

AMENDED IN ASSEMBLY AUGUST 8, 2002

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 383.5 and 390 of, to add Sections 333, 387, and 399.25 to, and to add Article 16 (commencing with Section 399.11) to Chapter 2.3 of Part 1 of Division 1 of, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1524, as amended, Sher. Renewable energy: *California Renewables Portfolio Standard Program.*

(1) *Under the Public Utilities Act, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, and authorizes the commission to establish just and reasonable rates and charges. The act requires retail suppliers of electric services to disclose sources of electrical generation and requires that those retail suppliers report information to the State Energy Resources Conservation and Development Commission (Energy Commission).*

This bill would establish the California Renewables Portfolio Standard Program. The program would require that a retail seller of

electricity, including electrical corporations, community choice aggregators, local publicly owned electric utilities and electric service providers, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard).

The bill would require the PUC to implement the renewables portfolio standard for electrical corporations. Each electrical corporation would be required to increase its total procurement of eligible renewable energy resources by at least 1% per year so that at least 20% of its retail sales are procured from eligible renewable energy resources by December 31, 2015. If an electrical corporation fails to procure sufficient eligible renewable energy resources in a given year to meet an annual target, the electrical corporation would be required to procure additional eligible renewable resources in subsequent years to compensate for the shortfall. An electrical corporation with at least 20% of retail sales procured from eligible renewable energy resources in any year would not be required to increase its procurement in the following year.

This bill would require the PUC to direct electrical corporations to prepare within 90 days of being deemed creditworthy, and to annually update, renewable energy procurement plans that are sufficient to satisfy at least 5 years of obligations under the California Renewables Portfolio Standard Program, with the goal of procuring the least-cost and best-fit eligible renewable energy resources. The PUC would be required to adopt rules for electrical corporations establishing a process for determining market prices of electricity from renewable generators pursuant to specified criteria, a process for rank ordering and selection of least-cost and best-fit renewable resources to fulfill program obligations, flexible rules for compliance that permit electrical corporations to apply excess or inadequate procurement in one year to the following 3 years, and standard terms and conditions to be used by electrical corporations in contracting with renewable electricity generators. The PUC would be required to review and accept, modify, or reject each electrical corporation's renewable procurement plan 90 days prior to the commencement of renewable procurement by the electrical corporation. The PUC would be required to review and accept, modify, or reject renewable solicitations by electrical corporations and proposed contracts by electrical corporations with renewable electricity generators. The PUC would be



required to allow an electrical corporation to recover, in rates, electricity procurement and administrative costs reasonably incurred consistent with a renewable energy procurement plan approved by the PUC.

Because a violation of the Public Utilities Act or an order of the PUC is a crime under existing law, the bill would impose a state-mandated local program by creating a new crime.

The bill would require the Energy Commission to certify eligible renewable energy resources, to design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, to allocate and award supplemental energy payments, pursuant to provisions discussed below, to eligible renewable energy resources in order to reduce the cost of compliance with the portfolio standard by retail sellers to consult with the PUC prior to establishing rules for compliance by retail sellers other than electrical corporations, to consult with the PUC prior to establishing rules for the awarding of supplemental energy payments, and to assess and collect penalties sufficient to ensure compliance, on any retail seller that is not an electrical corporation, that fails to meet its renewables portfolio standard. If supplemental energy payments are insufficient to cover above-market renewable procurement costs, the Energy Commission would be required to allow retail sellers other than electrical corporations to limit their annual procurement obligations to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments. The bill would require that the Energy Commission enforce and monitor compliance with the renewable portfolio standards by retail sellers other than electrical corporations and local publicly owned electric utilities.

(2) Under the Public Utilities Act, the PUC requires electrical corporations to identify a separate rate component to fund cost-effective energy efficiency and conservation activities, public interest research and development, and development of renewable resources technology. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing law requires specified electrical corporations to collect specific amounts to support each of these programs. Existing law also requires the ~~State Energy Resources Conservation and Development Commission~~ ~~(Energy 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~~

~~Existing law requires 45% of the money collected for the program be used 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 restate the goal of the program to be, to increase the amount of renewable electricity generated per year, so that it equals at least 17% of the total electricity generated for consumption in California by 2006. 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 specified eligible existing in-state renewable electricity generation facilities. The bill would instead require 50.5% 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 supplemental energy payments to projects selected by retail sellers to fulfill their obligations under the California Renewables Portfolio Standard Program, pursuant to specified criteria and procedures. 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 and would authorize the Energy Commission, in awarding funding, to provide preference to systems that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations. 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 to customers that



entered into direct transactions on or before September 20, 2001, for purchases of electricity produced by in-state renewable electricity generation facilities. The bill would require the Energy Commission to report to the Governor and Legislature by March 31, 2003, on how to most effectively utilize the funds for customer credits. The bill would require 1% 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. The bill would authorize the Energy Commission to expend up to 1% of the funds collected for any of its costs in implementing and administering the California Renewables Portfolio Standard Program.

(4) Existing law, the Warren-Alquist State Energy Resources Conservation and Development Act, requires the Energy Commission to certify sufficient sites and related facilities that are required to provide a supply of electric power sufficient to accommodate projected demand for power statewide. Under existing law, the PUC must grant a certificate of public convenience and necessity, upon application by a public utility, for the construction of a new transmission facility or electric transmission line within the state. As a basis for granting a certificate of public convenience and necessity, the PUC is required to give consideration to community values, recreational and park areas, historical and aesthetic values, and influence on the environment. No certificate of public convenience and necessity may be granted for an electrical transmission line without certification by the Energy Commission, and the decision by the Energy Commission is conclusive as to all matters determined thereby and take the place of consideration by the PUC.

This bill would provide that an application of an electrical corporation for a certificate for the construction of new transmission facilities, that are necessary to facilitate achievement of the renewable power goals, shall be deemed to be necessary by the PUC in determining to issue a certificate of public necessity and convenience. The bill would require the PUC to take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission do not discriminate against a renewable generator.



(5) Existing law requires each local publicly owned utility to establish a nonbypassable usage based charge to fund investments in specified public purpose programs, including cost-effective demand-side management services to promote energy efficiency and energy conservation, investment in renewable energy resources and technologies, and services for low-income electricity consumers. The charge is required to be not less than the lowest expenditure of the 3 largest electrical corporations in California based on a percentage of revenue.

This bill would require the governing board of a local publicly owned electric utility to be responsible for implementing and enforcing a renewables portfolio standard consistent with the California Renewables Portfolio Standard Program and to annually report to the Energy Commission upon expenditures of public goods funds on public purpose programs, thereby imposing a state-mandated local program. Because a violation of this provision would be a crime, this bill would also impose a state-mandated local program by creating a new crime.

(6) Existing law provide that subject to applicable contractual terms, energy prices paid to nonutility power generators by a public utility electrical corporation based on the commission's 'short run avoided cost energy methodology' are required to be determined by specified law.

This bill would authorize any nonutility power generator using renewable fuels that entered into a contract with an electrical corporation specifying fixed energy prices for output prior to December 31, 2001, to elect an additional 5 years of fixed energy payments at a level to be determined by the PUC.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.



~~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~~ yes.

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 SECTION 1. Section 333 is added to the Public Utilities Code,
4 to read:
5 333. (a) *The commission shall direct each electrical*
6 *corporation to prepare renewable energy procurement plans as*
7 *described in paragraph (3) to satisfy at least five years of*
8 *obligations under the California Renewables Portfolio Standard*
9 *Program as established in Article 16 (commencing with Section*
10 *399.11). To the extent feasible, this procurement plan shall be*
11 *proposed, reviewed, and adopted by the commission as part of, and*
12 *pursuant to, a general procurement plan process. Consistent with*
13 *the goal of procuring the least-cost and best-fit eligible renewable*
14 *energy resources, each electrical corporation shall file an initial*
15 *renewable energy procurement plan with the commission prior to*
16 *resuming general procurement responsibilities. The commission*
17 *shall require each electrical corporation to update its renewable*
18 *energy procurement plan on an annual basis.*
19 (1) *The commission shall not require an electrical corporation*
20 *to conduct procurement to fulfill the California Renewables*
21 *Portfolio Standard Program until it is deemed creditworthy by the*
22 *commission upon it having attained an investment grade rating as*
23 *determined by at least two major rating agencies. Within 90 days*
24 *of being deemed creditworthy, an electrical corporation shall*
25 *conduct solicitations to implement a renewable energy*
26 *procurement plan. An electrical corporation that is creditworthy*
27 *as of January 1, 2003, shall conduct solicitations to implement a*

1 *renewable energy procurement plan pursuant to this section and*
2 *the requirements of Article 16 (commencing with Section 399.11).*

3 (2) *The commission shall adopt, by rule, for all electrical*
4 *corporations, all of the following:*

5 (A) *A process for determining market prices pursuant to*
6 *subdivision (c) of section 399.15. The commission shall make*
7 *specific determinations of market prices after the closing date of*
8 *a competitive solicitation conducted by an electrical corporation*
9 *for eligible renewable energy resources. The electrical*
10 *corporation shall not transmit or share the results of any*
11 *competitive solicitation for eligible renewable energy resources*
12 *until the commission has established market prices pursuant to*
13 *subdivision (c) of Section 399.15.*

14 (B) *A process that provides criteria for the rank ordering and*
15 *selection of least-cost and best-fit renewable resources to comply*
16 *with the annual California Renewables Portfolio Standard*
17 *Program obligations on a total cost basis. This process shall*
18 *consider estimates of indirect costs associated with needed*
19 *transmission investments and ongoing utility expenses resulting*
20 *from integrating and operating eligible renewable energy*
21 *resources.*

22 (C) *Flexible rules for compliance including, but not limited to,*
23 *permitting electrical corporations to apply excess or inadequate*
24 *procurement in one year to no more than the following three years.*

25 (D) *Standard terms and conditions to be used by all electrical*
26 *corporations in contracting for eligible renewable energy*
27 *resources, including performance requirements for renewable*
28 *generators.*

29 (3) *Consistent with the goal of procuring the least-cost and*
30 *best-fit eligible renewable energy resources, the renewable energy*
31 *procurement plan submitted by an electrical corporation shall*
32 *include, but is not limited to, all of the following:*

33 (A) *An assessment of annual or multiyear portfolio supplies*
34 *and demand to determine the optimal mix of renewable generation*
35 *resources with deliverability characteristics that may include*
36 *peaking, dispatchable, baseload, firm, and as-available capacity.*

37 (B) *Provisions for employing available compliance flexibility*
38 *mechanisms established by the commission.*

39 (C) *A bid solicitation setting forth the need for renewable*
40 *generation of each deliverability characteristic, required on-line*

1 *dates, locational preferences if any, and market price for each*
2 *renewable energy product. Payments may be structured to include*
3 *both capacity and energy components.*

4 *(4) In soliciting and procuring eligible renewable energy*
5 *resources, each electrical corporation shall offer contracts of no*
6 *less than 10 years in duration, unless the commission approves of*
7 *a contract of shorter duration.*

8 *(5) In soliciting and procuring eligible renewable energy*
9 *resources, each electrical corporation may give preference to*
10 *projects that provide tangible demonstrable benefits to*
11 *communities with a plurality of minority or low-income*
12 *populations.*

13 *(b) The commission shall review and accept, modify, or reject*
14 *each electrical corporation's renewable procurement plan 90 days*
15 *prior to the commencement of renewable procurement by the*
16 *electrical corporation. The commission shall ensure that, if the*
17 *electrical corporation submits a procurement plan within the*
18 *required time period, the electrical corporation will be able to*
19 *procure sufficient renewable resources to comply with the terms*
20 *and goals of the California Renewables Portfolio Standard*
21 *Program.*

22 *(c) The commission shall review the results of a renewable*
23 *energy resources solicitation submitted for approval by an*
24 *electrical corporation and accept or reject proposed contracts*
25 *with eligible renewable energy resources based on consistency*
26 *with the approved renewable procurement plan. If the commission*
27 *determines that the bid prices are elevated due to a lack of effective*
28 *competition amongst the bidders, the commission shall direct the*
29 *electrical corporation to renegotiate such contracts or conduct a*
30 *new solicitation.*

31 *(d) If an electrical corporation fails to comply with a*
32 *commission order adopting a renewable procurement plan, the*
33 *commission shall exercise its authority pursuant to Section 2113*
34 *to require compliance.*

35 *(e) Upon application by an electrical corporation, the*
36 *commission may authorize another entity to enter into contracts on*
37 *behalf of customers of the electrical corporation for deliveries of*
38 *eligible renewable energy resources to satisfy the annual portfolio*
39 *standard obligations. The commission shall allow the procurement*

entity to recover reasonable costs through retail rates subject to review and approval.

(f) The commission shall allow an electrical corporation to recover, in rates, procurement and administrative costs reasonably incurred pursuant to the California Renewables Portfolio Standard Program, if the electrical corporation incurred the costs consistent with a renewable energy procurement plan approved by the commission.

SEC. 2. Section 383.5 of the Public Utilities Code is amended to read:

383.5. (a) It is the intent of the Legislature in establishing the Renewable Energy 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 technology” means ~~biomass, solar thermal, photovoltaic, wind, geothermal, small hydropower of 30 megawatts or less, waste tire, digester gas, landfill gas, and municipal solid waste generation technologies, as described in the report, defined in paragraph (2), including any additions or enhancements thereto, that are produced in facilities located in this state and placed in operation after September 26, 1996, or that were operational prior to that date, and that are also certified under Section 292.2904 of Title 18 of the Code of Federal Regulations as a qualifying small power production facility either located in California, or that began selling electricity to a California electrical corporation prior to September 26, 1996, under a Standard Offer Power Purchase Agreement authorized by the commission~~ a facility using biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation facility of 30 megawatts or less, digester gas, 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 of this state and with the first point of connection to the Western Systems Coordinating Council (WSCC) transmission system located within this state. “In-state renewable electricity generation facility” also includes a facility using ocean

1 *thermal, tidal current, and wave energy generation technologies,*
2 *located within the state's territorial boundaries.*

3 (2) "Report" means the ~~Policy Report on AB 1890~~
4 ~~Renewables Funding (March 1997, Publication Number~~
5 ~~P500-97-002) submitted to the Legislature by the State Energy~~
6 ~~Resources Conservation and Development Commission report~~
7 ~~entitled "Investing in Renewable Electricity Generation in~~
8 ~~California" (June 2001, Publication Number P500-00-022)~~
9 ~~submitted to the Governor and the Legislature by the State Energy~~
10 ~~Resources Conservation and Development Commission (Energy~~
11 ~~Commission).~~

12 ~~(b) (1) Forty five percent of the money~~

13 ~~(c) (1) Twenty percent of the funds collected pursuant to~~
14 ~~paragraph (3) of subdivision (c) of Section 381, up to two hundred~~
15 ~~forty three million dollars (\$243,000,000), shall be used for~~
16 ~~programs that are designed to improve the competitiveness of~~
17 ~~existing in-state renewable electricity generation technology~~
18 ~~facilities, and to secure for the state the environmental, economic,~~
19 ~~and reliability benefits that continued operation of those facilities~~
20 ~~will provide. Eligibility for incentives under this subdivision shall~~
21 ~~be limited to those technologies found eligible for funds by the~~
22 ~~Energy Commission pursuant to paragraphs (5), (6), and (8) of~~
23 ~~subdivision (c) of Section 399.6.~~

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

28 (A) ~~Funding for existing renewable electricity generation~~
29 ~~technologies shall be grouped into three technology tiers, as~~
30 ~~follows:~~

31 ~~(i) Twenty five percent of the money, up to one hundred~~
32 ~~thirty five million dollars (\$135,000,000), shall be used to fund~~
33 ~~first tier technologies, including biomass, solar thermal, and whole~~
34 ~~waste tire technologies.~~

35 ~~(ii) Thirteen percent of the money, up to seventy million two~~
36 ~~hundred thousand dollars (\$70,200,000), shall be used to fund~~
37 ~~second tier wind technologies.~~

38 ~~(iii) Seven percent of the money, up to thirty seven million~~
39 ~~eight hundred thousand dollars (\$37,800,000), shall be used to~~
40 ~~fund third tier technologies, including geothermal, small~~

~~hydropower, digester gas, landfill gas, and municipal solid waste technologies.~~

~~(B) Of the funding for existing renewable electricity generation facilities available pursuant to this subdivision, 75 percent shall be used to fund first tier technologies, including biomass and solar electric technologies and 25 percent shall be used to fund second tier wind technologies.~~

~~(B) The Energy Commission shall reexamine the tier structure as proposed in the report and adjust the structure to reflect market and contractual conditions. The Energy Commission shall also consider inflation when adjusting the structure.~~

~~(C) The State Energy Resources—Conservation and Development Commission shall establish a cents per kilowatthour production incentive, not to exceed the payment caps per kilowatthour established in the report, as those payment caps are revised in guidelines adopted by the commission, representing the difference between target prices and the market clearing price for electricity, if sufficient funds are available. If there are insufficient funds in any payment period to pay either the difference between the target and market price or the payment caps, production incentives shall be based on the amount determined by dividing available funds by eligible generation. The target price for Tier 1 technologies shall not be based on less than four cents (\$0.04) per kilowatthour. The market clearing price for electricity shall be the energy prices paid to nonutility power generators as provided in Section 390.~~

~~(C) Funding for each type of existing in-state renewable electricity generation technology shall be reduced each year during the period from January 1, 1998, to January 1, 2002, to encourage the development of increasingly competitive technologies. The market price for electricity shall be determined by the Energy Commission based on the energy prices paid to nonutility power generators as authorized by the Energy Commission, or on otherwise available measures of market price. For the first tier technologies, the Energy Commission shall establish a time-differentiated incentive structure that encourages plants to run the maximum feasible amount of time and that provides a higher incentive when the plants are receiving the lowest price.~~

(D) Facilities that are eligible to receive funding pursuant to this section ~~subdivision~~ shall be ~~certified~~ *registered* in accordance with the requirements set forth in the report and criteria developed by the Energy Commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:

(i) ~~Is sold under a fixed energy price payment under a long-term contract with an existing in-state electrical corporation at monthly average rates equal to or greater than the applicable target price, as determined by the Energy Commission.~~

(ii) ~~Derives from a utility-owned facility that is receiving, or is eligible to receive, recovery of above-market facility costs through a competitive transition charge. Is that portion of electricity generation attributable to the use of qualified agricultural biomass fuel, for a facility that is 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 excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

~~(c) (1) Thirty percent of the money, up to one hundred sixty-two million dollars (\$162,000,000);~~

~~(d) (1) Fifty-one and one-half percent of the funds collected pursuant to paragraph (3) of subdivision (c) of Section 381, shall be used for programs designed to foster the development of new in-state renewable electricity generation technology facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide. Funds to further the purposes of this subdivision may be committed for multiple years towards achieving the goals, to the extent possible, of the California Renewables Portfolio Standard Program established pursuant to Article 16 (commencing with Section 399.11).~~

(2) Any funds used for new in-state renewable electricity generation ~~technology~~ 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 one and one-half cents (\$0.015) per kilowatthour, are awarded to the lowest bidders, provided that not more than 25 percent of the funds allocated 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 the date that a project begins electricity production, provided that the project shall be operational prior to January 1, 2002, unless the State Energy Resources Conservation and Development Commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer. Upon making this finding, the State Energy Resources Conservation and Development Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007.~~

(C) ~~The amount of funds expended shall be increased for each successive year during the period from January 1, 1998, to January 1, 2002, as fewer projects are expected to be funded during the first few years after funding becomes available.~~

~~(D) All funds shall be awarded in the form of supplemental energy payments to projects selected by retail sellers to fulfill their obligations under the California Renewables Portfolio Standard Program pursuant to Article 16 (commencing with Section 399.11). The Energy Commission shall manage the funds in a manner that ensures the availability of supplemental energy payments to support the renewables portfolio standard established by Sections 399.14 and 399.15. Funds not required for this purpose may be allocated by the Energy Commission pursuant to the report.~~

(B) After reviewing the results of solicitations conducted by electrical corporations pursuant to Section 333, the Energy Commission shall do all of the following:

(i) Confirm that the facility has been selected by an electrical corporation, pursuant to a commission approved process, to supply electricity under a long-term contract.

(ii) Award supplemental energy payments to the facility for any above-market prices approved by the commission pursuant to Sections 333 and 399.15, subject to caps established by the Energy Commission. These caps shall be designed to provide for a viable renewable energy market capable of achieving the goals of Article 16 (commencing with Section 399.11). The Energy Commission may waive applicability of the caps to accommodate a facility if it is demonstrated, to the Energy Commission's satisfaction, that operation of the facility would provide substantial economic and environmental benefits to end use customers subject to the funding requirements of Section 381.

(iii) Supplemental energy payments shall be awarded for the lesser of 10 years or the duration of the contract with the electrical corporation, commencing on the date of operation. The Energy Commission may reduce or terminate the awards for projects that fail either to commence and maintain operations consistent with the contractual obligations to an electrical corporation or that fail to meet eligibility requirements, pursuant to subparagraph (G).

(C) After reviewing contracts between facilities and retail suppliers other than electrical corporations, the Energy Commission shall do the following:

(1) Confirm that the facility has been selected by a retail seller other than an electrical corporation to supply electricity under a long-term contract.

(2) Award supplemental energy payments to the facility based on any above-market costs calculated by the Energy Commission pursuant to the criteria established in Section 399.15. Supplemental payments shall only be awarded if there are reasonable above-market costs that have been reviewed and approved by the Energy Commission. The Energy Commission may reduce or terminate the awards for projects that fail to commence operations consistent with contractual obligations or program guidelines.

(D) The Energy Commission may determine as part of a solicitation, that a facility that does not meet the definition of "in-state renewable electricity generation facility" solely because it is located outside the state, is eligible for funding under this subdivision if it meets both of the following requirements:

(i) It is located so that it is or will be connected to the Western Systems Coordinating Council (WSCC) transmission system.

(ii) *It is developed with guaranteed contracts to sell its generation to end use customers subject to the funding requirements of Section 381, or to marketers that provide this guarantee for resale of the generation, for a period of time at least equal to the amount of time it receives incentive payments under this subdivision.*

(E) ~~Facilities that are eligible to receive payments from the New Renewable Resources Account created pursuant to paragraph (2) of subdivision (a) of Section 445 shall be certified as specified in the report and funding pursuant to this subdivision shall be registered in accordance with criteria developed by the Energy Commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:~~

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

(ii) *Is used onsite and or is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.*

(iii) *Is produced by a facility that is owned by customer-owned electricity generating systems an electrical corporation or a local publicly owned electric utility as defined in subdivision (d) of Section 9604.*

(iv) *Is a hydroelectric generation project that will require a new or increased diversion, as defined in Section 5100 of the Water Code.*

~~(E)~~

(F) ~~Eligibility to compete for funds or to receive funds shall not be contingent upon the location or nature of the power purchaser~~ *be contingent upon having to sell the output of the renewable electricity generation facility to customers subject to the funding requirements of Section 381.*

(G) *Facilities generating electricity from biomass energy shall be considered an in-state renewable electricity generation facility to the extent that they certify to the Energy Commission that fuel utilization is limited to the following:*

(i) *Agricultural crops and agricultural wastes and residues.*

(ii) Solid waste materials such as waste pallets, crates, dunnage, manufacturing and construction wood wastes, landscape or right-of-way tree trimmings, mill residues that are directly the result of the milling of lumber, and rangeland maintenance residues.

(iii) Wood and wood wastes that meet all of the following requirements:

(I) Have been harvested pursuant to an approved timber harvest plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973 (Ch. 8 (commencing with Sec. 4511), Pt. 2, Div. 4, P.R.C.).

(II) Have been harvested for the purpose of forest fire fuel reduction or forest stand improvement.

(III) Do not transport or cause the transportation of species known to harbor insect or disease nests outside zones of infestation or current quarantine zones, as identified by the Department of Food and Agriculture or the Department of Forestry and Fire Protection, unless approved by the Department of Food and Agriculture and the Department of Forestry and Fire Protection.

(3) Production incentives awarded under this subdivision prior to January 1, 2002, shall commence on the date that a project begins electricity production, provided that the project was operational prior to January 1, 2002, unless the Energy Commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer. Upon making a finding that the project will not be operational due to circumstances beyond the control of the developer, the Energy Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007.

~~(3)~~

(4) Repowered wind projects existing facilities shall be eligible for funding under this subdivision if the new investment is capital investment to repower the existing facility equals at least 80 percent of the value of the repowered facility.

~~(d) (1) Ten percent of the money~~

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

(e) (1) Seventeen and one-half percent of the funds collected pursuant to paragraph (3) of subdivision (c) of Section 381, ~~up to fifty-four million dollars (\$54,000,000),~~ shall be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications. ~~Funds to further the purposes of this subdivision may be committed for multiple years.~~

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

(A) Funding for emerging technologies shall be provided through a competitive, market-based process that shall be in place for a period of not less than ~~four~~ five years, and shall be structured so as to allow eligible emerging technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program.

(B) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to subparagraph (C) ~~of paragraph (2) of subdivision (d),~~ to purchasers, lessees, lessors, or sellers of eligible electricity generating systems. Incentives shall benefit the end-use consumer of renewable generation by directly and exclusively reducing the *purchase or lease* cost of the eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical generating capacity of the system measured in watts. ~~The amount of the per-watt incentive shall decline over the term of the program, with a corresponding increase in the amount of total electrical capacity eligible for the incentive, thereby encouraging the manufacturers and suppliers of eligible systems to reduce system costs. Incentives shall be limited to a maximum percentage of the system price, as defined by the State Energy Resources Conservation and Development Commission, and the maximum incentive percentage shall decline over the term of the program, as shall the per-watt incentive, in amounts to be determined by the State Energy Resources Conservation and Development Commission, or the amount of electricity production of the system, measured in kilowatthours determined by the Energy Commission.~~

(C) Eligible distributed emerging technologies are photovoltaic, solar thermal electric, fuel cell technologies that utilize renewable fuels, and wind turbines of not more than ~~ten~~ 50

1 kilowatts rated electrical *generating* capacity per customer site,
2 ~~provided that the technologies meet the and other distributed~~
3 ~~renewable emerging technologies that meet the emerging~~
4 ~~technology eligibility criteria contained in the report prepared by~~
5 ~~State Energy Resources Conservation and Development~~
6 ~~Commission established by the Energy Commission.~~ Eligible
7 electricity generating systems are intended primarily to offset part
8 or all of the consumer's own electrical ~~energy~~ *electricity* demand,
9 and shall not be owned by ~~electrical corporations or local~~ publicly
10 owned *electric* utilities, *nor* be located at a customer site that is not
11 receiving distribution service from ~~existing in-state electrical~~
12 ~~corporations an electrical corporation that is subject to Section~~
13 ~~381 and contributing funds to support programs under this section.~~
14 ~~Not less than 60 percent of the available incentive funds shall be~~
15 ~~reserved for systems of 10 kilowatts rated electrical capacity or~~
16 ~~smaller, and not less than 15 percent of the funds shall be reserved~~
17 ~~for systems of 100 kilowatts rated electrical capacity or smaller.~~
18 All eligible electricity generating system components shall be new
19 and unused, ~~and~~ shall not have been previously placed in service
20 in any other location or for any other application, *and shall have*
21 *a warranty of not less than five years to protect against defects and*
22 *undue degradation of electrical generation output.* Systems and
23 their fuel resource shall be located on the *same* premises of the
24 end-use consumer ~~of the electricity produced where the consumers~~
25 *own electricity demand is located*, and all eligible electricity
26 generating systems shall be connected to the utility grid in
27 California. *The Energy Commission may require eligible*
28 *electricity generating systems to have meters in place to monitor*
29 *and measure a system's performance and generation. Only systems*
30 *that will be operated in compliance with applicable law and the*
31 *rules of the commission shall be eligible for funding.*

32 (D) ~~The State Energy Resources Conservation and~~
33 ~~Development Commission Commission~~ shall also determine, in
34 collaboration with industry and consumer interests, if a program
35 provision limiting the amount of funds available for any single
36 project is warranted, and determine how federal, state, or other
37 funds or incentives not related to this section that are already
38 available, or that may become available for eligible electricity
39 generating systems, may impact the availability of funds allocated
40 under this section, if at all. ~~The emerging renewable technologies~~

~~program shall be implemented not later than March 31, 1998, and incentives shall be available for eligible electricity generating systems that are placed in service after January 1, 1998, in accordance with the program provisions developed by the State Energy Resources Conservation and Development Commission. However, projects placed in service after January 1, 1998, and prior to September 1, 1998, shall not be subject to limits, if any, that may be determined by the commission, pursuant to this subparagraph limit the amount of funds available for any system or project of multiple systems and reduce the level of funding for any system or project of multiple systems that has received, or may be eligible to receive, any government or utility funds, incentives, or credit.~~

~~(e) Fifteen percent of the money~~

(E) In awarding funding, the Energy Commission may provide preference to systems that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(F) In awarding funding, the Energy Commission shall develop and implement eligibility criteria and a system that provides preference to systems based upon system performance, taking into account factors, including, but not limited to, shading, insulation levels, and installation orientation.

~~(f) (1) Ten percent of the funds collected pursuant to paragraph (3) of subdivision (c) of Section 381, up to eighty-one million dollars (\$81,000,000), shall 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 to provide customer credits to customers that entered into a direct transaction on or before September 20, 2001, for purchases of electricity produced by registered in-state renewable electricity generating facilities.~~

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

~~(1) (A) Fourteen percent of the money, up to seventy-five million six hundred thousand dollars (\$75,600,000), shall be~~

~~expended to provide customer credits for purchases of renewable energy produced by certified energy providers. Customer-~~

(A) *Customer credits shall be awarded to California retail customers located in the service territory of an investor-owned utility electrical corporation that is subject to Section 381 who purchase qualifying renewable electric power that is contributing funds to support programs under this section, and that is purchasing qualifying electricity from renewable electricity generating facilities through transactions traceable to specific generation sources by any auditable contract trail or equivalent that provides commercial verification that the electricity source claimed has been sold not more than once to a retail customer. Credits may be given without regard to whether the power supplier is also receiving funds under any other subdivision of this section from the claimed renewable electricity generating facilities has been sold once and only once to a retail customer.*

(B) Credits awarded pursuant to this paragraph may be paid directly to *electric service providers, energy marketers, aggregators, or generators if those persons or entities account for the credits on the recipient customer's utility bills. Credits shall may not exceed one and one-half cents (\$0.015) per kilowatthour. Credits awarded to members of the combined class of customers, other than residential and small commercial customers, shall may not exceed one thousand dollars (\$1,000) per customer in 1998 and 1999 per calendar year. In no event may more than 20 percent of the total customer incentive funds be awarded to members of the combined class of customers other than residential and small commercial customers. Thereafter, the State Energy Resources Conservation and Development Commission shall determine by January 10 of each year the average customer incentive rebate level paid over the preceding calendar year. In the event that the payments have remained at the one and one-half cents (\$0.015) per kilowatthour cap over the preceding calendar year, the one thousand dollars (\$1,000) per customer cap shall be removed for that calendar year, except that in no event shall more than fifteen million dollars (\$15,000,000) of the total customer incentive funds be awarded to members of the combined class of customers other than residential and small commercial customers.*

(C) ~~Funding for credits pursuant to this paragraph shall be increased for each successive year during the period from January~~

1 ~~1, 1998, to January 1, 2002, to encourage the increasing use of~~
2 ~~those credits. Credits awarded pursuant to this paragraph are~~
3 ~~subject to the following additional limitations:~~

4 (i) *No credits shall be awarded for any customer signing*
5 *contracts with an electric service provider after September 20,*
6 *2001.*

7 (ii) *Credits may not be awarded for procurement from projects*
8 *receiving supplemental energy payments under subdivision (c) of*
9 *this section.*

10 (D) ~~The State Energy Resources Conservation and~~
11 ~~Development Commission shall develop interim criteria and~~
12 ~~procedures for the certification of energy providers and for the~~
13 ~~identification of energy purchasers who identification of energy~~
14 ~~purchasers and providers that are eligible to receive funds~~
15 ~~pursuant to this paragraph through a process consistent with this~~
16 ~~paragraph. The These criteria and procedures shall apply only to~~
17 ~~funding eligibility and shall may not extend to other renewable~~
18 ~~marketing claims.~~

19 (E) ~~The commission shall notify the State Energy Resources~~
20 ~~Conservation and Development Commission in writing within 10~~
21 ~~days of revoking or suspending the registration of any electric~~
22 ~~service provider pursuant to paragraph (4) of subdivision (b) of~~
23 ~~Section 394.25.~~

24 ~~(2)—~~

25 (F) *By March 31, 2003, the Energy Commission shall report to*
26 *the Governor and the Legislature on how to most effectively utilize*
27 *the funds for customer credits, including whether, and under what*
28 *conditions, the program should be continued. The report shall*
29 *include an examination of trends in markets for renewable energy,*
30 *including the trading of nonenergy attributes, and the role of*
31 *customer credits in such markets. The report will recommend an*
32 *appropriate funding allocation for the customer credits and how*
33 *implementation of the customer credits should be structured, if*
34 *appropriate.*

35 (g) ~~One percent of the money, up to five million four hundred~~
36 ~~thousand dollars (\$5,400,000), funds collected pursuant to~~
37 ~~paragraph (3) of subdivision (c) of Section 381 shall be expended~~
38 ~~used in accordance with the report to promote renewable energy~~
39 ~~and to disseminate information on renewable energy technologies,~~
40 ~~including emerging renewable technologies, and to help develop~~

1 a consumer market for renewable energy and for small-scale
2 emerging renewable energy technologies.

3 ~~(f)–~~

4 ~~(h) (1) The State Energy Resources Conservation and~~
5 ~~Development Commission shall adopt guidelines governing the~~
6 ~~funding programs authorized under this section, at a publicly~~
7 ~~noticed meeting offering all interested parties an opportunity to~~
8 ~~comment. Substantive changes to the guidelines shall may not be~~
9 ~~adopted without at least 10 days' written notice to the public. The~~
10 ~~public notice of meetings required by this paragraph shall may not~~
11 ~~be less than 30 days. Notwithstanding any other provision of law,~~
12 ~~any guidelines adopted pursuant to this section shall be deemed to~~
13 ~~satisfy exempt from the requirements of Chapter 3.5 (commencing~~
14 ~~with Section 11340) of Division 3 of Title 2 of the Government~~
15 ~~Code. The Legislature declares that the changes made to this~~
16 ~~paragraph by the act amending this section during the 2002~~
17 ~~portion of the 2001–02 Regular Session are declaratory of, and not~~
18 ~~a change in, existing law.~~

19 ~~(2) The State Energy Resources Conservation and~~
20 ~~Development Commission shall, in collaboration with eligible~~
21 ~~emerging technology industry stakeholders and consumer~~
22 ~~interests, complete the emerging technology program design, as~~
23 ~~outlined in subdivision (d), and implement its provisions. Funds~~
24 ~~to further the purposes of this section may be committed for~~
25 ~~multiple years.~~

26 (3) Awards made pursuant to this section are grants, subject to
27 appeal to the State Energy Resources Conservation and
28 Development Commission upon a showing that factors other than
29 those described in the guidelines adopted by the State Energy
30 Resources Conservation and Development Commission were
31 applied in making the awards and payments. Any actions taken by
32 an applicant to apply for, or become or remain eligible and
33 certified registered to receive, payments or awards, including
34 satisfying conditions specified by the State Energy Resources
35 Conservation and Development Commission, shall not constitute
36 the rendering of goods, services, or a direct benefit to the State
37 Energy Resources Conservation and Development Commission.

38 ~~(g)–~~

39 ~~(i) The State Energy Resources Conservation and~~
40 ~~Development Commission shall report to the Legislature on or~~

1 before May 31, 2000, and on or before May 31 of every second
 2 year thereafter, regarding the results of the mechanisms funded
 3 pursuant to this section. Reports prepared pursuant to this section
 4 shall include a description of the allocation of funds among
 5 existing, new and emerging technologies; the allocation of funds
 6 among programs, including consumer-side incentives; and the
 7 need for the reallocation of money among those technologies. *The*
 8 *reports shall discuss the progress being made toward achieving the*
 9 *17 percent target provided in subdivision (a) by each funding*
 10 *category authorized pursuant to subdivisions (c), (d), (e), (f), and*
 11 *(g) of this section.* The reports shall also address the allocation of
 12 funds from interest on the accounts described in this section, *and*
 13 money in the accounts described in subdivision (e) of Section 381;
 14 ~~and money included in the accounts pursuant to Section 385.~~
 15 ~~Notwithstanding paragraph (4) of subdivision (b) of Section 383~~
 16 ~~or subdivisions (b), (c), (d), and (e), (f), and (g) of this section,~~
 17 money may be reallocated without further legislative action
 18 among existing, new, and emerging technologies and
 19 consumer-side programs in a manner consistent with the report
 20 *and with the latest report provided to the Legislature pursuant to*
 21 *this subdivision, except that reallocations may not reduce the*
 22 *allocation established in subdivision (d) nor increase the*
 23 *allocation established in subdivision (c).*

24 (j) *The Energy Commission shall, by December 1, 2003,*
 25 *prepare and submit to the Legislature a comprehensive renewable*
 26 *electricity generation resource plan that describes the renewable*
 27 *resource potential available in California, and recommendations*
 28 *for a plan for development to achieve the target of increasing the*
 29 *amount of electricity generated from renewable sources per year,*
 30 *so that it equals 17 percent of the total electricity generated for*
 31 *consumption in California by 2006. The Energy Commission shall*
 32 *consult with the commission, electrical corporations, and the*
 33 *Independent System Operator, in the development and preparation*
 34 *of the plan.*

35 (k) *The Energy Commission shall participate in proceedings at*
 36 *the commission that relate to or effect efforts to stimulate the*
 37 *development of electricity generated from renewable sources, in*
 38 *order to obtain coordination of the state's efforts to achieve the*
 39 *target of increasing the amount of electricity generated from*

1 *renewable sources per year, so that it equals 17 percent of the total*
2 *electricity generated for consumption in California by 2006.*

3 *(l) The Energy Commission may expend up to 1 percent of the*
4 *funds collected pursuant to paragraph (3) of subdivision (c) of*
5 *Section 381 for any of its costs of implementing and administering*
6 *Article 16 (commencing with Section 399.11).*

7 *SEC. 3. Section 387 is added to the Public Utilities Code, to*
8 *read:*

9 *387. (a) Each governing body of a local publicly owned*
10 *electric utility, as defined in Section 9604, shall be responsible for*
11 *implementing and enforcing the renewables portfolio standard*
12 *consistent with Article 16 (commencing with Section 399.11).*

13 *(b) Each local publicly owned electric utility shall report, on an*
14 *annual basis, to the State Energy Resources Conservation and*
15 *Development Commission, the following:*

16 *(1) Expenditures of public goods funds collected pursuant to*
17 *Section 385 for renewable energy resource development. Reports*
18 *shall contain a description of programs, expenditures and*
19 *expected or actual results.*

20 *(2) The resource mix used to serve its customers by fuel type.*
21 *Reports shall contain the contribution of each type of renewable*
22 *energy resource with separate categories for those fuels*
23 *considered eligible renewable energy resources as defined by*
24 *Section 399.12.*

25 *SEC. 4. Section 390 of the Public Utilities Code is amended*
26 *to read:*

27 *390. (a) Subject to applicable contractual terms, energy*
28 *prices paid to nonutility power generators by a public utility*
29 *electrical corporation based upon the commission's prescribed*
30 *"short run avoided cost energy methodology" shall be determined*
31 *as set forth in subdivisions (b) and (c).*

32 *(b) Until the requirements of subdivision (c) have been*
33 *satisfied, short run avoided cost energy payments paid to*
34 *nonutility power generators by an electrical corporation shall be*
35 *based on a formula that reflects a starting energy price, adjusted*
36 *monthly to reflect changes in a starting gas index price in relation*
37 *to an average of current California natural gas border price indices.*
38 *The starting energy price shall be based on 12-month averages of*
39 *recent, pre-January 1, 1996, short-run avoided energy prices paid*
40 *by each public utility electrical corporation to nonutility power*

1 generators. The starting gas index price shall be established as an
2 average of index gas prices for the same annual periods.

3 (c) The short-run avoided cost energy payments paid to
4 nonutility power generators by electrical corporations shall be
5 based on the clearing price paid by the independent Power
6 Exchange if (1) the commission has issued an order determining
7 that the independent Power Exchange is functioning properly for
8 the purposes of determining the short-run avoided cost energy
9 payments to be made to nonutility power generators, and either (2)
10 the fossil-fired generation units owned, directly or indirectly, by
11 the public utility electrical corporation are authorized to charge
12 market-based rates and the “going forward” costs of those units
13 are being recovered solely through the clearing prices paid by the
14 independent Power Exchange or from contracts with the
15 Independent System Operator, whether those contracts are
16 market-based or based on operating costs for particular
17 utility-owned powerplant units and at particular times when
18 reactive power/voltage support is not yet procurable at
19 market-based rates at locations where it is needed, and are not
20 being recovered directly or indirectly through any other source, or
21 (3) the public utility electrical corporation has divested 90 percent
22 of its gas-fired generation facilities that were operated to meet load
23 in 1994 and 1995. However, nonutility power generators subject
24 to this section may, upon appropriate notice to the public utility
25 electrical corporation, exercise a one-time option to elect to
26 thereafter receive energy payments based upon the clearing price
27 from the independent Power Exchange.

28 (d) If a nonutility power generator is being paid short-run
29 avoided costs energy payments by an electrical corporation by a
30 firm capacity contract, a forecast as-available capacity contract, or
31 a forecast as-delivered capacity contract on the basis of the
32 clearing price paid by the independent Power Exchange as
33 described in subdivision (c) above, the value of capacity in the
34 clearing price, if any, shall not be paid to the nonutility power
35 generator. The value of capacity in the clearing price, if any, equals
36 the difference between the market clearing customer demand bid
37 at the level of generation dispatched by the independent Power
38 Exchange and the highest supplier bid dispatched.

39 (e) Short-run avoided energy cost payments made pursuant to
40 this section are in addition to contractually specified capacity

1 payments. Nothing in this section shall be construed to affect,
2 modify or amend the terms and conditions of existing nonutility
3 power generators' contracts with respect to the sale of energy or
4 capacity or otherwise.

5 (f) Nothing in this section shall be construed to limit the level
6 of transition cost recovery provided to utilities under electric
7 industry restructuring policies established by the commission.

8 (g) The term "going forward costs" shall include, but not be
9 limited to, all costs associated with fuel transportation and fuel
10 supply, administrative and general, and operation and
11 maintenance; provided that, for purposes of this section, the
12 following shall not be considered "going forward costs": (1)
13 commission-approved capital costs for capital additions to
14 fossil-fueled powerplants, provided that such additions are
15 necessary for the continued operation of the powerplants utilized
16 to meet load and such additions are not undertaken primarily to
17 expand, repower or enhance the efficiency of plant operations; or,
18 (2) commission-approved operating costs for particular
19 utility-owned powerplant units and at particular times when
20 reactive power/voltage support is not yet procurable at
21 market-based rates in locations where it is needed, provided that
22 the recovery shall end on December 31, 2001.

23 (h) *Any nonutility power generator using renewable fuels that*
24 *has entered into a contract with an electrical corporation prior to*
25 *December 31, 2001, specifying fixed energy prices for five years*
26 *of output may elect an additional five years of fixed energy*
27 *payments, upon expiration of the initial five year term, at a price*
28 *to be determined by the commission.*

29 SEC. 5. Article 16 (commencing with Section 399.11) is added
30 to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code,
31 to read:

32
33 Article 16. California Renewables Portfolio Standard
34 Program
35

36 399.11. The Legislature finds and declares all of the
37 following:

38 (a) In order to attain a target of 20 percent renewable energy
39 for the State of California and for the purposes of increasing the
40 diversity, reliability, public health and environmental benefits of

1 *the energy mix, it is the intent of the Legislature that the California*
 2 *Public Utilities Commission and the State Energy Resources*
 3 *Conservation and Development Commission implement the*
 4 *California Renewables Portfolio Standard Program described in*
 5 *this article.*

6 *(b) Increasing California's reliance on renewable energy*
 7 *resources will promote stable electricity prices, protect public*
 8 *health, improve environmental quality, stimulate sustainable*
 9 *economic development, create new employment opportunities,*
 10 *and reduce reliance on imported fuels.*

11 *(c) The development of renewable energy resources will*
 12 *ameliorate air quality problems throughout the state and improve*
 13 *public health by reducing the burning of fossil fuels and the*
 14 *associated environmental impacts.*

15 *(d) Uncontrolled natural gas prices have the potential to cause*
 16 *serious economic damage to the State of California and measures*
 17 *must be taken to avoid overreliance on any one fuel for future*
 18 *electric generation needs.*

19 *(e) The enactment of a renewables portfolio standard will*
 20 *benefit low-income communities and communities of color that*
 21 *experience disproportionate impacts from air pollution caused by*
 22 *electric generating facilities that burn fossil fuels. The Legislature*
 23 *intends that these communities shall receive economic and*
 24 *environmental benefits associated with the siting of renewable*
 25 *generation.*

26 *(f) The California Renewables Portfolio Standard is intended*
 27 *to complement the Renewable Energy Program administered by*
 28 *the State Energy Resources Conservation and Development*
 29 *Commission and established pursuant to Sections 383.5 and 445.*

30 *399.12. For purposes of this article, the following terms have*
 31 *the following meanings:*

32 *(a) "Eligible renewable energy resource" means an electric*
 33 *generating facility that is one of the following:*

34 *(1) The facility is certified by the State Energy Resources*
 35 *Conservation and Development Commission as eligible to receive*
 36 *funding from programs authorized under Section 383.5.*

37 *(2) The facility is a geothermal, digester gas or landfill gas*
 38 *generation technology that, as of December 30, 2001, sold its*
 39 *output to a California electrical corporation under a long-term*

1 contract entered into pursuant to the federal Public Utility
2 Regulatory Policies Act of 1978 (Public Law 95-617).

3 (3) A geothermal generation facility that was divested by a
4 California electrical corporation or local publicly owned electric
5 utility at any time prior to January 1, 2002, and whose output is
6 purchased by any California electrical corporation. Output from
7 these facilities shall be eligible only for the purpose of adjusting
8 a retail seller's baseline quantity of eligible renewable energy
9 resources, except for that output that satisfies subparagraph (C)
10 of paragraph (1) of subdivision (c) of Section 399.6. All such
11 facilities owned by the same entity and that use the same steamfield
12 shall be considered a single facility for purposes of determining if
13 the output satisfies subparagraph (C) of paragraph (1) of
14 subdivision (c) of Section 399.6.

15 (b) "Retail seller" means an entity engaged in the retail sale of
16 electricity to end-use customers, including any of the following:

17 (1) An electrical corporation, as defined in Section 218.

18 (2) A community choice aggregator.

19 (3) A local publicly owned electric utility as defined by
20 subdivision (d) of Section 9604. A local publicly owned electrical
21 utility as defined by subdivision (d) of Section 9604 shall be subject
22 only to Section 387 for purposes of compliance with the
23 renewables portfolio standard obligation.

24 (4) An electric service provider, as defined in Section 218.3
25 subject to the following conditions:

26 (A) An electric service provider shall be considered a retail
27 seller under this article for sales to any customer acquiring service
28 after January 1, 2003.

29 (B) An electric service provider shall be considered a retail
30 seller under this article for sales to all its customers beginning on
31 January 1, 2005.

32 (5) "Retail seller" does not include either of the following:

33 (A) Self-generation serving customer load, consistent with
34 subdivision (b) of Section 218.

35 (B) The Department of Water Resources acting in its capacity
36 pursuant to Division 27 (commencing with Section 80000) of the
37 Water Code.

38 (c) "Renewables portfolio standard" means the specified
39 percentage of electricity generated by eligible renewable energy

1 *resources that a retail seller is required to procure in any given*
2 *year, as established pursuant to Sections 399.13 and 399.15.*

3 *(d) “Commission” means the Public Utilities Commission.*

4 *(e) “Energy Commission” means the State Energy Resources*
5 *Conservation and Development Commission.*

6 *399.13. The Energy Commission shall do all of the following:*

7 *(a) Certify eligible renewable energy resources that it*
8 *determines meet the criteria described in subdivision (a) of Section*
9 *399.12.*

10 *(b) Design and implement an accounting system to verify*
11 *compliance with the renewables portfolio standard by retail*
12 *sellers, to ensure that renewable energy output is counted only*
13 *once for the purpose of meeting the renewables portfolio standard*
14 *of this state or any other state, and for verifying retail product*
15 *claims in this state or any other state. In establishing the guidelines*
16 *governing this system, the Energy Commission shall collect data*
17 *from electricity market participants that the Energy Commission*
18 *deems necessary to verify compliance of retail sellers, in*
19 *accordance with the requirements of this article and the California*
20 *Public Records Act (Chapter 3.5 (commencing with Section 6250)*
21 *of Division 7 of Title 1 of the Government Code). In seeking data*
22 *from electrical corporations, the Energy Commission shall request*
23 *data from the commission. The commission shall collect data from*
24 *electrical corporations and remit the data to the Energy*
25 *Commission within 90 days of the request.*

26 *(c) Allocate and award supplemental energy payments*
27 *pursuant to subdivision (d) of Section 383.5 to eligible renewable*
28 *energy resources to reduce the cost of compliance with the*
29 *renewables portfolio standard by electrical corporations and*
30 *electric service providers.*

31 *(d) The Energy Commission shall consult with the commission*
32 *prior to establishing rules for compliance by retail sellers other*
33 *than electrical corporations and rules governing the awarding of*
34 *supplemental energy payments to all retail sellers. The Energy*
35 *Commission shall adopt guidelines governing the programs*
36 *authorized under this section at a publicly noticed meeting*
37 *offering all interested parties an opportunity to comment.*
38 *Substantive changes to the guidelines may not be adopted without*
39 *at least 10 days’ written notice to the public. The public notice of*
40 *meetings required by this paragraph may not be less than 30 days.*

1 *Notwithstanding any other provision of law, any guidelines*
2 *adopted pursuant to this section shall be exempt from the*
3 *requirements of Chapter 3.5 (commencing with Section 11340) of*
4 *Part 1 of Division 3 of Title 2 of the Government Code.*

5 *399.14. The Energy Commission shall enforce and monitor*
6 *compliance with the renewables portfolio standard by retail sellers*
7 *other than electrical corporations and local publicly owned*
8 *electric utilities. In enforcing compliance, the Energy Commission*
9 *shall do all of the following:*

10 *(a) Ensure that electric service providers, as defined in Section*
11 *218.3, procure a minimum percentage of renewable energy*
12 *resources for every customer served, located in the service*
13 *territory of an electrical corporation. In any given year, the*
14 *minimum percentage shall be equivalent to the difference between*
15 *the annual portfolio standard for the electrical corporation*
16 *serving the customer's geographic region and the percentage*
17 *represented by the share of eligible renewable energy resources*
18 *supported by the customer through nonbypassable charges*
19 *assessed pursuant to paragraph (2) of subdivision (a) of Section*
20 *367.*

21 *(b) Ensure that retail sellers other than electric service*
22 *providers and electrical corporations procure a minimum*
23 *percentage of renewable energy resources for every customer*
24 *served. The Energy Commission shall determine an initial*
25 *baseline and annual obligation for these retail sellers in a manner*
26 *consistent with the initial baselines and annual obligations*
27 *established for electrical corporations in Section 399.15.*

28 *(c) Establish flexible rules for compliance by retail sellers*
29 *other than electrical corporations including, but not limited to, the*
30 *banking of excess compliance by permitting retail sellers to apply*
31 *overcompliance in one year to no more than the following three*
32 *years. The Energy Commission may allow retail sellers other than*
33 *electrical corporations to receive credit for any early procurement*
34 *of eligible renewable energy resources prior to the first date of*
35 *compliance required under the renewables portfolio standard.*

36 *(d) Award supplemental energy payments pursuant to*
37 *subdivision (d) of Section 383.5 to eligible renewable energy*
38 *resources to reduce the cost of compliance by retail sellers other*
39 *than electrical corporations and local publicly owned electric*
40 *utilities. The Energy Commission shall allocate sufficient funds to*

1 ensure the availability of supplemental energy payments for
2 eligible renewable energy resources contracting with electric
3 service providers and community aggregators.

4 (e) If supplemental energy payments from the Energy
5 Commission are insufficient to cover above-market renewable
6 procurement costs, the Energy Commission shall allow retail
7 sellers other than electrical corporations to limit their annual
8 procurement obligations to the quantity of eligible renewable
9 energy resources that can be procured with available supplemental
10 energy payments. Assess and collect penalties on any retail seller
11 that is not an electrical corporation and fails to comply with this
12 article. Penalties shall be set at a level sufficient to ensure
13 compliance, as determined by the Energy Commission.

14 399.15. (a) In order to fulfill unmet long-term resource
15 needs, the commission shall establish a renewables portfolio
16 standard requiring all electrical corporations to procure a
17 minimum quantity of output from eligible renewable energy
18 resources as a specified percentage of total kilowatthours sold to
19 their retail end-use customers each calendar year, subject to all of
20 the following:

21 (1) An electric corporation shall not be required to make
22 payments to eligible renewable energy resources for contracts
23 approved by the commission pursuant to subdivision (c) of Section
24 333 that exceed the market prices established pursuant to
25 subdivision (c) of this section.

26 (2) The Energy Commission shall provide supplemental energy
27 payments from funds in the New Renewable Resources Account in
28 the Renewable Resource Trust Fund to eligible renewable energy
29 resources pursuant to Section 383.5 for costs approved by the
30 commission that exceed market prices. Indirect costs associated
31 with the purchase of eligible renewable energy resources, such as
32 imbalance energy charges, sale of excess energy, decreased
33 generation from existing resources, or transmission upgrades
34 shall not be eligible for supplemental energy payments.

35 (3) For purposes of setting annual purchase targets, the
36 commission shall establish an initial baseline for each electrical
37 corporation based on the actual percentage of retail sales
38 procured from eligible renewable energy resources in 2001, and,
39 to the extent applicable, adjusted going forward pursuant to
40 paragraph (3) of subdivision (a) of Section 399.12.

1 **(b)** *The commission shall implement annual purchase targets*
2 *for each electrical corporation as follows:*

3 **(1)** *Beginning on January 1, 2003, each electrical corporation*
4 *shall increase its total procurement of eligible renewable energy*
5 *resources by at least an additional 1 percent of retail sales per year*
6 *so that at least 20 percent of its retail sales are procured from*
7 *eligible renewable energy resources no later than December 31,*
8 *2015. An electrical corporation with at least 20 percent of retail*
9 *sales procured from eligible renewable energy resources in any*
10 *year shall not be required to increase its procurement of such*
11 *resources in the following year.*

12 **(2)** *Only for purposes of establishing these targets, the*
13 *commission shall include all power sold to retail customers by the*
14 *Department of Water Resources pursuant to Section 80100 of the*
15 *Water Code in the calculation of retail sales by an electrical*
16 *corporation.*

17 **(3)** *In the event that an electrical corporation fails to procure*
18 *sufficient eligible renewable energy resources in a given year to*
19 *meet any annual target established pursuant to this subdivision,*
20 *the electrical corporation shall procure additional eligible*
21 *renewable energy resources in subsequent years to compensate for*
22 *the shortfall.*

23 **(4)** *If supplemental energy payments from the Energy*
24 *Commission, in combination with the market prices approved by*
25 *the commission, are insufficient to cover the total energy payments*
26 *for approved contracts with eligible renewable energy resources,*
27 *the commission shall allow an electrical corporation to limit its*
28 *annual procurement obligation to the quantity of eligible*
29 *renewable energy resources that can be procured with available*
30 *supplemental energy payments.*

31 **(c)** *The commission shall establish a methodology to determine*
32 *the market price of electricity for terms corresponding to the length*
33 *of contracts with renewable generators, in consideration of the*
34 *following:*

35 **(1)** *The long-term market price of electricity for fixed price*
36 *contracts, determined pursuant to the electrical corporation's*
37 *procurement activities as set forth in Section 333 and this article.*

38 **(2)** *The long-term ownership, operating, and fixed-price fuel*
39 *costs associated with fixed-price electricity from new generating*
40 *facilities, and any consumer benefits resulting from reduced*

demand for natural gas, to the extent these benefits are not already reflected in the long-term costs of electricity.

(3) The value of different products including baseload, peaking and as-available output.

(d) The establishment of a renewables portfolio standard shall not constitute implementation by the commission of the federal Public Utility Regulatory Policies Act of 1978 (Public Law 95-617). The commission shall continue to implement any federal requirements pursuant to Section 390.

(e) The commission shall consult with the Energy Commission in calculating market prices under subdivision (c) and establishing other renewables portfolio standard policies.

SEC. 6. Section 399.25 is added to the Public Utilities Code, immediately following Section 399.2, to read:

399.25. (a) Notwithstanding any other provision in Sections 1001 to 1013, inclusive, an application of an electric corporation for a certificate authorizing the construction of new transmission facilities shall be deemed to be necessary to the provision of electric service for purposes of any determination made under Section 1003 if the commission finds that the new facility is necessary to facilitate achievement of the renewable power goals established in Article 16 (commencing with Section 399.11).

(b) With respect to a transmission facility described in subdivision (a) of this section, the commission shall take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission do not discriminate against a renewable generator and are fully reflected in any retail rates established by the commission. These actions shall include but are not limited to:

(1) Making findings, where supported by an evidentiary record, that transmission facilities built to accommodate such generators provide benefit to the transmission network and are necessary to facilitate the achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11).

(2) Directing the utility to which the generator will be interconnected, where the direction is not preempted by federal law, to seek the recovery through general transmission rates of the costs associated with transmission facilities built to accommodate such generators.

(3) Asserting the positions described in paragraphs (1) and (2) to the Federal Energy Regulatory Commission in appropriate proceedings.

(4) Allowing recovery in retail rates of any increase in transmission costs incurred by an electrical corporation resulting from the construction of the transmission facilities that are not approved for recovery in transmission rates by the Federal Energy Regulatory Commission after the commission determines that the costs were prudently incurred in accordance with subdivision (a) of Section 454.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

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

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

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

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

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

~~25620.1. (a) The commission shall develop, implement, and administer the Public Interest Research, Development, and Demonstration Program, which is hereby created. The program shall include a full range of research, development, and demonstration activities that, as determined by the commission, are not adequately provided for by competitive and regulated markets.~~

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

~~(1) The potential for exploiting emerging opportunities.~~

1 ~~(2) The potential for mitigating important energy system~~
2 ~~problems.~~

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

5 ~~(e) The commission shall review the portfolio adopted~~
6 ~~pursuant to subdivision (b) in accordance with the “Five-Year~~
7 ~~Investment Plan, 2002 Through 2006 for the Public Interest~~
8 ~~Energy Research (PIER) Program (Volume 1)” (P600-01-004a,~~
9 ~~March 1, 2001).~~

10 ~~(d) The term “award,” as used in this chapter, may include, but~~
11 ~~is not limited to, contracts, grants, interagency agreements, loans,~~
12 ~~purchase orders, and other financial agreements designed to fund~~
13 ~~public interest research, demonstration, and development projects~~
14 ~~or programs.~~

15 ~~SEC. 3. Section 25620.2 of the Public Resources Code is~~
16 ~~amended to read:~~

17 ~~25620.2. (a) The commission shall administer the program in~~
18 ~~a manner that is consistent with the purposes of Section 399.7 of~~
19 ~~the Public Utilities Code, and shall ensure that the program meets~~
20 ~~all of the following criteria:~~

21 ~~(1) Demonstrates a balance of benefits to all sectors that~~
22 ~~contribute to the funding under Section 381 of the Public Utilities~~
23 ~~Code.~~

24 ~~(2) Addresses key technical and scientific barriers.~~

25 ~~(3) Demonstrates a balance between short-term, mid-term, and~~
26 ~~long-term potential.~~

27 ~~(4) Ensures that research currently, previously, or about to be~~
28 ~~undertaken by research organizations is not unnecessarily~~
29 ~~duplicated.~~

30 ~~(b) To ensure the efficient implementation and administration~~
31 ~~of the program, the commission shall do both of the following:~~

32 ~~(1) Develop procedures for the solicitation of award~~
33 ~~applications for project or program funding, and to ensure efficient~~
34 ~~program management.~~

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

37 ~~(c) The commission may adopt regulations in accordance with~~
38 ~~the following procedures:~~

1 ~~(1) Prepare a preliminary text of the proposed regulation and~~
2 ~~provide a copy of the preliminary text to any person requesting a~~
3 ~~copy.~~

4 ~~(2) Provide public notice of the proposed regulation to any~~
5 ~~person who has requested notice of the regulations prepared by the~~
6 ~~commission. The notice shall contain all of the following:~~

7 ~~(A) A clear overview explaining the proposed regulation.~~

8 ~~(B) Instructions on how to obtain a copy of the proposed~~
9 ~~regulations.~~

10 ~~(C) A statement that if a public hearing is not scheduled for the~~
11 ~~purpose of reviewing a proposed regulation, any person may~~
12 ~~request, not later than 15 days prior to the close of the written~~
13 ~~comment period, a public hearing conducted in accordance with~~
14 ~~commission procedures.~~

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

17 ~~(4) Certify that all written comments were read and considered~~
18 ~~by the commission.~~

19 ~~(5) Place all written comments in a record that includes copies~~
20 ~~of any written factual support used in developing the proposed~~
21 ~~regulation, including written reports and copies of any transcripts~~
22 ~~or minutes in connection with any public hearings on the adoption~~
23 ~~of the regulation. The record shall be open to public inspection and~~
24 ~~available to the courts.~~

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

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

32 ~~(8) Adopt any proposed regulation at a regularly scheduled and~~
33 ~~noticed meeting of the commission. The regulation shall become~~
34 ~~effective immediately unless otherwise provided by the~~
35 ~~commission.~~

36 ~~(9) Publish any adopted regulation in a manner that makes~~
37 ~~copies of the regulation easily available to the public. Any adopted~~
38 ~~regulation shall also be made available on the Internet. The~~
39 ~~commission shall transmit a copy of an adopted regulation to the~~
40 ~~Office of Administrative Law for publication, or, if the~~

1 ~~commission determines that printing the regulation is impractical,~~
2 ~~an appropriate reference as to where a copy of the regulation may~~
3 ~~be obtained.~~

4 ~~(10) Notwithstanding any other provision of law, this~~
5 ~~subdivision provides an interim exception from the requirements~~
6 ~~of Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
7 ~~Division 3 of Title 2 of the Government Code for regulations~~
8 ~~required to implement Sections 25620.1 and 25620.2 that are~~
9 ~~adopted under the procedures specified in this subdivision.~~

10 ~~(11) This subdivision shall become inoperative on January 1,~~
11 ~~2007, unless a later enacted statute deletes or extends that date.~~
12 ~~However, after January 1, 2007, the commission is not required to~~
13 ~~repeat any procedural step in adopting a regulation that has been~~
14 ~~completed before January 1, 2007, using the procedures specified~~
15 ~~in this subdivision.~~

16 ~~SEC. 4. Section 25620.3 of the Public Resources Code is~~
17 ~~amended to read:~~

18 ~~25620.3. (a) The commission may, consistent with the~~
19 ~~requirements of Section 25620.2, provide awards to any~~
20 ~~individual or entity to participate in any or all of the planning,~~
21 ~~developing, executing, implementing, administering, evaluating,~~
22 ~~and supporting the program. The commission may solicit that~~
23 ~~expertise using, among other approaches, the methods set forth in~~
24 ~~Chapter 10 (commencing with Section 4525) of Division 5 of Title~~
25 ~~1 of the Government Code. The commission may also solicit for~~
26 ~~multiple awardees for similar work using, among other~~
27 ~~approaches, a commission-issued intradepartmental master~~
28 ~~services agreement. Regardless of the method of making the~~
29 ~~award, in the event that awards have been made to multiple entities~~
30 ~~and their subcontractors for similar purposes, the commission may~~
31 ~~select from among the awardees the particular expertise needed for~~
32 ~~a specified type of work. Selection of the particular expertise may~~
33 ~~be based solely on a review of qualifications, including the specific~~
34 ~~expertise required, availability of the expertise, or access to a~~
35 ~~resource of special relevance to the work, including, but not~~
36 ~~limited to, a data base, model, technical facility, or a collaborative~~
37 ~~or institutional affiliation that would expedite the quality and~~
38 ~~performance of the work.~~

39 ~~(b) If the committee of the commission with oversight of the~~
40 ~~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.~~

~~(e) 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 enters into these agreements, it shall be a party to these agreements and may share in the roles, responsibilities, risks, investments, and results.~~

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

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

~~(g) The commission may delegate to a public entity, in any award, its authority for a portion of the program, and any or all of the planning, developing, executing, implementing, administering, evaluation, and supporting functions. This delegation of authority includes the authority to conduct a solicitation using reasonable competitive bidding methods;~~

1 reasonable sole and single source methods, or the sole and single
2 source authorities of the program for subcontracts or agreements
3 and the execution of those agreements.

4 SEC. 5. ~~Section 25620.5 of the Public Resources Code is~~
5 ~~amended to read:~~

6 ~~25620.5. (a) The commission may solicit applications for~~
7 ~~awards, using a sealed competitive bid, competitive negotiation~~
8 ~~process, interagency agreement, single source, or sole source~~
9 ~~method. When scoring teams are convened to review and score~~
10 ~~proposals, the scoring teams may include persons not employed by~~
11 ~~the commission, as long as employees of the state constitute no less~~
12 ~~than 50 percent of the membership of the scoring team. A person~~
13 ~~participating on a scoring team may not have any conflict of~~
14 ~~interest with respect to the proposal before the scoring team.~~

15 ~~(b) A sealed bid method may be used when goods and services~~
16 ~~to be acquired can be described with sufficient specificity so that~~
17 ~~bids can be evaluated against specifications and criteria set forth~~
18 ~~in the solicitation for bids.~~

19 ~~(c) The commission may use a competitive negotiation process~~
20 ~~in any of the following circumstances:~~

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

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

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

26 ~~(4) Whenever there is a need to afford bidders an opportunity~~
27 ~~to revise their proposals.~~

28 ~~(5) Whenever oral or written discussions with bidders~~
29 ~~concerning the technical and price aspects of their proposals will~~
30 ~~provide better results to the state.~~

31 ~~(6) Whenever the price of the award is not the determining~~
32 ~~factor.~~

33 ~~(d) The commission may establish interagency agreements.~~

34 ~~(e) The commission may provide awards on a single source~~
35 ~~basis by choosing from among two or more parties or by soliciting~~
36 ~~multiple applications from parties capable of supplying or~~
37 ~~providing similar goods or services. The cost to the state shall be~~
38 ~~reasonable and the commission may only enter into a single source~~
39 ~~agreement with a particular entity if the commission determines~~
40 ~~that it is in the state's best interests.~~

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

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

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

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

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

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

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

~~(1) The commission, at least 30 days prior to taking an action pursuant to subdivision (f), notifies the Joint Legislative Budget 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 program established pursuant to this chapter. The panel, not later than 30 months after the enactment of this section, shall submit a final report to the Governor and to the Legislature, including any additional findings and recommendations regarding implementation of the program.~~

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

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

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

~~(b) In selecting projects, the commission shall consider, but is not limited to, the list of opportunity technologies developed in the~~

1 ~~most current energy development report produced pursuant to~~
2 ~~Section 25604, or a subset of those opportunity technologies.~~

3 ~~(e) The commission shall select the projects through~~
4 ~~competitive bid procedures, such as invitations for bids, requests~~
5 ~~for proposals, program opportunity notices, and multistep bids~~
6 ~~using preapplications, by demonstrating the need for sole source~~
7 ~~awards, or by evaluating small business grant and loan~~
8 ~~applications.~~

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

11 ~~(1) The potential of the project to reduce energy consumption~~
12 ~~or provide an alternative source of energy.~~

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

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

16 ~~(4) The ability of the project technology to be used throughout~~
17 ~~California.~~

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

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

21 ~~(7) The potential of the project for reducing adverse~~
22 ~~environmental impacts.~~

23 ~~(8) The potential of the project to stimulate economic~~
24 ~~development, employment, and tax revenues for California.~~

25 ~~(9) The potential of the project for reducing short-term and~~
26 ~~long-term energy costs for the ratepayers of California.~~

27 ~~(10) The need of the project for state financing.~~

28 ~~(11) The ability of the project to attract private and other public~~
29 ~~investment.~~

30 ~~(12) The investment payback period for the project.~~

31 ~~(13) The probability of success in overcoming the risk of the~~
32 ~~project.~~

33 ~~(14) The potential for stimulating small business competition~~
34 ~~in the field of alternative energy development.~~

35 ~~(15) The ability of the project to generate needed community~~
36 ~~economic development for participating local jurisdictions.~~

37 ~~(16) The extent of the applicant's financial participation.~~

38 ~~(17) The degree of innovation of the project.~~

~~(18) Whether the project is, in general, consistent with the energy policies of California regarding the energy technologies and priorities as set forth in the biennial report of the commission.~~

~~(19) The cost of the project.~~

~~(e) The commission shall apply the criteria specified in subdivision (d) consistently within each competitive bid solicitation.~~

~~(f) 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. 9. Section 25648.4 of the Public Resources Code is amended to read:~~

~~25648.4. The commission shall apply this chapter to research, development, demonstration, and commercialization projects that are not subject to Chapter 6 (commencing with Section 3800) of Division 3 and Chapter 7.1 (commencing with Section 25620), and Chapter 7.8 (commencing with Section 25680).~~

~~SEC. 10. Section 25684 of the Public Resources Code is amended to read:~~

~~25684. (a) The commission shall make loans and repayable research contracts, and may provide primary research contracts 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.~~

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

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

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

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

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

9 ~~(11) The investment payback period for the project.~~

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

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

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

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

17 ~~(16) The degree of innovation of the project.~~

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

21 {

22 ~~(b) Awards provided pursuant to this chapter are not subject to~~
23 ~~Article 4 (commencing with Section 10335) of Chapter 2 of Part~~
24 ~~2 of Division 2 of the Public Contract Code.~~

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

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

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

39 ~~(1) Cost-effective energy efficiency and conservation~~
40 ~~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).~~

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

~~(d) Notwithstanding any other provisions of this chapter, the commission may allow entities subject to its jurisdiction to extend the period for competition transition charge collection up to three months beyond its otherwise applicable termination of December 31, 2001, or to allow these entities to impose an alternative nonbypassable system benefits charge, so as to ensure that the aggregate portion of the research, environmental, and low-income~~

~~funds allocated to renewable resources shall equal five hundred forty million dollars (\$540,000,000) and that the costs specified in paragraphs (3), (4), and (5) of subdivision (c) are collected.~~

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

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

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

~~383.5. (a) It is the intent of the Legislature in establishing 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, digester gas, 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 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.~~

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

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

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

16 ~~(A) (i) Of the funding for existing renewable electricity~~
17 ~~generation facilities available pursuant to this subdivision, 75~~
18 ~~percent shall be used to fund first tier technologies, including~~
19 ~~biomass and solar electric technologies, and 25 percent shall be~~
20 ~~used to fund second tier wind technologies.~~

21 ~~(ii) The State Energy Resources Conservation and~~
22 ~~Development Commission shall reexamine the tier structure as~~
23 ~~proposed in the report and adjust the structure to reflect market~~
24 ~~conditions. The State Energy Resources Conservation and~~
25 ~~Development Commission may also consider inflation when~~
26 ~~adjusting the structure.~~

27 ~~(B) The State Energy Resources Conservation and~~
28 ~~Development Commission shall establish a cents per kilowatthour~~
29 ~~production incentive, not to exceed the payment caps per~~
30 ~~kilowatthour established in the report representing the difference~~
31 ~~between target prices and the market clearing price for electricity,~~
32 ~~if sufficient funds are available. If there are insufficient funds in~~
33 ~~any payment period to pay either the difference between the target~~
34 ~~and market price or the payment caps, production incentives shall~~
35 ~~be based on the amount determined by dividing available funds by~~
36 ~~eligible generation. The market price for electricity shall be~~
37 ~~determined by the State Energy Resources Conservation and~~
38 ~~Development Commission based on the energy prices paid to~~
39 ~~nonutility power generators as provided in Section 390, or on~~
40 ~~otherwise available measures of market price.~~

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

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

~~(ii) Is that portion of electricity generation attributable to the use of qualified agricultural biomass fuel, for a facility that is 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 may extend and reapprove a project award if it finds that the project will not be operational within the expected four-year period, due to circumstances specific to the project and beyond the control of the project developer. Upon making this finding, the State Energy Resources Conservation and Development Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond six years after the date of the applicable competitive solicitation or January 1, 2007, whichever is later.~~

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

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

~~(ii) 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.~~

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

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

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

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

13 ~~(F) In awarding funding, the State Energy Resources~~
14 ~~Conservation and Development Commission may provide~~
15 ~~preference to projects that provide tangible demonstrable benefits~~
16 ~~to communities with a plurality of minority or low-income~~
17 ~~populations.~~

18 ~~(3) Repowered existing facilities shall be eligible for funding~~
19 ~~under this subdivision if the capital investment to repower the~~
20 ~~existing facility equals at least 80 percent of the value of the~~
21 ~~repowered facility.~~

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

24 ~~(e) (1) Seventeen and one-half percent of the money collected~~
25 ~~pursuant to paragraph (6) of subdivision (c) of Section 381 shall~~
26 ~~be used for a multiyear, consumer-based program to foster the~~
27 ~~development of emerging renewable technologies in distributed~~
28 ~~generation applications.~~

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

32 ~~(A) Funding for emerging technologies shall be provided~~
33 ~~through a competitive, market-based process that shall be in place~~
34 ~~for a period of not less than five years, and shall be structured so~~
35 ~~as to allow eligible emerging technology manufacturers and~~
36 ~~suppliers to anticipate and plan for increased sale and installation~~
37 ~~volumes over the life of the program.~~

38 ~~(B) The program shall provide monetary rebates, buydowns, or~~
39 ~~equivalent incentives, subject to subparagraph (C), to purchasers,~~
40 ~~lessees, lessors, or sellers of eligible electricity generating~~

~~systems. Incentives shall benefit the end use consumer of renewable generation by directly and exclusively reducing the purchase or lease cost of the eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical capacity of the system measured in watts, or the amount of electricity production of the system, measured in kilowatthours. Incentives shall be limited to a maximum percentage of the system price, as determined by the State Energy Resources Conservation and Development Commission.~~

~~(C) Eligible distributed emerging technologies are photovoltaic, solar thermal electric, fuel cell technologies that utilize renewable fuels, and wind turbines of not more than 50 kilowatts rated electrical capacity per customer site, and other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the State Energy Resources Conservation and Development Commission. Eligible electricity generating systems are intended primarily to offset part or all of the consumer's own electrical energy demand, and shall not be owned by electrical corporations or local publicly owned electric utilities, nor be located at a customer site that is not receiving distribution service from an electrical corporation that is subject to Section 381 and contributing funds to support programs under this section. All eligible electricity generating system components shall be new and unused, shall not have been previously placed in service in any other location or for any other application, and shall have a warranty of not less than five years to protect against defects and undue degradation of electrical output. Systems and their fuel resources shall be located on the same premises of the end use consumer where the consumer's own electricity demand is located, and all eligible electricity generating systems shall be connected to the utility grid in California. The State Energy Resources Conservation and Development Commission may require eligible electricity generating systems to have meters in place to monitor and measure a system's performance and generation.~~

~~(D) The State Energy Resources Conservation and Development Commission may limit the amount of funds available for any system or project of multiple systems and reduce the level of funding for any system or project of multiple systems~~

1 that has received, or may be eligible to receive, any government
2 or utility funds, incentives, or credit.

3 (E) In awarding funding, the State Energy Resources
4 Conservation and Development Commission may provide
5 preference to systems that provide tangible demonstrable benefits
6 to communities with a plurality of minority or low-income
7 populations.

8 (f) (1) Ten percent of the money collected pursuant to
9 paragraph (6) of subdivision (e) of Section 381 shall be used to
10 provide customer credits for purchases of the renewable attributes
11 of renewable energy produced by registered generating facilities.

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

15 (A) Customer credits shall be awarded to California retail
16 customers located in the service territory of an electrical
17 corporation that is subject to Section 381 and contributing funds
18 to support programs under this section, and who are purchasing
19 qualifying renewable aspects of renewable electric power through
20 transactions traceable to specific generation sources by any
21 auditable contract trail or equivalent that provides commercial
22 verification that the renewable aspect of the electricity source
23 claimed has been sold once and only once to a retail customer.
24 Credits may be given without regard to whether the power supplier
25 is also receiving funds under any other subdivision of this section.

26 (B) Credits awarded pursuant to this paragraph may be paid
27 directly to electric service providers, energy marketers,
28 aggregators, or generators if those persons or entities account for
29 the credits on the recipient customer's bills. Credits may not
30 exceed one and one-half cents (\$0.015) per kilowatthour. Credits
31 awarded to members of the combined class of customers, other
32 than residential and small commercial customers, may not exceed
33 one thousand dollars (\$1,000) per customer per calendar year. In
34 no event may more than 10 percent of the total customer incentive
35 funds be awarded to members of the combined class of customers
36 other than residential and small commercial customers.

37 (C) The State Energy Resources Conservation and
38 Development Commission shall develop criteria and procedures
39 for the registration of energy providers and for the identification
40 of energy purchasers who are eligible to receive funds pursuant to

~~this paragraph through a process consistent with this paragraph. These criteria and procedures shall apply only to funding eligibility and may not extend to other renewable marketing claims.~~

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

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

~~(h) (1) The State Energy Resources Conservation and Development Commission shall adopt guidelines governing the funding programs authorized under this section, at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines may not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this paragraph may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this section shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Legislature declares that the changes made to this paragraph by the act amending this section during the 2002 portion of the 2001-02 Regular Session are declaratory of, and not a change in existing law.~~

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

~~(3) Awards made pursuant to this section are grants, subject to appeal to the State Energy Resources Conservation and Development Commission upon a showing that factors other than those described in the guidelines adopted by the State Energy Resources Conservation and Development Commission were applied in making the awards and payments. Any actions taken by an applicant to apply for, or become or remain eligible and~~

1 registered to receive, payments or awards, including satisfying
2 conditions specified by the State Energy Resources Conservation
3 and Development Commission, shall not constitute the rendering
4 of goods, services, or a direct benefit to the State Energy Resources
5 Conservation and Development Commission.

6 (i) ~~The State Energy Resources Conservation and~~
7 ~~Development Commission shall report to the Legislature on or~~
8 ~~before May 31, 2000, and on or before May 31 of every second~~
9 ~~year thereafter, regarding the results of the mechanisms funded~~
10 ~~pursuant to this section. Reports prepared pursuant to this~~
11 ~~subdivision shall include a description of the allocation of funds~~
12 ~~among existing, new and emerging technologies; the allocation of~~
13 ~~funds among programs, including consumer-side incentives; and~~
14 ~~the need for the reallocation of money among those technologies.~~
15 ~~The reports shall also address the allocation of funds from interest~~
16 ~~on the accounts described in this section, and money in the~~
17 ~~accounts described in subdivision (c) of Section 381.~~
18 ~~Notwithstanding subdivisions (c), (d), (e), (f), and (g) of this~~
19 ~~section, money may be reallocated without further legislative~~
20 ~~action among existing, new, and emerging technologies and~~
21 ~~consumer-side programs in a manner consistent with the report~~
22 ~~and with the latest report provided to the Legislature pursuant to~~
23 ~~this subdivision.~~

24 (j) ~~The State Energy Resources Conservation and~~
25 ~~Development Commission may expend up to one percent of the~~
26 ~~money collected pursuant to paragraph (6) of subdivision (c) of~~
27 ~~Section 381 for the statutory costs of implementing and~~
28 ~~administering a renewable portfolio standard that is imposed on~~
29 ~~the commission by Senate Bill 532 of the 2001-02 Regular~~
30 ~~Session, if that bill is enacted during the 2002 portion of the~~
31 ~~2001-02 Regular Session.~~

32 ~~SEC. 13. Section 394.25 of the Public Utilities Code is~~
33 ~~amended to read:~~

34 ~~394.25. (a) The commission may enforce the provisions of~~
35 ~~Sections 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against~~
36 ~~electric service providers as if those electric service providers were~~
37 ~~public utilities as defined in these code sections. Notwithstanding~~
38 ~~the above, nothing in this section grants the commission~~
39 ~~jurisdiction to regulate electric service providers other than as~~
40 ~~specifically set forth in this part. Electric service providers shall~~

1 continue to be subject to the provisions of Sections 2111 and 2112.
2 Upon a finding by the commission's executive director that there
3 is evidence to support a finding that the electric service provider
4 has committed an act constituting grounds for suspension or
5 revocation of registration as set forth in subdivision (b) of Section
6 394.25, the commission shall notify the electric service provider
7 in writing and notice an expedited hearing on the suspension or
8 revocation of the electric service provider's registration to be held
9 within 30 days of the notification to the electric service provider
10 of the executive director's finding of evidence to support
11 suspension or revocation of registration. The commission shall,
12 within 45 days after holding the hearing, issue a decision on the
13 suspension or revocation of registration, which shall be based on
14 findings of fact and conclusions of law based on the evidence
15 presented at the hearing. The decision shall include the findings of
16 fact and the conclusions of law relied upon.

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

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

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

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

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

31 (e) Pursuant to its authority to revoke or suspend registration,
32 the commission may suspend a registration for a specified period
33 or revoke the registration, or in lieu of suspension or revocation,
34 impose a moratorium on adding or soliciting additional customers.
35 Any suspension or revocation of a registration shall require the
36 electric service provider to cease serving customers within the
37 boundaries of investor-owned electric corporations, and the
38 affected customers shall be served by the electrical corporation
39 until the time when they may select service from another service
40 provider. Customers shall not be liable for the payment of any

1 ~~early termination fees or other penalties to any electric service~~
2 ~~provider under the service agreement if the serving electric service~~
3 ~~provider's registration is suspended or revoked.~~

4 ~~(d) The commission shall require any electric service provider~~
5 ~~whose registration is revoked pursuant to paragraph (4) of~~
6 ~~subdivision (b) to refund all of the customer credit funds that the~~
7 ~~electric service provider received from the State Energy Resources~~
8 ~~Conservation and Development Commission pursuant to~~
9 ~~paragraph (1) of subdivision (f) of Section 383.5. The repayment~~
10 ~~of these funds shall be in addition to all other penalties and fines~~
11 ~~appropriately assessed the electric service provider for committing~~
12 ~~those acts under other provisions of law. All customer credit funds~~
13 ~~refunded under this subdivision shall be deposited in the~~
14 ~~Renewable Resource Trust Fund for redistribution by the State~~
15 ~~Energy Resources Conservation and Development Commission~~
16 ~~pursuant to Section 383.5. This subdivision may not be construed~~
17 ~~to apply retroactively.~~

18 ~~SEC. 14. Section 445 of the Public Utilities Code is amended~~
19 ~~to read:~~

20 ~~445. (a) The Renewable Resource Trust Fund is hereby~~
21 ~~created in the State Treasury.~~

22 ~~(b) The following accounts are hereby created within the~~
23 ~~Renewable Resource Trust Fund:~~

24 ~~(1) The Existing Renewable Resources Account.~~

25 ~~(2) New Renewable Resources Account.~~

26 ~~(3) Emerging Renewable Resources Account.~~

27 ~~(4) Customer Credit Renewable Resources Account.~~

28 ~~(5) Renewable Resources Consumer Education Account.~~

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

32 ~~(d) Notwithstanding Section 383, that portion of revenues~~
33 ~~collected by electrical corporations for the benefit of in-state~~
34 ~~operation and development of existing and new and emerging~~
35 ~~renewable resource technologies, pursuant to paragraphs (3) and~~
36 ~~(6) of subdivision (e) of Section 381, shall be transmitted to the~~
37 ~~State Energy Resources Conservation and Development~~
38 ~~Commission at least quarterly for deposit in the Renewable~~
39 ~~Resource Trust Fund. After setting aside in the fund money that~~
40 ~~may be needed for expenditures authorized by the annual Budget~~

~~Act in accordance with subdivision (c), the Treasurer shall immediately deposit money received pursuant to this section into the accounts created pursuant to subdivision (b) in proportions designated by the State Energy Resources Conservation and Development Commission for the current calendar year. Notwithstanding Section 13340 of the Government Code, the money in the fund and the accounts within the fund are hereby continuously appropriated to the State Energy Resources Conservation and Development Commission without regard to fiscal year for the purposes enumerated in Section 383.5.~~

~~(e) Upon notification by the State Energy Resources Conservation and Development Commission, the Controller shall pay all awards of the money in the accounts created pursuant to subdivision (b) for purposes enumerated in Section 383.5. The eligibility of each award shall be determined solely by the State Energy Resources Conservation and Development Commission based on the procedures it adopts under subdivision (h) of Section 383.5. Based on the eligibility of each award, the State Energy Resources Conservation and Development Commission shall also establish the need for a multiyear commitment to any particular award and so advise the Department of Finance. Eligible awards submitted by the State Energy Resources Conservation and Development Commission to the Controller shall be accompanied by information specifying the account from which payment should be made and the amount of each payment; a summary description of how payment of the award furthers the purposes enumerated in Section 383.5; and an accounting of future costs associated with any award or group of awards known to the State Energy Resources Conservation and Development Commission to represent a portion of a multiyear funding commitment.~~

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

1 ~~(g) The State Energy Resources Conservation and~~
2 ~~Development Commission shall, on a quarterly basis, report to the~~
3 ~~Legislature on the implementation of this article. Those quarterly~~
4 ~~reports shall be submitted to the Legislature not more than 30 days~~
5 ~~after the close of each quarter and shall include information~~
6 ~~describing the awards submitted to the Controller for payment~~
7 ~~pursuant to this article, the cumulative commitment of claims by~~
8 ~~account, the relative demand for funds by account, a forecast of~~
9 ~~future awards, and other matters the State Energy Resources~~
10 ~~Conservation and Development Commission determines may be~~
11 ~~of importance to the Legislature.~~

12 ~~(h) The Department of Finance, commencing March 1, 1999,~~
13 ~~shall conduct an independent audit of the Renewable Resource~~
14 ~~Trust Fund and its related accounts annually, and provide an audit~~
15 ~~report to the Legislature not later than March 31 of each year for~~
16 ~~which this article is operative. The Department of Finance's report~~
17 ~~shall include information regarding revenues, payment of awards,~~
18 ~~reserves held for future commitments, unencumbered cash~~
19 ~~balances, and other matters that the Director of Finance determines~~
20 ~~may be of importance to the Legislature.~~

