

AMENDED IN SENATE MAY 2, 2002

AMENDED IN SENATE APRIL 18, 2002

SENATE BILL

No. 1389

Introduced by Senators Bowen and Sher

February 12, 2002

An act to ~~add Section 25521.5 to,~~ to repeal Sections 25401.1 and 25604 of, and to repeal and add Chapter 4 (commencing with Section 25300) of Division 15 of, the Public Resources Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1389, as amended, Bowen. Energy: planning and forecasting.

The planning and forecasting provisions of the existing Warren-Alquist State Energy Resources Conservation and Development Act require the State Energy Resources Conservation and Development Commission to prepare various reports. These reports include a draft and final electricity report based on reporting and forecasting required to be submitted by electric utilities, a report regarding emerging trends in energy availability and use, a report related to energy conservation, and a report regarding emerging trends in use, availability, and price of transportation fuels, among other things.

This bill would repeal the provisions of law requiring various reports, and instead require the commission to prepare an integrated energy policy report on or before November 1, 2003, and every ~~two~~ 2 years thereafter as specified. The bill would require the commission to conduct assessments and forecasts as often as necessary, but no less frequently than every 2 years. The bill would require the commission to conduct workshops and hearings for purposes of the report.

The bill would also require the commission to manage a data collection system for obtaining the information necessary to develop specified energy policy reports and analyses, and energy shortage contingency planning efforts, and to support other duties of the commission, as prescribed. The bill would authorize the commission to impose a civil penalty to ensure timely and accurate compliance with the data collection system. The bill would include certain requirements relating to the confidentiality of the data.

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

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

1 SECTION 1. Chapter 4 (commencing with Section 25300) of
2 Division 15 of the Public Resources Code is repealed.

3 SEC. 2. Chapter 4 (commencing with Section 25300) is added
4 to Division 15 of the Public Resources Code, to read:

5

6 CHAPTER 4. INTEGRATED ENERGY POLICY REPORTING

7

8 25300. (a) The Legislature finds and declares that clean and
9 reliable energy is essential to the health of the California economy
10 and of vital importance to the health and welfare of the citizens of
11 the state and to the environment.

12 (b) The Legislature further finds and declares that government
13 has an essential role to ensure that a reliable supply of energy is
14 provided consistent with protection of public health and safety,
15 promotion of the general welfare, maintenance of a sound
16 economy, conservation of resources, and preservation of
17 environmental quality.

18 (c) The Legislature further finds and declares that the state
19 government requires at all times a complete and thorough
20 understanding of the operation of energy markets, including
21 electricity, natural gas, petroleum, and alternative energy sources,
22 to enable it to respond to possible shortages, price shocks,
23 oversupplies, or other disruptions.

24 (d) The Legislature further finds and declares that timely
25 reporting, assessment, forecasting, and data collection activities
26 are essential to serve the information and policy development



1 needs of the Governor, the Legislature, public agencies, market
2 participants, and the public.

3 (e) The Legislature further finds and declares that one of the
4 objectives of this act is to encourage cooperation among the
5 various state agencies with energy responsibilities.

6 25301. (a) At least every two years, the commission shall
7 conduct assessments and forecasts of all aspects of energy industry
8 supply, production, transportation, delivery and distribution,
9 demand, and prices. The commission shall use these assessments
10 and forecasts to develop energy policies that conserve resources,
11 protect the environment, ensure energy reliability, enhance the
12 state's economy, and protect public health and safety. To perform
13 these assessments and forecasts, the commission may require
14 submission of demand forecasts, resource plans, market
15 assessments, and related outlooks from electric and natural gas
16 utilities, transportation fuel and technology suppliers, and other
17 market participants. These assessments and forecasts shall be done
18 in consultation with the appropriate state and federal agencies
19 including, but not limited to, the Public Utilities Commission, the
20 Air Resources Board, the Electricity Oversight Board, the
21 Independent System Operator, the Department of Water
22 Resources, the California Consumer Power and Conservation
23 Financing Authority, the Department of Transportation, and the
24 Department of Motor Vehicles.

25 (b) In developing the assessments and forecasts prepared
26 pursuant to subdivision (a), the commission shall do all of the
27 following:

28 (1) Provide information about the performance of energy
29 industries.

30 (2) Develop and maintain the analytical capability sufficient to
31 answer inquiries about energy issues from government, market
32 participants, and the public.

33 (3) Analyze and develop energy policies.

34 (4) Provide an analytical foundation for regulatory and policy
35 decisionmaking.

36 (5) Facilitate efficient and reliable energy markets.

37 25302. (a) Beginning November 1, 2003, and every two
38 years thereafter, the commission shall adopt an integrated energy
39 policy report. This integrated report shall contain an overview of
40 major energy trends and issues facing the state, including, but not

1 limited to, supply, demand, pricing, reliability, efficiency, and
2 impacts on public health and safety, the economy, resources, and
3 the environment. Energy markets and systems shall be grouped
4 and assessed in three subsidiary volumes:

5 (1) Electricity and natural gas markets.

6 (2) Transportation fuels, technologies, and infrastructure.

7 (3) Public interest energy strategies.

8 (b) The commission shall compile the integrated energy policy
9 report prepared pursuant to subdivision (a) by consolidating the
10 analyses and findings of the subsidiary volumes in paragraphs (1),
11 (2), and (3) of subdivision (a). The integrated energy policy report
12 shall present policy recommendations based on an indepth and
13 integrated analysis of the most current and pressing energy issues
14 facing the state. The analyses supporting this integrated energy
15 policy report shall explicitly address interfuel and intermarket
16 effects to provide a more informed evaluation of potential
17 tradeoffs when developing energy policy across different markets
18 and systems.

19 (c) The integrated energy policy report shall include an
20 assessment and forecast of system reliability and the need for
21 resource additions, efficiency, and conservation that considers all
22 aspects of energy industries and markets that are essential for the
23 state economy, general welfare, public health and safety, energy
24 diversity, and protection of the environment. This assessment shall
25 be based on determinations made pursuant to this chapter.

26 (d) Beginning November 1, 2004, and every two years
27 thereafter, the commission shall prepare an energy policy review
28 to update analyses from the integrated energy policy report
29 prepared pursuant to subdivisions (a), (b), and (c), or to raise
30 energy issues that have emerged since the release of the integrated
31 energy policy report. The commission may also periodically
32 prepare and release technical analyses and assessments of energy
33 issues and concerns to provide timely and relevant information for
34 the Governor, the Legislature, market participants, and the public.

35 (e) In preparation of the report, the commission shall consult
36 with the following entities: the Public Utilities Commission, the
37 State Air Resources Board, the Electricity Oversight Board, the
38 Independent System Operator, the Department of Water
39 Resources, the California Consumer Power and Conservation
40 Financing Authority, the Department of Transportation, and the

1 Department of Motor Vehicles, and any federal, state, and local
2 agencies it deems necessary in preparation of the integrated energy
3 policy report. To assure collaborative development of state energy
4 policies, these agencies shall make a good faith effort to provide
5 data, assessment, and proposed recommendations for review by
6 the commission.

7 (f) The commission shall provide the report to the Public
8 Utilities Commission, the State Air Resources Board, the
9 Electricity Oversight Board, the Independent System Operator,
10 the Department of Water Resources, the California Consumer
11 Power and Conservation Financing Authority, and the Department
12 of Transportation. To assist those entities in carrying out their
13 energy-related duties and responsibilities, each entity shall
14 consider the information and analyses contained in the report to
15 ensure consistency in the underlying information that forms the
16 foundation of energy policies and decisions affecting the state.

17 (g) The commission shall make the report accessible to state,
18 local, and federal entities and to the general public.

19 25303. (a) The commission shall conduct electricity and
20 natural gas forecasting and assessment activities to meet the
21 requirements of paragraph (1) of subdivision (a) of Section 25302,
22 including, but not limited to, all of the following:

23 (1) Assessment of trends in electricity and natural gas supply
24 and demand, and the outlook for wholesale and retail prices for
25 commodity electricity and natural gas under current market
26 structures and expected market conditions.

27 (2) Forecasts of statewide and regional electricity and natural
28 gas demand including annual, seasonal, and peak demand, and the
29 factors leading to projected demand growth including, but not
30 limited to, projected population growth, urban development,
31 industrial expansion and energy intensity of industries, energy
32 demand for different building types, energy efficiency, and other
33 factors influencing demand for electricity. With respect to
34 long-range forecasts of the demand for natural gas, the report shall
35 include an evaluation of average conditions, as well as best and
36 worst case scenarios, and an evaluation of the impact of the
37 increasing use of renewable resources on natural gas demand.

38 (3) Evaluation of the adequacy of electricity and natural gas
39 supplies to meet forecasted demand growth. Assessment of the
40 availability, reliability, and efficiency of the electricity and natural

1 gas infrastructure and systems including, but not limited to, natural
2 gas production capability both in and out of state, natural gas
3 interstate and intrastate pipeline capacity, storage and use, and
4 western regional and California electricity and transmission
5 system capacity and use.

6 (4) Evaluation of potential impacts of electricity and natural
7 gas supply, demand, and infrastructure and resource additions on
8 the electricity and natural gas systems, public health and safety, the
9 economy, resources, and the environment.

10 (5) Evaluation of the potential impacts of electricity and
11 natural gas load management efforts, including end user response
12 to market price signals, as a means to ensure reliable operation of
13 electricity and natural gas systems.

14 (6) Evaluation of whether electricity and natural gas markets
15 are adequately meeting public interest objectives including the
16 provision of all of the following: economic benefits; competitive,
17 low-cost reliable services; customer information and protection;
18 and environmentally sensitive electricity and natural gas supplies.
19 This evaluation may consider the extent to which California is an
20 element within western energy markets, the existence of
21 appropriate incentives for market participants to provide supplies
22 and for consumers to respond to energy prices, appropriate
23 identification of responsibilities of various market participants,
24 and an assessment of long-term versus short-term market
25 performance. To the extent this evaluation identifies market
26 shortcomings, the commission shall propose market structure
27 changes to improve performance.

28 (7) Identification of impending or potential problems or
29 uncertainties in the electricity and natural gas markets, potential
30 options and solutions, and recommendations.

31 (b) Commencing November 1, 2003, and every two years
32 thereafter, to be included in the integrated energy policy report
33 prepared pursuant to Section 25302, the commission shall assess
34 the current status of the following:

35 (1) The environmental performance of the electric generation
36 facilities of the state, to include all of the following:

37 (A) Generation facility efficiency.

38 (B) Air emission control technologies in use in operating
39 plants.

1 (C) The extent to which recent resource additions have, and
2 expected resource additions are likely to, displace or reduce the
3 operation of existing facilities, including the environmental
4 consequences of these changes.

5 (2) The geographic distribution of statewide environmental,
6 efficiency, and socioeconomic benefits and drawbacks of existing
7 generation facilities, including, but not limited to, the impacts on
8 natural resources including wildlife habitat, air quality, and water
9 resources, and the relationship to demographic factors. The
10 assessment shall describe the socioeconomic and demographic
11 factors that existed when the facilities were constructed and the
12 current status of these factors. In addition, the report shall include
13 how expected or recent resource additions could change the
14 assessment through displaced or reduced operation of existing
15 facilities.

16 25304. The commission shall conduct transportation
17 forecasting and assessment activities to meet the requirements of
18 paragraph (2) of subdivision (a) of Section 25302 including, but
19 not limited to:

20 (a) Assessment of trends in transportation fuels, technologies,
21 and infrastructure supply and demand and the outlook for
22 wholesale and retail prices for petroleum, petroleum products, and
23 alternative transportation fuels under current market structures
24 and expected market conditions.

25 (b) Forecasts of statewide and regional transportation energy
26 demand, both annual and seasonal, and the factors leading to
27 projected demand growth including, but not limited to, projected
28 population growth, urban development, vehicle miles traveled, the
29 type, class, and efficiency of personal vehicles and commercial
30 fleets, and shifts in transportation modes.

31 (c) Evaluation of the sufficiency of transportation fuel
32 supplies, technologies, and infrastructure to meet projected
33 transportation demand growth. Assessment of crude oil and other
34 transportation fuel feedstock supplies; in-state, national, and
35 worldwide production and refining capacity; product output
36 storage availability; and transportation and distribution systems
37 capacity and use.

38 (d) Assessments of the risks of supply disruptions, price
39 shocks, or other events and the consequences of these events on the

1 availability and price of transportation fuels and effects on the
2 state's economy.

3 (e) Evaluation of the potential for needed changes in the state's
4 energy shortage contingency plans to increase production and
5 productivity, improve efficiency of fuel use, increase conservation
6 of resources, and other actions to maintain sufficient, secure, and
7 affordable transportation fuel supplies for the state.

8 (f) Evaluation of alternative transportation energy scenarios, in
9 the context of least environmental and economic costs, to examine
10 potential effects of alternative fuels usage, vehicle efficiency
11 improvements, and shifts in transportation modes on public health
12 and safety, the economy, resources, the environment, and energy
13 security.

14 (g) Examination of the success of introduction, prices, and
15 availability of advanced transportation technologies, low- or
16 zero-emission vehicles, and clean-burning transportation fuels,
17 including their potential future contributions to air quality, energy
18 security, and other public interest benefits.

19 (h) Recommendations to improve the efficiency of
20 transportation energy use, reduce dependence on petroleum fuels,
21 decrease environmental impacts from transportation energy use,
22 and contribute to reducing congestion, promoting economic
23 development, and enhancing energy diversity and security.

24 25305. The commission shall rely upon forecasting and
25 assessments performed in accordance with Sections 25301 to
26 25304, inclusive, as the basis for analyzing the success of and
27 developing policy recommendations for public interest energy
28 strategies. Public interest energy strategies include, but are not
29 limited to, achieving energy efficiency and energy conservation;
30 implementing load management; pursuing research, development,
31 demonstration, and commercialization of new technologies;
32 promoting renewable generation technologies; reducing statewide
33 greenhouse gas emissions and addressing the impacts of climate
34 change on California; and protecting and enhancing the
35 environment. Additional assessments to address public interest
36 energy strategies shall include, but are not limited to, all of the
37 following:

38 (a) Identification of emerging trends in energy efficiency in the
39 residential, commercial, industrial, agricultural, and
40 transportation sectors of the state's economy, including, but not

1 limited to, evaluation of additional achievable energy efficiency
2 measures and technologies. Identification of policies that would
3 permit fuller realization of the potential for energy efficiency,
4 either through direct programmatic actions or facilitation of the
5 market.

6 (b) Identification of emerging trends in the renewable energy
7 industry. In addition, the commission shall evaluate progress in
8 ensuring the operation of existing facilities, and the development
9 of new and emerging, in-state renewable resources.

10 (c) Identification of emerging trends in energy research,
11 development, and demonstration activities that advance science or
12 technology to produce public benefits.

13 (d) Identification of progress in reducing statewide greenhouse
14 gas emissions and addressing the effects of climate change on
15 California.

16 25306. The commission shall conduct workshops, hearings,
17 and other forums to gain the perspectives of the public and market
18 participants for purposes of the integrated energy policy report
19 prepared pursuant to Section 25302 and the forecasting and
20 assessments prepared pursuant to Sections 25301, 25303, 25304,
21 and 25305. The commission shall include the comments, as well
22 as responses to those comments, of governmental agencies,
23 industry representatives, market participants, private groups, and
24 any other person concerning the commission's proposals and
25 recommendations in the docket for the integrated energy policy
26 report.

27 25307. (a) The Governor shall review the integrated energy
28 policy report prepared pursuant to Section 25302 and shall, on or
29 before 90 days after receipt of the report, report further to the
30 Legislature the Governor's agreement or disagreement with the
31 policy recommendations contained in that report. The Governor's
32 report to the Legislature shall cover the information required to be
33 included in the integrated energy policy report and may cover any
34 additional item that is necessary or appropriate. If the Governor
35 disagrees with one or more recommendations in the integrated
36 energy policy report, the Governor shall, in each instance, indicate
37 the reason for disagreement and shall specify the alternate policy
38 the Governor finds appropriate.

39 (b) The Governor's report to the Legislature pursuant to this
40 section is the Governor's official statement of energy policy.

1 25320. (a) The commission shall manage a data collection
2 system for obtaining information necessary to develop the policy
3 reports and analyses required by Sections 25301 to 25307,
4 inclusive, the energy shortage contingency planning efforts in
5 Chapter 8 (commencing with Section 25700), and to support other
6 duties of the commission.

7 (b) The data collection system managed by the commission
8 shall:

9 (1) Include a timetable for the submission of this information,
10 so that the integrated energy policy report required by Section
11 25302 can be completed in an accurate and timely manner.

12 (2) Require a person to submit only information that is
13 reasonably relevant, and that the person can either be expected to
14 acquire through his or her market activities, or possesses or
15 controls. Information collected pursuant to this section shall relate
16 to the functional role of each category of market participant in that
17 industry and the consumers within that industry.

18 (3) To the extent it satisfies the information needs of the
19 commission, rely on the use of estimates and proxies, to the
20 maximum extent practicable, for some data elements using survey
21 and research techniques, while for other information it shall obtain
22 data from market participants using submissions from their
23 accounting records. In determining whether to rely upon estimates
24 or participant provided data, the commission shall weigh the
25 burden of compliance upon industry participants and energy
26 consumers against the benefit of participant provided data for the
27 public interest.

28 (4) To the extent it satisfies the information needs of the
29 commission, rely on data, to the maximum extent practicable, that
30 is reported to other government agencies or is otherwise available
31 to the commission.

32 (c) In addition to the requirements of subdivision (b), the data
33 collection system for electricity and natural gas shall enumerate
34 specific requirements for each category of market participants,
35 including, but not limited to, private market participants, energy
36 service providers, energy service companies, natural gas
37 marketers, utility distribution companies, independent generators,
38 electric transmission entities, natural gas producers, natural gas
39 pipeline operators, importers and exporters of electricity and
40 natural gas, and specialized electric or natural gas system

operators. The commission may also collect information about consumers from their voluntary participation in surveys and other research techniques.

(d) In addition to the requirements of subdivision (b), the data collection system for petroleum, other fuels, and transportation technologies shall enumerate specific requirements for each category of market participant, including, but not limited to, refineries, crude or refined fuel importers and exporters, fuel distributors and retailers, fuel pipeline operators, oil and natural gas liquid producers, as provided in Chapter 4.5 (commencing with Section 25350), and transportation technology providers. The commission may also collect information about consumers from their voluntary participation in surveys and other research techniques. the commission may use any of the following enforcement measures:

(a) If any person fails to comply with an applicable provision of the data collection system, the commission shall notify the person. If, on or before five working days after being notified of the violation, the person continues to fail to comply, the person shall be subject to a civil penalty, to be imposed by the commission after a hearing that complies with constitutional requirements. The civil penalty may be not less than five hundred dollars (\$500) and not more than two thousand dollars (\$2,000) for each category of data the person did not provide and for each day the violation has existed and continues to exist.

(b) Any person who willfully makes any false statement, representation, or certification in any record, report, plan, or other document filed with the commission is subject to a civil penalty of not less than five hundred dollars (\$500) or more than two thousand dollars (\$2,000) per day applied to each day in the interval between the original due date and the date when corrected information is submitted.

(c) For the purposes of this section, “person” means, in addition to the definition contained in Section 25116, any responsible corporate officer.

(d) Enforcement measures for petroleum and other fuels shall be those contained in Section 25362.

25322. (a) The data collection system managed pursuant to Section 25320 shall include the following requirements regarding

1 the confidentiality of the information collected by the
2 commission:

3 (1) Any person required to present information to the
4 commission pursuant to this section may request that specific
5 information be held in confidence. The commission shall grant the
6 request in any of the following circumstances:

7 (A) The information is exempt from disclosure under the
8 California Public Records Act, Chapter 3.5 (commencing with
9 Section 6250) of Division 7 of Title 1 of the Government Code.

10 (B) The information satisfies the confidentiality requirements
11 of Article 2 (commencing with Section 2501) of Chapter 7 of
12 Division 2 of Title 20 of the California Code of Regulations, as
13 those regulations existed on January 1, 2002.

14 (C) On the facts of the particular case, the public interest served
15 by not disclosing the information clearly outweighs the public
16 interest served by disclosure of the information.

17 (2) The commission may, by regulation, designate certain
18 categories of information as confidential, which removes the
19 obligation to request confidentiality for that information.

20 (3) Any confidential information pertinent to the
21 responsibilities of the commission specified in this chapter that is
22 obtained by another state agency, or the California Independent
23 System Operator or its successor, shall be available to the
24 commission and shall be treated in a confidential manner.

25 (4) Information presented to or developed by the commission
26 and deemed confidential pursuant to this section shall be held in
27 confidence by the commission. Confidential information shall be
28 aggregated or masked to the extent necessary to assure
29 confidentiality if public disclosure of the specific information
30 would result in an unfair competitive disadvantage to the person
31 supplying the information.

32 (b) Requests for records of information shall be handled as
33 follows:

34 (1) If the commission receives a written request to publicly
35 disclose information that is being held in confidence pursuant to
36 paragraphs (1) ~~or~~ (2), (2), *or* (3) of subdivision (a), the
37 commission shall provide the person making the request with
38 written justification for the confidential designation and a
39 description of the process to seek disclosure.

(2) If the commission receives a written request to publicly disclose an disaggregated or unmasked record of information designated as confidential under paragraphs (1) ~~or (2)~~, (2), *or* (3) of subdivision (a), notice of the request shall be provided to the person that submitted the record. Upon receipt of the notice, the person that submitted the record may, within five working days of receipt of the notice, provide a written justification of the claim of confidentiality.

(3) The commission or its designee shall rule on a request made pursuant to paragraph (2) on or before 20 working days after its receipt. The commission shall deny the request if the disclosure will result in an unfair competitive disadvantage to the person that submitted the information. If disclosure will not result in an unfair competitive disadvantage to the person that submitted the information, the commission shall grant the request unless the public interest served by not making the information public clearly outweighs the public interest served by disclosure of the information, or unless another applicable provision of law exempts the information from disclosure.

(4) If the commission grants the request pursuant to paragraph (3), it shall withhold disclosure for a reasonable amount of time, not to exceed 14 working days, to allow the submitter of the information to seek judicial review.

(c) No information submitted to the commission pursuant to this section is confidential if the person submitting the information has made it public.

(d) The commission shall establish, maintain, and use appropriate security practices and procedures to ensure that the information it has designated as confidential, or received with a confidential designation from another government agency, is protected against disclosure other than that authorized using the procedures in subdivision (b). The commission shall incorporate the following elements into its security practices and procedures:

(1) Commission employees shall sign a confidential data disclosure agreement providing for various remedies, including, but not limited to, fines and termination for wrongful disclosure of confidential information.

(2) Commission employees, or contract employees of the commission, shall only have access to confidential information

1 when it is appropriate to their job assignments and if they have
2 signed a nondisclosure agreement.

3 (3) Computer data systems that hold confidential information
4 shall include sufficient security measures to protect the data from
5 inadvertent or wrongful access by unauthorized commission
6 employees and the public.

7 (e) Data collected by the commission on petroleum fuels in
8 Section 25320 shall be subject to the confidentiality provisions of
9 Sections 25364 to 25366, inclusive.

10 (f) Information withheld pursuant to this section is not subject
11 to disclosure under the Public Records Act (Chapter 3.5
12 (commencing with Section 6250) of Division 7 of Title 1 of the
13 Government Code.

14 SEC. 3. Section 25401.1 of the Public Resources Code is
15 repealed.

16 ~~SEC. 4. Section 25521.5 is added to the Public Resources~~
17 ~~Code, to read:~~

18 ~~25521.5. Conservation, load management, or other demand~~
19 ~~reducing measures reasonably expected to occur shall be explicitly~~
20 ~~taken into account only in the determinations made pursuant to~~
21 ~~Chapter 4 (commencing with Section 25300), and may not be~~
22 ~~considered as alternatives to a proposed facility during the siting~~
23 ~~process.~~

24 ~~SEC. 5.—~~

25 SEC. 4. Section 25604 of the Public Resources Code is
26 repealed.

