

Introduced by Senator HertzbergFebruary 19, 2015

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.

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

1 aggregator for resale to community choice aggregation electricity
2 consumers pursuant to Section 366.2.

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

27 (2) *By July 1, 2016, the commission shall adopt and implement*
28 *a second direct transactions reopening schedule that commences*
29 *immediately and will phase in new direct transactions over a period*
30 *of not more than three years, raising the allowable limit of*
31 *kilowatthours supplied by other providers in each electrical*
32 *corporation's distribution service territory from that in effect as*
33 *of the conclusion of the first phase-in period, so that at the*
34 *conclusion of the three-year period, all nonresidential end-use*
35 *customers may acquire electric service from other providers in*
36 *each electrical corporation's distribution service territory. At the*
37 *conclusion of the second phase-in period, there will cease to be*
38 *any maximum allowable annual limit of kilowatthours that can be*
39 *supplied by other providers to nonresidential end-use customers*
40 *in each electrical corporation's distribution service territory.*

1 (c) Once the commission has authorized additional direct
2 transactions pursuant to subdivision (b), it shall do both of the
3 following:

4 (1) Ensure that other providers are subject to the same
5 requirements that are applicable to the state's three largest electrical
6 corporations under any programs or rules adopted by the
7 commission to implement the resource adequacy provisions of
8 Section 380, the renewables portfolio standard provisions of Article
9 16 (commencing with Section 399.11), and the requirements for
10 the electricity sector adopted by the State Air Resources Board
11 pursuant to the California Global Warming Solutions Act of 2006
12 (Division 25.5 (commencing with Section 38500) of the Health
13 and Safety Code). This requirement applies notwithstanding any
14 prior decision of the commission to the contrary.

15 (2) (A) Ensure that, in the event that the commission authorizes,
16 in the situation of a contract with a third party, or orders, in the
17 situation of utility-owned generation, an electrical corporation to
18 obtain generation resources that the commission determines are
19 needed to meet system or local area reliability needs for the benefit
20 of all customers in the electrical corporation's distribution service
21 territory, the net capacity costs of those generation resources are
22 allocated on a fully nonbypassable basis consistent with departing
23 load provisions as determined by the commission, to all of the
24 following:

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

26 (ii) Customers that purchase electricity through a direct
27 transaction with other providers.

28 (iii) Customers of community choice aggregators.

29 (B) If the commission authorizes or orders an electrical
30 corporation to obtain generation resources pursuant to subparagraph
31 (A), the commission shall ensure that those resources meet a system
32 or local reliability need in a manner that benefits all customers of
33 the electrical corporation. The commission shall allocate the costs
34 of those generation resources to ratepayers in a manner that is fair
35 and equitable to all customers, whether they receive electric service
36 from the electrical corporation, a community choice aggregator,
37 or an electric service provider.

38 (C) The resource adequacy benefits of generation resources
39 acquired by an electrical corporation pursuant to subparagraph (A)
40 shall be allocated to all customers who pay their net capacity costs.

1 Net capacity costs shall be determined by subtracting the energy
2 and ancillary services value of the resource from the total costs
3 paid by the electrical corporation pursuant to a contract with a
4 third party or the annual revenue requirement for the resource if
5 the electrical corporation directly owns the resource. An energy
6 auction shall not be required as a condition for applying this
7 allocation, but may be allowed as a means to establish the energy
8 and ancillary services value of the resource for purposes of
9 determining the net costs of capacity to be recovered from
10 customers pursuant to this paragraph, and the allocation of the net
11 capacity costs of contracts with third parties shall be allowed for
12 the terms of those contracts.

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

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

27 (2) If the use of a centralized resource adequacy mechanism is
28 authorized by the commission and has been implemented as set
29 forth in paragraph (1), the net capacity costs of generation resources
30 that the commission determines are required to meet urgent system
31 or urgent local grid reliability needs, and that the commission
32 authorizes to be procured outside of the Section 380 or Section
33 454.5 processes, shall be recovered according to the provisions of
34 paragraph (2) of subdivision (c).

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

38 (e) The commission may report to the Legislature on the efficacy
39 of authorizing individual retail end-use residential customers to

1 enter into direct transactions, including appropriate consumer
2 protections.

3 SEC. 2. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.