

AMENDED IN SENATE JUNE 1, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1733**

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Introduced by ~~Committee on Utilities and Commerce (Reyes (Chair), Calderon, Canciamilla, Diaz, Jerome Horton, Levine, Nunez, and Ridley-Thomas)~~ Assembly Members *Reyes, Campbell, Correa, and Levine*  
(Coauthors: Assembly Members *Berg, Chu, Diaz, Firebaugh, Frommer, Goldberg, Hancock, Laird, Leno, Lieber, Lowenthal, Montanez, Nakano, Ridley-Thomas, and Steinberg*)

March 5, 2003

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An act to amend ~~and repeal Section 454.5~~ *Section 2891.1* of the Public Utilities Code, relating to ~~electricity~~ *telecommunications*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1733, as amended, ~~Committee on Utilities and Commerce Reyes. Electricity procurement plans~~ *Telecommunications: selling or licensing lists of subscribers.*

*Under existing law, the Federal Communications Commission licenses and partially regulates providers of commercial mobile radio service, including providers of cellular radiotelephone service, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR) services (collectively, mobile telephony service providers). Under existing law, no state or local government may regulate the entry of, or the rates charged by, any commercial mobile radio service, but is generally not prohibited from regulating the other terms and conditions of commercial mobile radio service.*

*Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law authorizes the commission to regulate telecommunications services and rates of telephone corporations, except to the extent regulation of commercial mobile radio service is preempted by federal regulation. Existing law prohibits a telephone corporation selling or licensing lists of residential subscribers, from including the telephone number of any subscriber assigned an unpublished or unlisted access number, as defined, without his or her written waiver of this protection.*

*This bill would prohibit a provider of mobile telephony services, as defined, selling or licensing lists of subscribers or otherwise providing the name and dialing number of a subscriber for inclusion in a directory, from including the dialing number of any subscriber without first obtaining the express consent of that subscriber. The bill would establish certain requirements for the provider’s form for obtaining the subscriber’s express consent.*

~~The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission with respect to the purchase of electricity and requires the commission to establish a renewables portfolio standard and to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation. Existing law requires the commission, until it completes an electric generation procurement methodology that values the environmental and diversity costs and benefits associated with various generation technologies, to direct that a specified portion of electrical generating capacity needed for the future, is reserved or set aside for renewable resources. Existing law requires a proposed procurement plan to show that it is in furtherance of this reserve or set-aside requirement.~~

~~This bill would instead require that the proposed procurement plan show that it is in furtherance of the electrical corporation’s obligation under the renewables portfolio standard.~~

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

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

- 1 ~~SECTION 1.—Section 454.5 of the Public Utilities Code, as~~
- 2 ~~SECTION 1. Section 2891.1 of the Public Utilities Code is~~
- 3 ~~amended to read:~~



1 2891.1. (a) Notwithstanding Section 2891, a telephone  
2 corporation selling or licensing lists of residential subscribers shall  
3 not include the telephone number of any subscriber assigned an  
4 unlisted or unpublished access number.

5 (b) *Notwithstanding Section 2891, a provider of mobile*  
6 *telephony services selling or licensing lists of subscribers or*  
7 *otherwise providing the name and dialing number of a subscriber*  
8 *for inclusion in any directory, shall not include the dialing number*  
9 *of any subscriber without first obtaining the express consent of that*  
10 *subscriber. The provider's form for obtaining the subscriber's*  
11 *express consent shall meet all of the following requirements:*

12 (1) *It shall be a separate document that is not attached to any*  
13 *other document.*

14 (2) *It shall be signed and dated by the subscriber.*

15 (3) *It shall be unambiguous, legible, and in a minimum*  
16 *10-point type, and conspicuously disclose that, by signing, the*  
17 *subscriber is consenting to have the subscriber's dialing number*  
18 *sold or licensed as part of a list of subscribers and the subscriber's*  
19 *dialing number may be included in a publicly available directory.*

20 (c) A subscriber may waive all or part of the protection  
21 provided by this section through written notice to the telephone  
22 corporation.

23 ~~(e)~~

24 (d) This section does not apply to the provision of telephone  
25 numbers to the following parties for the purposes indicated:

26 (1) To a collection agency, to the extent disclosures made by the  
27 agency are supervised by the commission, exclusively for the  
28 collection of unpaid debts.

29 (2) (A) To any law enforcement agency, fire protection  
30 agency, public health agency, public environmental health agency,  
31 city or county emergency services planning agency, or private  
32 for-profit agency operating under contract with, and at the  
33 direction of, one or more of these agencies, for the exclusive  
34 purpose of responding to a 911 call or communicating an imminent  
35 threat to life or property.

36 (B) Any information or records provided to a private for-profit  
37 agency pursuant to this subdivision shall be held in confidence by  
38 that agency and by any individual employed by or associated with  
39 that agency. This information or these records shall not be open to  
40 examination for any purpose not directly connected with the



1 administration of the services specified in subdivision (e) of  
 2 Section 2872 or this paragraph.

3 (3) To a lawful process issued under state or federal law.

4 (4) To a telephone corporation providing service between  
 5 service areas for the provision to the subscriber of telephone  
 6 service between service areas, or to third parties for the limited  
 7 purpose of providing billing services.

8 (5) To the commission pursuant to its jurisdiction and control  
 9 over telephone and telegraph corporations.

10 ~~(d)~~

11 (e) Every deliberate violation of this section is grounds for a  
 12 civil suit by the aggrieved subscriber against the organization or  
 13 corporation and its employees responsible for the violation.

14 ~~(e)~~

15 (f) For purposes of this section, “unpublished or unlisted  
 16 access number” means a telephone, telex, teletex, facsimile,  
 17 computer modem, or any other code number that is assigned to a  
 18 subscriber by a telephone or telegraph corporation for the receipt  
 19 of communications initiated by other telephone or telegraph  
 20 customers and that the subscriber has requested that the telephone  
 21 or telegraph corporation keep in confidence.

22 ~~(f)~~

23 (g) No telephone corporation, nor any official or employee  
 24 thereof, shall be subject to criminal or civil liability for the release  
 25 of customer information as authorized by this section.

26 (h) *For purposes of this section, “mobile telephony services”*  
 27 *means commercially available interconnected mobile phone*  
 28 *services that provide access to the public switched telephone*  
 29 *network (PSTN) via mobile communication devices employing*  
 30 *radio wave technology to transmit calls, including cellular*  
 31 *radiotelephone, broadband Personal Communications Services*  
 32 *(PCS), and digital Specialized Mobile Radio (SMR). “Mobile*  
 33 *telephony services” does not include mobile satellite services or*  
 34 *mobile data services used exclusively for the delivery of nonvoice*  
 35 *information to a mobile device.*

36 ~~added by Section 2 of Chapter 835 of the Statutes of 2002, is~~  
 37 ~~repealed.~~

38 ~~SEC. 2. Section 454.5 of the Public Utilities Code, as added~~  
 39 ~~by Section 3 of Chapter 850 of the Statutes of 2002, is amended~~  
 40 ~~to read:~~



1 ~~454.5. (a) The commission shall specify the allocation of~~  
2 ~~electricity, including quantity, characteristics, and duration of~~  
3 ~~electricity delivery, that the Department of Water Resources shall~~  
4 ~~provide under its power purchase agreements to the customers of~~  
5 ~~each electrical corporation, which shall be reflected in the~~  
6 ~~electrical corporation's proposed procurement plan. Each~~  
7 ~~electrical corporation shall file a proposed procurement plan with~~  
8 ~~the commission not later than 60 days after the commission~~  
9 ~~specifies the allocation of electricity. The proposed procurement~~  
10 ~~plan shall specify the date that the electrical corporation intends to~~  
11 ~~resume procurement of electricity for its retail customers,~~  
12 ~~consistent with its obligation to serve. After the commission's~~  
13 ~~adoption of a procurement plan, the commission shall allow not~~  
14 ~~less than 60 days before the electrical corporation resumes~~  
15 ~~procurement pursuant to this section.~~

16 ~~(b) An electrical corporation's proposed procurement plan~~  
17 ~~shall include, but not be limited to, all of the following:~~

18 ~~(1) An assessment of the price risk associated with the~~  
19 ~~electrical corporation's portfolio, including any utility retained~~  
20 ~~generation, existing power purchase and exchange contracts, and~~  
21 ~~proposed contracts or purchases under which an electrical~~  
22 ~~corporation will procure electricity, electricity demand reductions,~~  
23 ~~and electricity-related products and the remaining open position to~~  
24 ~~be served by spot market transactions.~~

25 ~~(2) A definition of each electricity product, electricity-related~~  
26 ~~product, and procurement-related financial product, including~~  
27 ~~support and justification for the product type and amount to be~~  
28 ~~procured under the plan.~~

29 ~~(3) The duration of the plan.~~

30 ~~(4) The duration, timing, and range of quantities of each~~  
31 ~~product to be procured.~~

32 ~~(5) A competitive procurement process under which the~~  
33 ~~electrical corporation may request bids for procurement-related~~  
34 ~~services, including the format and criteria of that procurement~~  
35 ~~process.~~

36 ~~(6) An incentive mechanism, if any incentive mechanism is~~  
37 ~~proposed, including the type of transactions to be covered by that~~  
38 ~~mechanism, their respective procurement benchmarks, and other~~  
39 ~~parameters needed to determine the sharing of risks and benefits.~~



1 ~~(7) The upfront standards and criteria by which the~~  
2 ~~acceptability and eligibility for rate recovery of a proposed~~  
3 ~~procurement transaction will be known by the electrical~~  
4 ~~corporation prior to execution of the transaction. This shall include~~  
5 ~~an expedited approval process for the commission's review of~~  
6 ~~proposed contracts and subsequent approval or rejection thereof.~~  
7 ~~The electrical corporation shall propose alternative procurement~~  
8 ~~choices in the event a contract is rejected.~~

9 ~~(8) Procedures for updating the procurement plan.~~

10 ~~(9) A showing that the procurement plan will achieve the~~  
11 ~~following:~~

12 ~~(A) The electrical corporation will, in order to fulfill its unmet~~  
13 ~~resource needs and in furtherance of Section 399.14, until a 20~~  
14 ~~percent renewable resources portfolio is achieved, procure~~  
15 ~~renewable energy resources with the goal of ensuring that at least~~  
16 ~~an additional 1 percent per year of the electricity sold by the~~  
17 ~~electrical corporation is generated from renewable energy~~  
18 ~~resources, provided sufficient funds are made available pursuant~~  
19 ~~to Section 399.6, to cover the above-market costs for new~~  
20 ~~renewable energy resources.~~

21 ~~(B) The electrical corporation will create or maintain a~~  
22 ~~diversified procurement portfolio consisting of both short-term~~  
23 ~~and long-term electricity and electricity-related and demand~~  
24 ~~reductions products.~~

25 ~~(10) The electrical corporation's risk management policy,~~  
26 ~~strategy, and practices, including specific measures of price~~  
27 ~~stability.~~

28 ~~(11) A plan to achieve appropriate increases in diversity of~~  
29 ~~ownership and diversity of fuel supply of nonutility electrical~~  
30 ~~generation.~~

31 ~~(12) A mechanism for recovery of reasonable administrative~~  
32 ~~costs related to procurement in the generation component of rates.~~

33 ~~(c) The commission shall review and accept, modify, or reject~~  
34 ~~each electrical corporation's procurement plan. The commission's~~  
35 ~~review shall consider each electrical corporation's individual~~  
36 ~~procurement situation, and shall give strong consideration to that~~  
37 ~~situation in determining which one or more of the features set forth~~  
38 ~~in this subdivision shall apply to that electrical corporation. A~~  
39 ~~procurement plan approved by the commission shall contain one~~  
40 ~~or more of the following features, provided that the commission~~



1 ~~may not approve a feature or mechanism for an electrical~~  
2 ~~corporation if it finds that the feature or mechanism would impair~~  
3 ~~the restoration of an electrical corporation's creditworthiness or~~  
4 ~~would lead to a deterioration of an electrical corporation's~~  
5 ~~creditworthiness:~~

6 ~~(1) A competitive procurement process under which the~~  
7 ~~electrical corporation may request bids for procurement-related~~  
8 ~~services. The commission shall specify the format of that~~  
9 ~~procurement process, as well as criteria to ensure that the auction~~  
10 ~~process is open and adequately subscribed. Any purchases made~~  
11 ~~in compliance with the commission-authorized process shall be~~  
12 ~~recovered in the generation component of rates.~~

13 ~~(2) An incentive mechanism that establishes a procurement~~  
14 ~~benchmark or benchmarks and authorizes the electrical~~  
15 ~~corporation to procure from the market, subject to comparing the~~  
16 ~~electrical corporation's performance to the~~  
17 ~~commission-authorized benchmark or benchmarks. The incentive~~  
18 ~~mechanism shall be clear, achievable, and contain quantifiable~~  
19 ~~objectives and standards. The incentive mechanism shall contain~~  
20 ~~balanced risk and reward incentives that limit the risk and reward~~  
21 ~~of an electrical corporation.~~

22 ~~(3) Upfront achievable standards and criteria by which the~~  
23 ~~acceptability and eligibility for rate recovery of a proposed~~  
24 ~~procurement transaction will be known by the electrical~~  
25 ~~corporation prior to the execution of the bilateral contract for the~~  
26 ~~transaction. The commission shall provide for expedited review~~  
27 ~~and either approve or reject the individual contracts submitted by~~  
28 ~~the electrical corporation to ensure compliance with its~~  
29 ~~procurement plan. To the extent the commission rejects a proposed~~  
30 ~~contract pursuant to this criteria, the commission shall designate~~  
31 ~~alternative procurement choices obtained in the procurement plan~~  
32 ~~that will be recoverable for ratemaking purposes.~~

33 ~~(d) A procurement plan approved by the commission shall~~  
34 ~~accomplish each of the following objectives:~~

35 ~~(1) Enable the electrical corporation to fulfill its obligation to~~  
36 ~~serve its customers at just and reasonable rates.~~

37 ~~(2) Eliminate the need for after-the-fact reasonableness~~  
38 ~~reviews of an electrical corporation's actions in compliance with~~  
39 ~~an approved procurement plan, including resulting electricity~~  
40 ~~procurement contracts, practices, and related expenses. However,~~



1 the commission may establish a regulatory process to verify and  
2 assure that each contract was administered in accordance with the  
3 terms of the contract, and contract disputes which may arise are  
4 reasonably resolved.

5 (3) ~~Ensure timely recovery of prospective procurement costs~~  
6 ~~incurred pursuant to an approved procurement plan. The~~  
7 ~~commission shall establish rates based on forecasts of~~  
8 ~~procurement costs adopted by the commission, actual~~  
9 ~~procurement costs incurred, or combination thereof, as~~  
10 ~~determined by the commission. The commission shall establish~~  
11 ~~power procurement balancing accounts to track the differences~~  
12 ~~between recorded revenues and costs incurred pursuant to an~~  
13 ~~approved procurement plan. The commission shall review the~~  
14 ~~power procurement balancing accounts, not less than~~  
15 ~~semiannually, and shall adjust rates or order refunds, as necessary,~~  
16 ~~to promptly amortize a balancing account, according to a schedule~~  
17 ~~determined by the commission. Until January 1, 2006, the~~  
18 ~~commission shall ensure that any overcollection or~~  
19 ~~undercollection in the power procurement balancing account does~~  
20 ~~not exceed 5 percent of the electrical corporation's actual recorded~~  
21 ~~generation revenues for the prior calendar year excluding revenues~~  
22 ~~collected for the Department of Water Resources. The commission~~  
23 ~~shall determine the schedule for amortizing the overcollection or~~  
24 ~~undercollection in the balancing account to ensure that the 5~~  
25 ~~percent threshold is not exceeded. After January 1, 2006, this~~  
26 ~~adjustment shall occur when deemed appropriate by the~~  
27 ~~commission consistent with the objectives of this section.~~

28 (4) ~~Moderate the price risk associated with serving its retail~~  
29 ~~customers, including the price risk embedded in its long-term~~  
30 ~~supply contracts, by authorizing an electrical corporation to enter~~  
31 ~~into financial and other electricity-related product contracts.~~

32 (5) ~~Provide for just and reasonable rates, with an appropriate~~  
33 ~~balancing of price stability and price level in the electrical~~  
34 ~~corporation's procurement plan.~~

35 (e) ~~The commission shall provide for the periodic review and~~  
36 ~~prospective modification of an electrical corporation's~~  
37 ~~procurement plan.~~

38 (f) ~~The commission may engage an independent consultant or~~  
39 ~~advisory service to evaluate risk management and strategy. The~~  
40 ~~reasonable costs of any consultant or advisory service is a~~



1 ~~reimbursable expense and eligible for funding pursuant to Section~~  
2 ~~631.~~

3 ~~(g) The commission shall adopt appropriate procedures to~~  
4 ~~ensure the confidentiality of any market sensitive information~~  
5 ~~submitted in an electrical corporation's proposed procurement~~  
6 ~~plan or resulting from or related to its approved procurement plan,~~  
7 ~~including, but not limited to, proposed or executed power purchase~~  
8 ~~agreements, data request responses, or consultant reports, or any~~  
9 ~~combination, provided that the Office of Ratepayer Advocates and~~  
10 ~~other consumer groups that are nonmarket participants shall be~~  
11 ~~provided access to this information under confidentiality~~  
12 ~~procedures authorized by the commission.~~

13 ~~(h) Nothing in this section alters, modifies, or amends the~~  
14 ~~commission's oversight of affiliate transactions under its rules and~~  
15 ~~decisions or the commission's existing authority to investigate and~~  
16 ~~penalize an electrical corporation's alleged fraudulent activities,~~  
17 ~~or to disallow costs incurred as a result of gross incompetence,~~  
18 ~~fraud, abuse, or similar grounds. Nothing in this section expands,~~  
19 ~~modifies, or limits the State Energy Resources Conservation and~~  
20 ~~Development Commission's existing authority and~~  
21 ~~responsibilities as set forth in Sections 25216, 25216.5, and 25323~~  
22 ~~of the Public Resources Code.~~

23 ~~(i) An electrical corporation that serves less than 500,000~~  
24 ~~electric retail customers within the state may file with the~~  
25 ~~commission a request for exemption from this section, which the~~  
26 ~~commission shall grant upon a showing of good cause.~~

27 ~~(j) (1) Prior to its approval pursuant to Section 851 of any~~  
28 ~~divestiture of generation assets owned by an electrical corporation~~  
29 ~~on or after the date of enactment of the act adding this section, the~~  
30 ~~commission shall determine the impact of the proposed divestiture~~  
31 ~~on the electrical corporation's procurement rates and shall approve~~  
32 ~~a divestiture only to the extent it finds, taking into account the~~  
33 ~~effect of the divestiture on procurement rates, that the divestiture~~  
34 ~~is in the public interest and will result in net ratepayer benefits.~~

35 ~~(2) Any electrical corporation's procurement necessitated as a~~  
36 ~~result of the divestiture of generation assets on or after the effective~~  
37 ~~date of the act adding this subdivision shall be subject to the~~  
38 ~~mechanisms and procedures set forth in this section only if its~~  
39 ~~actual cost is less than the recent historical cost of the divested~~  
40 ~~generation assets.~~



- 1 ~~(3) Notwithstanding paragraph (2), the commission may deem~~
- 2 ~~proposed procurement eligible to use the procedures in this section~~
- 3 ~~upon its approval of asset divestiture pursuant to Section 851.~~

