



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Date Introduced:	05/17/01	Bill No:	SB 78XX
Tax:	Sales and Use	Author:	Polanco
Board Position:		Related Bills:	

BILL SUMMARY

This bill would, among other things, exclude from the term “tangible personal property” any property that may be sold or transferred by an electrical corporation to any state agency or authority pursuant to a settlement agreement, as described.

ANALYSIS

Current Law

Under existing law, the sales or use tax applies to the sale or use of tangible personal property in this state, unless otherwise exempted or excluded by statute. Current law defines “tangible personal property” as personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses. The law *excludes* from the term, telephone and telegraph lines, electrical transmission and distribution lines, and the poles, towers, or conduit by which they are supported or in which they are contained.

Proposed Law

This bill would, among many other things, amend Section 6016.5 of the Sales and Use Tax Law to exclude from the term “tangible personal property” any property that may be sold or transferred by an electrical corporation to the Department of Water Resources or any other state agency or authority pursuant to a settlement agreement, as defined in Section 840 of the Public Utilities Code (as added by this measure), including, but not limited to, implementing agreements described in that settlement agreement. The bill would also add Section 6052 to the Sales and Use Tax Law to specify that no such conveyances may constitute the sale of tangible personal property for purposes of Section 6051.

The bill would add Section 840 to the Public Utilities Code to, among other things, define “electric rate settlement agreement” and “settlement agreement” as a memorandum of understanding entered into prior to December 15, 2001, by an electrical corporation and the department as the same may be amended and supplemented by agreement of the parties, setting forth a plan that includes, but is not limited to, provisions calling for all of the following (in part):

1. The acquisition of certain transmission facilities by the state.
2. The stipulated judgment, dismissal, or release of the litigation or claim that electrical corporations may have or could have had against the state, federal government, or

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the commission for the takings or under the filed rate doctrine arising from or related to the facts asserted in that litigation or, in the case of any electrical corporation that has not commenced litigation, which could be asserted in litigation.

3. The dedication of generation assets or interest therein owned by the electrical corporation for the benefit of California ratepayers.

The bill would become effective immediately upon its enactment.

Background

California's investor-owned electric utilities, including Southern California Edison Company (SCE), are currently facing a crisis resulting from deregulation of the generation side of the electric industry through legislation enacted by the California Legislature and decisions issued by the California Public Utilities Commission (CPUC). Under the legislation and CPUC decisions, prices for wholesale purchases of electricity from power suppliers are set by markets while the retail prices paid by utility customers for electricity delivered to them remain frozen at June 1996 levels except for the 1(cent)-per-kWh and 3(cent)-per-kWh surcharges effective first quarter 2001. Since May 2000, SCE's costs to obtain power (at wholesale electricity prices) for resale to its customers substantially exceeded revenue from frozen rates. The shortfall has been accumulated in the transition revenue account (TRA), a CPUC-authorized regulatory asset. SCE has borrowed significant amounts of money to finance its electricity purchases, creating a severe financial drain on SCE.

On April 9, 2001, SCE and the California Department of Water Resources (CDWR) executed a memorandum of understanding (MOU) which sets forth a comprehensive plan calling for legislation, regulatory action and definitive agreements to resolve important aspects of the energy crisis, and which is expected to help restore SCE's creditworthiness and liquidity. Governor Davis and his representatives participated in the negotiation of the MOU, and the Governor endorsed implementation of all the elements of the MOU. SCE and the CDWR committed in the MOU to proceed in good faith to sponsor and support the required legislation and to negotiate in good faith the necessary definitive agreements. If required legislation is not adopted and definitive agreements executed by August 15, 2001, the MOU may be terminated by SCE or the CDWR. This bill would implement this MOU.

Litigation

In November 2000, SCE filed a lawsuit against the CPUC in federal court in California, seeking a ruling that SCE is entitled to full recovery of its past electricity procurement costs in accordance with the tariffs filed with the Federal Energy Regulatory Commission. The effect of such a ruling would be to overturn the prior decisions of the CPUC restricting recovery of TRA undercollections. In January 2001, the court denied the CPUC's motion to dismiss the action and also denied SCE's motion for summary judgment without prejudice. In February 2001, the court denied SCE's motion for a preliminary injunction ordering the CPUC to institute rates sufficient to enable SCE to

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recover its past procurement costs, subject to refund. The court granted, in part, SCE's additional motion to specify certain material facts without substantial controversy, but denied the remainder of the motion and declined to declare at that time that SCE is entitled to recover the amount of its undercollected procurement costs. In March 2001, the court directed the parties to be prepared for trial on July 31, 2001. Per mutual agreement of the parties, a stay has been issued while SCE is attempting to further the MOU implementation process with the CPUC. As discussed in the Memorandum of Understanding with the CDWR, if the other elements of the MOU are implemented, SCE will enter into a settlement of or dismiss its lawsuit against the CPUC seeking recovery of past undercollected costs. The settlement or dismissal will include related claims against California or any of its agencies, or against the federal government. SCE cannot predict whether or when a favorable final judgment or other resolution would be obtained in this legal action, if it were to proceed to trial.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by Governor Davis and is intended to implement the elements of the MOU to 1) restore Southern California Edison to financial health, 2) resolve outstanding litigation, 3) finance necessary improvements to transmission lines, and 4) serve as a blueprint for restoring financial health of other investor-owned utility companies.
2. **Bill would not be problematic to administer.** The impact to the Board on the small component in the bill that would amend the Sales and Use Tax Law is minimal and would not be problematic to administer.

COST ESTIMATE

Minor, absorbable costs would be incurred to implement the provisions of the bill as they impact the Board.

REVENUE ESTIMATE

Pending specific information from the California Department of Water Resources.

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