

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

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.~~ *An act to add Section 1090.2 to the Government Code, relating to public contracts.*

LEGISLATIVE COUNSEL'S DIGEST

AB 976, as amended, Hall. ~~Electricity: community choice aggregation.~~ *Public contracts: consulting services: community choice aggregators.*

Existing law prohibits a person, firm, or subsidiary thereof, which has been awarded a consulting services contract from submitting a bid for, or being awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract, except as specified.

This bill would also prohibit a person, firm, or subsidiary thereof, which has been awarded a consulting services contract for advising a public entity on the feasibility of creating a community choice aggregator, as defined, from submitting a bid for, or being awarded a contract for any work including the procurement of electric supply and renewable energy credits, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

The bill would also specify that this provision is declaratory of existing law.

By imposing new restrictions on local government entities with respect to their contract procedures, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~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 1090.2 is added to the Government Code,
2 to read:

3 1090.2. No person, firm, or subsidiary thereof that has been
4 awarded a consulting services contract to advise a public entity
5 on the feasibility of creating a community choice aggregator, as
6 defined in Sections 331.1 and 366.2 of the Public Utilities Code,
7 may submit a bid for, or be awarded a contract for, any work
8 including the procurement of electric supply and renewable energy
9 credits, or any other related action which is required, suggested,
10 or otherwise deemed appropriate in the end product of the
11 consulting services contract.

12 SEC. 2. Section 1 of this act is declaratory of existing law.

13 SEC. 3. If the Commission on State Mandates determines that
14 this act contains costs mandated by the state, reimbursement to
15 local agencies and school districts for those costs shall be made
16 pursuant to Part 7 (commencing with Section 17500) of Division
17 4 of Title 2 of the Government Code.

18 SECTION 1. ~~Section 366.2 of the Public Utilities Code is~~
19 ~~amended to read:~~

20 ~~366.2. (a) (1) Customers shall be entitled to aggregate their~~
21 ~~electric loads as members of their local community with~~
22 ~~community choice aggregators.~~

23 ~~(2) Customers may aggregate their loads through a public~~
24 ~~process with community choice aggregators, if each customer is~~
25 ~~given an opportunity to opt out of their community's aggregation~~
26 ~~program.~~

27 ~~(3) If a customer opts out of a community choice aggregator's~~
28 ~~program, or has no community choice program available, that~~
29 ~~customer shall have the right to continue to be served by the~~
30 ~~existing electrical corporation or its successor in interest.~~

31 ~~(b) If a public agency seeks to serve as a community choice~~
32 ~~aggregator, it shall offer the opportunity to purchase electricity to~~
33 ~~all residential customers within its jurisdiction.~~

34 ~~(e) (1) Notwithstanding Section 366, a community choice~~
35 ~~aggregator is hereby authorized to aggregate the electrical load of~~
36 ~~interested electricity consumers within its boundaries to reduce~~
37 ~~transaction costs to consumers, provide consumer protections, and~~
38 ~~leverage the negotiation of contracts. However, the community~~

1 choice aggregator may not aggregate electrical load if that load is
 2 served by a local publicly owned electric utility. A community
 3 choice aggregator may group retail electricity customers to solicit
 4 bids, broker, and contract for electricity and energy services for
 5 those customers. The community choice aggregator may enter into
 6 agreements for services to facilitate the sale and purchase of
 7 electricity and other related services. Those service agreements
 8 may be entered into by a single city or county, a city and county,
 9 or by a group of cities, cities and counties, or counties.

10 (2) Under community choice aggregation, customer participation
 11 may not require a positive written declaration, but all customers
 12 shall be informed of their right to opt out of the community choice
 13 aggregation program. If no negative declaration is made by a
 14 customer, that customer shall be served through the community
 15 choice aggregation program.

16 (3) A community choice aggregator establishing electrical load
 17 aggregation pursuant to this section shall develop an
 18 implementation plan detailing the process and consequences of
 19 aggregation. The implementation plan, and any subsequent changes
 20 to it, shall be considered and adopted at a duly noticed public
 21 hearing. The implementation plan shall contain all of the following:

22 (A) An organizational structure of the program, its operations,
 23 and its funding.

24 (B) Ratesetting and other costs to participants.

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

27 (D) The methods for entering and terminating agreements with
 28 other entities.

29 (E) The rights and responsibilities of program participants,
 30 including, but not limited to, consumer protection procedures,
 31 credit issues, and shutoff procedures.

32 (F) Termination of the program.

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

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

40 (A) Universal access.

1 ~~(B) Reliability.~~

2 ~~(C) Equitable treatment of all classes of customers.~~

3 ~~(D) Any requirements established by state law or by the~~
4 ~~commission concerning aggregated service.~~

5 ~~(5) In order to determine the cost-recovery mechanism to be~~
6 ~~imposed on the community choice aggregator pursuant to~~
7 ~~subdivisions (d), (e), and (f) that shall be paid by the customers of~~
8 ~~the community choice aggregator to prevent shifting of costs, the~~
9 ~~community choice aggregator shall file the implementation plan~~
10 ~~with the commission, and any other information requested by the~~
11 ~~commission that the commission determines is necessary to develop~~
12 ~~the cost-recovery mechanism in subdivisions (d), (e), and (f).~~

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

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

28 ~~(8) An entity proposing community choice aggregation shall~~
29 ~~not act to furnish electricity to electricity consumers within its~~
30 ~~boundaries until the commission determines the cost-recovery that~~
31 ~~must be paid by the customers of that proposed community choice~~
32 ~~aggregation program, as provided for in subdivisions (d), (e), and~~
33 ~~(f). The commission shall designate the earliest possible effective~~
34 ~~date for implementation of a community choice aggregation~~
35 ~~program, taking into consideration the impact on any annual~~
36 ~~procurement plan of the electrical corporation that has been~~
37 ~~approved by the commission.~~

38 ~~(9) All electrical corporations shall cooperate fully with any~~
39 ~~community choice aggregators that investigate, pursue, or~~
40 ~~implement community choice aggregation programs. Cooperation~~

1 shall include providing the entities with appropriate billing and
2 electrical load data, including, but not limited to, data detailing
3 electricity needs and patterns of usage, as determined by the
4 commission, and in accordance with procedures established by
5 the commission. Electrical corporations shall continue to provide
6 all metering, billing, collection, and customer service to retail
7 customers that participate in community choice aggregation
8 programs. Bills sent by the electrical corporation to retail customers
9 shall identify the community choice aggregator as providing the
10 electrical energy component of the bill. The commission shall
11 determine the terms and conditions under which the electrical
12 corporation provides services to community choice aggregators
13 and retail customers.

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

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

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

1 after the opt-out period specified in this paragraph, shall be
2 approved by the commission and shall reflect the cost of reentry.
3 The commission shall exclude any amounts previously determined
4 and paid pursuant to subdivisions (d), (e), and (f) from the cost of
5 reentry.

6 ~~(12) This section shall not be construed as authorizing any city~~
7 ~~or any community choice retail load aggregator to restrict the~~
8 ~~ability of retail electricity customers to obtain or receive service~~
9 ~~from any authorized electric service provider in a manner consistent~~
10 ~~with law.~~

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

21 ~~(i) That they are to be automatically enrolled and that the~~
22 ~~customer has the right to opt out of the community choice~~
23 ~~aggregator without penalty.~~

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

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

39 ~~(C) Each notification shall also include a mechanism by which~~
40 ~~a ratepayer may opt out of community choice aggregated service.~~

1 The opt out may take the form of a self-addressed return postcard
2 indicating the customer's election to remain with, or return to,
3 electrical energy service provided by the electrical corporation, or
4 another straightforward means by which the customer may elect
5 to derive electrical energy service through the electrical corporation
6 providing service in the area.

7 ~~(14) The community choice aggregator shall register with the~~
8 ~~commission, which may require additional information to ensure~~
9 ~~compliance with basic consumer protection rules and other~~
10 ~~procedural matters.~~

11 ~~(15) (A) Once the community choice aggregator's contract is~~
12 ~~signed, the community choice aggregator shall notify the applicable~~
13 ~~electrical corporation that community choice service will~~
14 ~~commence within 30 days.~~

15 ~~(B) A community choice aggregator shall not procure electricity~~
16 ~~or energy services from any entity that provided any analysis,~~
17 ~~advice, consultation, or other services to the community choice~~
18 ~~aggregator prior to it providing notice to the electrical corporation~~
19 ~~pursuant to subparagraph (A).~~

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

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

37 ~~(18) At the request and expense of any community choice~~
38 ~~aggregator, electrical corporations shall install, maintain and~~
39 ~~calibrate metering devices at mutually agreeable locations within~~
40 ~~or adjacent to the community aggregator's political boundaries.~~

1 ~~The electrical corporation shall read the metering devices and~~
2 ~~provide the data collected to the community aggregator at the~~
3 ~~aggregator's expense. To the extent that the community aggregator~~
4 ~~requests a metering location that would require alteration or~~
5 ~~modification of a circuit, the electrical corporation shall only be~~
6 ~~required to alter or modify a circuit if the alteration or modification~~
7 ~~does not compromise the safety, reliability or operational flexibility~~
8 ~~of the electrical corporation's facilities. All costs incurred to modify~~
9 ~~circuits pursuant to this paragraph, shall be borne by the community~~
10 ~~aggregator.~~

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

20 ~~(2) The Legislature finds and declares that this subdivision is~~
21 ~~consistent with the requirements of Division 27 (commencing with~~
22 ~~Section 80000) of the Water Code and Section 360.5, and is~~
23 ~~therefore declaratory of existing law.~~

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

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

35 ~~(2) Any additional costs of the Department of Water Resources,~~
36 ~~equal to the customer's proportionate share of the Department of~~
37 ~~Water Resources' estimated net unavoidable electricity purchase~~
38 ~~contract costs as determined by the commission, for the period~~
39 ~~commencing with the customer's purchases of electricity from the~~
40 ~~community choice aggregator, through the expiration of all then~~

1 existing electricity purchase contracts entered into by the
2 Department of Water Resources.

3 (f) A retail end-use customer purchasing electricity from a
4 community choice aggregator pursuant to this section shall
5 reimburse the electrical corporation that previously served the
6 customer for all of the following:

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

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

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

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

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

37 (i) (1) The commission shall not authorize community choice
38 aggregation until it implements a cost-recovery mechanism,
39 consistent with subdivisions (d), (e), and (f), that is applicable to

1 ~~customers that elected to purchase electricity from an alternate~~
2 ~~provider between February 1, 2001, and January 1, 2003.~~

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

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

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