

AMENDED IN ASSEMBLY JUNE 12, 2003

AMENDED IN SENATE APRIL 28, 2003

SENATE BILL

No. 168

**Introduced by Committee on Energy, Utilities and
Communications (Senators Bowen (Chair), Battin, Dunn,
Morrow, and Sher)**

February 12, 2003

An act to amend Sections 25401.2, ~~25519~~, 25523, 25525, and 25620.5 of, and to amend and renumber Section 25620.10 of, the Public Resources Code, ~~and to amend Section~~ *to amend Sections 383.5 and 445 of*, and to repeal Division 4.7 (commencing with Section 9201) of, the Public Utilities Code, ~~and to amend Section 2 of Chapter 850 of the Statutes of 2002~~, relating to energy and telecommunications, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 168, as amended, Committee on Energy, Utilities and Communications. Renewable Resource Trust Fund: *Telecommunications: California High-Cost Fund-B Administrative Committee Fund and Universal Lifeline Telephone Service Trust Administrative Committee Fund.*

(1) The Warren-Alquist State Energy Resources Conservation and Development Act requires the State Energy Resources Conservation and Development Commission (*Energy Commission*) to certify a sufficient number of sites and related facilities to provide a supply of electric power sufficient to accommodate projected demand for power statewide. The act requires the ~~commission~~ *Energy Commission* to be the lead agency. Existing law requires the Energy Commission to

~~complete an environmental impact report (EIR) within one year after receipt of an application unless the Energy Commission's regulatory program governing site and facility related proceeding is certified by the Resources Agency.~~

~~This bill would require, if the Energy Commission's regulatory program is certified, that any other public agency that must make a decision that is subject to the California Environmental Quality Act on a site or related facility, use the Energy Commission's final staff assessment, unless the Energy Commission determines that another document is more appropriate for a particular site or facility, in the same manner as they would use an EIR or negative declaration prepared by a lead agency not certify any facility contained in an application when it finds that the facility does not conform with any applicable state, local, or regional standards, ordinances, or laws, unless the Energy Commission determines that the facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving the public convenience and necessity.~~

This bill would instead authorize the Energy Commission to not certify a facility contained in an application when it finds that the facility does not conform with any applicable state, local, or regional standards, ordinances, or laws, unless the Energy Commission determines that the facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving the public convenience and necessity.

(2) Existing law authorizes the ~~commission~~ Energy Commission to solicit applications for awards, using a sealed competitive bid, competitive negotiation process, multiparty agreement, single source, or sole source method. Existing law permits the cost to the state to be reasonable.

This bill would require the cost to the state to be reasonable.

(3) Existing law requires the ~~commission~~ Energy Commission to regularly convene an advisory board that is required to make recommendations to guide the ~~commission's~~ Energy Commission's selection of specified programs and projects to be funded. Existing law specifies the members of the advisory board.

This bill would instead require the board membership to include, as appropriate, but not be limited to, those specified representatives.

(4) *Under the Public Utilities Act, the Public Utilities Commission (PUC) requires electrical corporations to identify a separate rate component to fund in- state operation and development of existing and*



new and emerging renewable resources technologies. 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 in-state operation and development of existing and new and emerging renewable resources technologies. Existing law also requires the Energy Commission to transfer funds collected for in-state operation and development of existing and new and emerging renewable resources technologies into the Renewable Resource Trust Fund. Existing law provides for the Renewable Resource Trust Fund in the State Treasury and establishes certain accounts in the Renewable Resource Trust Fund. Existing law requires, upon notification by the ~~commission~~ Energy Commission, the Controller to pay all awards of the money in the accounts for certain renewable energy purposes. Existing law requires the ~~commission~~ Energy Commission to report to the Legislature on the implementation of these provisions on a quarterly basis and to report on the mechanisms funded by May 31, 2000, and every two years thereafter.

This bill instead would require the ~~commission~~ Energy Commission to report to the Legislature on the implementation of the Renewable Resource Trust Fund, and the mechanisms funded, on an annual basis.

(5) Existing law requires the ~~commission~~ Energy Commission, commencing on or before March 1, 1985, to participate in a meeting on an annual basis that includes specified representatives, the purpose of which is to work towards achieving specified goals related to energy research, development, and demonstration projects.

This bill would repeal those provisions.

(6) Existing law requires the Energy Commission, in consultation with the PUC, to report to the Legislature and the Governor, by March 31, 2003, regarding the feasibility of implementing real-time, critical peak, and other dynamic pricing tariffs for electricity in California, as strategies which can either reduce peak demand or shift peak demand load to off-peak periods.

This bill, instead, would require the report to be given to the Legislature and the Governor by September 30, 2003.

(7) Existing law, requires the PUC to develop, implement, and maintain a suitable program to establish a fair and equitable local rate structure aided by transfer payments to small independent telephone corporations serving high cost rural and small metropolitan areas, in order to promote the goals of universal telephone service and to reduce



any disparity in rates charged by small independent telephone corporations serving high cost rural and small metropolitan areas. Moneys collected for this program are deposited into the California High-Cost Fund-B Administrative Committee Fund. Moneys in the fund may be expended, upon appropriation in the annual Budget Act.

The Moore Universal Telephone Service Act requires the PUC to establish a class of lifeline service necessary to meet minimum residential communications needs and establish rates and charges for that service. Moneys collected by telephone corporations to fund this program are deposited into the Universal Lifeline Telephone Service Trust Administrative Committee Fund. Moneys in the fund may be expended, upon appropriation in the annual Budget Act.

This bill would appropriate \$40,000,000 from the California High-Cost Fund-B Administrative Committee Fund for the purpose of transfer payments to telephone corporations providing services in high cost areas in fiscal year 2001–02 and authorized to receive the funds. The bill would appropriate \$19,000,000 from the Universal Lifeline Telephone Service Trust Administrative Committee Fund for the purpose of transfer payments to telephone corporations providing lifeline service in fiscal year 2001–02 and authorized to receive the funds. The bill would prohibit the commission from increasing any fee, charge, rate, or assessment, or imposing any surcharge, as a result of these appropriations.

(8) This bill would make other related and conforming changes.

Vote: ~~majority~~ ^{2/3}. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: no.

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

- 1 SECTION 1. Section 25401.2 of the Public Resources Code
- 2 is amended to read:
- 3 25401.2. (a) As part of the report required by Section 25302,
- 4 the commission shall develop and update an inventory of current
- 5 and potential cost-effective opportunities in each utility's service
- 6 territory, to improve efficiencies and to help utilities manage loads
- 7 in all sectors of natural gas and electricity use. The report shall
- 8 include estimates of the overall magnitude of these resources, load
- 9 shapes, and the projected costs associated with delivering the
- 10 various types of energy savings that are identified in the inventory.
- 11 The report shall also estimate the amount and incremental cost per

unit of potential energy efficiency and load management activities. Where applicable, the inventory shall include data on variations in savings and costs associated with particular measures. The report shall take into consideration environmental benefits as developed in related commission and public utilities commission proceedings.

(b) The commission shall develop and maintain the inventory in consultation with electric and gas utilities, the Public Utilities Commission, academic institutions, and other interested parties.

(c) The commission shall convene a technical advisory group to develop an analytic framework for the inventory, to discuss the level of detail at which the inventory would operate, and to ensure that the inventory is consistent with other demand-side databases. Privately owned electric and gas utilities shall provide financial support, gather data, and provide analysis for activities that the technical advisory group recommends. The technical advisory group shall terminate on January 1, 1993.

SEC. 2. ~~Section 25519 of the Public Resources Code is amended to read:~~

~~25519. (a) In order to obtain certification for a site and related facility, an application for certification of the site and related facility shall be filed with the commission. The application shall be in form prescribed by the commission and shall be for a site and related facility that has been found to be acceptable by the commission pursuant to Section 25516, or for an additional facility at a site that has been designated a potential multiple-facility site pursuant to Section 25514.5 and found to be acceptable pursuant to Sections 25516 and 25516.5. An application for an additional facility at a potential multiple-facility site shall be subject to the conditions and review specified in Section 25520.5. An application may not be filed for a site and related facility, if there is no suitable alternative for the site and related facility that was previously found to be acceptable by the commission, unless the commission has approved the notice based on the one site as specified in Section 25516.~~

~~(b) The commission, upon its own motion or in response to the request of a party, may require the applicant to submit any information, document, or data, in addition to the attachments required by subdivision (i), that it determines is reasonably necessary to make a decision on the application.~~

~~(c) The commission shall be the lead agency as provided in Section 21165 for all projects that require certification pursuant to this chapter and for projects that are exempted from that certification pursuant to Section 25541. Unless the commission's regulatory program governing site and facility certification and related proceedings are certified by the Resources Agency pursuant to Section 21080.5, an environmental impact report shall be completed within one year after receipt of the application. If the commission's regulatory program is certified pursuant to Section 21080.5, any other public agency that must make a decision that is subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000), on a site or related facility, shall use the final staff assessment, unless the commission determines another document is more appropriate for a particular site or facility, in the same manner as they would use an environmental impact report or negative declaration prepared by a lead agency.~~

~~(d) If the site and related facility specified in the application is proposed to be located in the coastal zone, the commission shall transmit a copy of the application to the California Coastal Commission for its review and comments.~~

~~(e) If the site and related facility specified in the application is proposed to be located in the Suisun Marsh or the jurisdiction of the San Francisco Bay Conservation and Development Commission, the commission shall transmit a copy of the application to the San Francisco Bay Conservation and Development Commission for its review and comments.~~

~~(f) Upon receipt of an application, the commission shall forward the application to local governmental agencies having land use and related jurisdiction in the area of the proposed site and related facility. Those local agencies shall review the application and submit comments on, among other things, the design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area of the facility, and other appropriate aspects of the design, construction, or operation of the proposed site and related facility.~~

~~(g) Upon receipt of an application, the commission shall cause a summary of the application to be published in a newspaper of general circulation in the county in which the site and related facilities, or any part thereof, designated in the application, is~~

1 proposed to be located. The commission shall transmit a copy of
2 the application to each federal and state agency having jurisdiction
3 or special interest in matters pertinent to the proposed site and
4 related facilities and to the Attorney General.

5 (h) Local and state agencies having jurisdiction or special
6 interest in matters pertinent to the proposed site and related
7 facilities shall provide their comments and recommendations on
8 the project within 180 days of the date of filing of an application.

9 (i) The adviser shall require that adequate notice is given to the
10 public and that the procedures specified by this division are
11 complied with.

12 (j) For a proposed site and related facility requiring a certificate
13 of public convenience and necessity, the commission shall
14 transmit a copy of the application to the Public Utilities
15 Commission and request the comments and recommendations of
16 the Public Utilities Commission on the economic, financial, rate,
17 system reliability, and service implications of the proposed site
18 and related facility. If the commission requires modification of the
19 proposed facility, the commission shall consult with the Public
20 Utilities Commission regarding the economic, financial, rate,
21 system reliability, and service implications of those modifications.

22 (k) The commission shall transmit a copy of the application to
23 any governmental agency not specifically mentioned in this act,
24 but that it finds has any information or interest in the proposed site
25 and related facilities, and shall invite the comments and
26 recommendations of each agency. The commission shall request
27 relevant laws, ordinances, or regulations that an agency has
28 promulgated or administered.

29 (l) An application for certification of a site and related facilities
30 shall contain a listing of every federal agency from which an
31 approval or authorization concerning the proposed site is required,
32 specifying the approvals or authorizations obtained at the time of
33 the application and the schedule for obtaining approvals or
34 authorizations pending.

35 SEC. 3.—Section 25523 of the Public Resources Code is
36 amended to read:

37 25523. The commission shall prepare a written decision after
38 the public hearing on an application, which includes all of the
39 following:

1 (a) Specific provisions relating to the manner in which the
2 proposed facility is to be designed, sited, and operated in order to
3 protect environmental quality and assure public health and safety.

4 (b) In the case of a site to be located in the coastal zone, specific
5 provisions to meet the objectives of Division 20 (commencing
6 with Section 30000) as may be specified in the report submitted by
7 the California Coastal Commission pursuant to subdivision (d) of
8 Section 30413, unless the commission specifically finds that the
9 adoption of the provisions specified in the report would result in
10 greater adverse effect on the environment or that the provisions
11 proposed in the report would not be feasible.

12 (c) In the case of a site to be located in the Suisun Marsh or in
13 the jurisdiction of the San Francisco Bay Conservation and
14 Development Commission, specific provisions to meet the
15 requirements of Division 19 (commencing with Section 29000) of
16 this code or Title 7.2 (commencing with Section 66600) of the
17 Government Code as may be specified in the report submitted by
18 the San Francisco Bay Conservation and Development
19 Commission pursuant to subdivision (d) of Section 66645 of the
20 Government Code, unless the commission specifically finds that
21 the adoption of the provisions specified in the report would result
22 in greater adverse effect on the environment or the provisions
23 proposed in the report would not be feasible.

24 (d) (1) Findings regarding the conformity of the proposed site
25 and related facilities with standards adopted by the commission
26 pursuant to Section 25216.3 and subdivision (d) of Section 25402,
27 with public safety standards and the applicable air and water
28 quality standards, and with other applicable local, regional, state,
29 and federal standards, ordinances, or laws. If the commission finds
30 that there is noncompliance with a state, local, or regional
31 ordinance or regulation in the application, it shall consult and meet
32 with the state, local, or regional governmental agency concerned
33 to attempt to correct or eliminate the noncompliance. If the
34 noncompliance cannot be corrected or eliminated, the commission
35 shall inform the state, local, or regional governmental agency if it
36 makes the findings required by Section 25525.

37 (2) The commission may not find that the proposed facility
38 conforms with applicable air quality standards pursuant to
39 paragraph (1) unless the applicable air pollution control district or
40 air quality management district certifies, prior to the licensing of



the project by the commission, that complete emissions offsets for the proposed facility have been identified and will be obtained by the applicant within the time required by the district's rules or unless the applicable air pollution control district or air quality management district certifies that the applicant requires emissions offsets to be obtained prior to the commencement of operation consistent with Section 42314.3 of the Health and Safety Code and prior to commencement of the operation of the proposed facility. The commission shall require as a condition of certification that the applicant obtain any required emission offsets within the time required by the applicable district rules, consistent with any applicable federal and state laws and regulations, and prior to the commencement of the operation of the proposed facility.

(e) Provision for restoring the site as necessary to protect the environment, if the commission denies approval of the application.

(f) In the case of a site and related facility using resource recovery (waste-to-energy) technology, specific conditions requiring that the facility be monitored to ensure compliance with paragraphs (1), (2), (3), and (6) of subdivision (a) of Section 42315 of the Health and Safety Code.

(g) In the case of a facility, other than a resource recovery facility subject to subdivision (f), specific conditions requiring the facility to be monitored to ensure compliance with toxic air contaminant control measures adopted by an air pollution control district or air quality management district pursuant to subdivision (d) of Section 39666 or Section 41700 of the Health and Safety Code, whether the measures were adopted before or after issuance of a determination of compliance by the district.

(h) A discussion of any public benefits from the project including, but not limited to, economic benefits, environmental benefits, and electricity reliability benefits.

~~SEC. 4.—~~

SEC. 3. Section 25525 of the Public Resources Code is amended to read:

25525. The commission may not certify a facility contained in the application when it finds, pursuant to subdivision (d) of Section 25523, that the facility does not conform with any applicable state, local, or regional standards, ordinances, or laws, unless the commission determines that the facility is required for

1 public convenience and necessity and that there are not more
2 prudent and feasible means of achieving public convenience and
3 necessity. In making the determination, the commission shall
4 consider the entire record of the proceeding, including, but not
5 limited to, the impacts of the facility on the environment,
6 consumer benefits, and electric system reliability. The
7 commission may not make a finding in conflict with applicable
8 federal law or regulation. The basis for these findings shall be
9 reduced to writing and submitted as part of the record pursuant to
10 Section 25523.

11 ~~SEC. 5.—~~

12 *SEC. 4.* Section 25620.5 of the Public Resources Code is
13 amended to read:

14 25620.5. (a) The commission may solicit applications for
15 awards, using a sealed competitive bid, competitive negotiation
16 process, commission-issued intradepartmental master agreement,
17 the methods for selection of professional services firms set forth
18 in Chapter 10 (commencing with Section 4525) of Division 5 of
19 Title 1 of the Government Code, interagency agreement, single
20 source, or sole source method. When scoring teams are convened
21 to review and score proposals, the scoring teams may include
22 persons not employed by the commission, as long as employees of
23 the state constitute no less than 50 percent of the membership of
24 the scoring team. A person participating on a scoring team may not
25 have any conflict of interest with respect to the proposal before the
26 scoring team.

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

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

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

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

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

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



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

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

(d) The commission may establish interagency agreements.

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

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

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

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

(3) A competitive solicitation would frustrate obtaining necessary information, goods, or services in a timely manner.

(4) The award 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 an award 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 does not affect other provisions or applications that can be given effect without the invalid provision or application.

~~SEC. 6.—~~

SEC. 5. Section 25620.10 of the Public Resources Code, as added by Section 9 of Chapter 515 of the Statutes of 2002, is amended and renumbered to read:

25620.11. The commission shall regularly convene an advisory board that shall make recommendations to guide the commission's selection of programs and projects to be funded under this chapter. The advisory board shall include as appropriate, but not be limited to, representatives from the Public Utilities Commission, consumer organizations, environmental organizations, and electrical corporations subject to the funding requirements of Section 381 of the Public Utilities Code.

SEC. 6. *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.

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

(1) "In-state renewable electricity generation technology" means a facility that meets all of the following criteria:

(A) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

(B) The facility is located in the state or near the border of the state with the first point of connection to the Western Electricity Coordinating Council (WECC) transmission system located within this state.

(C) For the purposes of this subdivision, “solid waste conversion” means a technology that uses a noncombustion thermal process to convert solid waste to a clean burning fuel for the purpose of generating electricity, and that meets all of the following criteria:

(i) The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.

(ii) The technology produces no discharges of air contaminants or emissions, including greenhouse gases as defined in Section 42801 of the Health and Safety Code.

(iii) The technology produces no discharges to surface or groundwaters of the state.

(iv) The technology produces no hazardous wastes.

(v) To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream prior to the conversion process and the owner or operator of the facility certifies that the those materials will be recycled or composted.

(vi) The facility at which the technology is used is in compliance with all applicable laws, regulations, and ordinances.

(vii) The technology meets any other conditions established by the State Energy Resources Conservation and Development Commission.

(viii) The facility certifies that any local agency sending solid waste to the facility is in compliance with Division 30 (commencing with Section 40000) of the Public Resources Code, has reduced, recycled, or composted solid waste to the maximum extent feasible, and shall have been found by the California Integrated Waste Management Board to have diverted at least 30 percent of all solid waste through source reduction, recycling and composting.

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

(3) “Energy Commission” means the State Energy Resources Conservation and Development Commission.

(c) (1) Twenty percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used for

1 programs that are designed to improve the competitiveness of
2 existing in-state renewable electricity generation technology
3 facilities, and to secure for the state the environmental, economic,
4 and reliability benefits that continued operation of those facilities
5 will provide. Eligibility for incentives under this subdivision shall
6 be limited to those technologies found eligible for funds by the
7 Energy Commission pursuant to paragraphs (5), (6), and (8) of
8 subdivision (c) of Section 399.6.

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

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

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

22 (C) The Energy Commission shall establish a cents per
23 kilowatthour production incentive, not to exceed the payment caps
24 per kilowatthour established in the report, as those payment caps
25 are revised in guidelines adopted by the commission, representing
26 the difference between target prices and the market clearing price
27 for electricity, if sufficient funds are available. If there are
28 insufficient funds in any payment period to pay either the
29 difference between the target and market clearing price or the
30 payment caps, production incentives shall be based on the amount
31 determined by dividing available funds by eligible generation. The
32 market clearing price for electricity shall be determined by the
33 Energy Commission based on the energy prices paid to nonutility
34 power generators as authorized by the commission, or on
35 otherwise available measures of market price. For the first tier
36 biomass technologies, the Energy Commission shall establish a
37 time-differentiated incentive structure that encourages plants to
38 run the maximum feasible amount of time and that provides a
39 higher incentive when the plants are receiving the lowest price.
40 The Energy Commission may establish a different incentive rate

within the same technology tier to account for discounted contracts.

(D) Facilities that are eligible to receive 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 at monthly average rates equal to or greater than the applicable target price, as determined by the Energy 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 excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

(d) (1) Fifty-one and one-half percent of the funds 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 technology facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide.

(2) Any funds used 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) In order to cover the above market costs of renewable resources as approved by the commission and selected by retail sellers to fulfill their obligations under Article 16 (commencing with Section 399.11), the Energy Commission shall award funds in the form of supplemental energy payments, subject to the following criteria:

(i) The Energy Commission may establish caps on supplemental energy payments. The caps shall be designed to

1 provide for a viable energy market capable of achieving the goals
2 of Article 16 (commencing with Section 399.11). The Energy
3 Commission may waive application of the caps to accommodate
4 a facility, if it is demonstrated to the satisfaction of the Energy
5 Commission, that operation of the facility would provide
6 substantial economic and environmental benefits to end use
7 customers subject to the funding requirements of Section 381.

8 (ii) Supplemental energy payments shall be awarded only to
9 facilities that are eligible for funding under this subdivision.

10 (iii) Supplemental energy payments awarded to facilities
11 selected by an electrical corporation pursuant to Article 16
12 (commencing with Section 399.11) shall be paid for the lesser of
13 10 years, or the duration of the contract with the electrical
14 corporation.

15 (iv) The Energy Commission shall reduce or terminate
16 supplemental energy payments for projects that fail either to
17 commence and maintain operations consistent with the contractual
18 obligations to an electrical corporation, or that fail to meet
19 eligibility requirements.

20 (v) Funds shall be managed in an equitable manner in order for
21 retail sellers to meet their obligation under Article 16
22 (commencing with Section 399.11).

23 (B) The Energy Commission may determine as part of a
24 solicitation, that a facility that does not meet the definition of
25 “in-state renewable electricity generation technology” facility
26 solely because it is located outside the state, is eligible for funding
27 under this subdivision if it meets both of the following
28 requirements:

29 (i) It is located so that it is or will be connected to the Western
30 Electricity Coordinating Council (WECC) transmission system.

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

37 (C) Facilities that are eligible to receive funding pursuant to
38 this subdivision shall be registered in accordance with criteria
39 developed by the Energy Commission and those facilities may not

1 receive payments for any electricity produced that has any of the
2 following characteristics:

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

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

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

14 (iv) Is a hydroelectric generation project that will require a new
15 or increased appropriation of water under Part 2 (commencing
16 with Section 1200) of Division 2 of the Water Code.

17 (D) Eligibility to compete for funds or to receive funds shall be
18 contingent upon having to sell the output of the renewable
19 electricity generation facility to customers subject to the funding
20 requirements of Section 381.

21 (E) The Energy Commission may require applicants
22 competing for funding to post a forfeitable bid bond or other
23 financial guaranty as an assurance of the applicant's intent to move
24 forward expeditiously with the project proposed. The amount of
25 any bid bond or financial guaranty may not exceed 10 percent of
26 the total amount of the funding requested by the applicant.

27 (F) In awarding funding, the Energy Commission may provide
28 preference to projects that provide tangible demonstrable benefits
29 to communities with a plurality of minority or low-income
30 populations.

31 (3) Repowered existing facilities shall be eligible for funding
32 under this subdivision if the capital investment to repower the
33 existing facility equals at least 80 percent of the value of the
34 repowered facility.

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

37 (5) Production incentives awarded under this subdivision prior
38 to January 1, 2002, shall commence on the date that a project
39 begins electricity production, provided that the project was
40 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.

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

(A) Agricultural crops and agricultural wastes and residues.

(B) 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.

(C) 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.

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

(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 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), 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 capacity of the system measured in watts, or in 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 50 kilowatts rated electrical generating capacity per customer site, and other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the Energy Commission. Eligible electricity generating systems are intended primarily to offset part or all of the consumer's own electricity demand, and shall not be owned by 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, and 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 generation output. Systems and their fuel resource shall be located on the same premises of the end-use consumer where the consumer's own electricity demand is located, and all eligible

1 electricity generating systems shall be connected to the utility grid
2 in California. The Energy Commission may require eligible
3 electricity generating systems to have meters in place to monitor
4 and measure a system's performance and generation. Only
5 systems that will be operated in compliance with applicable law
6 and the rules of the commission shall be eligible for funding.

7 (D) The Energy Commission shall limit the amount of funds
8 available for any system or project of multiple systems and reduce
9 the level of funding for any system or project of multiple systems
10 that has received, or may be eligible to receive, any government
11 or utility funds, incentives, or credit.

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

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

21 (f) (1) Ten percent of the funds collected pursuant to paragraph
22 (6) of subdivision (c) of Section 381 shall be used to provide
23 customer credits to customers that entered into a direct transaction
24 on or before September 20, 2001, for purchases of electricity
25 produced by registered in-state renewable electricity generating
26 facilities.

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

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



1 (B) Credits awarded pursuant to this paragraph may be paid
2 directly to electric service providers, energy marketers,
3 aggregators, or generators if those persons or entities account for
4 the credits on the recipient customer's utility bills. Credits may not
5 exceed one and one-half cents (\$0.015) per kilowatthour. Credits
6 awarded to members of the combined class of customers, other
7 than residential and small commercial customers, may not exceed
8 one thousand dollars (\$1,000) per customer per calendar year. In
9 no event may more than 20 percent of the total customer incentive
10 funds be awarded to members of the combined class of customers
11 other than residential and small commercial customers.

12 (C) The Energy Commission shall develop criteria and
13 procedures for the identification of energy purchasers and
14 providers that are eligible to receive funds pursuant to this
15 paragraph through a process consistent with this paragraph. These
16 criteria and procedures shall apply only to funding eligibility and
17 may not extend to other renewable marketing claims.

18 (D) The commission shall notify the Energy Commission in
19 writing within 10 days of revoking or suspending the registration
20 of any electric service provider pursuant to paragraph (4) of
21 subdivision (b) of Section 394.25.

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

32 (F) Customer credits may not be awarded for the purchase of
33 electricity that is used to meet the obligations of a renewable
34 portfolio standard.

35 (g) One percent of the funds collected pursuant to paragraph (6)
36 of subdivision (c) of Section 381 shall be used in accordance with
37 the report to promote renewable energy and to disseminate
38 information on renewable energy technologies, including
39 emerging renewable technologies, and to help develop a consumer

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

3 (h) (1) The Energy Commission shall adopt guidelines
4 governing the funding programs authorized under this section and
5 Section 399.13, at a publicly noticed meeting offering all
6 interested parties an opportunity to comment. Substantive changes
7 to the guidelines may not be adopted without at least 10 days'
8 written notice to the public. The public notice of meetings required
9 by this paragraph may not be less than 30 days. Notwithstanding
10 any other provision of law, any guidelines adopted pursuant to this
11 section shall be exempt from the requirements of Chapter 3.5
12 (commencing with Section 11340) of Division 3 of Title 2 of the
13 Government Code. The Legislature declares that the changes
14 made to this paragraph by the act amending this section during the
15 2002 portion of the 2001–02 Regular Session are declaratory of,
16 and not a change in existing law.

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

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

28 (i) The Energy Commission shall report to the Legislature on
29 or before ~~May 31, 2000~~ *March 31, 2004*, and ~~on or before May 31~~
30 ~~of every second year~~ *annually* thereafter, regarding the results of
31 the mechanisms funded pursuant to this section. *The report shall*
32 *contain the following elements:* ~~Reports prepared pursuant to this~~
33 ~~subdivision shall include a~~

34 (A) A description of the allocation of funds among existing,
35 new and emerging technologies; the allocation of funds among
36 programs, including consumer-side incentives; and the need for
37 the reallocation of money among those technologies. ~~The reports~~
38 ~~shall discuss the~~

39 (B) *The status of account transfers and repayments.*

1 (C) A description of the cumulative commitment of claims by
2 account, the relative demand for funds by account, and a forecast
3 of future awards.

4 (D) A discussion of the progress being made toward achieving
5 the 17 percent target provided in subdivision (a) by each funding
6 category authorized pursuant to subdivisions (c), (d), (e), (f), and
7 (g) of this section. ~~The reports shall also address~~

8 (E) The description of the allocation of funds from interest on
9 the accounts described in this section, and money in the accounts
10 described in subdivision (e) of Section 381. ~~Notwithstanding~~

11 (F) An itemized list, including project descriptions, award
12 amounts, and outcomes for projects awarded funding in the prior
13 year.

14 (G) Other matters the Energy Commission determines may be
15 of importance to the Legislature.

16 (2) Notwithstanding subdivisions (c), (d), (e), (f), and (g) of
17 this section, money may be reallocated without further legislative
18 action 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 allocation
23 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 affect 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 SEC. 7. Section 445 of the Public Utilities Code is amended
4 to read:

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

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

9 (1) The Existing Renewable Resources Account.

10 (2) New Renewable Resources Account.

11 (3) Emerging Renewable Resources Account.

12 (4) Customer-Credit Renewable Resource Purchases Account.

13 (5) Renewable Resources Consumer Education Account.

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

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

35 (e) Upon notification by the Energy Commission, the
36 Controller shall pay all awards of the money in the accounts
37 created pursuant to subdivision (b) for purposes enumerated in
38 Section 383.5. The eligibility of each award shall be determined
39 solely by the Energy Commission based on the procedures it
40 adopts under subdivision (h) of Section 383.5. Based on the



1 eligibility of each award, the Energy Commission shall also
 2 establish the need for a multiyear commitment to any particular
 3 award and so advise the Department of Finance. Eligible awards
 4 submitted by the Energy Commission to the Controller shall be
 5 accompanied by information specifying the account from which
 6 payment should be made and the amount of each payment; a
 7 summary description of how payment of the award furthers the
 8 purposes enumerated in Section 383.5; and an accounting of future
 9 costs associated with any award or group of awards known to the
 10 Energy Commission to represent a portion of a multiyear funding
 11 commitment.

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

19 ~~(g) The Energy Commission shall, on an annual basis, report to~~
 20 ~~the Legislature on the implementation of this article. Those annual~~
 21 ~~reports shall be submitted to the Legislature not more than 30 days~~
 22 ~~after the close of the fiscal year and shall include information~~
 23 ~~describing the awards submitted to the Controller for payment~~
 24 ~~pursuant to this article, the cumulative commitment of claims by~~
 25 ~~account, the relative demand for funds by account, a forecast of~~
 26 ~~future awards, and other matters the Energy Commission~~
 27 ~~determines may be of importance to the Legislature.~~

28 ~~(h)~~

29 (g) The Department of Finance, commencing March 1, 1999,
 30 shall conduct an independent audit of the Renewable Resource
 31 Trust Fund and its related accounts annually, and provide an audit
 32 report to the Legislature not later than March 1 of each year for
 33 which this article is operative. The Department of Finance's report
 34 shall include information regarding revenues, payment of awards,
 35 reserves held for future commitments, unencumbered cash
 36 balances, and other matters that the Director of Finance determines
 37 may be of importance to the Legislature.

38 SEC. 8. Division 4.7 (commencing with Section 9201) of the
 39 Public Utilities Code is repealed.

1 SEC. 9. Section 2 of Chapter 850 of the Statutes of 2002 is
2 amended to read:

3 Sec. 2. (a) On or before ~~March 31~~ September 30, 2003, the
4 State Energy Resources Conservation and Development
5 Commission, in consultation with the Public Utilities
6 Commission, shall report to the Legislature and the Governor
7 regarding the feasibility of implementing real-time pricing,
8 critical peak pricing, and other dynamic pricing tariffs for
9 electricity in California, as strategies which can either reduce peak
10 demand or shift peak demand load to off-peak periods.

11 (b) The report shall consider all of the following:

12 (1) How wholesale real-time prices would be calculated and
13 made available to customers.

14 (2) Options for day-ahead and hour-ahead retail prices.

15 (3) Options for incorporating demand responsiveness into the
16 wholesale competitive market and operations of the California
17 Independent System Operator.

18 (4) Options for ensuring customer protection under a real-time,
19 critical peak, and other dynamic pricing scenarios, including
20 identifying potentially disadvantaged groups who may be
21 disproportionately vulnerable to the impact of volatile prices and
22 suggestions for effective safeguards for those customers.

23 (5) A summary of current cooperative activities to further
24 implementation of price responsive demand among appropriate
25 state agencies.

26 (6) A listing of existing statutes and other regulatory barriers
27 that could constrain the implementation of price responsive
28 demand, or are redundant with price responsive demand.

29 (7) Identification of means to ensure consumer protection.

30 SEC. 10. (a) There is hereby appropriated from the
31 California High-Cost Fund-B Administrative Committee Fund to
32 the Public Utilities Commission, forty million dollars
33 (\$40,000,000) for the purpose of transfer payments to telephone
34 corporations providing services in high cost rural and small
35 metropolitan areas in fiscal year 2001–02 and authorized to
36 receive these funds pursuant to Chapter 1.5 (commencing with
37 Section 270) of Part 1 of Division 1 and Section 739.5 of the Public
38 Utilities Code.

39 (b) There is hereby appropriated from the Universal Lifeline
40 Telephone Service Trust Administrative Committee Fund to the

1 Public Utilities Commission, nineteen million dollars
2 (\$19,000,000) for the purpose of transfer payments to telephone
3 corporations providing discounted residential telephone services
4 to eligible customers in fiscal year 2001–02 and authorized to
5 receive these funds pursuant to Chapter 1.5 (commencing with
6 Section 270) and Article 8 (commencing with Section 871) of
7 Chapter 3, of Part 1 of Division 1 of, the Public Utilities Code.

8 (c) No fee, charge, rate, or assessment may be increased, nor
9 any surcharge imposed, by the commission as a result of this
10 section.

11 SEC. 11. It is the intent of the Legislature that the report
12 required by subdivision (i) of Section 383.5 of the Public Utilities
13 Code, is the annual report required by item 3360-001-0381 of the
14 Supplemental Budget Report of the 1999 Budget Act.

