

AMENDED IN ASSEMBLY JUNE 24, 2002

AMENDED IN ASSEMBLY JUNE 13, 2002

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 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 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2 Division 15 of the Public Resources Code is repealed.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.



1 (d) The Legislature further finds and declares that timely
2 reporting, assessment, forecasting, and data collection activities
3 are essential to serve the information and policy development
4 needs of the Governor, the Legislature, public agencies, market
5 participants, and the public.

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

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

28 (b) In developing the assessments and forecasts prepared
29 pursuant to subdivision (a), the commission shall do all of the
30 following:

31 (1) Provide information about the performance of energy
32 industries.

33 (2) Develop and maintain the analytical capability sufficient to
34 answer inquiries about energy issues from government, market
35 participants, and the public.

36 (3) Analyze and develop energy policies.

37 (4) Provide an analytical foundation for regulatory and policy
38 decisionmaking.

39 (5) Facilitate efficient and reliable energy markets.

1 25302. (a) Beginning November 1, 2003, and every two
2 years thereafter, the commission shall adopt an integrated energy
3 policy report. This integrated report shall contain an overview of
4 major energy trends and issues facing the state, including, but not
5 limited to, supply, demand, pricing, reliability, efficiency, and
6 impacts on public health and safety, the economy, resources, and
7 the environment. Energy markets and systems shall be grouped
8 and assessed in three subsidiary volumes:

9 (1) Electricity and natural gas markets.

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

11 (3) Public interest energy strategies.

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

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

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

39 (e) In preparation of the report, the commission shall consult
40 with the following entities: the Public Utilities Commission, the

1 Office of Ratepayer Advocates, the State Air Resources Board, the
2 Electricity Oversight Board, the Independent System Operator,
3 the Department of Water Resources, the California Consumer
4 Power and Conservation Financing Authority, the Department of
5 Transportation, and the Department of Motor Vehicles, and any
6 federal, state, and local agencies it deems necessary in preparation
7 of the integrated energy policy report. To assure collaborative
8 development of state energy policies, these agencies shall make a
9 good faith effort to provide data, assessment, and proposed
10 recommendations for review by the commission.

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

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

24 25303. (a) The commission shall conduct electricity and
25 natural gas forecasting and assessment activities to meet the
26 requirements of paragraph (1) of subdivision (a) of Section 25302,
27 including, but not limited to, all of the following:

28 (1) Assessment of trends in electricity and natural gas supply
29 and demand, and the outlook for wholesale and retail prices for
30 commodity electricity and natural gas under current market
31 structures and expected market conditions.

32 (2) Forecasts of statewide and regional electricity and natural
33 gas demand including annual, seasonal, and peak demand, and the
34 factors leading to projected demand growth including, but not
35 limited to, projected population growth, urban development,
36 industrial expansion and energy intensity of industries, energy
37 demand for different building types, energy efficiency, and other
38 factors influencing demand for electricity. With respect to
39 long-range forecasts of the demand for natural gas, the report shall
40 include an evaluation of average conditions, as well as best and

1 worst case scenarios, and an evaluation of the impact of the
2 increasing use of renewable resources on natural gas demand.

3 (3) Evaluation of the adequacy of electricity and natural gas
4 supplies to meet forecasted demand growth. Assessment of the
5 availability, reliability, and efficiency of the electricity and natural
6 gas infrastructure and systems including, but not limited to, natural
7 gas production capability both in and out of state, natural gas
8 interstate and intrastate pipeline capacity, storage and use, and
9 western regional and California electricity and transmission
10 system capacity and use.

11 (4) Evaluation of potential impacts of electricity and natural
12 gas supply, demand, and infrastructure and resource additions on
13 the electricity and natural gas systems, public health and safety, the
14 economy, resources, and the environment.

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

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

33 (7) Identification of impending or potential problems or
34 uncertainties in the electricity and natural gas markets, potential
35 options and solutions, and recommendations.

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



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

(A) Generation facility efficiency.

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

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

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

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

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

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

(c) Evaluation of the sufficiency of transportation fuel supplies, technologies, and infrastructure to meet projected transportation demand growth. Assessment of crude oil and other transportation fuel feedstock supplies; in-state, national, and worldwide production and refining capacity; product output

1 storage availability; and transportation and distribution systems
2 capacity and use.

3 (d) Assessments of the risks of supply disruptions, price
4 shocks, or other events and the consequences of these events on the
5 availability and price of transportation fuels and effects on the
6 state's economy.

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

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

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

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

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



1 energy strategies shall include, but are not limited to, all of the
2 following:

3 (a) Identification of emerging trends in energy efficiency in the
4 residential, commercial, industrial, agricultural, and
5 transportation sectors of the state's economy, including, but not
6 limited to, evaluation of additional achievable energy efficiency
7 measures and technologies. Identification of policies that would
8 permit fuller realization of the potential for energy efficiency,
9 either through direct programmatic actions or facilitation of the
10 market.

11 (b) Identification of emerging trends in the renewable energy
12 industry. In addition, the commission shall evaluate progress in
13 ensuring the operation of existing facilities, and the development
14 of new and emerging, in-state renewable resources.

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

18 (d) Identification of progress in reducing statewide greenhouse
19 gas emissions and addressing the effects of climate change on
20 California.

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

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

1 energy policy report, the Governor shall, in each instance, indicate
2 the reason for disagreement and shall specify the alternate policy
3 the Governor finds appropriate.

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

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

12 (b) The data collection system, adopted by regulation under
13 Chapter 3.5 (commencing with Section 11340) of Part 1 of
14 Division 3 of Title 2 of the Government Code, and managed by the
15 commission shall:

16 (1) Include a timetable for the submission of this information,
17 so that the integrated energy policy report required by Section
18 25302 can be completed in an accurate and timely manner.

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

25 (3) To the extent it satisfies the information needs of the
26 commission, rely on the use of estimates and proxies, to the
27 maximum extent practicable, for some data elements using survey
28 and research techniques, while for other information it shall obtain
29 data from market participants using submissions consistent with
30 their accounting records. In determining whether to rely upon
31 estimates or participant provided data, the commission shall weigh
32 the burden of compliance upon industry participants and energy
33 consumers against the benefit of participant provided data for the
34 public interest.

35 (4) To the extent it satisfies the information needs of the
36 commission, rely on data, to the maximum extent practicable, that
37 is reported to other government agencies or is otherwise available
38 to the commission.

39 (c) Pursuant to the requirements of subdivision (b), the data
40 collection system for electricity and natural gas shall enumerate

specific requirements for each category of market participants, including, but not limited to, private market participants, energy service providers, energy service companies, natural gas marketers, electric utility and natural gas utility companies, independent generators, electric transmission entities, natural gas producers, natural gas pipeline operators, importers and exporters of electricity and natural gas, and specialized electric or natural gas system operators. The commission may also collect information about consumers' natural gas and electricity use from their voluntary participation in surveys and other research techniques.

(d) Pursuant to the requirements of subdivision (b), the data collection system for ~~non-petroleum~~ *nonpetroleum* fuels and transportation technologies shall enumerate specific requirements for each category of market participant, including, but not limited to, fuel importers and exporters, fuel distributors and retailers, fuel pipeline operators, natural gas liquid producers, and transportation technology providers. The commission may also collect information about consumers' ~~non-petroleum~~ *nonpetroleum* fuel and transportation technology use from their voluntary participation in surveys and other research techniques.

(e) The commission shall collect data for petroleum fuel pursuant to Chapter 4.5 (commencing with Section 25350). The commission may also collect information about consumers' petroleum fuel use from consumers' participation in surveys and other research techniques.

25321. In order to ensure timely and accurate compliance with the data collection system adopted under Section 25320, 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, after five working days from 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.

(1) The civil penalty shall not be less than five hundred dollars (\$500) nor 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.

(2) In the case of a person who willfully makes any false statement, representation, or certification in any record, report,

1 plan, or other document filed with the commission, the civil
2 penalty shall not be less than five hundred dollars (\$500) nor more
3 than two thousand dollars (\$2,000) per day applied to each day in
4 the interval between the original due date and the date when
5 corrected information is submitted.

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

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

11 25322. (a) The data collection system managed pursuant to
12 Section 25320 shall include the following requirements regarding
13 the confidentiality of the information collected by the
14 commission:

15 (1) Any person required to present information to the
16 commission pursuant to this section may request that specific
17 information be held in confidence. The commission shall grant the
18 request in any of the following circumstances:

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

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

26 (C) On the facts of the particular case, the public interest served
27 by not disclosing the information clearly outweighs the public
28 interest served by disclosure of the information.

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

32 (3) Any confidential information pertinent to the
33 responsibilities of the commission specified in this chapter that is
34 obtained by another state agency, or the California Independent
35 System Operator or its successor, shall be available to the
36 commission and shall be treated in a confidential manner.

37 (4) Information presented to or developed by the commission
38 and deemed confidential pursuant to this section shall be held in
39 confidence by the commission. Confidential information shall be
40 aggregated or masked to the extent necessary to assure

1 confidentiality if public disclosure of the specific information
2 would result in an unfair competitive disadvantage to the person
3 supplying the information.

4 (b) Requests for records of information shall be handled as
5 follows:

6 (1) If the commission receives a written request to publicly
7 disclose information that is being held in confidence pursuant to
8 paragraph (1), (2), or (3) of subdivision (a), the commission shall
9 provide the person making the request with written justification
10 for the confidential designation and a description of the process to
11 seek disclosure.

12 (2) If the commission receives a written request to publicly
13 disclose a disaggregated or unmasked record of information
14 designated as confidential under paragraph (1), (2), or (3) of
15 subdivision (a), notice of the request shall be provided to the
16 person that submitted the record. Upon receipt of the notice, the
17 person that submitted the record may, within five working days
18 of receipt of the notice, provide a written justification of the claim
19 of confidentiality.

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

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

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

39 (d) The commission shall establish, maintain, and use
40 appropriate security practices and procedures to ensure that the

1 information it has designated as confidential, or received with a
2 confidential designation from another government agency, is
3 protected against disclosure other than that authorized using the
4 procedures in subdivision (b). The commission shall incorporate
5 the following elements into its security practices and procedures:

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

10 (2) Commission employees, or contract employees of the
11 commission, shall only have access to confidential information
12 when it is appropriate to their job assignments and if they have
13 signed a nondisclosure agreement.

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

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

21 ~~(f) Information withheld pursuant to this section is not subject~~
22 ~~to disclosure under the Public Records Act (Chapter 3.5~~
23 ~~(commencing with Section 6250) of Division 7 of Title 1 of the~~
24 ~~Government Code).~~

25 SEC. 3. Section 25401.1 of the Public Resources Code is
26 repealed.

27 SEC. 4. Section 25604 of the Public Resources Code is
28 repealed.

