

AMENDED IN ASSEMBLY AUGUST 18, 2015

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE APRIL 29, 2015

AMENDED IN SENATE APRIL 27, 2015

AMENDED IN SENATE APRIL 14, 2015

SENATE BILL

No. 286

Introduced by Senator Hertzberg

February 19, 2015

An act to amend Section 365.1 of, ~~and~~ to add Section 395.5 to, *and to add and repeal Section 769.1 of*, the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 286, as amended, 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.

The California Renewables Portfolio Standard Program requires a retail seller, as defined, and local publicly owned electric utilities to purchase specified minimum quantities of electricity products from eligible renewable energy resources, as defined, for specified compliance periods. The program, consistent with the goals of procuring the least-cost and best-fit eligible renewable energy resources that meet project viability principles, requires that all retail sellers procure a balanced portfolio of electricity products from eligible renewable energy resources, meeting specified portfolio content categories.

This bill would require the commission to adopt and implement a schedule that implements a 2nd phase-in period for expanding direct transactions for individual retail nonresidential end-use customers over a period of not more than 3 years, raising the allowable limit of kilowatthours that can be supplied by other providers in each electrical corporation's distribution service territory by that electrical corporation's share of an aggregate of 8,000 gigawatthours, apportioned as specified. The bill would require that all of an electric service provider's retail sales associated with each 2nd phase direct transaction be procured from eligible renewable energy resources and would require the commission to enforce the bill's renewables procurement requirements as part of the California Renewables Portfolio Standard Program. *The bill would require nonresidential retail end-use customers engaging in direct transactions to be responsible for their proportionate share of the costs of specified programs.* The bill would require that an electrical corporation continue to *construct, own, and operate distribution system equipment, as specified, and continue to provide direct access customers with support functions, as specified, through its own employees, except that construction of distribution system equipment and line clearance tree trimming may be performed under contract with the electrical corporation.* *contract.* The bill would prohibit an electric service provider from offering consolidated billing beginning January 1, 2016.

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.

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. The Legislature finds and declares all of the
2 following:

3 (a) As the state's electrical system evolves to include more
4 electricity generated by eligible renewable energy resources and
5 distributed generation, electrical corporations must continue to
6 facilitate safe and reliable transactions for electricity. Whether it
7 comes from efficient natural gas powerplants, large wind or solar
8 facilities, or customer-owned generation, including rooftop
9 photovoltaics, fuel cells, or combined heat and power systems, the
10 role of electrical corporations will be to ensure that electricity
11 moves from suppliers to customers. In effect, the electrical
12 corporations will become transmission and distribution companies,
13 connecting customers with the electrical mix they want when and
14 where they need it.

15 (b) California already has a few examples for this business
16 model, including community choice aggregation and direct access.
17 Direct access allows a customer to receive electricity through a
18 direct transaction with an electric service provider, rather than
19 from the electrical corporation. The electricity is delivered over
20 the electrical corporation's transmission and distribution grid and
21 the direct access customer pays the utility for providing
22 transmission and distribution service.

1 (c) Direct access was suspended in California in 2001, despite
2 not being a contributing component to the market manipulation,
3 blackouts, and price spikes that led to the energy crisis of 2000–01.
4 In 2010, the right of individual retail nonresidential end-use
5 customers to acquire electric service through a direct transaction
6 was reopened, but subject to limitations on the amount of electricity
7 that could be delivered through those transactions.

8 (d) Direct access customers currently pay charges for electrical
9 grid maintenance and pay nonbypassable charges on the
10 distribution of electricity to support public purpose programs,
11 including the California Alternate Rates for Energy program, which
12 supports affordable electric service for low-income customers, and
13 energy efficiency programs. Other providers of electric service,
14 including electric service providers and community choice
15 aggregators, are required to follow the same laws, rules, and
16 regulations as electrical corporations with respect to resource
17 adequacy (Section 380 of the Public Utilities Code), procurement
18 of electricity pursuant to the California Renewables Portfolio
19 Standard Program (Article 16 (commencing with Section 399.11)
20 of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code),
21 and for reducing emissions of greenhouse gases pursuant to the
22 California Global Warming Solutions Act of 2006 (Division 25.5
23 (commencing with Section 38500) of the Health and Safety Code).

24 (e) The Public Utilities Commission is required to ensure local
25 area reliability needs for the benefit of both bundled and unbundled
26 electric service customers. If the commission determines that new
27 resources are needed for reliability, the costs are to be shared
28 equitably, on a fully nonbypassable basis, amongst all customers,
29 whether the customer receives their electricity from the electrical
30 corporation, a community choice aggregator, or an electric service
31 provider. The cost allocation mechanism ensures that there is no
32 cost shift to bundled customers of the electrical corporation.

33 (f) A growing number of businesses are recognizing the
34 importance of managing their energy supplies and are seeking
35 more control over their energy management decisions. Many of
36 these businesses also want options to contract for electricity, with
37 up to 100 percent of that electricity coming from eligible renewable
38 energy resources. However, because of the statutory limitations
39 placed upon direct transactions, most businesses lack the means
40 and necessary tools to make cost-effective energy decisions, which

1 makes California less business friendly than other states with more
2 direct access options.

3 (g) Given high demand for direct transactions, it is in the interest
4 of the state to expand the right to direct access opportunities,
5 especially to provide options for acquiring electricity from
6 renewable sources of generation.

7 SEC. 2. Section 365.1 of the Public Utilities Code is amended
8 to read:

9 365.1. (a) Except as expressly authorized by this section, and
10 subject to the limitations in subdivisions (b) and (c), the right of
11 retail end-use customers pursuant to this chapter to acquire service
12 from other providers is suspended until the Legislature, by statute,
13 lifts the suspension or otherwise authorizes direct transactions. For
14 purposes of this section, “other provider” means any person,
15 corporation, or other entity that is authorized to provide electric
16 service within the service territory of an electrical corporation
17 pursuant to this chapter, and includes an aggregator, broker, or
18 marketer, as defined in Section 331, and an electric service
19 provider, as defined in Section 218.3. “Other provider” does not
20 include a community choice aggregator, as defined in Section
21 331.1, and the limitations in this section do not apply to the sale
22 of electricity by “other providers” to a community choice
23 aggregator for resale to community choice aggregation electricity
24 consumers pursuant to Section 366.2.

25 (b) (1) During the first phase-in period for expanding access
26 to direct transactions, the commission shall allow individual retail
27 nonresidential end-use customers to acquire electric service from
28 other providers in each electrical corporation’s distribution service
29 territory, up to a maximum allowable total kilowatthours annual
30 limit. During this first phase-in period for expanding access to
31 direct transactions, the maximum allowable annual limit shall be
32 established by the commission for each electrical corporation at
33 the maximum total kilowatthours supplied by all other providers
34 to distribution customers of that electrical corporation during any
35 sequential 12-month period between April 1, 1998, and the
36 effective date of this section. Within six months of the effective
37 date of this section, or by July 1, 2010, whichever is sooner, the
38 commission shall adopt and implement a reopening schedule that
39 commences immediately and will phase in the allowable amount
40 of increased kilowatthours over a period of not less than three

1 years, and not more than five years, raising the allowable limit of
2 kilowatthours supplied by other providers in each electrical
3 corporation's distribution service territory from the number of
4 kilowatthours provided by other providers as of the effective date
5 of this section, to the maximum allowable annual limit for that
6 electrical corporation's distribution service territory. The
7 commission shall review and, if appropriate, modify its currently
8 effective rules governing direct transactions, but that review shall
9 not delay the start of the phase-in schedule.

10 (2) The commission shall adopt and implement a second direct
11 transactions reopening schedule that commences January 1, 2016,
12 and phases in new direct transactions for individual retail
13 nonresidential end-use customers over a period of not more than
14 three years, raising the allowable limit of kilowatthours that can
15 be supplied by other providers in each electrical corporation's
16 distribution service territory by that electrical corporation's
17 proportionate share of an aggregate of 8,000 gigawatthours,
18 apportioned to each electrical corporation based upon its share of
19 retail sales. For each electric service provider, 100 percent of retail
20 sales associated with each direct transaction under this paragraph
21 shall be procured from eligible renewable energy resources.
22 Procurement of eligible renewable energy resources in excess of
23 the renewable portfolio standard shall be subject to the same
24 minimum product content requirements specified in Section 399.16
25 for procurement credited toward each renewable portfolio standard
26 compliance period. The commission shall enforce the eligible
27 renewable energy resource procurement requirements of this
28 section as part of the California Renewables Portfolio Standard
29 Program (Article 16 (commencing with Section 399.11)). *The*
30 *commission shall ensure that retail sales associated with direct*
31 *transactions do not contribute to resource curtailment or*
32 *over-generation.*

33 (c) Once the commission has authorized additional direct
34 transactions pursuant to subdivision (b), it shall do ~~both~~ *all* of the
35 following:

36 (1) Ensure that other providers are subject to the same
37 requirements that are applicable to the state's three largest electrical
38 corporations under any programs or rules adopted by the
39 commission to implement the resource adequacy provisions of
40 Section 380, the renewables portfolio standard provisions of Article

1 16 (commencing with Section 399.11), and the requirements for
2 the electricity sector adopted by the State Air Resources Board
3 pursuant to the California Global Warming Solutions Act of 2006
4 (Division 25.5 (commencing with Section 38500) of the Health
5 and Safety Code). This requirement applies notwithstanding any
6 prior decision of the commission to the contrary.

7 (2) (A) Ensure that, in the event that the commission authorizes,
8 in the situation of a contract with a third party, or orders, in the
9 situation of utility-owned generation, an electrical corporation to
10 obtain generation resources that the commission determines are
11 needed to meet system or local area reliability needs for the benefit
12 of all customers in the electrical corporation’s distribution service
13 territory, the net capacity costs of those generation resources are
14 allocated on a fully nonbypassable basis consistent with departing
15 load provisions as determined by the commission, to all of the
16 following:

17 (i) Bundled service customers of the electrical corporation.

18 (ii) Customers that purchase electricity through a direct
19 transaction with other providers.

20 (iii) Customers of community choice aggregators.

21 (B) If the commission authorizes or orders an electrical
22 corporation to obtain generation resources pursuant to subparagraph
23 (A), the commission shall ensure that those resources meet a system
24 or local reliability need in a manner that benefits all customers of
25 the electrical corporation. The commission shall allocate the costs
26 of those generation resources to ratepayers in a manner that is fair
27 and equitable to all customers, whether they receive electric service
28 from the electrical corporation, a community choice aggregator,
29 or an electric service provider.

30 (C) The resource adequacy benefits of generation resources
31 acquired by an electrical corporation pursuant to subparagraph (A)
32 shall be allocated to all customers who pay their net capacity costs.
33 Net capacity costs shall be determined by subtracting the energy
34 and ancillary services value of the resource from the total costs
35 paid by the electrical corporation pursuant to a contract with a
36 third party or the annual revenue requirement for the resource if
37 the electrical corporation directly owns the resource. An energy
38 auction shall not be required as a condition for applying this
39 allocation, but may be allowed as a means to establish the energy
40 and ancillary services value of the resource for purposes of

1 determining the net costs of capacity to be recovered from
2 customers pursuant to this paragraph, and the allocation of the net
3 capacity costs of contracts with third parties shall be allowed for
4 the terms of those contracts.

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

11 *(3) Ensure that customers of other providers are responsible*
12 *for their proportionate share of the costs of programs authorized*
13 *pursuant to Sections 379.5 and 381.*

14 (d) (1) If the commission approves a centralized resource
15 adequacy mechanism pursuant to subdivisions (h) and (i) of Section
16 380, upon the implementation of the centralized resource adequacy
17 mechanism the requirements of paragraph (2) of subdivision (c)
18 shall be suspended. If the commission later orders that electrical
19 corporations cease procuring capacity through a centralized
20 resource adequacy mechanism, the requirements of paragraph (2)
21 of subdivision (c) shall again apply.

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

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

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

37 ~~(f) An electrical corporation shall continue to provide direct~~
38 ~~access customers with support functions, including, but not limited~~
39 ~~to, billing, customer service, call centers, support services, and~~
40 ~~line clearance tree trimming, through its own employees, except~~

1 ~~that construction of distribution system equipment and line~~
2 ~~clearance tree trimming may be performed pursuant to contracts~~
3 ~~between the electrical corporation and another entity.~~

4 SEC. 3. Section 395.5 is added to the Public Utilities Code, to
5 read:

6 395.5. Beginning January 1, 2016, no electric service provider
7 shall offer consolidated billing.

8 SEC. 4. Section 769.1 is added to the Public Utilities Code, to
9 read:

10 769.1. (a) For purposes of this section, the following terms
11 have the following meanings:

12 (1) “Distribution system equipment” means the portions of the
13 electric delivery system beginning with equipment that operates
14 at voltages lower than that controlled by the Independent System
15 Operator up to and including a customer’s electric meter.

16 (2) “Distribution system support functions” means the functions
17 currently provided by an electrical corporation, including, but not
18 limited to, billing, customer service, call centers, other support
19 services, and line clearance tree trimming.

20 (b) An electrical corporation shall continue to construct, own,
21 and operate distribution system equipment, and shall continue to
22 provide distribution system support functions directly with their
23 own employees, except that construction of distribution system
24 equipment and line clearance tree trimming may be performed
25 under a contract between the electrical corporation and another
26 entity.

27 (c) Before January 1, 2021, the commission shall not adopt any
28 decision inconsistent with subdivision (b).

29 (d) This section shall remain in effect only until January 1, 2021,
30 and as of that date is repealed.

31 ~~SEC. 4.~~

32 SEC. 5. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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