

BILL: AB 1912 (Rodriguez, D-Pomona)
Amended April 19, 2018
Amended March 19, 2018
Introduced January 23, 2018

SUBJECT: AB 1912 would make member agencies of a joint powers authority jointly and severally liable for the retirement liabilities of employees of that joint powers authority

STATUS: Pending in the Assembly Appropriations Committee
Passed Assembly Judiciary Committee 7-2
Passed Assembly Public Employees, Retirement and Social Security Committee 5-0

SUMMARY AS OF MAY 4, 2018:

AB 1912 (Rodriguez, D-Pomona) specifies that if an agency to a joint powers agreement participates in a public retirement system, all parties, both current and former to the joint powers authority (JPA) agreement, would be jointly and severally liable for all obligations to the retirement system. The bill would eliminate the ability for member agencies to the JPA to come to a different agreement, removing a member agency's ability to negotiate and contract related to these liabilities under existing JPA law. Under AB 1912, these new requirements apply retroactively and prospectively, and are placed on member agencies that later leave a JPA, maintained even when a JPA is disbanded.

AB 1912 includes several amendments specific to when a JPA contracts with the California Public Employees' Retirement System (CalPERS). This includes provisions that prevents CalPERS from contracting with a JPA for retirement benefits, if the JPA agreement does not include a provision that makes all parties jointly and severally liable for the retirement benefits of the JPA. Any current agreement would have to be reopended to include these provisions. As a backstop, the CalPERS Board is to have a lien on not only the assets of the JPA, but also the member agencies of the JPA. AB 1912 also sets parameters for how the CalPERS Board may pursue civil litigation for enforcement for terminated JPA retirement obligations, and empowers the CalPERS Board to apportion the retirement liabilities among the parties to the JPA agreement if they cannot reach agreement to the apportionment themselves.

EFFECTS ON ORANGE COUNTY:

The introduction of AB 1912 was influenced by a State Auditor report released in March 2018, which recommended the Legislature enact legislation which would require new JPA agreements to include clauses that make parties to the JPA agreement responsible for unfunded pension and other postemployment benefits. The audit was analyzing the South Orange County Wastewater Authority, a JPA formed of various local water districts, service districts, and cities. The State Auditor found that the JPA agreement did not hold its member agencies liable for the retirement benefits of the JPA's employees. AB 1912 goes significantly beyond the recommendations of the State

Auditor, and puts in place new requirements that will significantly deter the formation of JPAs in the future.

For the Orange County Transportation Authority (OCTA), AB 1912 could lead to significant implications for not only its participation in JPAs, but also in its financing and bonding processes. Under existing law, when forming a JPA, member agencies currently have the authority to come to agreement about the pension liabilities related to that agency, which could include the ability to make member agencies jointly and severally liable for those obligations, or apportion the liability in another method. AB 1912 infringes upon these contracting authorities, and dictates how this shall be done, not only to future agreements, but also to existing and past agreements. This raises not only constitutional concerns, but also impacts an agency's current financial structure in a way that could not have been anticipated when the JPA was initially formed. This also removes the ability for parties to the JPA to determine how best to handle these liabilities based on financial ability, participation, governing structure, jurisdictional boundaries, or other factor. Further, AB 1912 is unclear as to whether this is truly "joint and several" liability, or if this liability is to be apportioned in some other manner. Because this is unclear, this could lead to confusion when forming these agreements about how this should be worded, and what type of liability is actually being agreed to.

Currently, OCTA is a member of at least two JPAs: Metrolink and the Los Angeles-San Diego-San Luis Obispo Rail Corridor Agency (LOSSAN). These JPAs were formed out of the interest of the member agencies to address specific transportation demands that the member agencies could not address alone. These JPAs have allowed for improved transportation benefits throughout the region, providing a critical public service. While the employees working for LOSSAN are technically OCTA employees, and governed by the retirement structure provided by OCTA, there are potential significant consequences under the Metrolink JPA if AB 1912 is enacted. These new liabilities would have to be disclosed by OCTA in future bonding and financing agreements, potentially reducing the agency's bond rating and inhibiting OCTA's ability to achieve the most cost-effective agreements. This will directly impact OCTA's ability to deliver its services.

The added liabilities created by AB 1912 will likely deter agencies like OCTA from entering into new JPA agreements, removing a significant tool in allowing for address of larger, regional multi-jurisdictional issues. While the pension liabilities of an agency's employees are important to the well-being of any agency and its ability to attract and retain employees, this bill goes beyond that issue. Instead, further flexibility should be provided to members of JPAs to address the issue in any future agreements.

An oppose position is consistent with OCTA's 2017-18 State Legislative Platform principle to "oppose legislation and regulations adversely affecting OCTA's ability to efficiently and effectively deal with labor relations, employee rights, benefits including pension benefits, Family Medical Leave Act, and working conditions, including health, safety, and ergonomic standards for the workplace."

OCTA POSITION:

Staff recommends: OPPOSE

AMENDED IN ASSEMBLY APRIL 19, 2018

AMENDED IN ASSEMBLY MARCH 19, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1912

Introduced by Assembly Member Rodriguez

January 23, 2018

An act to amend Section 6508.1 of, to add Sections 6508.2, 20461.1, 20574.1, and 20575.1 to, and to repeal and add Section 20577.5 of, the Government Code, and to amend Section 366.2 of the Public Utilities Code, relating to public agencies, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1912, as amended, Rodriguez. Public employees' retirement: joint powers agreements: liability.

(1) Existing law establishes various public agency retirement systems, including, among others, the Public Employees' Retirement System, the State Teachers' Retirement System, the Judges' Retirement System II, and various county retirement systems pursuant to the County Employees Retirement Law of 1937. These systems provide defined pension benefits to public employees based on age, service credit, and amount of final compensation.

The Joint Exercise of Powers Act generally authorizes 2 or more public agencies, by agreement, to jointly exercise any common power. Under the act, if the agency is not one or more of the parties to the agreement but is a public entity, commission, or board constituted pursuant to the agreement, the debts, liabilities, and obligations of the agency are the debts, liabilities, and obligations of the parties to the agreement, unless the agreement specifies otherwise. Existing law also

~~permits otherwise and except as otherwise provided with respect to certain community choice aggregator joint powers agencies. The act also authorizes a party to an a joint powers agreement to separately contract for, or assume responsibilities for, specific debts, liabilities, or obligations of the agency. Existing law, with respect to electrical loads, permits entities authorized to be community choice aggregators to participate as a group through a joint powers agency and to also specify in their joint powers agreement that the debts, liabilities, and obligations of the agency shall not be those of the members of the agency.~~

~~This bill would eliminate the above provisions within the Joint Exercise of Powers Act and those related provisions for community choice aggregators that permit an agreement between one or more parties to specify otherwise as to their debts, liabilities, and obligations and that permit a party to separately contract for those debts, liabilities, or obligations.~~

~~The~~

~~This bill would additionally eliminate that authorization, would specify that if an agency to a joint powers agreement participates in a public retirement system, all parties, both current and former to the agreement, would be jointly and severally liable for all obligations to the retirement system, and would eliminate the authority of those parties to agree otherwise with respect to the retirement liabilities of the agency. The bill would also provide that if a judgment is rendered against an agency or a party to the agreement for a breach of its obligations to the retirement system, the time within which a claim for injury may be presented or an action commenced against the other party that is subject to the liability determined by the judgment begins to run when the judgment is rendered. The bill would specify that those provisions apply retroactively to all parties, both current and former, to the joint powers agreement.~~

(2) The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS), which provides a defined benefit to members of the system, based on final compensation, credited service, and age at retirement, subject to certain variations. PERL vests management and control of PERS in its Board of Administration. Under PERL, the board may refuse to contract with, or to agree to an amendment proposed by, any public agency for any benefit provisions that are not specifically authorized by that law and that the board determines would adversely affect the administration of the retirement system.

This bill would prohibit the board from contracting with any public agency formed under the Joint Exercise of Powers Act unless all the parties to that agreement are jointly and severally liable for all of the public agency's obligation to the system. The bill would specify that those provisions apply retroactively to all parties, both current and former, to the agreement. The bill would also require any current agreement that does not meet these requirements to be reopened to include a provision holding all member agencies party to the agreement jointly and severally liable for all of the public agency's obligations to the system.

(3) Existing law authorizes the governing board of a contracting agency to terminate its membership with PERS, subject to specified criteria. Existing law requires the PERS board to enter into a specified agreement with the governing body of a terminating agency, upon request of that agency, to ensure that final compensation is calculated in the same manner as benefits of nonterminating agencies, and that related necessary adjustments in the employer's contribution rate are made and benefits adequately funded, including a lump-sum payment at termination, if agreed to by the terminating agency and the board. Existing law requires a terminating agency to notify the PERS board of its intention to enter into this agreement within a specified period of time. Existing law authorizes the PERS board to choose not to enter into an agreement to terminate if the board determines that it is not in the best interests of PERS. Existing law requires all plan assets and liabilities of a terminating agency to be deposited in a single pooled account, the terminated agency pool subaccount within the Public Employees' Retirement Fund, a continuously appropriated fund.

This bill would also require the PERS board to enter into the above-described agreement upon request of a member agency of a terminating agency formed under the Joint Exercise of Powers Act, and would require a member agency to notify the PERS board of its intention to enter into this agreement within a specified period of time. The bill would authorize the board, if it determines that it is not in the best interests of the retirement system, to choose not to enter into that agreement. To the extent that the bill would increase any lump-sum payments made by a terminating agency and deposited into a subaccount within the Public Employees' Retirement Fund, the bill would make an appropriation. The bill would also provide that if the governing body of a terminating agency or the governing bodies of its member agencies do not enter into an agreement, the member agencies would then assume

the retirement obligations for their retirement systems, which the board would be required to apportion equitably among the member agencies. *systems, by apportionment among the member agencies as mutually agreed to by those agencies, or as determined by the board if the member agencies are unable to mutually agree, as prescribed.*

(4) Existing law makes a terminated agency liable to the system for any deficit in funding for earned benefits, interest, and for reasonable and necessary costs of collection, including attorney's fees. Existing law provides that the board has a lien on the assets of a terminated contracting agency, as specified, and that assets shall also be available to pay actual costs, including attorney's fees necessarily expended for collection on the lien.

This bill would extend that liability and lien to all of the parties of a terminating agency that was formed under the Joint Exercise of Powers Act. The bill would specify that the liability of those parties is joint and several. To the extent that these changes would increase deposits in the Public Employees' Retirement Fund, the bill would make an appropriation.

(5) Existing law authorizes the board of PERS to elect not to impose a reduction, or to impose a lesser reduction, on a terminated plan if the board has made all reasonable efforts to collect the amount necessary to fully fund the liabilities of the plan and the board finds that not reducing the benefits, or imposing a lesser reduction, will not impact the actuarial soundness of the terminated agency pool.

This bill would eliminate that provision. The bill would require the board to bring a civil action against any member agencies to a terminated agency formed by an agreement under the Joint Exercise of Powers Act to compel payment of the terminated public agency's pension obligations. The bill would also specify that the board is entitled to reasonable attorney's fees in addition to other costs. The bill would also set forth related legislative findings.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. The Legislature finds and declares as follows:
- 2 (a) Retirement security is important to families, workers, and
- 3 communities, as well as to the local, regional, and statewide

1 economies, and provides financial security and dignity to those
2 who retire.

3 (b) A defined benefit plan offers, among other types of
4 retirement plans, a guarantee of financial security in retirement.

5 (c) A Joint Power Authority (JPA) created pursuant to the Joint
6 Exercise of Powers Act (Chapter 5 (commencing with Section
7 6500) of Division 7 of Title 1 of the Government Code) provides
8 important services and benefits to its geographical areas and
9 communities.

10 (d) A JPA may offer a defined benefit plan to attract, recruit,
11 and retain highly skilled employees toward providing services and
12 fulfilling its purpose.

13 (e) Employees who have been promised a retirement allowance
14 and the other benefits of a defined benefit plan by their employer
15 should be provided those benefits after reaching the requisite age,
16 based on years of service and an established benefit formula, as
17 promised by that employer.

18 (f) Further, an employee who accepts employment with a JPA
19 employer that promises a defined benefit plan may detrimentally
20 rely on the retirement benefit, as committed by the employer,
21 during his or her employment and retirement from that employer.

22 (g) Moreover, a JPA might have limited sources of revenue,
23 and an inability to increase, or secure additional sources of revenue,
24 that may lead to financial distress or insolvency of the JPA, absent
25 the financial surety of its member agencies and for the retirement
26 benefits of the JPA's employees.

27 (h) Additionally, employees who rely on a promise by a JPA
28 employer to provide retirement benefits by accepting and
29 maintaining employment with the employer based partly on the
30 employer's promise may do so to their own retirement detriment.

31 (i) Thus, member agencies of a JPA should not be permitted to
32 absolve themselves of financial liability, in whole or in part, of
33 the financial distress or insolvency of a JPA that results in
34 reductions in a defined benefit plan retirement allowance of a
35 retired JPA employee, of which the agencies are members.

36 (j) Therefore, in order to ensure that the Board of Administration
37 of the Public Employees' Retirement System is meeting its
38 fiduciary duties and responsibilities to its members and the system,
39 the board should be permitted to seek legal redress on behalf of
40 its members as a result of the financial insolvency of a JPA that

1 contracts with the retirement system if the financial distress or
2 insolvency of the JPA may result in a reduction of retirement
3 benefits to its members.

4 (k) Further, to ensure that the board is meeting its fiduciary
5 duties and responsibilities, both current and future contracts with
6 the retirement system by a JPA must include joint and several
7 liability provisions that apply to all agencies under the agreement
8 in order to protect the members of the retirement system against
9 financial insolvency.

10 SEC. 2. Section 6508.1 of the Government Code is amended
11 to read:

12 6508.1. If the agency is not one or more of the parties to the
13 agreement but is a public entity, commission, or board constituted
14 pursuant to the agreement, the debts, liabilities, and obligations of
15 the agency shall be debts, liabilities, and obligations of the parties
16 to the ~~agreement~~. *agreement, unless the agreement specifies*
17 *otherwise. However, the parties to the agreement may not agree*
18 *otherwise with respect to the retirement liabilities of the agency*
19 *if the agency contracts with a public retirement system.*

20 SEC. 3. Section 6508.2 is added to the Government Code, to
21 read:

22 6508.2. (a) Notwithstanding Section 6508.1, if the agency
23 participates in a public retirement system, all parties, both current
24 and former, to the agreement, including all amendments thereto,
25 shall be jointly and severally liable for all obligations to the
26 retirement system.

27 (b) Notwithstanding any other law, if a judgment is rendered
28 against an agency or a party to the agreement for a breach to its
29 obligations to the public retirement system, the time within which
30 a claim for injury may be presented or an action commenced
31 against any other party that is subject to the liability determined
32 by the judgment begins to run when the judgment is rendered.

33 (c) This section shall apply retroactively to all parties, both
34 current and former, to the agreement.

35 SEC. 4. Section 20461.1 is added to the Government Code, to
36 read:

37 20461.1. (a) The board shall not contract with any public
38 agency formed by an agreement under Chapter 5 (commencing
39 with Section 6500) of Division 7 of Title 1 unless all the parties
40 to that agreement, including all amendments thereto, are jointly

1 and severally liable for all of the public agency's obligations to
2 this system.

3 (b) This section shall apply retroactively to all parties, both
4 current and former, to the agreement. Any current agreement
5 forming a public agency under Chapter 5 (commencing with
6 Section 6500) of Division 7 of Title 1 that does not meet the
7 requirements set forth in this section shall be reopened to include
8 a provision holding all member agencies party to the agreement
9 jointly and severally liable for all of the public agency's obligations
10 to this system.

11 SEC. 5. Section 20574.1 is added to the Government Code, to
12 read:

13 20574.1. In lieu of the procedure set forth in Section 20574,
14 all parties to a terminating agency that was formed by an agreement
15 under Chapter 5 (commencing with Section 6500) of Division 7
16 of Title 1 shall be jointly and severally liable to the system for any
17 deficit in funding for earned benefits, as determined pursuant to
18 Section 20577, interest at the actuarial rate from the date of
19 termination to the date the agency pays the system, and reasonable
20 and necessary costs of collection, including attorneys' fees. The
21 board shall have a lien on the assets of a terminated contracting
22 agency and on the assets of all parties to the terminating contracting
23 agency, subject only to a prior lien for wages, in an amount equal
24 to the actuarially determined deficit in funding for earned benefits
25 of the employee members of the agency, interest, and collection
26 costs. The assets shall also be available to pay actual costs,
27 including attorney's fees, necessarily expended for collection of
28 the lien.

29 SEC. 6. Section 20575.1 is added to the Government Code, to
30 read:

31 20575.1. (a) Notwithstanding any other provision of this part
32 to the contrary, upon request of a terminating agency formed by
33 an agreement under Chapter 5 (commencing with Section 6500)
34 of Division 7 of Title 1 or of any member agency to the agreement,
35 the board shall enter into an agreement with the governing body
36 of a terminating agency or the governing body of the member
37 agency in order to ensure that (1) the final compensation used in
38 the calculation of benefits of its employees shall be calculated in
39 the same manner as the benefits of employees of agencies that are
40 not terminating, regardless of whether they retire directly from

1 employment with the terminating agency or continue in other
2 public service; and (2) related necessary adjustments in the
3 employer's contribution rate are made, from time to time, by the
4 board prior to the date of termination to ensure that benefits are
5 adequately funded or any other actuarially sound payment
6 technique, including a lump-sum payment at termination, is agreed
7 to by the governing body of the terminating agency and the board.

8 (b) A terminating agency formed by an agreement under Chapter
9 5 (commencing with Section 6500) of Division 7 of Title 1 that
10 will cease to exist or its member agency shall notify the board not
11 sooner than three years nor later than one year prior to the
12 terminating agency's termination date of its intention to enter into
13 agreement pursuant to this section. The terms of the agreement
14 shall be reflected in an amendment to the agency's contract with
15 the board.

16 (c) If the board, itself, determines that it is not in the best
17 interests of the system, it may choose not to enter into an agreement
18 pursuant to this section.

19 (d) If the governing body of a terminating agency formed by
20 an agreement under Chapter 5 (commencing with Section 6500)
21 of Division 7 of Title 1 or the governing bodies of its member
22 agencies do not enter into an agreement pursuant to this section,
23 the member agencies shall assume the retirement obligations on
24 their retirement systems. ~~The board shall apportion the obligations~~
25 ~~among the member agencies in an equitable manner. Member~~
26 *agencies of the agency shall mutually agree as to the*
27 *apportionment of the agency's retirement obligations among*
28 *themselves provided that the agreement equals the total retirement*
29 *liability of the agency. A copy of this mutual agreement signed by*
30 *all parties thereto shall be provided to the board, which shall be*
31 *reflected in the agreement with the board. If the member agencies*
32 *are unable to mutually agree to apportionment of the total*
33 *retirement liability of the agency, the board shall, in its discretion,*
34 *apportion the retirement liability of the agency to each member*
35 *agency such that the apportionment equals the total retirement*
36 *liability of the agency, which shall be reflected in the agreement*
37 *with the board. However, if after the board apportions the*
38 *retirement liability, the member agencies mutually agree to*
39 *apportionment that equals the total retirement liability of the*
40 *agency, a copy of that agreement signed by all parties thereto shall*

1 *be provided to the board, which shall supersede the apportionment*
2 *made by the board, and be reflected in the agreement with the*
3 *board.*

4 SEC. 7. Section 20577.5 of the Government Code is repealed.

5 SEC. 8. Section 20577.5 is added to the Government Code, to
6 read:

7 20577.5. The board shall bring a civil action against any and
8 all of the member agencies that are parties to a terminated agency
9 formed by an agreement under Chapter 5 (commencing with
10 Section 6500) of Division 7 of Title 1 to compel payment of the
11 terminated agency's pension obligations, and shall be entitled to
12 reasonable attorneys' fees in addition to other costs.

13 SEC. 9. Section 366.2 of the Public Utilities Code is amended
14 to read:

15 366.2. (a) (1) Customers shall be entitled to aggregate their
16 electric loads as members of their local community with
17 community choice aggregators.

18 (2) Customers may aggregate their loads through a public
19 process with community choice aggregators, if each customer is
20 given an opportunity to opt out of his or her community's
21 aggregation program.

22 (3) If a customer opts out of a community choice aggregator's
23 program, or has no community choice aggregation program
24 available, that customer shall have the right to continue to be served
25 by the existing electrical corporation or its successor in interest.

26 (4) The implementation of a community choice aggregation
27 program shall not result in a shifting of costs between the customers
28 of the community choice aggregator and the bundled service
29 customers of an electrical corporation.

30 (5) A community choice aggregator shall be solely responsible
31 for all generation procurement activities on behalf of the
32 community choice aggregator's customers, except where other
33 generation procurement arrangements are expressly authorized by
34 statute.

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

38 (c) (1) Notwithstanding Section 366, a community choice
39 aggregator is hereby authorized to aggregate the electrical load of
40 interested electricity consumers within its boundaries to reduce

1 transaction costs to consumers, provide consumer protections, and
2 leverage the negotiation of contracts. However, the community
3 choice aggregator may not aggregate electrical load if that load is
4 served by a local publicly owned electric utility. A community
5 choice aggregator may group retail electricity customers to solicit
6 bids, broker, and contract for electricity and energy services for
7 those customers. The community choice aggregator may enter into
8 agreements for services to facilitate the sale and purchase of
9 electricity and other related services. Those service agreements
10 may be entered into by an entity authorized to be a community
11 choice aggregator, as defined in Section 331.1.

12 (2) Under community choice aggregation, customer participation
13 may not require a positive written declaration, but each customer
14 shall be informed of his or her right to opt out of the community
15 choice aggregation program. If no negative declaration is made
16 by a customer, that customer shall be served through the
17 community choice aggregation program. If an existing customer
18 moves the location of his or her electric service within the
19 jurisdiction of the community choice aggregator, the customer
20 shall retain the same subscriber status as prior to the move, unless
21 the customer affirmatively changes his or her subscriber status. If
22 the customer is moving from outside to inside the jurisdiction of
23 the community choice aggregator, customer participation shall not
24 require a positive written declaration, but the customer shall be
25 informed of his or her right to elect not to receive service through
26 the community choice aggregator.

27 (3) A community choice aggregator establishing electrical load
28 aggregation pursuant to this section shall develop an
29 implementation plan detailing the process and consequences of
30 aggregation. The implementation plan, and any subsequent changes
31 to it, shall be considered and adopted at a duly noticed public
32 hearing. The implementation plan shall contain all of the following:

33 (A) An organizational structure of the program, its operations,
34 and its funding.

35 (B) Ratesetting and other costs to participants.

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

38 (D) The methods for entering and terminating agreements with
39 other entities.

1 (E) The rights and responsibilities of program participants,
2 including, but not limited to, consumer protection procedures,
3 credit issues, and shutoff procedures.

4 (F) Termination of the program.

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

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

12 (A) Universal access.

13 (B) Reliability.

14 (C) Equitable treatment of all classes of customers.

15 (D) Any requirements established by state law or by the
16 commission concerning aggregated service, including those rules
17 adopted by the commission pursuant to paragraph (3) of
18 subdivision (b) of Section 8341 for the application of the
19 greenhouse gases emission performance standard to community
20 choice aggregators.

21 (5) In order to determine the cost-recovery mechanism to be
22 imposed on the community choice aggregator pursuant to
23 subdivisions (d), (e), and (f) that shall be paid by the customers of
24 the community choice aggregator to prevent shifting of costs, the
25 community choice aggregator shall file the implementation plan
26 with the commission, and any other information requested by the
27 commission that the commission determines is necessary to develop
28 the cost-recovery mechanism in subdivisions (d), (e), and (f).

29 (6) The commission shall notify any electrical corporation
30 serving the customers proposed for aggregation that an
31 implementation plan initiating community choice aggregation has
32 been filed, within 10 days of the filing.

33 (7) Within 90 days after the community choice aggregator
34 establishing load aggregation files its implementation plan, the
35 commission shall certify that it has received the implementation
36 plan, including any additional information necessary to determine
37 a cost-recovery mechanism. After certification of receipt of the
38 implementation plan and any additional information requested,
39 the commission shall then provide the community choice
40 aggregator with its findings regarding any cost recovery that must

1 be paid by customers of the community choice aggregator to
2 prevent a shifting of costs as provided for in subdivisions (d), (e),
3 and (f).

4 (8) No entity proposing community choice aggregation shall
5 act to furnish electricity to electricity consumers within its
6 boundaries until the commission determines the cost recovery that
7 must be paid by the customers of that proposed community choice
8 aggregation program, as provided for in subdivisions (d), (e), and
9 (f). The commission shall designate the earliest possible effective
10 date for implementation of a community choice aggregation
11 program, taking into consideration the impact on any annual
12 procurement plan of the electrical corporation that has been
13 approved by the commission.

14 (9) All electrical corporations shall cooperate fully with any
15 community choice aggregators that investigate, pursue, or
16 implement community choice aggregation programs. Cooperation
17 shall include providing the entities with appropriate billing and
18 electrical load data, including, but not limited to, electrical
19 consumption data as defined in Section 8380 and other data
20 detailing electricity needs and patterns of usage, as determined by
21 the commission, and in accordance with procedures established
22 by the commission. The commission shall exercise its authority
23 pursuant to Chapter 11 (commencing with Section 2100) to enforce
24 the requirements of this paragraph when it finds that the
25 requirements of this paragraph have been violated. Electrical
26 corporations shall continue to provide all metering, billing,
27 collection, and customer service to retail customers that participate
28 in community choice aggregation programs. Bills sent by the
29 electrical corporation to retail customers shall identify the
30 community choice aggregator as providing the electrical energy
31 component of the bill. The commission shall determine the terms
32 and conditions under which the electrical corporation provides
33 services to community choice aggregators and retail customers.

34 (10) If the commission finds that an electrical corporation has
35 violated this section, the commission shall consider the impact of
36 the violation upon community choice aggregators.

37 (11) The commission shall proactively expedite the complaint
38 process for disputes regarding an electrical corporation's violation
39 of its obligations pursuant to this section in order to provide for
40 timely resolution of complaints made by community choice

1 aggregation programs, so that all complaints are resolved in no
2 more than 180 days following the filing of a complaint by a
3 community choice aggregation program concerning the actions of
4 the incumbent electrical corporation. This deadline may only be
5 extended under either of the following circumstances:

6 (A) Upon agreement of all of the parties to the complaint.

7 (B) The commission makes a written determination that the
8 deadline cannot be met, including findings for the reason for this
9 determination, and issues an order extending the deadline. A single
10 order pursuant to this subparagraph shall not extend the deadline
11 for more than 60 days.

12 (12) (A) An entity authorized to be a community choice
13 aggregator, as defined in Section 331.1, that elects to implement
14 a community choice aggregation program within its jurisdiction
15 pursuant to this chapter, shall do so by ordinance. A city, county,
16 or city and county may request, by affirmative resolution of its
17 governing council or board, that another entity authorized to be a
18 community choice aggregator act as the community choice
19 aggregator on its behalf. If a city, county, or city and county, by
20 resolution, requests another authorized entity be the community
21 choice aggregator for the city, county, or city and county, that
22 authorized entity shall be responsible for adopting the ordinance
23 to implement the community choice aggregation program on behalf
24 of the city, county, or city and county.

25 (B) (i) Two or more entities authorized to be a community
26 choice aggregator, as defined in Section 331.1, may participate as
27 a group in a community choice aggregation program pursuant to
28 this chapter, through a joint powers agency established pursuant
29 to Chapter 5 (commencing with Section 6500) of Division 7 of
30 Title 1 of the Government Code, if each entity adopts an ordinance
31 pursuant to subparagraph (A).

32 (ii) *Pursuant to Section 6508.1 of the Government Code,*
33 *members of a joint powers agency that is a community choice*
34 *aggregator may specify in their joint powers agreement that, unless*
35 *otherwise agreed by the members of the agency, the debts,*
36 *liabilities, and obligations of the agency shall not be the debts,*
37 *liabilities, and obligations, either jointly or severally, of the*
38 *members of the agency.*

1 (iii) *Notwithstanding clause (ii), if the agency contracts with a*
2 *public retirement system, the members of the agency shall be jointly*
3 *and severally liable for the retirement liabilities of the agency.*

4 (iv) *Except as provided in clause (iii), the commission shall not,*
5 *as a condition of registration or otherwise, require an agency's*
6 *members to voluntarily assume the debts, liabilities, and*
7 *obligations of the agency to the electrical corporation unless the*
8 *commission finds that the agreement by the agency's members is*
9 *the only reasonable means by which the agency may establish its*
10 *creditworthiness under the electrical corporation's tariff to pay*
11 *charges to the electrical corporation under the tariff.*

12 (13) Following adoption of aggregation through the ordinance
13 described in *subparagraph (A) of paragraph (12)*, the program
14 shall allow any retail customer to opt out and to continue to be
15 served as a bundled service customer by the existing electrical
16 corporation, or its successor in interest. Delivery services shall be
17 provided at the same rates, terms, and conditions, as approved by
18 the commission, for community choice aggregation customers and
19 customers that have entered into a direct transaction where
20 applicable, as determined by the commission. Once enrolled in
21 the aggregated entity, any ratepayer that chooses to opt out within
22 60 days or two billing cycles of the date of enrollment may do so
23 without penalty and shall be entitled to receive default service
24 pursuant to paragraph (3) of subdivision (a). Customers that return
25 to the electrical corporation for procurement services shall be
26 subject to the same terms and conditions as are applicable to other
27 returning direct access customers from the same class, as
28 determined by the commission, as authorized by the commission
29 pursuant to this code or any other provision of law, except that
30 those customers shall be subject to no more than a 12-month stay
31 requirement with the electrical corporation. Any reentry fees to
32 be imposed after the opt-out period specified in this paragraph,
33 shall be approved by the commission and shall reflect the cost of
34 reentry. The commission shall exclude any amounts previously
35 determined and paid pursuant to subdivisions (d), (e), and (f) from
36 the cost of reentry.

37 (14) Nothing in this section shall be construed as authorizing
38 any city or any community choice retail load aggregator to restrict
39 the ability of retail electricity customers to obtain or receive service

1 from any authorized electric service provider in a manner consistent
2 with law.

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

13 (i) That they are to be automatically enrolled and that the
14 customer has the right to opt out of the community choice
15 aggregator without penalty.

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

17 (B) The community choice aggregator may request the
18 commission to approve and order the electrical corporation to
19 provide the notification required in subparagraph (A). If the
20 commission orders the electrical corporation to send one or more
21 of the notifications required pursuant to subparagraph (A) in the
22 electrical corporation's normally scheduled monthly billing
23 process, the electrical corporation shall be entitled to recover from
24 the community choice aggregator all reasonable incremental costs
25 it incurs related to the notification or notifications. The electrical
26 corporation shall fully cooperate with the community choice
27 aggregator in determining the feasibility and costs associated with
28 using the electrical corporation's normally scheduled monthly
29 billing process to provide one or more of the notifications required
30 pursuant to subparagraph (A).

31 (C) Each notification shall also include a mechanism by which
32 a ratepayer may opt out of community choice aggregated service.
33 The opt out may take the form of a self-addressed return postcard
34 indicating the customer's election to remain with, or return to,
35 electrical energy service provided by the electrical corporation, or
36 another straightforward means by which the customer may elect
37 to derive electrical energy service through the electrical corporation
38 providing service in the area.

39 (16) A community choice aggregator shall have an operating
40 service agreement with the electrical corporation prior to furnishing

1 electric service to consumers within its jurisdiction. The service
2 agreement shall include performance standards that govern the
3 business and operational relationship between the community
4 choice aggregator and the electrical corporation. The commission
5 shall ensure that any service agreement between the community
6 choice aggregator and the electrical corporation includes equitable
7 responsibilities and remedies for all parties. The parties may
8 negotiate specific terms of the service agreement, provided that
9 the service agreement is consistent with this chapter.

10 (17) The community choice aggregator shall register with the
11 commission, which may require additional information to ensure
12 compliance with basic consumer protection rules and other
13 procedural matters.

14 (18) Once the community choice aggregator's contract is signed,
15 the community choice aggregator shall notify the applicable
16 electrical corporation that community choice service will
17 commence within 30 days.

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

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

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

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

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

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

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

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

34 (2) Any additional costs of the Department of Water Resources,
35 equal to the customer's proportionate share of the Department of
36 Water Resources' estimated net unavoidable electricity purchase
37 contract costs as determined by the commission, for the period
38 commencing with the customer's purchases of electricity from the
39 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) Estimated net unavoidable electricity costs paid by the
20 customers of a community choice aggregator shall be reduced by
21 the value of any benefits that remain with bundled service
22 customers, unless the customers of the community choice
23 aggregator are allocated a fair and equitable share of those benefits.

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

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

34 (i) The commission shall authorize community choice
35 aggregation only if the commission imposes a cost-recovery
36 mechanism pursuant to subdivisions (d), (e), (f), and (h). Except
37 as provided by this subdivision, this section shall not alter the
38 suspension by the commission of direct purchases of electricity
39 from alternate providers other than by community choice
40 aggregators, pursuant to Section 365.1.

(j) (1) The commission shall not authorize community choice aggregation until it implements a cost-recovery mechanism, consistent with subdivisions (d), (e), and (f), that is applicable to customers that elected to purchase electricity from an alternate provider between February 1, 2001, and January 1, 2003.

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

(k) (1) Except for nonbypassable charges imposed by the commission pursuant to subdivisions (d), (e), (f), and (h), and programs authorized by the commission to provide broader statewide or regional benefits to all customers, electric service customers of a community choice aggregator shall not be required to pay nonbypassable charges for goods, services, or programs that do not benefit either, or where applicable, both, the customer and the community choice aggregator serving the customer.

(2) The commission, Energy Commission, electrical corporation, or third-party administrator shall administer any program funded through a nonbypassable charge on a nondiscriminatory basis so that the electric service customers of a community choice aggregator may participate in the program on an equal basis with the customers of an electrical corporation.

(3) Nothing in this subdivision is intended to modify, or prohibit the use of, charges funding programs for the benefit of low-income customers.

(l) (1) An electrical corporation shall not terminate the services of a community choice aggregator unless authorized by a vote of the full commission. The commission shall ensure that prior to authorizing a termination of service, that the community choice aggregator has been provided adequate notice and a reasonable opportunity to be heard regarding any electrical corporation contentions in support of termination. If the contentions made by the electrical corporation in favor of termination include factual claims, the community choice aggregator shall be afforded an opportunity to address those claims in an evidentiary hearing.

(2) Notwithstanding paragraph (1), if the Independent System Operator has transferred the community choice aggregator's scheduling coordination responsibilities to the incumbent electrical corporation, an administrative law judge or assigned commissioner, after providing the aggregator with notice and an opportunity to

1 respond, may suspend the aggregator's service to customers
2 pending a full vote of the commission.
3 (m) Any meeting of an entity authorized to be a community
4 choice aggregator, as defined in Section 331.1, for the purpose of
5 developing, implementing, or administering a program of
6 community choice aggregation shall be conducted in the manner
7 prescribed by the Ralph M. Brown Act (Chapter 9 (commencing
8 with Section 54950) of Part 1 of Division 2 of Title 5 of the
9 Government Code).

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