

AMENDED IN ASSEMBLY APRIL 2, 2002

CALIFORNIA LEGISLATURE—2001-02 REGULAR SESSION

ASSEMBLY BILL

No. 2266

Introduced by Assembly Member Kelley

February 20, 2002

~~An act to amend Section 31149.2 of the Water Code, relating to county water districts. An act to add Sections 12828 and 12829 to the Public Utilities Code, relating to public utilities.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2266, as amended, Kelley. ~~County water districts; hydroelectric power~~ *Municipal Utility Districts.*

~~Existing law, the County Water District Law, authorizes a county water district to construct, maintain, and operate hydroelectric powerplants and transmission lines. That district law authorizes a county water district to lease those plants and transmission lines for operation by a public utility or public agency engaged in the distribution, use, or sale of electricity.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

(1) Existing law, the Municipal Utility District Act, authorizes any public agency together with unincorporated territory, or two or more public agencies, with or without unincorporated territory, to organize and incorporate as a municipal utility district. A district may acquire and control works or parts of works for supplying the inhabitants of the district and public agencies with power, among other things.

This bill would authorize a district, if a public utility regulated by the Public Utilities Commission is providing electric distribution service

within the territory of the district, to furnish electric distribution service within the territory served by the public utility upon submission of the issue as a separate proposition at any election and approval of the voters within the entire district. The bill would prohibit a district from loaning, financing, financially supporting or otherwise subsidizing the provision of electric service, or the district's entry into the electric business, from funds received, or reserves established, by the district for or in connection with any service other than electric service. The bill would require a district providing electric service to maintain its accounting books and records in conformance with the Federal Energy Regulatory Commission's approved Uniform System of Accounts for utilities.

This bill would prohibit a district from constructing, leasing, acquiring, installing, or operating facilities for the distribution or transmission of electricity to retail customers located in the service territory of an electrical corporation providing electric distribution services, unless the district has first applied for and received the approval of the Public Utilities Commission and implements its service consistent with the commission's order. The bill would require the commission to make a finding that the service is in the public's interest and to approve the request of a district to provide distribution or transmission of electricity to retail customers located in the service territory of an electrical corporation providing electric distribution service if, after notice and hearing, the commission makes certain determinations with regard to the rates for the district's service, the area the district is proposing to serve, the avoidance of economic waste caused by duplication of facilities, the avoidance of shifting of net unavoidable costs of power procurement by an electrical corporation to the electrical corporation's remaining customers, the avoidance of shifting of net unavoidable costs of power procurement by the Department of Water Resources, as defined, to the electrical corporation's remaining customers, and the public's interest. The bill would require a district that obtains the approval of the commission to serve an area to prepare an annual report available to the public on the total load and number of accounts of residential, low-income, agricultural, commercial, and industrial customers served by the district in the approved service area. The bill would grant the commission jurisdiction to resolve and adjudicate complaint cases brought against a district by an interested party concerning retail electric service outside the boundaries of the district and within the

service territory of an electrical corporation. The bill would provide that its provisions do not grant the commission jurisdiction to adjudicate complaint cases involving retail electric service by a district inside its boundaries. The bill would prohibit a district from offering service to customers outside of its district boundaries before offering service to all customers within its district boundaries. The bill would provide that its provisions do not apply to any district providing electric distribution service as of January 1, 2003. Since a violation of an order of the commission is a crime under existing provisions of law, the bill would create a state-mandated local program by expanding the definition of a crime.

(2) 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: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

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

- 1 ~~SECTION 1. — Section 31149.2 of the Water Code is amended~~
- 2 *SECTION 1. The Legislature finds and declares the*
- 3 *following:*
- 4 *(a) In recent years the electric power industry has been in the*
- 5 *midst of a crisis, with wholesale power prices subject to increasing*
- 6 *volatility.*
- 7 *(b) In 2000, a combination of regional electricity demand*
- 8 *growth, unseasonably hot weather, and drought-depleted*
- 9 *hydroelectric resources created a tight electricity supply situation*
- 10 *within California and the Western region that was exploited by the*
- 11 *exercise of market power by marketers and generators, under the*
- 12 *jurisdiction of the Federal Energy Regulatory Commission, to*
- 13 *create enormously high wholesale electricity prices.*
- 14 *(c) This volatility has created financial problems for public and*
- 15 *private utilities alike.*
- 16 *(d) It is important that municipal utility districts not currently*
- 17 *in the electric business retain the authority to enter into the electric*
- 18 *business if their directors and constituents approve of the venture,*



1 *but, given the increasing risk profile of the electric industry, it is*
2 *increasingly important that the decision be made only after*
3 *approval of the voters within the district's boundaries and that the*
4 *venture not be cross-subsidized by the district's other services and*
5 *other customers.*

6 SEC. 2. *Section 12828 is added to the Public Utilities Code,*
7 *to read:*

8 *12828. (a) This section does not apply to any district*
9 *providing electric distribution service as of January 1, 2003.*

10 *(b) If a public utility regulated by the commission is providing*
11 *electric distribution service in all or a portion of a district, the*
12 *district may not furnish electric distribution service within the*
13 *territory served by the public utility except upon approval of the*
14 *voters within the entire district. The question of whether the district*
15 *should provide electric distribution service shall be submitted as*
16 *a separate proposition at any election. If the question is defeated*
17 *at the election, for one year thereafter no new election may be*
18 *called upon the question.*

19 *(c) A district may not loan, finance, financially support or*
20 *otherwise subsidize the provision of electric service, or the*
21 *district's entry into the electric business, from funds received, or*
22 *reserves established, by the district for or in connection with any*
23 *service other than electric service.*

24 *(d) A district providing electric service shall maintain its*
25 *accounting books and records in conformance with the Federal*
26 *Energy Regulatory Commission's approved Uniform System of*
27 *Accounts for utilities, as may be modified or amended from time*
28 *to time.*

29 *(e) For the purposes of this section, "commission" means the*
30 *Public Utilities Commission.*

31 SEC. 3. *Section 12829 is added to the Public Utilities Code,*
32 *to read:*

33 *(a) This section does not apply to any district providing electric*
34 *distribution service as of January 1, 2003.*

35 *(b) The intent of this section is to avoid cost-shifting to*
36 *customers of an electrical corporation resulting from the provision*
37 *of distribution services by a district.*

38 *(c) A district may not construct, lease, acquire, install, or*
39 *operate facilities for the distribution or transmission of electricity*
40 *to retail customers located in the service territory of an electrical*

1 corporation providing electric distribution services, unless the
2 district has first applied for and received the approval of the
3 commission and implements its service consistent with the
4 commission's order. The commission shall find that service to be
5 in the public interest and shall approve the request of a district to
6 provide distribution or transmission of electricity to retail
7 customers located in the service territory of an electrical
8 corporation providing electric distribution service if, after notice
9 and hearing, the commission determines all of the following:

10 (1) The district will provide universal service to all retail
11 customers who request service within the area to be served, at
12 published tariff rates and on a just, reasonable, and
13 nondiscriminatory basis, comparable to that provided by the
14 current retail service provider.

15 (2) The area the district is proposing to serve is either of the
16 following:

17 (A) Within the district's boundaries but less than the entire
18 district, and the area to be served includes a percentage of
19 residential customers and small commercial customers, based on
20 load, comparable to the percentage of residential and small
21 commercial customers in the district, based on load.

22 (B) Includes territory outside the district's boundaries, in
23 which case the territory outside the district's boundaries must
24 include a percentage of residential customers and small
25 commercial customers, based on load, comparable to the
26 percentage of residential and small commercial customers in the
27 county or counties where service is to be provided, based on load.

28 (3) Service by the district will be consistent with the intent of the
29 state to avoid economic waste caused by duplication of facilities.

30 (4) Service by the district will include reasonable mitigation of
31 any adverse affects on the reliability of an existing service by the
32 electrical corporation.

33 (5) The district has established, funded, and is carrying out
34 public purpose and low-income programs comparable to those
35 provided by the current electric retail service provider.

36 (6) The district's tariffed electric rates, exclusive of commodity
37 costs, will be at least 15 percent below the tariffed electric rates,
38 exclusive of commodity costs and nonbypassable charges under
39 Sections 367, 368, 375, 376, and 379, of the electrical corporation
40 for comparable services.

1 (7) *The net unavoidable costs of power procurement by an*
2 *electrical corporation will not be shifted onto the electrical*
3 *corporation's remaining customers, but will be the responsibility*
4 *of the electrical corporation's former customers being served by*
5 *the district or of the district itself.*

6 (8) *The net unavoidable costs of power procurement by the*
7 *Department of Water Resources will not be shifted to the electrical*
8 *corporation's remaining customers, but will be the responsibility*
9 *of the electrical corporation's former customers being served by*
10 *the district or of the district itself. For each consumer, the net*
11 *unavoidable costs of power procurement by the Department of*
12 *Water Resources includes:*

13 (A) *The difference, if any, between the Department of Water*
14 *Resources' total actual procurement costs incurred on behalf of the*
15 *consumer during the term of service, including financing costs,*
16 *and the rates collected on behalf of the Department of Water*
17 *Resources from that consumer during the term of service.*

18 (B) *The Department of Water Resources' net unavoidable cost*
19 *of future power procurement, including any financing costs,*
20 *attributable to that consumer.*

21 (9) *Service by the district is in the public's interest.*

22 (d) *A district that obtains the approval of the commission under*
23 *this section to serve an area shall prepare an annual report*
24 *available to the public on the total load and number of accounts*
25 *of residential, low-income, agricultural, commercial, and*
26 *industrial customers served by the district in the approved service*
27 *area.*

28 (e) *The commission shall have jurisdiction to resolve and*
29 *adjudicate complaint cases brought against a district by an*
30 *interested party where the complaint concerns retail electric*
31 *service outside the boundaries of the district and within the service*
32 *territory of an electrical corporation. Nothing in this section*
33 *grants the commission jurisdiction to adjudicate complaint cases*
34 *involving retail electric service by a district inside its boundaries.*

35 (f) *A district may not offer service to customers outside of its*
36 *district boundaries before offering service to all customers within*
37 *its district boundaries.*

38 (g) *For the purposes of this section, "commission" means the*
39 *Public Utilities Commission.*

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

10 to read:

11 ~~31149.2. The hydroelectric powerplant or plants and~~
12 ~~transmission lines constructed pursuant to this article may be~~
13 ~~leased for operation by, or the power generated may be sold to, a~~
14 ~~public utility or public agency engaged in the distribution, use, or~~
15 ~~sale of electricity. The power generated may be used by a district~~
16 ~~for its own purposes, or for the production or transmission of~~
17 ~~water, but may not be offered for sale directly by a district to~~
18 ~~customers other than such a public utility or public agency. The~~
19 ~~power to acquire works and facilities does not include, and nothing~~
20 ~~in this article shall be interpreted to allow, the acquisition of~~
21 ~~property employed in the generation of hydroelectric energy for~~
22 ~~public utility purposes, except by mutual agreement between the~~
23 ~~district and the owner of that property.~~

