both of the
15 following:

16 (i) That they are to be automatically enrolled and that the
17 customer has the right to opt out of the community choice
18 aggregator without penalty.

19 (ii) The terms and conditions of the services offered.

20 (B) The community choice aggregator may request the
21 commission to approve and order the electrical corporation to
22 provide the notification required in subparagraph (A). If the
23 commission orders the electrical corporation to send one or more
24 of the notifications required pursuant to subparagraph (A) in the
25 electrical corporation's normally scheduled monthly billing
26 process, the electrical corporation shall be entitled to recover from
27 the community choice aggregator all reasonable incremental costs
28 it incurs related to the notification or notifications. The electrical
29 corporation shall fully cooperate with the community choice
30 aggregator in determining the feasibility and costs associated with
31 using the electrical corporation's normally scheduled monthly
32 billing process to provide one or more of the notifications required
33 pursuant to subparagraph (A).

34 (C) Each notification shall also include a mechanism by which
35 a ratepayer may opt out of community choice aggregated service.
36 The opt out may take the form of a self-addressed return postcard
37 indicating the customer's election to remain with, or return to,
38 electrical energy service provided by the electrical corporation, or
39 another straightforward means by which the customer may elect

1 to derive electrical energy service through the electrical corporation
2 providing service in the area.

3 (14) The community choice aggregator shall register with the
4 commission, which may require additional information to ensure
5 compliance with basic consumer protection rules and other
6 procedural matters.

7 (15) (A) Once the community choice aggregator's contract is
8 signed, the community choice aggregator shall notify the applicable
9 electrical corporation that community choice service will
10 commence within 30 days.

11 (B) *A community choice aggregator shall not procure electricity*
12 *or energy services from any entity that provided any analysis,*
13 *advice, consultation, or other services to the community choice*
14 *aggregator prior to it providing notice to the electrical corporation*
15 *pursuant to subparagraph (A).*

16 (16) Once notified of a community choice aggregator program,
17 the electrical corporation shall transfer all applicable accounts to
18 the new supplier within a 30-day period from the date of the close
19 of their normally scheduled monthly metering and billing process.

20 (17) An electrical corporation shall recover from the community
21 choice aggregator any costs reasonably attributable to the
22 community choice aggregator, as determined by the commission,
23 of implementing this section, including, but not limited to, all
24 business and information system changes, except for
25 transaction-based costs as described in this paragraph. Any costs
26 not reasonably attributable to a community choice aggregator shall
27 be recovered from ratepayers, as determined by the commission.
28 All reasonable transaction-based costs of notices, billing, metering,
29 collections, and customer communications or other services
30 provided to an aggregator or its customers shall be recovered from
31 the aggregator or its customers on terms and at rates to be approved
32 by the commission.

33 (18) At the request and expense of any community choice
34 aggregator, electrical corporations shall install, maintain and
35 calibrate metering devices at mutually agreeable locations within
36 or adjacent to the community aggregator's political boundaries.
37 The electrical corporation shall read the metering devices and
38 provide the data collected to the community aggregator at the
39 aggregator's expense. To the extent that the community aggregator
40 requests a metering location that would require alteration or

1 modification of a circuit, the electrical corporation shall only be
2 required to alter or modify a circuit if ~~such~~ *the* alteration or
3 modification does not compromise the safety, reliability or
4 operational flexibility of the electrical corporation's facilities. All
5 costs incurred to modify circuits pursuant to this paragraph, shall
6 be borne by the community aggregator.

7 (d) (1) It is the intent of the Legislature that each retail end-use
8 customer that has purchased power from an electrical corporation
9 on or after February 1, 2001, should bear a fair share of the
10 Department of Water Resources' electricity purchase costs, as well
11 as electricity purchase contract obligations incurred as of the
12 effective date of the act adding this section, that are recoverable
13 from electrical corporation customers in commission-approved
14 rates. It is further the intent of the Legislature to prevent any
15 shifting of recoverable costs between customers.

16 (2) The Legislature finds and declares that this subdivision is
17 consistent with the requirements of Division 27 (commencing with
18 Section 80000) of the Water Code and Section 360.5, and is
19 therefore declaratory of existing law.

20 (e) A retail end-use customer that purchases electricity from a
21 community choice aggregator pursuant to this section shall pay
22 both of the following:

23 (1) A charge equivalent to the charges that would otherwise be
24 imposed on the customer by the commission to recover bond
25 related costs pursuant to any agreement between the commission
26 and the Department of Water Resources pursuant to Section 80110
27 of the Water Code, which charge shall be payable until any
28 obligations of the Department of Water Resources pursuant to
29 Division 27 (commencing with Section 80000) of the Water Code
30 are fully paid or otherwise discharged.

31 (2) Any additional costs of the Department of Water Resources,
32 equal to the customer's proportionate share of the Department of
33 Water Resources' estimated net unavoidable electricity purchase
34 contract costs as determined by the commission, for the period
35 commencing with the customer's purchases of electricity from the
36 community choice aggregator, through the expiration of all then
37 existing electricity purchase contracts entered into by the
38 Department of Water Resources.

39 (f) A retail end-use customer purchasing electricity from a
40 community choice aggregator pursuant to this section shall

1 reimburse the electrical corporation that previously served the
2 customer for all of the following:

3 (1) The electrical corporation's unrecovered past
4 undercollections for electricity purchases, including any financing
5 costs, attributable to that customer, that the commission lawfully
6 determines may be recovered in rates.

7 (2) Any additional costs of the electrical corporation recoverable
8 in commission-approved rates, equal to the share of the electrical
9 corporation's estimated net unavoidable electricity purchase
10 contract costs attributable to the customer, as determined by the
11 commission, for the period commencing with the customer's
12 purchases of electricity from the community choice aggregator,
13 through the expiration of all then existing electricity purchase
14 contracts entered into by the electrical corporation.

15 (g) (1) Any charges imposed pursuant to subdivision (e) shall
16 be the property of the Department of Water Resources. Any charges
17 imposed pursuant to subdivision (f) shall be the property of the
18 electrical corporation. The commission shall establish mechanisms,
19 including agreements with, or orders with respect to, electrical
20 corporations necessary to ensure that charges payable pursuant to
21 this section shall be promptly remitted to the party entitled to
22 payment.

23 (2) Charges imposed pursuant to subdivisions (d), (e), and (f)
24 shall be nonbypassable.

25 (h) Notwithstanding Section 80110 of the Water Code, the
26 commission shall authorize community choice aggregation only
27 if the commission imposes a cost-recovery mechanism pursuant
28 to subdivisions (d), (e), (f), and (g). Except as provided by this
29 subdivision, this section shall not alter the suspension by the
30 commission of direct purchases of electricity from alternate
31 providers other than by community choice aggregators, pursuant
32 to Section 80110 of the Water Code.

33 (i) (1) The commission shall not authorize community choice
34 aggregation until it implements a cost-recovery mechanism,
35 consistent with subdivisions (d), (e), and (f), that is applicable to
36 customers that elected to purchase electricity from an alternate
37 provider between February 1, 2001, and January 1, 2003.

38 ~~(2) The commission shall not authorize community choice~~
39 ~~aggregation until it submits a report certifying compliance with~~
40 ~~paragraph (1) to the Senate Energy, Utilities and Communications~~

1 ~~Committee, or its successor, and the Assembly Committee on~~
2 ~~Utilities and Commerce, or its successor.~~

3 (3)

4 (2) The commission shall not authorize community choice
5 aggregation until it has adopted rules for implementing community
6 choice aggregation.

7 (j) The commission shall prepare and submit to the Legislature,
8 on or before January 1, 2006, a report regarding the number of
9 community choices aggregations, the number of customers served
10 by community choice aggregations, third party suppliers to
11 community choice aggregations, compliance with this section, and
12 the overall effectiveness of community choice aggregation
13 programs.

14 SEC. 2. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.