

An act to amend Sections 40009, 40010, 40018, 40019, 40020, 40051, 40061, 40062, and 40063 of, to amend, repeal, and add Section 40016 of, to add Sections 40009.5, 40010.5, 40011, 40012, 40012.5, and 40013 to, to repeal Section 40064 of, and to repeal and add Section 40005 of, the Revenue and Taxation Code, relating to electricity.

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

SECTION 1. Section 40005 of the Revenue and Taxation Code is repealed.
~~40005. "Board" means the State Board of Equalization.~~

SEC. 2. Section 40005 is added to the Revenue and Taxation Code, to read:
40005. "Department" means the California Department of Tax and Fee

Administration.

SEC. 3. Section 40009 of the Revenue and Taxation Code is amended to read:
40009. "Consumer" means ~~any~~ all of the following:

(a) Any person receiving for consumption electrical energy electricity furnished by an electric utility and includes utility, including a person receiving electrical energy electricity for redistribution for the use of his their tenants.

(b) Any person consuming electricity generated by a solar energy system.

(c) Any person consuming electricity generated by a power plant that is not a solar energy system and that is connected to the grid, and which electricity is not delivered to an electric utility.

(d) Any person regarded as a consumer by the department pursuant to Section 40010.

SEC. 4. Section 40009.5 is added to the Revenue and Taxation Code, to read:

40009.5. "Electric generator" means a machine that converts mechanical energy into electricity or a device that converts nonmechanical energy into electricity directly, including, without limitation, photovoltaic solar cells and fuel cells.

SEC. 5. Section 40010 of the Revenue and Taxation Code is amended to read:

40010. (a) "Electric utility" means any person engaged in producing, generating, transmitting, furnishing, distributing distributing, or delivering electrical energy electricity for sale without regard to whether the person is subject to regulation or is regulated by the Public Utilities Commission. The term does not include a person who generates electrical energy electricity or redistributes electrical energy electricity solely for his their own use or for the use of his their tenants and not for sale to others.

~~When~~

(b) When the board department determines that it is necessary for the efficient administration of this part, the board department may regard any person not primarily engaged in the business of selling electrical energy electricity who purchases electrical energy electricity for distribution to others as a consumer and not as an electric utility.

SEC. 6. Section 40010.5 is added to the Revenue and Taxation Code, to read:

40010.5. "Electrical energy" means electricity.

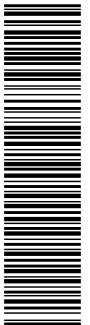
SEC. 7. Section 40011 is added to the Revenue and Taxation Code, to read:

40011. "Power plant" means a plant that is located in California or a California control area, contains a prime mover, an electric generator, and appropriate auxiliary equipment, has nameplate capacity of one megawatt or more, and the electricity generated by the plant is consumed, or sold for consumption, in California.

SEC. 8. Section 40012 is added to the Revenue and Taxation Code, to read:

40012. "Power plant owner" means any person that owns a power plant, or, if there is more than one owner, the majority or plurality owner.

SEC. 9. Section 40012.5 is added to the Revenue and Taxation Code, to read:



40012.5. "Prime mover" means the engine, gas turbine, steam turbine, water wheel, or other machine that produces the mechanical energy that drives an electric generator, or a device that converts nonmechanical energy to electricity directly, including, without limitation, photovoltaic solar cells and fuel cells.

SEC. 10. Section 40013 is added to the Revenue and Taxation Code, to read:

40013. "Solar energy system" means a behind-the-meter solar energy device that is located in California and that generates electricity.

SEC. 11. Section 40016 of the Revenue and Taxation Code is amended to read:

40016. (a) A surcharge is imposed on the consumption in this state of electrical energy purchased from an electric utility on and after January 1, 2003, at the rate of three-tenths mill (\$0.0003) per kilowatt-hour, or at the rate determined pursuant to subdivision (b).

(b) The Energy Commission shall fix the rate at a public meeting in each November for each calendar year starting the following January. Under no circumstances may the rate fixed exceed three-tenths mill (\$0.0003) per kilowatt-hour. If the commission fails to fix the rate in any November, the surcharge shall continue at the rate in effect during that November.

(c) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 12. Section 40016 is added to the Revenue and Taxation Code, to read:

40016. (a) On and after January 1, 2025, a surcharge is imposed on the consumption in this state of electricity purchased from an electric utility, and of electricity generated by a solar energy system that is connected to the grid, and of electricity generated by a power plant that is not a solar energy system and is connected to the grid, and which electricity is not delivered to an electric utility, at a rate not to exceed sixty-six hundredths mill (\$0.00066) per kilowatt-hour or at the rate determined pursuant to subdivision (c).

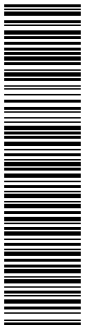
(b) Beginning January 1, 2025, and annually thereafter, the surcharge rate cap of sixty-six hundredths mill (\$0.00066) per kilowatt-hour in subdivision (a) shall be adjusted in an amount equal to the change in the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the prior year.

(c) The Energy Commission shall fix the rate at a public meeting in each November for each calendar year starting the following January. The rate fixed shall not exceed the rate described in subdivision (b). If the commission fails to fix the rate in any November, the surcharge shall continue at the rate in effect during that November.

SEC. 13. Section 40018 of the Revenue and Taxation Code is amended to read:

40018. Every (a) On and before December 31, 2024, every person consuming electrical energy electricity in this state purchased from an electric utility, or the United States or an agency thereof, is liable for the surcharge. His This liability is not extinguished until the surcharge has been paid to this state, except that payment to an electric utility registered under this part is sufficient to relieve the consumer from further liability for the surcharge.

(b) On and after January 1, 2025, every person consuming electricity in this state purchased from an electric utility, or the United States or an agency thereof, generated by a solar energy system that is connected to the grid, or generated by a power plant that is not a solar energy system and is connected to the grid, and which electricity is not delivered to an electric utility system, is liable for the surcharge. This liability is



not extinguished until the surcharge has been paid to this state, except that payment of the surcharge to an electric utility registered under this part is sufficient to relieve the consumer from further liability for the surcharge.

SEC. 14. Section 40019 of the Revenue and Taxation Code is amended to read:

40019. Every electric utility ~~making sales of electrical energy~~ selling electricity to consumers in this state or that has an interconnection agreement for a solar energy system shall collect the surcharge from each consumer, other than a consumer that is an electric utility, utility or an owner of a power plant that is not a solar energy system and is connected to the grid, and which electricity is not delivered to an electric utility, at the time it collects its billings from the consumer for the ~~electrical energy sold;~~ electricity sold. The duty to collect the surcharge from a consumer shall commence with the beginning of the first regular billing period applicable to that person ~~which starts on or after the operative date of this part.~~ consumer.

SEC. 15. Section 40020 of the Revenue and Taxation Code is amended to read:

40020. The surcharge required to be collected by the ~~electric~~ electric utility from the consumer shall be added to the charges to the consumer for the ~~electrical energy sold.~~ electricity sold or consumed. The amount of the surcharge may be stated separately. If the electric utility does not separately state the amount of the surcharge, the electric utility shall print on the billing a notice to the effect that the charges include energy resources surcharge computed at (applicable rate) mill per kilowatt hour. ~~Until January 1, 1976, such notice need not appear on the billing itself provided that the electric utility notifies each of its customers, no later than at the time it renders a bill for the first regular billing period applicable to that person which starts on or after the operative date of this part, that electrical energy charges shall include energy resources surcharge computed at (applicable rate) mill per kilowatt-hour. If the Board of Equalization fixes a new rate in 1975, the electric utility shall notify its customers of the new rate at or prior to the time a billing is rendered to the customer subject to the new rate if the electric utility does not separately state the amount of the surcharge or print on the billing notice that the surcharge is included in the charges.~~

SEC. 16. Section 40051 of the Revenue and Taxation Code is amended to read:

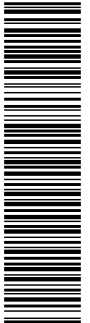
40051. The surcharges imposed by this part and the amounts thereof required to be collected by electric utilities or paid by owners of power plants that are not a solar energy system and are connected to the grid, and which electricity is not delivered to an electric utility, are due quarterly on or before the last day of the month next succeeding each calendar quarter.

SEC. 17. Section 40061 of the Revenue and Taxation Code is amended to read:

40061. (a) On or before the last day of the month following each calendar quarter, a return for the preceding quarterly period shall be filed with the ~~board in the form as prescribed by the board, which may include, but not be limited to,~~ department using electronic media.

~~A~~

(b) A return shall be filed by every electric ~~utility and utility,~~ by every person purchasing ~~electrical energy, electricity,~~ the consumption of which is subject to the ~~surcharge and surcharge,~~ who has not paid the surcharge billed and required to be collected by an electric ~~utility.~~ utility, and by every owner of a power plant that is not a solar energy system and is connected to the grid, and which electricity is not delivered to an electric utility. The return shall be signed by the person required to file the return



or by ~~his or her~~ their duly authorized agent. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the ~~board~~ department.

SEC. 18. Section 40062 of the Revenue and Taxation Code is amended to read:

40062. (a) (1) The return filed by an electric utility shall show the number of kilowatt-hours of electrical energy electricity sold to consumers in this state state, and kilowatt-hours of electricity generated by a solar energy system that offsets the consumer's consumption, for which billing was first made during that quarter that are due and required to be collected for all such of those billings. The return shall further also show the number of kilowatt-hours of electrical energy electricity purchased by the electric utility during the calendar quarter and the number of kilowatt-hours of electrical energy electricity generated by such the electric utility during such the period. Such the period. The return shall also set forth the number of kilowatt-hours of electricity consumed during such the period by the electric utility for its own use and consumption and such any other information as the board the department deems necessary for the proper administration of this part.

(2) For purposes of paragraph (1), the electric utility shall calculate the number of kilowatt-hours of electricity generated by a solar energy system as follows:

(A) Multiply the solar energy system's size in kilowatts, as determined by the State Energy Resources Conservation and Development Commission's CEC-AC rating, by 8,760 hours per year.

(B) Multiply the product calculated pursuant to subparagraph (A) by a 17.68-percent capacity factor.

(C) Subtract the net electricity exports to the grid in kilowatt-hours from the product calculated pursuant to subparagraph (B).

(b) The return filed by a power plant owner shall show the number of kilowatt-hours of electricity generated and consumed, or sold, by the power plant owner and that is subject to the surcharge during the reporting period and any other information that the department deems necessary for the proper administration of this part.

SEC. 19. Section 40063 of the Revenue and Taxation Code is amended to read:

40063. ~~The board~~ department may prescribe the contents of returns of consumers subject to the surcharge. It may require the filing of returns by consumers in addition to those required by Section 40061 in circumstances where it finds that consumers' liabilities are not being included in the return of an electric utility or it determines that consumer returns are necessary for the efficient administration of this part. Consumers' returns shall cover the periods as the ~~board~~ department may prescribe and ~~shall be in the form as prescribed by the board, which may include, but not be limited to, be filed with the department using electronic media.~~ Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the ~~board~~ department.

SEC. 20. Section 40064 of the Revenue and Taxation Code is repealed.

~~40064. The person required to file the return shall deliver the return together with a remittance of the amount of the surcharge payable to the office of the board.~~

SEC. 21. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes



the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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LEGISLATIVE COUNSEL'S DIGEST

Bill No.
as introduced, _____.
General Subject: Energy Resources Surcharge Law: surcharge.

The Energy Resources Surcharge Law imposes a surcharge on consumers for the consumption of electricity purchased from an electric utility, as defined, at a rate annually fixed by the State Energy Resources Conservation and Development Commission not to exceed a surcharge rate cap of \$0.0003 per kilowatt-hour. Existing law requires electric utilities to collect the surcharge from consumers, and requires electric utilities and any consumers who have not had the surcharge collected by an electric utility to file a return with specified information.

This bill would expand the applicability of the surcharge to additionally include the consumption of electricity generated by solar energy systems that are connected to the grid and certain power plants, and would increase the surcharge rate cap from \$0.0003 per kilowatt-hour to \$0.00066 per kilowatt-hour, which would be subject to an annual adjustment based on the Consumer Price Index, as specified. The bill would similarly extend the collection and filing requirements to electricity generated by those solar energy systems and power plants, as specified, and would make related conforming changes.

Under existing law, a violation of the Energy Resources Surcharge Law is a crime.

Because the provisions of this bill would be codified in the Energy Resources Surcharge Law, a violation of which would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

