



AB-1912 Public employees' retirement: joint powers agreements: liability. (2017-2018)

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CALIFORNIA LEGISLATURE— 2017–2018 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~~ *an* 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 and except as otherwise provided with respect to certain community choice aggregator joint powers agencies.~~ *otherwise*. The act also authorizes a party to a joint powers agreement to separately contract for, or assume responsibilities for, specific debts, liabilities, or obligations of the agency.

This bill would eliminate that authorization, *and* would specify that if an agency ~~to~~ *established by* a joint powers agreement participates ~~in in, or contracts with,~~ a public retirement system, ~~all parties,~~ *member agencies*, both current and former to the agreement, would be ~~jointly and severally liable for all~~ *required to mutually agree as to the apportionment of the agency's retirement* obligations ~~to the retirement system, and would eliminate the~~

~~authority of those parties to agree otherwise with respect to the retirement liabilities among themselves, provided that the agreement equals the total retirement liability of the agency. The bill would require the board, in cases in which the member agencies are unable to mutually agree to apportionment, to apportion the retirement liability of the agency to each member agency, as specified.~~ 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 board, on and after January 1, 2019,~~ 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 these 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, 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.~~ *systems.*

(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~~ *board, prior to exercising its authority to reduce benefits, to consider and exhaust all options and necessary actions, including evaluating whether* 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 Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares as follows:

(a) Retirement security is important to families, workers, and communities, as well as to the local, regional, and statewide economies, and provides financial security and dignity to those who retire.

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

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

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

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

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

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

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

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

(j) Therefore, in order to ensure that the ~~Board of Administration of the Public Employees' Retirement System~~ *board of a public retirement system* is meeting its fiduciary duties and responsibilities to its members and the system, the board should be permitted to seek legal redress on behalf of its members as a result of the financial insolvency of a JPA that contracts with the retirement system if the financial distress or insolvency of the JPA may result in a reduction of retirement benefits to its members.

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

(l) For purposes of this section, "public retirement system" means any pension or retirement system of a public employer, including, but not limited to, an independent retirement plan offered by a public employer that the public employer participates in or offers to its employees for the purpose of providing retirement benefits, or a system of benefits for public employees that is governed by Section 401(a) of Title 26 of the United States Code.

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

6508.1. (a) 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 shall be debts, liabilities, and obligations of the parties to the agreement, unless the agreement specifies otherwise. However, the parties to the agreement may not agree otherwise with respect to the retirement liabilities of the agency if the agency contracts with a public retirement ~~system.~~ *system.*

(b) For purposes of this section, "public retirement system" means any pension or retirement system of a public employer, including, but not limited to, an independent retirement plan offered by a public employer that the public employer participates in or offers to its employees for the purpose of providing retirement benefits, or a system of benefits for public employees that is governed by Section 401(a) of Title 26 of the United States Code.

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

6508.2. (a) ~~Notwithstanding Section 6508.1, if the agency~~ *(1) An agency established by agreement under this chapter that participates in in, or contracts with,* a public retirement system, ~~all parties, and member agencies,~~ both current and former, to the agreement, including all amendments thereto, shall ~~be jointly and severally liable for all obligations to the retirement system.~~ *mutually agree as to the apportionment of the agency's retirement obligations among themselves, provided that the agreement equals the total retirement liability of the agency. A copy of this mutual agreement, signed by all parties thereto, shall be provided to the board, which shall be reflected in the agreement with the board. If the member agencies are unable to mutually agree to apportionment of the total retirement liability of the agency, the board shall apportion the retirement liability of the agency to each member agency based on the share of service received from the joint power authority by the agency, or population of each member agency, such that the apportionment equals the total retirement liability of the agency, which shall be reflected in the agreement with the board. However, if, after the board apportions the retirement liability, the member agencies mutually agree to apportionment that equals the total retirement liability of the agency, a copy of that agreement signed by all parties thereto shall be provided to the board, which shall supersede the apportionment made by the board, and be reflected in the agreement with the board.*

(2) For purposes of this section, "board" means the board of any pension or retirement system of a public employer, including, but not limited to, an independent retirement plan offered by a public employer that the public employer participates in or offers to its employees for the purpose of providing retirement benefits, or a system of benefits for public employees that is governed by Section 401(a) of Title 26 of the United States Code.

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

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

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

20461.1. (a) ~~The~~ *On and after January 1, 2019, the* board shall not contract with any public agency formed by an agreement under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 unless all the parties to that agreement, including all amendments thereto, are jointly and severally liable for all of the public agency's obligations to this system.

~~(b) This section shall apply retroactively to all parties, both current and former, to the agreement. Any current agreement forming a public agency under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 that does not meet the requirements set forth in this section shall 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 this system.~~

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

20574.1. In lieu of the procedure set forth in Section 20574, all parties to a terminating agency that was formed by an agreement under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 shall be ~~jointly and severally~~ liable to the system for any deficit in funding for earned benefits, as determined pursuant to Section 20577, interest at the actuarial rate from the date of termination to the date the agency pays the system, and

reasonable and necessary costs of collection, including attorneys' fees. The board shall have a lien on the assets of a terminated contracting agency and on the assets of all parties to the terminating contracting agency, subject only to a prior lien for wages, in an amount equal to the actuarially determined deficit in funding for earned benefits of the employee members of the agency, interest, and collection costs. The assets shall also be available to pay actual costs, including attorney's fees, necessarily expended for collection of the lien.

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

20575.1. (a) Notwithstanding any other provision of this part to the contrary, upon request of a terminating agency formed by an agreement under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 or of any member agency to the agreement, the board shall enter into an agreement with the governing body of a terminating agency or the governing body of the member agency in order to ensure that (1) the final compensation used in the calculation of benefits of its employees shall be calculated in the same manner as the benefits of employees of agencies that are not terminating, regardless of whether they retire directly from employment with the terminating agency or continue in other public service; and (2) related necessary adjustments in the employer's contribution rate are made, from time to time, by the board prior to the date of termination to ensure that benefits are adequately funded or any other actuarially sound payment technique, including a lump-sum payment at termination, is agreed to by the governing body of the terminating agency and the board.

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

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

(d) If the governing body of a terminating agency formed by an agreement under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 or the governing bodies of its member agencies do not enter into an agreement pursuant to this section, the member agencies shall assume the retirement obligations on their retirement systems. ~~Member agencies of the agency shall mutually agree as to the apportionment of the agency's retirement obligations among themselves provided that the agreement equals the total retirement liability of the agency. A copy of this mutual agreement signed by all parties thereto shall be provided to the board, which shall be reflected in the agreement with the board. If the member agencies are unable to mutually agree to apportionment of the total retirement liability of the agency, the board shall, in its discretion, apportion the retirement liability of the agency to each member agency such that the apportionment equals the total retirement liability of the agency, which shall be reflected in the agreement with the board. However, if after the board apportions the retirement liability, the member agencies mutually agree to apportionment that equals the total retirement liability of the agency, a copy of that agreement signed by all parties thereto shall be provided to the board, which shall supersede the apportionment made by the board, and be reflected in the agreement with the board.~~

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

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

20577.5. The board ~~shall bring a~~ *shall, prior to exercising authority granted pursuant to Section 20577, consider and exhaust all options and necessary actions, including evaluating whether to bring a* civil action against any and all of the member agencies that are parties to a terminated agency formed by an agreement under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 to compel payment of the terminated agency's ~~pension obligations; retirement obligations pursuant to Section 20575.1,~~ and shall be entitled to reasonable ~~attorneys' attorney's~~ fees in addition to other costs.

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

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

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

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

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

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

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

~~(c)(1) Notwithstanding Section 366, a community choice aggregator is hereby authorized to aggregate the electrical load of interested electricity consumers within its boundaries to reduce transaction costs to consumers, provide consumer protections, and leverage the negotiation of contracts. However, the community choice aggregator may not aggregate electrical load if that load is served by a local publicly owned electric utility. A community choice aggregator may group retail electricity customers to solicit bids, broker, and contract for electricity and energy services for those customers. The community choice aggregator may enter into agreements for services to facilitate the sale and purchase of electricity and other related services. Those service agreements may be entered into by an entity authorized to be a community choice aggregator, as defined in Section 331.1.~~

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

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

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

~~(B) Ratesetting and other costs to participants.~~

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

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

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

~~(F) Termination of the program.~~

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

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

~~(A) Universal access.~~

~~(B) Reliability.~~

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

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

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

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

~~(7)Within 90 days after the community choice aggregator establishing load aggregation files its implementation plan, the commission shall certify that it has received the implementation plan, including any additional information necessary to determine a cost recovery mechanism. After certification of receipt of the implementation plan and any additional information requested, the commission shall then provide the community choice aggregator with its findings regarding any cost recovery that must be paid by customers of the community choice aggregator to prevent a shifting of costs as provided for in subdivisions (d), (e), and (f).~~

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

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

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

~~(11)The commission shall proactively expedite the complaint process for disputes regarding an electrical corporation's violation of its obligations pursuant to this section in order to provide for timely resolution of complaints made by community choice aggregation programs, so that all complaints are resolved in no more than 180 days following the filing of a complaint by a community choice aggregation program concerning the actions of the incumbent electrical corporation. This deadline may only be extended under either of the following circumstances:~~

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

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

~~(12)(A)An entity authorized to be a community choice aggregator, as defined in Section 331.1, that elects to implement a community choice aggregation program within its jurisdiction pursuant to this chapter, shall do so by ordinance. A city, county, or city and county may request, by affirmative resolution of its governing council or board, that another entity authorized to be a community choice aggregator act as the community choice aggregator on its behalf. If a city, county, or city and county, by resolution, requests another authorized entity be the community choice aggregator for the city, county, or city and county, that authorized entity shall be~~

~~responsible for adopting the ordinance to implement the community choice aggregation program on behalf of the city, county, or city and county.~~

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

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

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

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

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

~~(14)Nothing in this section shall be construed as authorizing any city or any community choice retail load aggregator to restrict the ability of retail electricity customers to obtain or receive service from any authorized electric service provider in a manner consistent with law.~~

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

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

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

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

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

~~(16)A community choice aggregator shall have an operating service agreement with the electrical corporation prior to furnishing electric service to consumers within its jurisdiction. The service agreement shall include performance standards that govern the business and operational relationship between the community choice aggregator and the electrical corporation. The commission shall ensure that any service agreement between the community choice aggregator and the electrical corporation includes equitable responsibilities and remedies for all parties. The parties may negotiate specific terms of the service agreement, provided that the service agreement is consistent with this chapter.~~

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

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

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

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

~~(21)At the request and expense of any community choice aggregator, electrical corporations shall install, maintain, and calibrate metering devices at mutually agreeable locations within or adjacent to the community choice aggregator's political boundaries. The electrical corporation shall read the metering devices and provide the data collected to the community choice aggregator at the aggregator's expense. To the extent that the community choice aggregator requests a metering location that would require alteration or modification of a circuit, the electrical corporation shall only be required to alter or modify a circuit if such alteration or modification does not compromise the safety, reliability, or operational flexibility of the electrical corporation's facilities. All costs incurred to modify circuits pursuant to this paragraph, shall be borne by the community choice aggregator.~~

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

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

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

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

~~(2) Any additional costs of the Department of Water Resources, equal to the customer's proportionate share of the Department of Water Resources' estimated net unavoidable electricity purchase contract costs as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the Department of Water Resources.~~

~~(f) A retail end use customer purchasing electricity from a community choice aggregator pursuant to this section shall reimburse the electrical corporation that previously served the customer for all of the following:~~

~~(1) The electrical corporation's unrecovered past undercollections for electricity purchases, including any financing costs, attributable to that customer, that the commission lawfully determines may be recovered in rates.~~

~~(2) Any additional costs of the electrical corporation recoverable in commission approved rates, equal to the share of the electrical corporation's estimated net unavoidable electricity purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the electrical corporation.~~

~~(g) Estimated net unavoidable electricity costs paid by the customers of a community choice aggregator shall be reduced by the value of any benefits that remain with bundled service customers, unless the customers of the community choice aggregator are allocated a fair and equitable share of those benefits.~~

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

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

~~(i) The commission shall authorize community choice aggregation only if the commission imposes a cost recovery mechanism pursuant to subdivisions (d), (e), (f), and (h). Except as provided by this subdivision, this section shall not alter the suspension by the commission of direct purchases of electricity from alternate providers other than by community choice 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 respond, may suspend the aggregator's service to customers pending a full vote of the commission.~~

~~(m)Any meeting of an entity authorized to be a community choice aggregator, as defined in Section 331.1, for the purpose of developing, implementing, or administering a program of community choice aggregation shall be conducted in the manner prescribed by the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).~~