

AMENDED IN SENATE APRIL 30, 2002

AMENDED IN SENATE APRIL 18, 2002

SENATE BILL

No. 1524

Introduced by Senator Sher
(Coauthor: Senator Bowen)

February 20, 2002

An act to amend Sections 25620, 25620.1, 25620.2, 25620.3, 25620.5, 25620.7, 25648, 25648.4, and 25684 of, and to add and repeal Section 25620.9 of, the Public Resources Code, and to amend Sections 381, 383.5, 394.25, and 445 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1524, as amended, Sher. Renewable energy.

(1) Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to develop, implement, and administer the Public Interest Research, Development, and Demonstration Program. Existing law requires the program to consist of a balanced portfolio that addresses California's energy and environmental needs, technology opportunities, and system reliability. Existing law, until January 1, 2000, required the Energy Commission to adopt regulations to ensure the success of electricity industry restructuring in the transition to a new market structure and to implement the program. Existing law authorizes the Energy Commission to solicit applications for awards, using a sealed competitive bid, competitive negotiation process, multiparty agreement, single source, or sole source method.

This bill would require the Energy Commission, not later than 6 months after the enactment of this bill to designate a panel of independent experts with special expertise in public interest research, development, and demonstration programs to conduct an evaluation of the program and to submit a preliminary report to the Governor and the Legislature not later than 18 months after the enactment of this bill, and a final report not later than 30 months after the enactment of this bill.

Existing law authorizes the Energy Commission to solicit applications for awards and specifies criteria for funding projects under the program.

The bill would authorize the Energy Commission to adopt regulations governing the administration of the program, in accordance with specified procedures, until January 1, 2007.

The bill would make technical and conforming changes.

(2) Existing law requires the Public Utilities Commission (commission) to order specified electrical corporations to collect and spend certain funds for cost-effective energy efficiency and conservation activities, public interest research and development, and development of renewable resources technology. Existing law provides that the commission's authority to collect funds for in-state operation and development of existing and new and emerging renewable resource technologies becomes inoperative on March 31, 2002.

This bill would require the San Diego Gas and Electric Company to spend no less than \$13,900,000 per year, the Southern California Edison Company to spend no less than \$65,300,000 per year, and the Pacific Gas and Electric Company to spend no less than \$55,800,000 per year, for the years 2002 to 2011, inclusive, to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies. The bill would delete the provision making the commission's authority to collect funds for these purposes inoperative on March 31, 2002. The bill would make additional technical, nonsubstantive changes.

(3) Existing law defines "in-state renewable electricity generation technology" for the purposes of these provisions. Existing law defines, for the purposes of these provisions, "report" as the Policy Report on AB 1890 Renewables Funding (March 1997, Publication Number P500-97-002) submitted to the Legislature by the Energy Commission.

This bill would define "in-state renewable electricity generation facility" instead of "in-state renewable electricity generation technology" and would modify the existing definition to no longer only



include facilities that were placed in operation after September 26, 1996 *and to exclude waste tire and municipal solid waste generation technologies*. The bill would include within the definition of “in-state renewable electricity generation facility” a facility using ocean thermal, tidal current, and wave energy generation technologies, located within the state’s territorial boundaries. The bill would provide that on and after January 1, 2002, “report,” for the purposes of these provisions, means the report entitled “Investing in Renewable Electricity Generation in California” (June 2001, Publication Number P500-00-022) submitted to the Governor and the Legislature by the Energy Commission.

(4) Existing law requires 45% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$243,000,000, to be used for programs that are designed to improve the competitiveness of existing in-state renewable electricity generation technology facilities. Existing law requires 30% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$162,000,000, to be used for programs that are designed to foster the development of new in-state renewable electricity generation technology facilities. Existing law requires 10% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$54,000,000, to be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications. Existing law requires 15% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$81,000,000, to be used for programs designed to provide customer credits for purchases of renewable energy produced by certified energy providers, to disseminate information regarding renewable energy technologies, to promote purchases of renewable energy, to help develop a consumer market for renewable energy, and to help develop a consumer market for renewable energy technologies.

This bill would instead require 20% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used for programs that are designed to improve the



competitiveness of existing in-state renewable electricity generation facilities. The bill would instead require 50% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used for programs that are designed to foster the development of new in-state renewable electricity generation facilities. The bill would instead require 17.5% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications. The bill would instead require 10% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used to provide customer credits for purchases of renewable energy produced by certified generating facilities. The bill would require 2.5% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company and the Pacific Gas and Electric Company, to be used to promote renewable energy and to disseminate information on renewable energy technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies.

(5) Existing law provides for the Renewable Resource Trust Fund in the State Treasury and establishes certain accounts in the Renewable Resource Trust Fund, including the Customer-Side Renewable Resource Purchases Account. Existing law provides that the money in the fund and the accounts are continuously appropriated to the Energy Commission. Existing law provides that unallocated funds in any account shall remain in the respective account until December 31, 2001.

This bill would instead establish the Customer-Credit Renewable Resources Account and the Renewable Resources Consumer Education Account. The bill would require that unallocated funds in any account



remain in the respective account until the Energy Commission submits a specified report.

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. Section 25620 of the Public Resources Code is
2 amended to read:

3 25620. The Legislature hereby finds and declares all of the
4 following:

5 (a) It is in the best interests of the people of this state that the
6 quality of life of its citizens be improved by providing
7 environmentally sound, safe, reliable, and affordable energy
8 services and products.

9 (b) To improve the quality of life of this state's citizens, it is
10 proper and appropriate for the state to undertake public interest
11 energy research, development, and demonstration projects that are
12 not adequately provided for by competitive and regulated energy
13 markets.

14 (c) Public interest energy research, demonstration, and
15 development projects should advance energy science or
16 technologies of value to California citizens and should be
17 consistent with the policies of Section 399.7 of the Public Utilities
18 Code.

19 (d) The commission should use its adopted "Five-Year
20 Investment Plan, 2002 Through 2006 for the Public Interest
21 Energy Research (PIER) Program (Volume 1)" (P600-01-004a,
22 March 1, 2001) to ensure compliance with the policies and
23 provisions of Section 399.7 of the Public Utilities Code in the
24 administration of public interest energy research, demonstration,
25 and development programs.

26 SEC. 2. Section 25620.1 of the Public Resources Code is
27 amended to read:

28 25620.1. (a) The commission shall develop, implement, and
29 administer the Public Interest Research, Development, and
30 Demonstration Program, which is hereby created. The program
31 shall include a full range of research, development, and
32 demonstration activities that, as determined by the commission,

1 are not adequately provided for by competitive and regulated
2 markets.

3 (b) The goal of the program is to provide California and its
4 citizens with a clean, affordable, reliable, and resilient supply of
5 energy, where customers have energy choices that can meet their
6 individual needs, California's industries can grow and prosper, and
7 California is established as the world leader in energy efficiency
8 and clean, advanced energy technologies and systems. To meet this
9 goal, the commission shall adopt a portfolio approach for the
10 program to effectively balance the risks, benefits, and time
11 horizons for various activities and investments that will provide
12 tangible benefits for California electricity ratepayers. The
13 portfolio shall emphasize innovative energy supply and end use
14 technologies, focusing on their reliability, affordability, and
15 environmental attributes. The portfolio may also include projects
16 that have the potential to enhance the reliability, peaking power,
17 and storage capabilities of renewable energy. The priorities for
18 funding projects under the program shall be based upon at least one
19 of the following:

20 (1) The potential for exploiting emerging opportunities.

21 (2) The potential for mitigating important energy system
22 problems.

23 (3) The potential for expanding upon the benefits derived from
24 prior projects funded by the program.

25 (c) The commission shall review the portfolio adopted
26 pursuant to subdivision (b) in accordance with the "Five-Year
27 Investment Plan, 2002 Through 2006 for the Public Interest
28 Energy Research (PIER) Program (Volume 1)" (P600-01-004a,
29 March 1, 2001).

30 (d) The term "award," as used in this chapter, may include, but
31 is not limited to, contracts, grants, interagency agreements, loans,
32 purchase orders, and other financial agreements designed to fund
33 public interest research, demonstration, and development projects
34 or programs.

35 SEC. 3. Section 25620.2 of the Public Resources Code is
36 amended to read:

37 25620.2. (a) The commission shall administer the program in
38 a manner that is consistent with the purposes of Section 399.7 of
39 the Public Utilities Code, and shall ensure that the program meets
40 all of the following criteria:



1 (1) Demonstrates a balance of benefits to all sectors that
2 contribute to the funding under Section 381 of the Public Utilities
3 Code.

4 (2) Addresses key technical and scientific barriers.

5 (3) Demonstrates a balance between short-term, mid-term, and
6 long-term potential.

7 (4) Ensures that research currently, previously, or about to be
8 undertaken by research organizations is not unnecessarily
9 duplicated.

10 (b) To ensure the efficient implementation and administration
11 of the program, the commission shall do both of the following:

12 (1) Develop procedures for the solicitation of award
13 applications for project or program funding, and to ensure efficient
14 program management.

15 (2) Evaluate and select programs and projects, based on merit,
16 that will be funded under the program.

17 (c) The commission may adopt regulations in accordance with
18 the following procedures:

19 (1) Prepare a preliminary text of the proposed regulation and
20 provide a copy of the preliminary text to any person requesting a
21 copy.

22 (2) Provide public notice of the proposed regulation to any
23 person who has requested notice of the regulations prepared by the
24 commission. The notice shall contain all of the following:

25 (A) A clear overview explaining the proposed regulation.

26 (B) Instructions on how to obtain a copy of the proposed
27 regulations.

28 (C) A statement that if a public hearing is not scheduled for the
29 purpose of reviewing a proposed regulation, any person may
30 request, not later than 15 days prior to the close of the written
31 comment period, a public hearing conducted in accordance with
32 commission procedures.

33 (3) Accept written public comments for 30 calendar days after
34 providing the notice required in paragraph (2).

35 (4) Certify that all written comments were read and considered
36 by the commission.

37 (5) Place all written comments in a record that includes copies
38 of any written factual support used in developing the proposed
39 regulation, including written reports and copies of any transcripts
40 or minutes in connection with any public hearings on the adoption

1 of the regulation. The record shall be open to public inspection and
2 available to the courts.

3 (6) Provide public notice of any substantial revision of the
4 proposed regulation at least 15 days prior to the expiration of the
5 deadline for public comments and comment period using the
6 procedures provided in paragraph (2).

7 (7) Conduct public hearings, if a hearing is requested by an
8 interested party, that shall be conducted in accordance with
9 commission procedures.

10 (8) Adopt any proposed regulation at a regularly scheduled and
11 noticed meeting of the commission. The regulation shall become
12 effective immediately unless otherwise provided by the
13 commission.

14 (9) Publish any adopted regulation in a manner that makes
15 copies of the regulation easily available to the public. Any adopted
16 regulation shall also be made available on the Internet. The
17 commission shall transmit a copy of an adopted regulation to the
18 Office of Administrative Law for publication, or, if the
19 commission determines that printing the regulation is impractical,
20 an appropriate reference as to where a copy of the regulation may
21 be obtained.

22 (10) Notwithstanding any other provision of law, this
23 subdivision provides an interim exception from the requirements
24 of Chapter 3.5 (commencing with Section 11340) of Part 1 of
25 Division 3 of Title 2 of the Government Code for regulations
26 required to implement Sections 25620.1 and 25620.2 that are
27 adopted under the procedures specified in this subdivision.

28 (11) This subdivision shall become inoperative on January 1,
29 2007, unless a later enacted statute deletes or extends that date.
30 However, after January 1, 2007, the commission is not required to
31 repeat any procedural step in adopting a regulation that has been
32 completed before January 1, 2007, using the procedures specified
33 in this subdivision.

34 SEC. 4. Section 25620.3 of the Public Resources Code is
35 amended to read:

36 25620.3. (a) The commission may, consistent with the
37 requirements of Section 25620.2, provide awards to any
38 individual or entity to participate in any or all of the planning,
39 developing, executing, implementing, administering, evaluating,
40 and supporting the program. The commission may solicit that

expertise using, among other approaches, the methods set forth in Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code. The commission may also solicit for multiple awardees for similar work using, among other approaches, a commission-issued intradepartmental master services agreement. Regardless of the method of making the award, in the event that awards have been made to multiple entities and their subcontractors for similar purposes, the commission may select from among the awardees the particular expertise needed for a specified type of work. Selection of the particular expertise may be based solely on a review of qualifications, including the specific expertise required, availability of the expertise, or access to a resource of special relevance to the work, including, but not limited to, a data base, model, technical facility, or a collaborative or institutional affiliation that would expedite the quality and performance of the work.

(b) If the committee of the commission with oversight of the program determines that it is necessary, in order to ensure that research may commence in a timely manner to assist the development of a product that has significant commercial potential and that could help mitigate potential energy supply shortfalls, it may exempt awards made pursuant to this chapter from any or all of the following:

(1) Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

(2) Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, and Sections 6106 and 6106.5 of the Public Contract Code.

(3) Section 10295 of the Public Contract Code.

(4) Chapter 6 (commencing with Section 14825) of Part 5.5 of Division 3 of Title 2 of the Government Code.

(5) Subdivisions (f) and (g) of Section 25620.5.

(c) The commission may provide an award to a project or program that includes a group of related projects, or to a party who aggregates projects that directly benefit from the award.

(d) The commission may establish multiparty agreements. In a multiparty agreement, the commission may be a signatory to a common agreement among two or more parties. These agreements include, but are not limited to, cofunding, leveraged research, collaborations, and membership arrangements. If the commission

1 enters into these agreements, it shall be a party to these agreements
2 and may share in the roles, responsibilities, risks, investments, and
3 results.

4 (e) The commission may issue awards that include the ability
5 to make advance payments to federal agencies, national
6 laboratories, or other state agencies when those entities are
7 subcontractors to a binding and enforceable prime contract with
8 the commission that provides for specific performance milestones
9 and the ability to assign tasks on a work authorization basis.

10 (f) The commission may delegate approval of awards up to one
11 million dollars (\$1,000,000) to the executive director, to the
12 committee with oversight of the program, or to their designee.

13 (g) The commission may delegate to a public entity, in any
14 award, its authority for a portion of the program, and any or all of
15 the planning, developing, executing, implementing,
16 administering, evaluation, and supporting functions. This
17 delegation of authority includes the authority to conduct a
18 solicitation using reasonable competitive bidding methods,
19 reasonable sole and single source methods, or the sole and single
20 source authorities of the program for subcontracts or agreements
21 and the execution of those agreements.

22 SEC. 5. Section 25620.5 of the Public Resources Code is
23 amended to read:

24 25620.5. (a) The commission may solicit applications for
25 awards, using a sealed competitive bid, competitive negotiation
26 process, interagency agreement, single source, or sole source
27 method. When scoring teams are convened to review and score
28 proposals, the scoring teams may include persons not employed by
29 the commission, as long as employees of the state constitute no less
30 than 50 percent of the membership of the scoring team. A person
31 participating on a scoring team may not have any conflict of
32 interest with respect to the proposal before the scoring team.

33 (b) A sealed bid method may be used when goods and services
34 to be acquired can be described with sufficient specificity so that
35 bids can be evaluated against specifications and criteria set forth
36 in the solicitation for bids.

37 (c) The commission may use a competitive negotiation process
38 in any of the following circumstances:

39 (1) Whenever the desired award is not for a fixed price.

1 (2) Whenever project specifications cannot be drafted in
2 sufficient detail so as to be applicable to a sealed competitive bid.

3 (3) Whenever there is a need to compare the different price,
4 quality, and structural factors of the bids submitted.

5 (4) Whenever there is a need to afford bidders an opportunity
6 to revise their proposals.

7 (5) Whenever oral or written discussions with bidders
8 concerning the technical and price aspects of their proposals will
9 provide better results to the state.

10 (6) Whenever the price of the award is not the determining
11 factor.

12 (d) The commission may establish interagency agreements.

13 (e) The commission may provide awards on a single source
14 basis by choosing from among two or more parties or by soliciting
15 multiple applications from parties capable of supplying or
16 providing similar goods or services. The cost to the state shall be
17 reasonable and the commission may only enter into a single source
18 agreement with a particular entity if the commission determines
19 that it is in the state's best interests.

20 (f) The commission, in accordance with subdivision (g), may
21 provide awards on a sole source basis when the cost to the state is
22 reasonable when, in consultation with the Department of General
23 Services, the commission makes any of the following
24 determinations concerning sole source contracts:

25 (1) The proposal was unsolicited and meets the evaluation
26 criteria of this chapter.

27 (2) The expertise, service, or product is unique.

28 (3) The urgency of the need for the information or deliverable
29 is such that a competitive solicitation would frustrate timely
30 performance.

31 (4) The contract funds the next phase of a multiphased proposal
32 and the existing agreement is being satisfactorily performed.

33 (5) When it is determined by the commission to be in the best
34 interests of the state.

35 (g) The commission may not use a sole source basis for a
36 contract pursuant to subdivision (f), unless both of the following
37 conditions are met:

38 (1) The commission, at least 30 days prior to taking an action
39 pursuant to subdivision (f), notifies the Joint Legislative Budget
40 Committee, in writing, of its intent to take the proposed action.

(2) The Joint Legislative Budget Committee either approves or does not disapprove the proposed action within 30 days from the date of notification required by paragraph (1).

(h) The commission shall submit semiannual reports to the Legislative Analyst and to the appropriate fiscal and policy committees of the Legislature that review bills relating to energy and public utilities. The reports shall contain an evaluation of the progress and status of the implementation of this section. In addition, the reports shall identify each instance in which an exemption authorized by subdivision (b) of Section 25620.3 was utilized.

(i) The provisions of this section are severable. If any provision of this section or its application is held to be invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 6. Section 25620.7 of the Public Resources Code is amended to read:

25620.7. The commission may contract for, or through interagency agreement obtain, technical, scientific, or administrative services from one or more entities, to support the program. Funding for this purpose shall be made from money in the Public Interest Research, Development, and Demonstration Fund.

SEC. 7. Section 25620.9 is added to the Public Resources Code, to read:

25620.9. (a) Not later than six months after the enactment of this section, the commission shall designate a panel of independent experts with special expertise in public interest research, development, and demonstration programs. The panel shall conduct a comprehensive evaluation of the program established pursuant to this chapter. The evaluation shall include a review of the public value of programs established pursuant to this chapter, including, but not limited to, the monetary and nonmonetary benefits to public health and the environment, and the benefit of providing funds for technology development that would otherwise not be funded.

(b) Not later than 18 months after the enactment of this section, the panel designated pursuant to subdivision (a) shall submit a preliminary report to the Governor and to the Legislature on its findings and recommendations on the implementation of the

1 program established pursuant to this chapter. The panel, not later
2 than 30 months after the enactment of this section, shall submit a
3 final report to the Governor and to the Legislature, including any
4 additional findings and recommendations regarding
5 implementation of the program.

6 (c) This section shall remain in effect only until July 1, 2006,
7 and as of that date is repealed, unless a later enacted statute, that
8 is enacted before January 1, 2007, deletes or extends that date.

9 SEC. 8. Section 25648 of the Public Resources Code is
10 amended to read:

11 25648. (a) The commission shall make loans, and research
12 contract and grant awards, for purposes of making existing energy
13 technologies more efficient, cost-effective, and environmentally
14 acceptable, and to research, develop, demonstrate, and
15 commercialize new, cost-effective alternative sources of energy,
16 technologies that displace conventional fuels, and energy
17 efficiency and conservation devices.

18 (b) In selecting projects, the commission shall consider, but is
19 not limited to, the list of opportunity technologies developed in the
20 most current energy development report produced pursuant to
21 Section 25604, or a subset of those opportunity technologies.

22 (c) The commission shall select the projects through
23 competitive bid procedures, such as invitations for bids, requests
24 for proposals, program opportunity notices, and multistep bids
25 using preapplications, by demonstrating the need for sole source
26 awards, or by evaluating small business grant and loan
27 applications.

28 (d) The criteria for the selection of projects shall include, but
29 not be limited to, all of the following factors:

30 (1) The potential of the project to reduce energy consumption
31 or provide an alternative source of energy.

32 (2) The financial, technical, and management strength of the
33 project applicant.

34 (3) The near-term and long-term feasibility of the project.

35 (4) The ability of the project technology to be used throughout
36 California.

37 (5) The potential of the project for promoting diverse, secure,
38 and resilient energy supplies.

39 (6) The potential of the project to displace petroleum.

- 1 (7) The potential of the project for reducing adverse
- 2 environmental impacts.
- 3 (8) The potential of the project to stimulate economic
- 4 development, employment, and tax revenues for California.
- 5 (9) The potential of the project for reducing short-term and
- 6 long-term energy costs for the ratepayers of California.
- 7 (10) The need of the project for state financing.
- 8 (11) The ability of the project to attract private and other public
- 9 investment.
- 10 (12) The investment payback period for the project.
- 11 (13) The probability of success in overcoming the risk of the
- 12 project.
- 13 (14) The potential for stimulating small business competition
- 14 in the field of alternative energy development.
- 15 (15) The ability of the project to generate needed community
- 16 economic development for participating local jurisdictions.
- 17 (16) The extent of the applicant's financial participation.
- 18 (17) The degree of innovation of the project.
- 19 (18) Whether the project is, in general, consistent with the
- 20 energy policies of California regarding the energy technologies
- 21 and priorities as set forth in the biennial report of the commission.
- 22 (19) The cost of the project.
- 23 (e) The commission shall apply the criteria specified in
- 24 subdivision (d) consistently within each competitive bid
- 25 solicitation.
- 26 (f) Awards provided pursuant to this chapter are not subject to
- 27 Article 4 (commencing with Section 10335) of Chapter 2 of Part
- 28 2 of Division 2 of the Public Contract Code.
- 29 SEC. 9. Section 25648.4 of the Public Resources Code is
- 30 amended to read:
- 31 25648.4. The commission shall apply this chapter to research,
- 32 development, demonstration, and commercialization projects that
- 33 are not subject to Chapter 6 (commencing with Section 3800) of
- 34 Division 3 and Chapter 7.1 (commencing with Section 25620),
- 35 and Chapter 7.8 (commencing with Section 25680).
- 36 SEC. 10. Section 25684 of the Public Resources Code is
- 37 amended to read:
- 38 25684. (a) The commission shall make loans and repayable
- 39 research contracts, and may provide primary research contracts
- 40 funding from the account for the purposes of making energy

technologies more efficient and cost-effective, and to develop new cost-effective alternative sources of energy. The commission shall select recipients through a procedure using an invitation for bids or a request for proposals. Each invitation for bids and request for proposals shall specify the criteria to be used in selecting projects for financing. The criteria shall include, but not be limited to, all of the following factors:

(1) The potential of the project to reduce consumption and increase the efficiency of nonrenewable energy sources and systems.

(2) The financial, technical, and management strength of the project applicant.

(3) The near-term and long-term feasibility of the project.

(4) The ability of the project technology to be used on other applications throughout California.

(5) The potential of the project for promoting diverse, secure, and resilient energy supplies.

(6) The potential of the project for reducing adverse environmental impacts.

(7) The potential of the project to stimulate economic development, employment, and tax revenues for California.

(8) The potential of the project for reducing short-term and long-term energy costs for the ratepayers of California.

(9) The need of the project for state financing.

(10) The ability of the project to garner private investment.

(11) The investment payback period for the project.

(12) The probability of success in overcoming the risk of the project.

(13) The potential for stimulating small business competition in the field of alternative energy development.

(14) The ability of the project to generate needed community economic development for participating local jurisdictions.

(15) The extent of the applicant's financial participation.

(16) The degree of innovation of the project.

(17) Whether the project is in general agreement with the energy policies of California regarding the energy technologies and priorities as set forth in the biennial report of the commission.

(b) Awards provided pursuant to this chapter are not subject to Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

SEC. 11. Section 381 of the Public Utilities Code is amended to read:

381. (a) To ensure that the funding for the programs described in subdivision (b) and Section 382 are not commingled with other revenues, the commission shall require each electrical corporation to identify a separate rate component to collect the revenues used to fund these programs. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage. This rate component shall fall within the rate levels identified in subdivision (a) of Section 368.

(b) The commission shall allocate funds collected pursuant to subdivision (a), and any interest earned on collected funds, to programs that enhance system reliability and provide in-state benefits as follows:

(1) Cost-effective energy efficiency and conservation activities.

(2) Public interest research and development not adequately provided by competitive and regulated markets.

(3) In-state operation and development of existing and new and emerging renewable resource technologies defined as electricity produced from other than a conventional power source within the meaning of Section 2805, provided that a power source utilizing more than 25 percent fossil fuel may not be included.

(c) The Public Utilities Commission shall order the respective electrical corporations to collect and spend these funds, as follows:

(1) Cost-effective energy efficiency and conservation activities shall be funded at not less than the following levels commencing January 1, 1998, through December 31, 2001: for San Diego Gas and Electric Company a level of thirty-two million dollars (\$32,000,000) per year; for Southern California Edison Company a level of ninety million dollars (\$90,000,000) for each of the years 1998, 1999, and 2000; fifty million dollars (\$50,000,000) for the year 2001; and for Pacific Gas and Electric Company a level of one hundred six million dollars (\$106,000,000) per year.

(2) Research, development, and demonstration programs to advance science or technology that are not adequately provided by competitive and regulated markets shall be funded at not less than

the following levels commencing January 1, 1998, through December 31, 2011: for San Diego Gas and Electric Company a level of four million dollars (\$4,000,000) per year; for Southern California Edison Company a level of twenty-eight million five hundred thousand dollars (\$28,500,000) per year; and for Pacific Gas and Electric Company a level of thirty million dollars (\$30,000,000) per year.

(3) In-state operation and development of existing and new and emerging renewable resource technologies shall be funded at not less than the following levels on a statewide basis: one hundred nine million five hundred thousand dollars (\$109,500,000) per year for each of the years 1998, 1999, and 2000, and one hundred thirty-six million five hundred thousand dollars (\$136,500,000) for the year 2001. To accomplish these funding levels over the period described herein the San Diego Gas and Electric Company shall spend twelve million dollars (\$12,000,000) per year, the Southern California Edison Company shall expend no less than forty-nine million five hundred thousand dollars (\$49,500,000) for the years 1998, 1999, and 2000, and no less than seventy-six million five hundred thousand dollars (\$76,500,000) for the year 2001, and the Pacific Gas and Electric Company shall expend no less than forty-eight million dollars (\$48,000,000) per year through the year 2001. Additional funding not to exceed seventy-five million dollars (\$75,000,000) shall be allocated from moneys collected pursuant to subdivision (d) in order to provide a level of funding totaling five hundred forty million dollars (\$540,000,000).

(4) Up to fifty million dollars (\$50,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to implementation of subdivision (a) of Section 374. Moneys remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).

(5) Up to ninety million dollars (\$90,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to contractual arrangements in the Southern California Edison service territory stemming from the Biennial Resource Planning Update auction. Moneys remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).

1 (6) To accomplish the funding of in-state operation and
2 development of existing and new and emerging renewable
3 resources technologies in accordance with the intent of Section
4 399, the San Diego Gas and Electric Company shall spend no less
5 than thirteen million nine hundred thousand dollars (\$13,900,000)
6 per year from January 1, 2002, to December 31, 2011, inclusive,
7 the Southern California Edison Company shall spend no less than
8 sixty-five million three hundred thousand dollars (\$65,300,000)
9 per year from January 1, 2002, to December 31, 2011, inclusive,
10 and the Pacific Gas and Electric Company shall spend no less than
11 fifty-five million eight hundred thousand dollars (\$55,800,000)
12 per year from January 1, 2002, to December 31, 2011, inclusive.

13 (d) Notwithstanding any other provisions of this chapter, the
14 commission may allow entities subject to its jurisdiction to extend
15 the period for competition transition charge collection up to three
16 months beyond its otherwise applicable termination of December
17 31, 2001, or to allow these entities to impose an alternative
18 nonbypassable system benefits charge, so as to ensure that the
19 aggregate portion of the research, environmental, and low-income
20 funds allocated to renewable resources shall equal five hundred
21 forty million dollars (\$540,000,000) and that the costs specified in
22 paragraphs (3), (4), and (5) of subdivision (c) are collected.

23 (e) Each electrical corporation shall allow customers to make
24 voluntary contributions through their utility bill payments as
25 either a fixed amount or a variable amount to support programs
26 established pursuant to paragraph (3) of subdivision (b). Funds
27 collected by electrical corporations for these purposes shall be
28 forwarded in a timely manner to the appropriate fund as specified
29 by the commission.

30 (f) For purposes of this article, “emerging renewable
31 technology” means a new renewable technology, including, but
32 not limited to, fuel cells using renewable fuels and photovoltaic
33 technology, that is determined by the State Energy Resources
34 Conservation and Development Commission to be emerging from
35 research and development and that has significant commercial
36 potential.

37 SEC. 12. Section 383.5 of the Public Utilities Code is
38 amended to read:

39 383.5. (a) It is the intent of the Legislature in establishing
40 this program, to increase the amount of renewable electricity

generated per year, so that it equals at least 17 percent of the total electricity generated for consumption in California per year by 2006.

(b) As used in this section, the following terms have the following meaning:

(1) “In-state renewable electricity generation facility” means a facility using biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation facility of 30 megawatts or less, ~~waste-tire, digester gas, landfill gas, and municipal solid waste~~ *and landfill gas* generation technologies, as described in the report, defined in paragraph (2), including any additions or enhancements thereto, that are located in this state or located near the ~~border~~ *border* of this state and with the first point of connection to the Western States Coordinating Council (WSCC) transmission system located within this state. “In-state renewable electricity generation facility” also includes a facility using ocean thermal, tidal current, and wave energy generation technologies, located within the state’s territorial boundaries.

(2) “Report” means the report entitled “Investing in Renewable Electricity Generation in California” (June 2001, Publication Number P500-00-022) submitted to the Governor and the Legislature by the State Energy Resources Conservation and Development Commission.

(c) (1) Twenty percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used for programs that are designed to improve the competitiveness of existing in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide.

(2) Any funds used to support in-state renewable electricity generation facilities pursuant to this subdivision shall be expended in accordance with the provisions of the report, subject to ~~all~~ *both* of the following requirements:

~~(A) Funding for existing renewable electricity generation facilities shall be grouped into two technology tiers, as follows:~~

~~(i) Fifteen percent of the money shall be used to fund first tier technologies, including biomass and solar thermal electric technologies.~~

1 ~~(ii) Five percent of the money shall be used to fund second tier~~
2 ~~wind technologies.~~

3 ~~(iii)–~~

4 (A) (i) *Of the funding for existing renewable electricity*
5 *generation facilities available pursuant to this subdivision, 75*
6 *percent shall be used to fund first tier technologies, including*
7 *biomass and solar electric technologies, and 25 percent shall be*
8 *used to fund second tier wind technologies.*

9 (ii) The State Energy Resources Conservation and
10 Development Commission shall reexamine the tier structure as
11 proposed in the report and adjust the structure to reflect market
12 conditions. The State Energy Resources Conservation and
13 Development Commission may also consider ~~inflation~~ *inflation*
14 when adjusting the structure.

15 (B) The State Energy Resources Conservation and
16 Development Commission shall establish a cents per kilowatthour
17 production incentive, not to exceed the payment caps per
18 kilowatthour established in the report representing the difference
19 between target prices and the market clearing price for electricity,
20 if sufficient funds are available. If there are insufficient funds in
21 any payment period to pay either the difference between the target
22 and market price or the payment caps, production incentives shall
23 be based on the amount determined by dividing available funds by
24 eligible generation. The market price for electricity shall be
25 determined by the State Energy Resources Conservation and
26 Development Commission based on the energy prices paid to
27 nonutility power generators as provided in Section 390, or on
28 otherwise available measures of market price.

29 (C) Facilities that are eligible to receive funding pursuant to
30 this subdivision shall be registered in accordance with criteria
31 developed by the State Energy Resources Conservation and
32 Development Commission and those facilities may not receive
33 payments for any electricity produced that has any of the following
34 characteristics:

35 (i) Is sold at monthly average rates equal to or greater than the
36 applicable target price, as determined by the State Energy
37 Resources Conservation and Development Commission.

38 (ii) Is that portion of electricity generation attributable to the
39 use of qualified agricultural biomass fuel, for a facility that is
40 receiving fuel-based incentives through the Agricultural

Biomass-to-Energy Incentive Grant Program established pursuant to Part 3 (commencing with Section 1101) of Division 1 of the Food and Agricultural Code. Notwithstanding subdivision (f) of Section 1104 of the Food and Agricultural Code, facilities that receive funding from the Agricultural Biomass-to-Energy Incentive Grant Program are eligible to receive funding pursuant to this subdivision.

(iii) Is used onsite or is sold to customers in a manner that does not include independent metering of the electricity generated, upon which production incentives may be based.

(d) (1) Fifty percent of the money collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used for programs designed to foster the development of new in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that operation of those facilities will provide.

(2) Any funds used for new in-state renewable electricity generation facilities pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:

(A) Funds shall be allocated for proposed projects based on a competitive solicitation process whereby production incentives, not to exceed a maximum amount, as specified by the State Energy Resources Conservation and Development Commission, are awarded to the lowest bidders, provided that not more than 25 percent of the funds allocated in any competitive solicitation pursuant to paragraph (1) may be awarded to a single project.

(B) Funds expended for production incentives shall be paid over a five-year period commencing on or after the date that a project begins electricity production, provided that the project shall be operational within four years after the date of the competitive solicitation in which the project was allocated funding. A project that becomes operational later than four years after the date of the competitive solicitation in which the project was allocated funding may not receive payments except upon the extension and reapproval of its award by the State Energy Resources Conservation and Development Commission, and may not receive any payments for energy generated beyond the date nine years after the date of the competitive solicitation. The State Energy Resources Conservation and Development Commission

1 may extend and reapprove a project award if it finds that the
2 project will not be operational within the expected four-year
3 period, due to circumstances specific to the project and beyond the
4 control of the project developer. Upon making this finding, the
5 State Energy Resources Conservation and Development
6 Commission shall pay production incentives over a five-year
7 period, commencing on the date of operation, provided that the
8 date that a project begins electricity production may not extend
9 beyond six years after the date of the applicable competitive
10 solicitation or January 1, 2007, whichever is later.

11 ~~(C) The State Energy Resources Conservation and~~
12 ~~Development Commission may determine as part of a solicitation~~
13 ~~that a facility that does not meet the definition of “in-state~~
14 ~~renewable generation facility” solely because it is located outside~~
15 ~~the state is eligible for funding from this subdivision if it satisfies~~
16 ~~both of the following requirements:~~

17 ~~(i) It is located so that it is or will be connected to the WSCC~~
18 ~~grid.~~

19 ~~(ii) It is developed with guaranteed contracts to sell its~~
20 ~~generation to end use customers within California, or to marketers~~
21 ~~that provide this guarantee for resale of the generation, for a period~~
22 ~~at least equal to the amount of time it receives incentive payments~~
23 ~~pursuant to this subdivision.~~

24 ~~(D)–~~

25 (C) Facilities that are eligible to receive funding pursuant to
26 this subdivision shall be registered in accordance with criteria
27 developed by the State Energy Resources Conservation and
28 Development Commission and those facilities may not receive
29 payments for any electricity produced that has any of the following
30 characteristics:

31 (i) Is sold under an existing long-term contract with an existing
32 in-state electrical corporation if the contract includes fixed energy
33 or capacity payments, except for that electricity that satisfies the
34 provisions of subparagraph (C) of paragraph (1) of subdivision (c)
35 of Section 399.6.

36 (ii) Is used onsite or is sold to customers in a manner that does
37 not include independent metering of the electricity generated,
38 upon which production incentives may be based.

1 (iii) Is produced by a facility that is owned by an electrical
2 corporation or a local publicly owned electric utility as defined in
3 subdivision (d) of Section 9604.

4 (iv) Is a hydroelectric generation project that will require a new
5 or increased ~~appropriation~~ *diversion* of water under Part 2
6 (commencing with Section 1200) of Division 2 of the Water Code.

7 ~~(E)–~~

8 (D) Eligibility to compete for funds or to receive funds shall not
9 be contingent upon the location or nature of the power purchaser.

10 ~~(F)–~~

11 (E) The State Energy Resources Conservation and
12 Development Commission may require applicants competing for
13 funding to post a forfeitable bid bond or other financial guaranty
14 as an assurance of the applicant's intent to move forward
15 expeditiously with the project proposed. The amount of any bid
16 bond or financial guaranty may not exceed 10 percent of the total
17 amount of the funding requested by the applicant.

18 ~~(G)–~~

19 (F) In awarding funding, the State Energy Resources
20 Conservation and Development Commission may provide
21 preference to projects that provide tangible demonstrable benefits
22 to communities with a plurality of minority or low-income
23 populations.

24 (3) Repowered existing facilities shall be eligible for funding
25 under this subdivision if the capital investment to repower the
26 existing facility equals at least 80 percent of the value of the
27 repowered facility.

28 (4) Facilities engaging in the combustion of municipal solid
29 waste or tires are not eligible for funding under this subdivision.

30 (e) (1) Seventeen and one-half percent of the money collected
31 pursuant to paragraph (6) of subdivision (c) of Section 381 shall
32 be used for a multiyear, consumer-based program to foster the
33 development of emerging renewable technologies in distributed
34 generation applications.

35 (2) Any funds used for emerging technologies pursuant to this
36 subdivision shall be expended in accordance with the report,
37 subject to all of the following requirements:

38 (A) Funding for emerging technologies shall be provided
39 through a competitive, market-based process that shall be in place
40 for a period of not less than five years, and shall be structured so

1 as to allow eligible emerging technology manufacturers and
2 suppliers to anticipate and plan for increased sale and installation
3 volumes over the life of the program. ~~Notwithstanding~~
4 ~~subparagraphs (B), (C), and (D), up to 15 percent of the funds~~
5 ~~allocated by this subdivision may be used by the State Energy~~
6 ~~Resources Conservation and Development Commission to~~
7 ~~establish programs with alternative program structures, as long as~~
8 ~~the programs have goals consistent with this subparagraph. These~~
9 ~~programs may include incentives for in-state manufacturing of~~
10 ~~renewable energy systems eligible for funding under this~~
11 ~~subdivision provided that these programs yield tangible benefits~~
12 ~~to California ratepayers that contribute to the Renewable~~
13 ~~Resources Trust Fund.~~

14 (B) The program shall provide monetary rebates, buydowns, or
15 equivalent incentives, subject to subparagraph (C), to purchasers,
16 lessees, lessors, or sellers of eligible electricity generating
17 systems. Incentives shall benefit the end use consumer of
18 renewable generation by directly and exclusively reducing the
19 purchase or lease cost of the eligible system, or the cost of
20 electricity produced by the eligible system. Incentives shall be
21 issued on the basis of the rated electrical capacity of the system
22 measured in watts, or the amount of electricity production of the
23 system, measured in kilowatthours. Incentives shall be limited to
24 a maximum percentage of the system price, as determined by the
25 State Energy Resources Conservation and Development
26 Commission.

27 (C) Eligible distributed emerging technologies are
28 photovoltaic, solar thermal electric, fuel cell technologies that
29 utilize renewable fuels, and wind turbines of not more than 50
30 kilowatts rated electrical capacity per customer site, and other
31 distributed renewable emerging technologies that meet the
32 emerging technology eligibility criteria established by the State
33 Energy Resources Conservation and Development Commission.
34 Eligible electricity generating systems are intended primarily to
35 offset part or all of the consumer's own electrical energy demand,
36 and shall not be owned by electrical corporations or local publicly
37 owned electric utilities, nor be located at a customer site that is not
38 receiving distribution service from an electrical corporation that
39 is subject to Section 381 and contributing funds to support
40 programs under this section. All eligible electricity generating

1 system components shall be new and unused, shall not have been
2 previously placed in service in any other location or for any other
3 application, and shall have a warranty of not less than five years
4 to protect against defects and undue degradation of electrical
5 output. Systems and their fuel resources shall be located on the
6 same premises of the end use consumer where the consumer's own
7 electricity demand is located, and all eligible electricity generating
8 systems shall be connected to the utility grid in California. The
9 State Energy Resources Conservation and Development
10 Commission may require eligible electricity generating systems to
11 have meters in place to monitor and measure a system's
12 performance and generation.

13 (D) The State Energy Resources Conservation and
14 Development Commission may limit the amount of funds
15 available for any system or project of multiple systems and reduce
16 the level of funding for any system or project of multiple systems
17 that has received, or may be eligible to receive, any government
18 or utility funds, incentives, or credit.

19 (E) In awarding funding, the State Energy Resources
20 Conservation and Development Commission may provide
21 preference to systems that provide tangible demonstrable benefits
22 to communities with a plurality of minority or low-income
23 populations.

24 (f) (1) Ten percent of the money collected pursuant to
25 paragraph (6) of subdivision (c) of Section 381 shall be used to
26 provide customer credits for purchases of the renewable attributes
27 of renewable energy produced by registered generating facilities.

28 (2) Any funds used for customer credits pursuant to this
29 subdivision shall be expended, as provided in the report, subject
30 to all of the following requirements:

31 (A) Customer credits shall be awarded to California retail
32 customers located in the service territory of an electrical
33 corporation that is subject to Section 381 and contributing funds
34 to support programs under this section, and who are purchasing
35 qualifying renewable aspects of renewable electric power through
36 transactions traceable to specific generation sources by any
37 auditable contract trail or equivalent that provides commercial
38 verification that the renewable aspect of the electricity source
39 claimed has been sold once and only once to a retail customer.

1 Credits may be given without regard to whether the power supplier
2 is also receiving funds under any other subdivision of this section.

3 (B) Credits awarded pursuant to this paragraph may be paid
4 directly to electric service providers, energy marketers,
5 aggregators, or generators if those persons or entities account for
6 the credits on the recipient customer's bills. Credits may not
7 exceed one and one-half cents (\$0.015) per kilowatthour. Credits
8 awarded to members of the combined class of customers, other
9 than residential and small commercial customers, may not exceed
10 one thousand dollars (\$1,000) per customer per calendar year. In
11 no event may more ~~than thirteen million five hundred thousand~~
12 ~~dollars (\$13,500,000)~~ *than 10 percent* of the total customer
13 incentive funds be awarded to members of the combined class of
14 customers other than residential and small commercial customers.

15 (C) The State Energy Resources Conservation and
16 Development Commission shall develop criteria and procedures
17 for the registration of energy providers and for the identification
18 of energy purchasers who are eligible to receive funds pursuant to
19 this paragraph through a process consistent with this paragraph.
20 These criteria and procedures shall apply only to funding
21 eligibility and may not extend to other renewable marketing
22 claims.

23 (D) The commission shall notify the State Energy Resources
24 Conservation and Development Commission in writing within 10
25 days of revoking or suspending the registration of any electric
26 service provider pursuant to paragraph (4) of subdivision (b) of
27 Section 394.25.

28 (g) Two and one-half percent of the money collected pursuant
29 to paragraph (6) of subdivision (c) of Section 381 shall be used in
30 accordance with the report to promote renewable energy and to
31 disseminate information on renewable energy technologies,
32 including emerging renewable technologies, and to help develop
33 a consumer market for renewable energy and for small-scale
34 emerging renewable energy technologies.

35 (h) (1) The State Energy Resources Conservation and
36 Development Commission shall adopt guidelines governing the
37 funding programs authorized under this section, at a publicly
38 noticed meeting offering all interested parties an opportunity to
39 comment. Substantive changes to the guidelines may not be
40 adopted without at least 10 days' written notice to the public. The



1 public notice of meetings required by this paragraph may not be
2 less than 30 days. Notwithstanding any other provision of law, any
3 guidelines adopted pursuant to this section shall be exempt from
4 the requirements of Chapter 3.5 (commencing with Section
5 11340) of Part 1 of Division 3 of Title 2 of the Government Code.
6 The Legislature declares that the changes made to this paragraph
7 by the act amending this section during the 2002 portion of the
8 2001–02 Regular Session are declaratory of, and not a change in
9 existing law.

10 (2) Funds to further the purposes of this section may be
11 committed for multiple years.

12 (3) Awards made pursuant to this section are grants, subject to
13 appeal to the State Energy Resources Conservation and
14 Development Commission upon a showing that factors other than
15 those described in the guidelines adopted by the State Energy
16 Resources Conservation and Development Commission were
17 applied in making the awards and payments. Any actions taken by
18 an applicant to apply for, or become or remain eligible and
19 registered to receive, payments or awards, including satisfying
20 conditions specified by the State Energy Resources Conservation
21 and Development Commission, shall not constitute the rendering
22 of goods, services, or a direct benefit to the State Energy Resources
23 Conservation and Development Commission.

24 (i) The State Energy Resources Conservation and
25 Development Commission shall report to the Legislature on or
26 before May 31, 2000, and on or before May 31 of every second
27 year thereafter, regarding the results of the mechanisms funded
28 pursuant to this section. Reports prepared pursuant to this
29 subdivision shall include a description of the allocation of funds
30 among existing, new and emerging technologies; the allocation of
31 funds among programs, including consumer-side incentives; and
32 the need for the reallocation of money among those technologies.
33 The reports shall also address the allocation of funds from interest
34 on the accounts described in this section, and money in the
35 accounts described in subdivision (e) of Section 381.
36 Notwithstanding subdivisions (c), (d), (e), (f), and (g) of this
37 section, money may be reallocated without further legislative
38 action among existing, new, and emerging technologies and
39 consumer-side programs in a manner consistent with the report

1 and with the latest report provided to the Legislature pursuant to
2 this subdivision.

3 (j) The State Energy Resources Conservation and
4 Development Commission may expend *up to one percent of the*
5 money collected pursuant to paragraph (6) of subdivision (c) of
6 Section 381 for ~~statutory costs related to the State Energy~~
7 ~~Resources Conservation and Development Commission's~~
8 ~~implementation of a renewables portfolio standard program if that~~
9 ~~program is enacted during the 2002 portion of the the statutory~~
10 ~~costs of implementing and administering a renewable portfolio~~
11 ~~standard that is imposed on the commission by Senate Bill 532 of~~
12 ~~the 2001–02 Regular Session, if that bill is enacted during the 2002~~
13 ~~portion of the 2001–02 Regular Session.~~

14 SEC. 13. Section 394.25 of the Public Utilities Code is
15 amended to read:

16 394.25. (a) The commission may enforce the provisions of
17 Sections 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against
18 electric service providers as if those electric service providers were
19 public utilities as defined in these code sections. Notwithstanding
20 the above, nothing in this section grants the commission
21 jurisdiction to regulate electric service providers other than as
22 specifically set forth in this part. Electric service providers shall
23 continue to be subject to the provisions of Sections 2111 and 2112.
24 Upon a finding by the commission's executive director that there
25 is evidence to support a finding that the electric service provider
26 has committed an act constituting grounds for suspension or
27 revocation of registration as set forth in subdivision (b) of Section
28 394.25, the commission shall notify the electric service provider
29 in writing and notice an expedited hearing on the suspension or
30 revocation of the electric service provider's registration to be held
31 within 30 days of the notification to the electric service provider
32 of the executive director's finding of evidence to support
33 suspension or revocation of registration. The commission shall,
34 within 45 days after holding the hearing, issue a decision on the
35 suspension or revocation of registration, which shall be based on
36 findings of fact and conclusions of law based on the evidence
37 presented at the hearing. The decision shall include the findings of
38 fact and the conclusions of law relied upon.

(b) An electric service provider may have its registration suspended or revoked, immediately or prospectively, in whole or in part, for any of the following acts:

(1) Making material misrepresentations in the course of soliciting customers, entering into service agreements with those customers, or administering those service agreements.

(2) Dishonesty, fraud, or deceit with the intent to substantially benefit the electric service provider or its employees, agents, or representatives, or to disadvantage retail electric customers.

(3) Where the commission finds that there is evidence that the electric service provider is not financially or operationally capable of providing the offered electric service.

(4) The misrepresentation of a material fact by an applicant in obtaining a registration pursuant to Section 394.

(c) Pursuant to its authority to revoke or suspend registration, the commission may suspend a registration for a specified period or revoke the registration, or in lieu of suspension or revocation, impose a moratorium on adding or soliciting additional customers. Any suspension or revocation of a registration shall require the electric service provider to cease serving customers within the boundaries of investor-owned electric corporations, and the affected customers shall be served by the electrical corporation until the time when they may select service from another service provider. Customers shall not be liable for the payment of any early termination fees or other penalties to any electric service provider under the service agreement if the serving electric service provider's registration is suspended or revoked.

(d) The commission shall require any electric service provider whose registration is revoked pursuant to paragraph (4) of subdivision (b) to refund all of the customer credit funds that the electric service provider received from the State Energy Resources Conservation and Development Commission pursuant to paragraph (1) of subdivision (f) of Section 383.5. The repayment of these funds shall be in addition to all other penalties and fines appropriately assessed the electric service provider for committing those acts under other provisions of law. All customer credit funds refunded under this subdivision shall be deposited in the Renewable Resource Trust Fund for redistribution by the State Energy Resources Conservation and Development Commission

1 pursuant to Section 383.5. This subdivision may not be construed
2 to apply retroactively.

3 SEC. 14. Section 445 of the Public Utilities Code is amended
4 to read:

5 445. (a) The Renewable Resource Trust Fund is hereby
6 created in the State Treasury.

7 (b) The following accounts are hereby created within the
8 Renewable Resource Trust Fund:

9 (1) The Existing Renewable Resources Account.

10 (2) New Renewable Resources Account.

11 (3) Emerging Renewable Resources Account.

12 (4) Customer-Credit Renewable Resources Account.

13 (5) Renewable Resources Consumer Education Account.

14 (c) The money in the fund may be expended for the state's
15 administration of this article only upon appropriation by the
16 Legislature in the annual Budget Act.

17 (d) Notwithstanding Section 383, that portion of revenues
18 collected by electrical corporations for the benefit of in-state
19 operation and development of existing and new and emerging
20 renewable resource technologies, pursuant to paragraphs (3) and
21 (6) of subdivision (c) of Section 381, shall be transmitted to the
22 State Energy Resources Conservation and Development
23 Commission at least quarterly for deposit in the Renewable
24 Resource Trust Fund. After setting aside in the fund money that
25 may be needed for expenditures authorized by the annual Budget
26 Act in accordance with subdivision (c), the Treasurer shall
27 immediately deposit money received pursuant to this section into
28 the accounts created pursuant to subdivision (b) in proportions
29 designated by the State Energy Resources Conservation and
30 Development Commission for the current calendar year.
31 Notwithstanding Section 13340 of the Government Code, the
32 money in the fund and the accounts within the fund are hereby
33 continuously appropriated to the State Energy Resources
34 Conservation and Development Commission without regard to
35 fiscal year for the purposes enumerated in Section 383.5.

36 (e) Upon notification by the State Energy Resources
37 Conservation and Development Commission, the Controller shall
38 pay all awards of the money in the accounts created pursuant to
39 subdivision (b) for purposes enumerated in Section 383.5. The
40 eligibility of each award shall be determined solely by the State



1 Energy Resources Conservation and Development Commission
2 based on the procedures it adopts under subdivision (h) of Section
3 383.5. Based on the eligibility of each award, the State Energy
4 Resources Conservation and Development Commission shall also
5 establish the need for a multiyear commitment to any particular
6 award and so advise the Department of Finance. Eligible awards
7 submitted by the State Energy Resources Conservation and
8 Development Commission to the Controller shall be accompanied
9 by information specifying the account from which payment should
10 be made and the amount of each payment; a summary description
11 of how payment of the award furthers the purposes enumerated in
12 Section 383.5; and an accounting of future costs associated with
13 any award or group of awards known to the State Energy
14 Resources Conservation and Development Commission to
15 represent a portion of a multiyear funding commitment.

16 (f) The State Energy Resources Conservation and
17 Development Commission may transfer funds between accounts
18 for cashflow purposes, provided that the balance due each account
19 is restored and the transfer does not adversely affect any of the
20 accounts. The State Energy Resources Conservation and
21 Development Commission shall examine the cashflow in the
22 respective accounts on an annual basis, and shall annually prepare
23 and submit to the Legislature a report that describes the status of
24 account transfers and repayments.

25 (g) The State Energy Resources Conservation and
26 Development Commission shall, on a quarterly basis, report to the
27 Legislature on the implementation of this article. Those quarterly
28 reports shall be submitted to the Legislature not more than 30 days
29 after the close of each quarter and shall include information
30 describing the awards submitted to the Controller for payment
31 pursuant to this article, the cumulative commitment of claims by
32 account, the relative demand for funds by account, a forecast of
33 future awards, and other matters the State Energy Resources
34 Conservation and Development Commission determines may be
35 of importance to the Legislature.

36 (h) The Department of Finance, commencing March 1, 1999,
37 shall conduct an independent audit of the Renewable Resource
38 Trust Fund and its related accounts annually, and provide an audit
39 report to the Legislature not later than March 31 of each year for
40 which this article is operative. The Department of Finance's report

- 1 shall include information regarding revenues, payment of awards,
- 2 reserves held for future commitments, unencumbered cash
- 3 balances, and other matters that the Director of Finance determines
- 4 may be of importance to the Legislature.

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