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AMENDED IN SENATE AUGUST 18, 2003

AMENDED IN SENATE JULY 3, 2003

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AMENDED IN ASSEMBLY MAY 13, 2003

AMENDED IN ASSEMBLY MAY 6, 2003

AMENDED IN ASSEMBLY APRIL 22, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 914**

**Introduced by Assembly Member Reyes**  
**(Coauthor: Assembly Member Canciamilla)**  
*(Coauthor: Senator Bowen)*

February 20, 2003

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~~An act to amend Sections 53100, 53103, 53104, 53105, 53106, 53108.1, 53108.5, 53109, 53112, 53113, 53114, 53114.2, 53115, 53115.3, 53116, and 53117 of, to add Section 53102.5 to, to repeal Sections 53108, 53109.5, 53115.2, 53119, and 53120 of, and to repeal and add Section 53107 of, the Government Code, and to amend Sections 41001, 41007, 41009, 41010, 41011, 41012, 41015, 41016, 41017, 41018, 41020, 41021, 41025, 41027, 41030, 41031, 41136, 41137, 41137.1, 41138, 41140, 41141, 41142, and 41150 of the Revenue and Taxation Code, relating to public safety communications. An act to add Article 5.6 (commencing with Section 848) to Chapter 4~~



of Part 1 of Division 1 of the Public Utilities Code, relating to electricity.

## LEGISLATIVE COUNSEL'S DIGEST

AB 914, as amended, Reyes. ~~Public safety communications~~  
*Electricity: financing energy recovery.*

(1) *Existing law establishes the California Infrastructure and Economic Development Bank and authorizes the bank to make loans and provide other assistance to public and private entities to carry out various types of projects. The existing restructuring of the electrical services industry provides for the issuance of rate reduction bonds by the bank for the recovery of transition costs, as defined, by electrical corporations.*

*This bill would authorize the Public Utilities Commission to issue financing orders pursuant to the above provisions, to support the issuance of energy recovery bonds by the bank, secured by a dedicated rate component, for any electrical corporation that filed for federal bankruptcy protection or for reorganization pursuant to Chapter 11 of the Bankruptcy Code (11 U.S.C. Sec. 1101 et seq.) prior to December 31, 2002. The bonds would only be issued as part of a plan of reorganization endorsed by the commission to secure the emergence of the corporation from bankruptcy protection or to implement a confirmed plan, provided the commission finds that the corporation's ratepayers will benefit from lower rates as a result of the issuance of the bonds.*

*Since existing law makes any public utility, as defined, and any corporation other than a public utility, that violates the Public Utilities Act guilty of a crime, and the provisions of the bill would be within the act, this bill would impose a state-mandated local program by creating a new crime.*

(2) *The bill would declare that, due to the special circumstances applicable only to the Pacific Gas and Electric Company bankruptcy, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, and the enactment of a special statute is therefore necessary.*

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



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

~~Existing law establishes the Public Safety Communication Act of 2002.~~

~~The Warren 911 Emergency Assistance Act requires every local public agency to establish a telephone service that automatically connects a person dialing the digits 911 to an established public safety answering point through normal telephone service facilities. At the 911 public safety answering points serving an area where 5% or more of the population speak a specific primary language other than English, operators who speak each of these languages are required to be on duty or available at all times for “911” emergency services. The Communications Division within the Department of General Services is required to coordinate the implementation of systems established pursuant to the act and assist local public agencies and local public safety agencies in obtaining financial help to establish emergency telephone service.~~

~~This bill would revise and rename the act as the Telecommunications Emergency Response System Act, and would, among other things, rename the Communications Division within the Department of General Services as the Telecommunications Division, require the division to provide funding to local public agencies and local public safety agencies to establish and maintain a system, and require all public safety answering points to have access to operators who speak other languages, in addition to English, at all times for telecommunications emergency services.~~

~~The bill would eliminate statutory references to a 911 advisory committee.~~

~~(2) The Emergency Telephone Users Surcharge Act requires any person supplying intrastate telephone communication services, as specified, in the state to collect a surcharge imposed on amounts paid by every person in the state for intrastate telephone communication service. It requires the Department of General Services to annually determine a surcharge rate that it estimates will produce sufficient revenue to fund the current fiscal year’s costs, but prohibits the surcharge rate in any year to be greater than  $\frac{3}{4}$  of 1% nor less than  $\frac{1}{2}$  of 1%. It establishes the State Emergency Telephone Number Account into which the payments made pursuant to the act are deposited. It requires, upon appropriation, funds in the account to pay, among other things, bills submitted to the department by service suppliers or~~



~~communications equipment companies for the installation of, and ongoing expenses for, specified communications services.~~

~~This bill would, among other things, revise and rename the act as the Emergency Telecommunications Surcharge Act, require the surcharge to be collected for intrastate telecommunications services, and require the Department of General Services to annually determine a surcharge rate that it estimates will produce sufficient revenue to fund the current fiscal year’s telecommunications emergency response system costs. It would revise what expenses may be paid from the Emergency Telephone Number Account, as specified.~~

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 53100 of the Government Code is~~  
2 *SECTION 1. The Legislature finds and declares all of the*  
3 *following:*  
4 *(a) Pacific Gas and Electric Company (PG&E) has filed a*  
5 *voluntary petition for reorganization under Chapter 11 of the*  
6 *Bankruptcy Code (11 U.S.C. Sec. 1101 et seq.) to obtain protection*  
7 *from its creditors under the federal bankruptcy laws.*  
8 *(b) PG&E filed a plan to reorganize and emerge from*  
9 *bankruptcy that sought to strip the state of its ability to regulate*  
10 *many of the company’s assets and activities and transfers that*  
11 *jurisdiction to the Federal Energy Regulatory Commission.*  
12 *(c) PG&E and the Public Utilities Commission staff recently*  
13 *proposed a settlement of the PG&E bankruptcy case and related*  
14 *adversary proceedings that would retain state jurisdiction over*  
15 *PG&E’s assets and activities and allow the company to regain*  
16 *investment grade credit status. If approved by the commission, the*  
17 *proposed settlement will cost PG&E ratepayers more than an*  
18 *additional five billion dollars (\$5,000,000,000), and ensure that*  
19 *PG&E rates for electrical service remain far higher than rates for*  
20 *Southern California Edison, for nine years.*  
21 *(d) Evidence presented in commission Investigation No.*  
22 *02-04-026 demonstrates that ratepayers could save over two*  
23 *billion dollars (\$2,000,000,000) and still enable PG&E to emerge*  
24 *from bankruptcy, through the use of a securitized financing backed*  
25 *by a dedicated rate component.*



1 (e) This form of financing was successfully used to fund the 10  
2 percent rate reduction for residential and small commercial  
3 customers, pursuant to Assembly Bill 1890 (Chapter 854 of the  
4 Statutes of 1996) and Senate Bill 470 (Chapter 275 of the Statutes  
5 of 1997).

6 (f) The Legislature hereby finds and declares that the technical  
7 terms and conditions established in Sections 840 to 847, inclusive,  
8 of the Public Utilities Code were highly successful in allowing the  
9 issuance of rate reduction bonds with a high credit rating and  
10 favorable interest rates and that those technical terms and  
11 conditions also allowed the bonds to withstand the PG&E  
12 bankruptcy and the financial distress of Southern California  
13 Edison Company without interruption of payments to bondholders  
14 or impairment of the security for the bonds.

15 (g) It is the intent of the Legislature, and in the public interest,  
16 that PG&E's emergence from bankruptcy be accomplished at the  
17 lowest possible cost to the utility's ratepayers, without the loss of  
18 state regulatory jurisdiction over the utility's assets and activities.

19 (h) It is the further intent of the Legislature, and in the public  
20 interest, to adopt those same technical terms and conditions for the  
21 issuance of energy recovery bonds, modified only to the limited  
22 extent necessary to reflect the particular circumstances for this  
23 bond issuance, through the enactment of Article 5.6 (commencing  
24 with Section 848) of Chapter 4 of Part 1 of Division 1 of the Public  
25 Utilities Code.

26 (i) The Legislature finds and declares that, because of the  
27 unique circumstances applicable only to the PG&E bankruptcy, a  
28 statute of general applicability cannot be enacted within the  
29 meaning of subdivision (b) of Section 16 of Article IV of the  
30 California Constitution. Therefore, this special statute is  
31 necessary.

32 SEC. 2. Article 5.6 (commencing with Section 848) is added  
33 to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code,  
34 to read:

35

36 Article 5.6. Financing Energy Recovery

37

38 848. The commission may, for any electrical corporation that  
39 filed for federal bankruptcy protection or for reorganization  
40 pursuant to Chapter 11 of the Bankruptcy Code (11 U.S.C. Sec.



1 1101 et seq.) prior to December 31, 2002, issue financing orders  
2 pursuant to Section 849 to support the issuance of energy recovery  
3 bonds secured by a dedicated rate component as part of a plan of  
4 reorganization endorsed by the commission to secure the  
5 emergence of the corporation from bankruptcy protection or to  
6 implement a confirmed plan, so long as the commission finds that  
7 the corporation's ratepayers will benefit from lower rates as a  
8 result of the issuance of the bonds.

9 (b) The commission may, in a financing order issued pursuant  
10 to this section, and consistent with procedural requirements of  
11 Section 1705, authorize the issuance of energy recovery bonds in  
12 the amount, and in the manner, determined by the commission to  
13 provide the maximum benefit to the corporation's ratepayers in the  
14 context of a commission-endorsed plan of reorganization for the  
15 electrical corporation.

16 (c) Any commission-endorsed plan of reorganization shall  
17 provide for the dismissal of all pending federal court litigation  
18 brought by the electrical corporation against the commission or  
19 any other agency or official of the State of California for violation  
20 of the filed rate doctrine, for a taking of property, for impairment  
21 of the obligations of contract, or any related claims. No financing  
22 order shall be effective unless the dismissal is approved by the  
23 bankruptcy court, prior to confirmation of the plan of  
24 reorganization, or as part of the confirmed plan of reorganization.

25 (d) In confirming the commission's authority to approve a  
26 dedicated rate component to support the issuance of energy  
27 recovery bonds, the Legislature is not ratifying or endorsing any  
28 particular outcome of the federal bankruptcy proceeding, but  
29 rather is authorizing a means by which the commission can reduce  
30 ratepayer costs in a plan of reorganization.

31 849. For the purposes of this article, the following terms shall  
32 have the following meanings:

33 (a) "Bank" means the California Infrastructure and Economic  
34 Development Bank.

35 (b) "Financing entity" means the bank, any special purpose  
36 trust, as defined in Section 63010 of the Government Code, that is  
37 authorized by the bank to issue energy recovery bonds or acquire  
38 energy recovery property, or any other entity authorized by the  
39 bank to issue energy recovery bonds or acquire energy recovery  
40 property, or both. The bank may authorize an entity other than a



1 *special purpose trust, as defined in Section 63010 of the*  
2 *Government Code, to issue energy recovery bonds only if all of the*  
3 *following conditions are met:*

4 *(1) The bank by resolution has determined that allowing*  
5 *another entity to issue energy recovery bonds would produce*  
6 *greater overall ratepayer savings, taking into account all relevant*  
7 *considerations, including, but not limited to, the exclusion of*  
8 *interest on energy recovery bonds issued by the bank from*  
9 *investors' gross income for California or federal income tax*  
10 *purposes, or both, earnings on funds collected and held by the*  
11 *electrical corporation prior to deposit in a fund or account for the*  
12 *benefit of holders of energy recovery bonds, and all costs of*  
13 *issuance and other transaction costs.*

14 *(2) The bank submits to the Joint Legislative Budget Committee*  
15 *a certified copy of the bank's resolution, together with a report*  
16 *setting forth the basis for the bank's determination that a financing*  
17 *entity other than the bank or a special purpose trust will produce*  
18 *greater ratepayer savings and at least 30 days have elapsed from*  
19 *the date of submission.*

20 *(c) "Financing order" shall mean an order of the commission*  
21 *adopted in accordance with this article, which shall include,*  
22 *without limitation, a procedure to require the expeditious approval*  
23 *by the commission of periodic adjustments to fixed energy recovery*  
24 *amounts included therein to ensure recovery of all energy recovery*  
25 *costs and the costs of capital associated with the proposed*  
26 *provision, recovery, financing, or refinancing thereof, including*  
27 *the costs of issuing, servicing, and retiring the energy recovery*  
28 *bonds contemplated by the financing order.*

29 *(d) "Fixed energy recovery amounts" means those*  
30 *nonbypassable rates and other charges, including, but not limited*  
31 *to, distribution, connection, disconnection, and termination rates*  
32 *and charges, that are authorized by the commission in a financing*  
33 *order to recover (1) energy recovery costs, and (2) the costs of*  
34 *providing, recovering, financing, or refinancing the energy*  
35 *recovery costs through a plan approved by the commission in the*  
36 *financing order, including the costs of issuing, servicing, and*  
37 *retiring energy recovery bonds. Fixed energy recovery amounts*  
38 *may, if approved by the commission, include nonbypassable rates*  
39 *and other charges to recover federal and state taxes whose*



1 recovery period is modified by the transactions approved in the  
2 financing order.

3 (e) “Energy recovery bonds” means bonds, notes, certificates  
4 of participation or beneficial interest, or other evidences of  
5 indebtedness or ownership, issued pursuant to an executed  
6 indenture or other agreement of a financing entity, the proceeds of  
7 which are used, directly or indirectly, to provide, recover, finance,  
8 or refinance energy recovery costs, and that are directly or  
9 indirectly secured by, or payable from, energy recovery property.

10 (f) “Energy recovery costs” means those costs, and categories  
11 of costs, that the commission finds to be reasonably and  
12 necessarily incurred in order for an electrical corporation  
13 described in Section 848 to regain its financial health, and that the  
14 commission approves for recovery by the electrical corporation as  
15 part of a bankruptcy plan of reorganization for that electrical  
16 corporation.

17 (g) (1) “Energy recovery property” means the property right  
18 created pursuant to this article including, without limitation, the  
19 right, title, and interest of an electrical corporation or its  
20 transferee:

21 (A) In and to the tariff established pursuant to a financing  
22 order, as adjusted from time to time in accordance with subdivision  
23 (c) of Section 849.1 and the financing order.

24 (B) To be paid the amount that is determined in a financing  
25 order to be the amount that the electrical corporation or its  
26 transferee is lawfully entitled to receive pursuant to the provision  
27 of this article and the proceeds thereof, and in and to all revenues,  
28 collections, claims, payments, money, or proceeds of or arising  
29 from the tariff or constituting fixed energy recovery amounts that  
30 are the subject of a financing order including those nonbypassable  
31 rates and other charges referred to in subdivision (d).

32 (C) In and to all rights to obtain adjustments to the tariff  
33 pursuant to the terms of subdivision (c) of Section 849.1 and the  
34 financing order.

35 (2) “Energy recovery property” shall constitute a current  
36 property right notwithstanding the fact that the value of the  
37 property right will depend on consumers using electricity or, in  
38 those instances where consumers are customers of a particular  
39 electrical corporation, the electrical corporation performing  
40 certain services.



1 (3) For purposes of Sections 63010 and 63025.1 of the  
2 Government Code, “energy recovery property” also shall mean  
3 certificates representing primarily interests in the property rights  
4 described in paragraphs (1) and (2).

5 849.1. (a) The commission may, in an investigation instituted  
6 on its own motion or in response to an application, determine that  
7 an electrical corporation described in Section 848 may recover  
8 certain energy recovery costs through fixed energy recovery  
9 amounts, which is energy recovery property under this article. The  
10 commission shall designate fixed energy recovery amounts as  
11 recoverable in one or more financing orders if the commission  
12 determines, as part of its findings in connection with the financing  
13 order, that the designation of the fixed energy recovery amounts,  
14 and issuance of energy recovery bonds in connection with some or  
15 all of the fixed energy recovery amounts would reduce the rates  
16 that the electrical corporation’s customers would have paid if the  
17 financing order were not adopted. Customers of the electrical  
18 corporation, including direct access customers, and departing  
19 load customers as defined by the commission, shall continue to pay  
20 fixed energy recovery amounts until the bonds are paid in full by  
21 the financing entity. Once the bonds have been paid in full, the  
22 payment by customers of fixed energy recovery amounts shall  
23 terminate.

24 (b) The commission may issue financing orders in accordance  
25 with this article to facilitate the provision, recovery, financing, or  
26 refinancing of energy recovery costs. A financing order may  
27 specify how amounts collected from a customer shall be allocated  
28 between fixed energy recovery amounts and other charges.

29 (c) Notwithstanding Section 455.5, Section 1708, or any other  
30 provision of law, except as otherwise provided in this subdivision  
31 with respect to energy recovery property that has been made the  
32 basis for the issuance of energy recovery bonds, the financing  
33 orders and the fixed energy recovery amounts shall be irrevocable  
34 and the commission shall not have authority either by rescinding,  
35 altering, or amending the financing order or otherwise, to revalue  
36 or revise for ratemaking purposes the costs of recovering,  
37 financing, or refinancing the energy recovery costs, determine that  
38 the fixed energy recovery amounts or rates are unjust or  
39 unreasonable, or in any way reduce or impair the value of energy  
40 recovery property; nor shall the amount of revenues arising with



1 *respect thereto be subject to reduction, impairment, postponement,*  
2 *or termination. Except as otherwise provided in this subdivision,*  
3 *the State of California does hereby pledge and agree with the*  
4 *owners of energy recovery property and holders of energy recovery*  
5 *bonds that the state shall neither limit nor alter the fixed energy*  
6 *recovery amounts, energy recovery property, financing orders, and*  
7 *all rights thereunder until the obligations, together with the*  
8 *interest thereon, are fully met and discharged, provided nothing*  
9 *contained in this section shall preclude the limitation or alteration*  
10 *if and when adequate provision shall be made by law for the*  
11 *protection of the owners and holders. The bank as agent for the*  
12 *state is authorized to include this pledge and undertaking for the*  
13 *state in these obligations. Notwithstanding any other provision of*  
14 *this section, the commission shall approve the adjustments to the*  
15 *fixed energy recovery amounts as may be necessary to ensure*  
16 *timely recovery of all energy recovery costs that are the subject of*  
17 *the pertinent financing order, and the costs of capital associated*  
18 *with the provision, recovery, financing, or refinancing thereof,*  
19 *including the costs of issuing, servicing, and retiring the energy*  
20 *recovery bonds contemplated by the financing order.*

21 *(d) (1) Financing orders issued under this article do not*  
22 *constitute a debt or liability of the state or of any political*  
23 *subdivision thereof, other than the financing entity, and do not*  
24 *constitute a pledge of the full faith and credit of the state or any of*  
25 *its political subdivisions, other than the financing entity, but are*  
26 *payable solely from the funds provided therefore under this article*  
27 *and shall be consistent with Sections 1 and 18 of Article XVI of the*  
28 *California Constitution. This subdivision shall in no way preclude*  
29 *bond guarantees or enhancements pursuant to this article. All the*  
30 *bonds shall contain on the face thereof a statement to the following*  
31 *effect: "Neither the full faith and credit nor the taxing power of the*  
32 *State of California is pledged to the payment of the principal of,*  
33 *or interest on, this bond."*

34 *(2) The issuance of bonds under this article shall not directly,*  
35 *indirectly, or contingently obligate the state or any political*  
36 *subdivision thereof to levy or to pledge any form of taxation*  
37 *therefore or to make any appropriation for their payment. Nothing*  
38 *in this section shall prevent, or be construed to prevent, the*  
39 *financing entity from pledging the full faith and credit of the*



1 *infrastructure bank fund to the payment of bonds or issuance of*  
2 *bonds authorized pursuant to this article.*

3 *(e) The commission shall provide in any financing order for a*  
4 *procedure for the expeditious approval by the commission of*  
5 *periodic adjustments to the fixed energy recovery amounts that are*  
6 *the subject of the pertinent financing order, as required by*  
7 *subdivision (c). The procedure shall require the commission to*  
8 *determine whether the adjustments are required on each*  
9 *anniversary of the issuance of the financing order, and at the*  
10 *additional intervals as may be provided for in the financing order,*  
11 *and for the adjustments, if required, to be approved within 90 days*  
12 *of each anniversary of the issuance of the financing order, or of*  
13 *each additional interval provided for in the financing order.*

14 *(f) Fixed energy recovery amounts shall constitute energy*  
15 *recovery property when, and to the extent that, a financing order*  
16 *authorizing the fixed energy recovery amounts has become*  
17 *effective in accordance with this article, and the energy recovery*  
18 *property shall thereafter continuously exist as property for all*  
19 *purposes with all of the rights and privileges of this article for the*  
20 *period and to the extent provided in the financing order, but in any*  
21 *event until the energy recovery bonds are paid in full, including all*  
22 *principal, interest, premium, costs, and arrearages thereon.*

23 *(g) Any surplus fixed energy recovery amounts in excess of the*  
24 *amounts necessary to pay principal, premium, if any, interest and*  
25 *expenses of the issuance of the energy recovery bonds shall be*  
26 *remitted to the financing entity and may be used to benefit the*  
27 *electrical corporation's customers if this would not result in a*  
28 *recharacterization of the tax, accounting, and other intended*  
29 *characteristics of the financing, including, but not limited to, the*  
30 *following:*

31 *(1) Avoiding the recognition of debt on the electrical*  
32 *corporation's balance sheet for financial accounting and*  
33 *regulatory purposes.*

34 *(2) Treating the energy recovery bonds as debt of the electrical*  
35 *corporation or its affiliates for federal income tax purposes.*

36 *(3) Treating the transfer of the energy recovery property by the*  
37 *electrical corporation as a true sale for bankruptcy purposes.*

38 *(4) Avoiding any adverse impact of the financing on the*  
39 *electrical corporation's credit rating.*



1 849.2. (a) *Financing entities may issue energy recovery*  
2 *bonds upon approval by the commission in the pertinent financing*  
3 *orders. Energy recovery bonds shall be nonrecourse to the credit*  
4 *or any assets of the electrical corporation, other than the financial*  
5 *recovery property as specified in the pertinent financing order.*

6 (b) *Electrical corporations may sell and assign all or portions*  
7 *of their interest in energy recovery property to an affiliate.*  
8 *Electrical corporations or their affiliates may sell or assign their*  
9 *interests to one or more financing entities that make that property*  
10 *the basis for issuance of energy recovery bonds to the extent*  
11 *approved in the pertinent financing orders. Electrical*  
12 *corporations, their affiliates, or financing entities may pledge*  
13 *energy recovery property as collateral, directly or indirectly, for*  
14 *energy recovery bonds to the extent approved in the pertinent*  
15 *financing orders providing for a security interest in the energy*  
16 *recovery property, in the manner as set forth in Section 849.3. In*  
17 *addition energy recovery property may be sold or assigned by (1)*  
18 *the financing entity or a trustee for the holders of energy recovery*  
19 *bonds in connection with the exercise of remedies upon a default,*  
20 *or (2) any person acquiring the energy recovery property after a*  
21 *sale or assignment pursuant to this subdivision.*

22 (c) *To the extent that any interest in energy recovery property*  
23 *is so sold or assigned, or is so pledged as collateral, the*  
24 *commission shall authorize the electrical corporation to contract*  
25 *with the financing entity that it will continue to operate its system*  
26 *to provide service to its customers, will collect amounts in respect*  
27 *of the fixed energy recovery amounts for the benefit and account*  
28 *of the financing entity, and will account for and remit these*  
29 *amounts to or for the account of the financing entity. Contracting*  
30 *with the financing entity in accordance with that authorization*  
31 *shall not impair or negate the characterization of the sale,*  
32 *assignment, or pledge as an absolute transfer, a true sale, or*  
33 *security interest, as applicable.*

34 (d) *Notwithstanding Section 1708 or any other provision of*  
35 *law, any requirement under this article or a financing order that*  
36 *the commission take action with respect to the subject matter of a*  
37 *financing order shall be binding upon the commission, as it may*  
38 *be constituted from time to time, and any successor agency*  
39 *exercising functions similar to the commission and the commission*  
40 *shall have no authority to rescind, alter, or amend that requirement*



1 in a financing order. The approval by the commission in a  
2 financing order of the issuance by an electrical corporation or a  
3 financing entity of energy recovery bonds shall include the  
4 approvals, if any, as may be required by Article 5 (commencing  
5 with Section 816) and Section 701.5. Nothing in Section 701.5  
6 shall be construed to prohibit the issuance of energy recovery  
7 bonds upon the terms and conditions as may be approved by the  
8 commission in a financing order. Section 851 shall not be  
9 applicable to the transfer or pledge of energy recovery property,  
10 the issuance of energy recovery bonds, or related transactions  
11 approved in a financing order.

12 849.3. (a) A security interest in energy recovery property is  
13 valid, is enforceable against the pledgor and third parties, subject  
14 to the rights of any third parties holding security interests in the  
15 energy recovery property perfected in the manner described in this  
16 section, and attaches when all of the following have taken place:

17 (1) The commission has issued the financing order authorizing  
18 the fixed energy recovery amounts included in the energy recovery  
19 property.

20 (2) Value has been given by the pledgees of the energy recovery  
21 property.

22 (3) The pledgor has signed a security agreement covering the  
23 energy recovery property.

24 (b) A valid and enforceable security interest in energy recovery  
25 property is perfected when it has attached and when a financing  
26 statement has been filed in accordance with Chapter 5  
27 (commencing with Section 9501) of Division 9 of the Commercial  
28 Code naming the pledgor of the energy recovery property as  
29 'debtor' and identifying the energy recovery property. Any  
30 description of the energy recovery property shall be sufficient if it  
31 refers to the financing order creating the energy recovery property.  
32 A copy of the financing statement shall be filed with the  
33 commission by the electrical corporation that is the pledgor or  
34 transferor of the energy recovery property, and the commission  
35 may require the electrical corporation to make other filings with  
36 respect to the security interest in accordance with procedures it  
37 may establish, provided that the filings shall not affect the  
38 perfection of the security interest.

39 (c) A perfected security interest in energy recovery property is  
40 a continuously perfected security interest in all revenues and



1 *proceeds arising with respect thereto, whether or not the revenues*  
2 *or proceeds have accrued. Conflicting security interests shall rank*  
3 *according to priority in time of perfection. Energy recovery*  
4 *property shall constitute property for all purposes, including for*  
5 *contracts securing energy recovery bonds, whether or not the*  
6 *revenues and proceeds arising with respect thereto have accrued.*

7 (d) *Subject to the terms of the security agreement covering the*  
8 *energy recovery property and the rights of any third parties holding*  
9 *security interests in the energy recovery property perfected in the*  
10 *manner described in this section, the validity and relative priority*  
11 *of a security interest created under this section is not defeated or*  
12 *adversely affected by the commingling of revenues arising with*  
13 *respect to the energy recovery property with other funds of the*  
14 *electrical corporation that is the pledgor or transferor of the*  
15 *energy recovery property, or by any security interest in a deposit*  
16 *account of that electrical corporation perfected under Division 9*  
17 *(commencing with Section 9101) of the Commercial Code into*  
18 *which the revenues are deposited. Subject to the terms of the*  
19 *security agreement, upon compliance with the requirements of*  
20 *Section 9311 of the Commercial Code, the pledgees of the energy*  
21 *recovery property shall have a perfected security interest in all*  
22 *cash and deposit accounts of the electrical corporation in which*  
23 *revenues arising with respect to the energy recovery property have*  
24 *been commingled with other funds, but the perfected security*  
25 *interest shall be limited to an amount not greater than the amount*  
26 *of the revenues with respect to the energy recovery property*  
27 *received by the electrical corporation within 12 months before (1)*  
28 *any default under the security agreement or (2) the institution of*  
29 *insolvency proceedings by or against the electrical corporation,*  
30 *less payments from the revenues to the pledgees during that*  
31 *12-month period.*

32 (e) *If an event of default occurs under the security agreement*  
33 *covering the energy recovery property, the pledgees of the energy*  
34 *recovery property, subject to the terms of the security agreement,*  
35 *shall have all rights and remedies of a secured party upon default*  
36 *under Division 9 (commencing with Section 9101) of the*  
37 *Commercial Code, and shall be entitled to foreclose or otherwise*  
38 *enforce their security interest in the energy recovery property,*  
39 *subject to the rights of any third parties holding prior security*  
40 *interests in the energy recovery property perfected in the manner*



1 *provided in this section. In addition, the commission may require,*  
2 *in the financing order creating the energy recovery property, that,*  
3 *in the event of default by the electrical corporation in payment of*  
4 *revenues arising with respect to the energy recovery property, the*  
5 *commission and any successor thereto, upon the application by the*  
6 *pledgees or transferees, including transferees under Section*  
7 *849.4, of the energy recovery property, and without limiting any*  
8 *other remedies available to the pledgees or transferees by reason*  
9 *of the default, shall order the sequestration and payment to the*  
10 *pledgees or transferees of revenues arising with respect to the*  
11 *energy recovery property. Any order shall remain in full force and*  
12 *effect notwithstanding any bankruptcy, reorganization, or other*  
13 *insolvency proceedings with respect to the debtor, pledgor, or*  
14 *transferor of the energy recovery property. Any surplus in excess*  
15 *of amounts necessary to pay principal, premium, if any, interest,*  
16 *costs, and arrearages on the energy recovery bonds, and other*  
17 *costs arising under the security agreement, shall be remitted to the*  
18 *debtor or to the pledgor or transferor.*

19 *(f) Section 5451 of the Government Code shall not apply to any*  
20 *pledge of energy recovery property by a financing entity. Sections*  
21 *9204 and 9205 of the Commercial Code shall apply to a pledge of*  
22 *energy recovery property by an electrical corporation, an affiliate*  
23 *of an electrical corporation, or a financing entity.*

24 *(g) This section sets forth the terms by which a consensual*  
25 *security interest can be created and perfected in the energy*  
26 *recovery property. Unless otherwise ordered by the commission*  
27 *with respect to any series of energy recovery bonds on or prior to*  
28 *the issuance of the series, there shall exist a statutory lien as*  
29 *provided in this subdivision. Upon the effective date of the*  
30 *financing order, there shall exist a first priority lien on all energy*  
31 *recovery property then existing or thereafter arising pursuant to*  
32 *the terms of the financing order. This lien shall arise by operation*  
33 *of this section automatically without any action on the part of the*  
34 *electrical corporation, any affiliate thereof, the financing entity, or*  
35 *any other person. This lien shall secure all obligations, then*  
36 *existing or subsequently arising, to the holders of the energy*  
37 *recovery bonds issued pursuant to the financing order, the trustee*  
38 *or representative for the holders, and any other entity specified in*  
39 *the financing order. The persons for whose benefit this lien is*  
40 *established shall, upon the occurrence of any defaults specified in*



1 *the financing order, have all rights and remedies of a secured party*  
2 *upon default under Division 9 (commencing with Section 9101) of*  
3 *the Commercial Code, and shall be entitled to foreclose or*  
4 *otherwise enforce this statutory lien in the energy recovery*  
5 *property. This lien shall attach to the energy recovery property*  
6 *regardless of who shall own, or shall subsequently be determined*  
7 *to own, the energy recovery property including any electrical*  
8 *corporation, any affiliate thereof, the financing entity, or any other*  
9 *person. This lien shall be valid, perfected, and enforceable against*  
10 *the owner of the energy recovery property and all third parties*  
11 *upon the effectiveness of the financing order without any further*  
12 *public notice; provided, however, that any person may, but shall*  
13 *not be required to, file a financing statement in accordance with*  
14 *subdivision (b). Financing statements so filed may be “protective*  
15 *filings” and shall not be evidence of the ownership of the energy*  
16 *recovery property.*

17 *A perfected statutory lien in energy recovery property is a*  
18 *continuously perfected lien in all revenues and proceeds arising*  
19 *with respect thereto, whether or not the revenues or proceeds have*  
20 *accrued. Conflicting liens shall rank according to priority in time*  
21 *of perfection. Energy recovery property shall constitute property*  
22 *for all purposes, including for contracts securing energy recovery*  
23 *bonds, whether or not the revenues and proceeds arising with*  
24 *respect thereto have accrued.*

25 *In addition, the commission may require, in the financing order*  
26 *creating the energy recovery property, that, in the event of default*  
27 *by the electrical corporation in payment of revenues arising with*  
28 *respect to energy recovery property, the commission and any*  
29 *successor thereto, upon the application by the beneficiaries of the*  
30 *statutory lien, and without limiting any other remedies available*  
31 *to the beneficiaries by reason of the default, shall order the*  
32 *sequestration and payment to the beneficiaries of revenues arising*  
33 *with respect to the energy recovery property. Any order shall*  
34 *remain in full force and effect notwithstanding any bankruptcy,*  
35 *reorganization, or other insolvency proceedings with respect to the*  
36 *debtor, pledgor, or transferor of the energy recovery property. Any*  
37 *surplus in excess of amounts necessary to pay principal, premium,*  
38 *if any, interest, costs, and arrearages on the energy recovery bonds,*  
39 *and other costs arising in connection with the documents*



1 governing the energy recovery bonds, shall be remitted to the  
2 debtor or to the pledgor or transferor.

3 849.4. (a) A transfer of energy recovery property by an  
4 electrical corporation to an affiliate or to a financing entity, or by  
5 an affiliate of an electrical corporation or a financing entity to  
6 another financing entity, which the parties have in the governing  
7 documentation expressly stated to be a sale or other absolute  
8 transfer, in a transaction approved in a financing order, shall be  
9 treated as an absolute transfer of all of the transferor's right, title,  
10 and interest (as in a true sale), and not as a pledge or other  
11 financing, of the energy recovery property, other than for federal  
12 and state income and franchise tax purposes. Granting to holders  
13 of energy recovery bonds a preferred right to revenues of the  
14 electrical corporation, or the provision by the company of other  
15 credit enhancement with respect to energy recovery bonds, shall  
16 not impair or negate the characterization of any transfer as a true  
17 sale, other than for federal and state income and franchise tax  
18 purposes.

19 (b) A transfer of energy recovery property shall be deemed  
20 perfected as against third persons when both of the following have  
21 taken place:

22 (1) The commission has issued the financing order authorizing  
23 the fixed energy recovery amounts included in the energy recovery  
24 property.

25 (2) An assignment of the energy recovery property in writing  
26 has been executed and delivered to the transferee.

27 (c) As between bona fide assignees of the same right for value  
28 without notice, the assignee first filing a financing statement in  
29 accordance with Chapter 5 (commencing with Section 9501) of  
30 Division 9 of the Commercial Code naming the assignor of the  
31 energy recovery property as debtor and identifying the energy  
32 recovery property has priority. Any description of the energy  
33 recovery property shall be sufficient if it refers to the financing  
34 order creating the energy recovery property. A copy of the  
35 financing statement shall be filed by the assignee with the  
36 commission, and the commission may require the assignor or the  
37 assignee to make other filings with respect to the transfer in  
38 accordance with procedures it may establish, but these filings shall  
39 not affect the perfection of the transfer.

1 849.5. Any successor to the electrical corporation, whether  
2 pursuant to any bankruptcy, reorganization, or other insolvency  
3 proceeding, or pursuant to any merger, sale, or transfer, by  
4 operation of law, or otherwise, shall perform and satisfy all  
5 obligations of the electrical corporation pursuant to this article in  
6 the same manner and to the same extent as the electrical  
7 corporation, including, but not limited to, collecting and paying  
8 to the holders of energy recovery bonds or their representatives or  
9 the applicable financing entity revenues arising with respect to the  
10 energy recovery property sold to the applicable financing entity or  
11 pledged to secure energy recovery bonds.

12 849.6. The authority of the commission to issue financing  
13 orders pursuant to Section 849.1 shall expire on December 31,  
14 2005. The expiration of the authority shall have no effect upon  
15 financing orders adopted by the commission pursuant to this  
16 article or any energy recovery property arising therefrom, or upon  
17 the charges authorized to be levied thereunder, or the rights,  
18 interests, and obligations of the electrical corporation or a  
19 financing entity or holders of energy recovery bonds pursuant to  
20 the financing order, or the authority of the commission to monitor,  
21 supervise, or take further action with respect to the order in  
22 accordance with the terms of this article and of the order.

23 849.7. Notwithstanding any other law, regulations adopted to  
24 implement this article shall not be subject to the Administrative  
25 Procedure Act (Chapter 3.5 (commencing with Section 11340) of  
26 Part 1 of Division 3 of Title 2 of the Government Code).

27 SEC. 3. No reimbursement is required by this act pursuant to  
28 Section 6 of Article XIII B of the California Constitution because  
29 the only costs that may be incurred by a local agency or school  
30 district will be incurred because this act creates a new crime or  
31 infraction, eliminates a crime or infraction, or changes the penalty  
32 for a crime or infraction, within the meaning of Section 17556 of  
33 the Government Code, or changes the definition of a crime within  
34 the meaning of Section 6 of Article XIII B of the California  
35 Constitution.



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**All matter omitted in this version of the bill appears in the bill as amended in the Senate August 18, 2003 (JR 11)**

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