An act to amend Section 365.1 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL’S DIGEST

SB 286, as introduced, Hertzberg. Electricity: direct transactions. The Public Utilities Act requires the Public Utilities Commission, pursuant to electrical restructuring, to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. Existing law, enacted during the energy crisis of 2000-01, authorized the Department of Water Resources, until January 1, 2003, to enter into contracts for the purchase of electricity, and to sell electricity to retail end-use customers at not more than the department’s acquisition costs and to recover those costs through the issuance of bonds to be repaid by ratepayers. That law suspended the right of retail end-use customers, other than community choice aggregators and a qualifying direct transaction customer, as defined, to acquire service through a direct transaction until the Department of Water Resources no longer supplies electricity under that law. Existing law continues the suspension of direct transactions except as expressly authorized, until the Legislature, by statute, repeals the suspension or otherwise authorizes direct transactions. Existing law requires the commission to authorize direct transactions for nonresidential end-use customers subject to a reopening schedule that will phase in over a period of not less than 3 years and not more than 5 years, and is subject to an annual maximum allowable total kilowatthour limit established, as specified, for each electrical corporation.
This bill would require the commission to adopt and implement a schedule that implements a 2nd phase-in period for expanding direct transactions over a 3-year period so that by the end of the 3-year period all nonresidential end-use customers may acquire electric service from other providers in each electrical corporation’s distribution service territory.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by expanding the operation of a 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.


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

1 SECT. 1. Section 365.1 of the Public Utilities Code is amended to read:
2 365.1. (a) Except as expressly authorized by this section, and
3 subject to the limitations in subdivisions (b) and (c), the right of
4 retail end-use customers pursuant to this chapter to acquire service
5 from other providers is suspended until the Legislature, by statute,
6 lifts the suspension or otherwise authorizes direct transactions. For
7 purposes of this section, “other provider” means any person,
8 corporation, or other entity that is authorized to provide electric
9 service within the service territory of an electrical corporation
10 pursuant to this chapter, and includes an aggregator, broker, or
11 marketer, as defined in Section 331, and an electric service
12 provider, as defined in Section 218.3. “Other provider” does not
13 include a community choice aggregator, as defined in Section
14 331.1, and the limitations in this section do not apply to the sale
15 of electricity by “other providers” to a community choice
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aggregator for resale to community choice aggregation electricity
consumers pursuant to Section 366.2.

(b) (1) The commission shall allow individual retail
nonresidential end-use customers to acquire electric service from
other providers in each electrical corporation’s distribution service
territory, up to a maximum allowable total kilowatthours annual
limit. The During the first phase-in period for expanding access
to direct transactions, the maximum allowable annual limit shall
be established by the commission for each electrical corporation
at the maximum total kilowatthours supplied by all other providers
to distribution customers of that electrical corporation during any
sequential 12-month period between April 1, 1998, and the
effective date of this section. Within six months of the effective
date of this section, or by July 1, 2010, whichever is sooner, the
commission shall adopt and implement a reopening schedule that
commences immediately and will phase in the allowable amount
of increased kilowatthours over a period of not less than three
years, and not more than five years, raising the allowable limit of
kilowatthours supplied by other providers in each electrical
corporation’s distribution service territory from the number of
kilowatthours provided by other providers as of the effective date
of this section, to the maximum allowable annual limit for that
electrical corporation’s distribution service territory. The
commission shall review and, if appropriate, modify its currently
effective rules governing direct transactions, but that review shall
not delay the start of the phase-in schedule.

(2) By July 1, 2016, the commission shall adopt and implement
a second direct transactions reopening schedule that commences
immediately and will phase in new direct transactions over a period
of not more than three years, raising the allowable limit of
kilowatthours supplied by other providers in each electrical
corporation’s distribution service territory from that in effect as
of the conclusion of the first phase-in period, so that at the
conclusion of the three-year period, all nonresidential end-use
customers may acquire electric service from other providers in
each electrical corporation’s distribution service territory. At the
conclusion of the second phase-in period, there will cease to be
any maximum allowable annual limit of kilowatthours that can be
supplied by other providers to nonresidential end-use customers
in each electrical corporation’s distribution service territory.
(c) Once the commission has authorized additional direct
transactions pursuant to subdivision (b), it shall do both of the
following:
(1) Ensure that other providers are subject to the same
requirements that are applicable to the state’s three largest electrical
corporations under any programs or rules adopted by the
commission to implement the resource adequacy provisions of
Section 380, the renewables portfolio standard provisions of Article
16 (commencing with Section 399.11), and the requirements for
the electricity sector adopted by the State Air Resources Board
pursuant to the California Global Warming Solutions Act of 2006
(Division 25.5 (commencing with Section 38500) of the Health
and Safety Code). This requirement applies notwithstanding any
prior decision of the commission to the contrary.
(2) (A) Ensure that, in the event that the commission authorizes,
in the situation of a contract with a third party, or orders, in the
situation of utility-owned generation, an electrical corporation to
obtain generation resources that the commission determines are
needed to meet system or local area reliability needs for the benefit
of all customers in the electrical corporation’s distribution service
territory, the net capacity costs of those generation resources are
allocated on a fully nonbypassable basis consistent with departing
load provisions as determined by the commission, to all of the
following:
(i) Bundled service customers of the electrical corporation.
(ii) Customers that purchase electricity through a direct
transaction with other providers.
(iii) Customers of community choice aggregators.
(B) If the commission authorizes or orders an electrical
corporation to obtain generation resources pursuant to subparagraph
(A), the commission shall ensure that those resources meet a system
or local reliability need in a manner that benefits all customers of
the electrical corporation. The commission shall allocate the costs
of those generation resources to ratepayers in a manner that is fair
and equitable to all customers, whether they receive electric service
from the electrical corporation, a community choice aggregator,
or an electric service provider.
(C) The resource adequacy benefits of generation resources
acquired by an electrical corporation pursuant to subparagraph (A)
shall be allocated to all customers who pay their net capacity costs.
Net capacity costs shall be determined by subtracting the energy and ancillary services value of the resource from the total costs paid by the electrical corporation pursuant to a contract with a third party or the annual revenue requirement for the resource if the electrical corporation directly owns the resource. An energy auction shall not be required as a condition for applying this allocation, but may be allowed as a means to establish the energy and ancillary services value of the resource for purposes of determining the net costs of capacity to be recovered from customers pursuant to this paragraph, and the allocation of the net capacity costs of contracts with third parties shall be allowed for the terms of those contracts.

(D) It is the intent of the Legislature, in enacting this paragraph, to provide additional guidance to the commission with respect to the implementation of subdivision (g) of Section 380, as well as to ensure that the customers to whom the net costs and benefits of capacity are allocated are not required to pay for the cost of electricity they do not consume.

(d) (1) If the commission approves a centralized resource adequacy mechanism pursuant to subdivisions (h) and (i) of Section 380, upon the implementation of the centralized resource adequacy mechanism the requirements of paragraph (2) of subdivision (c) shall be suspended. If the commission later orders that electrical corporations cease procuring capacity through a centralized resource adequacy mechanism, the requirements of paragraph (2) of subdivision (c) shall again apply.

(2) If the use of a centralized resource adequacy mechanism is authorized by the commission and has been implemented as set forth in paragraph (1), the net capacity costs of generation resources that the commission determines are required to meet urgent system or urgent local grid reliability needs, and that the commission authorizes to be procured outside of the Section 380 or Section 454.5 processes, shall be recovered according to the provisions of paragraph (2) of subdivision (c).

(3) Nothing in this subdivision supplants the resource adequacy requirements of Section 380 or the resource procurement procedures established in Section 454.5.

(e) The commission may report to the Legislature on the efficacy of authorizing individual retail end-use residential customers to
enter into direct transactions, including appropriate consumer protections.

SEC. 2. 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.