

AMENDED IN ASSEMBLY JUNE 19, 2003

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, 25523, 25525, and 25620.5 of, and to amend and renumber Section 25620.10 of, the Public Resources Code, 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 Energy Commission to 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 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 Energy Commission to regularly convene an advisory board that is required to make recommendations to guide the 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 establishes certain accounts in the Renewable Resource Trust Fund. Existing law requires, upon notification by the Energy Commission, the Controller to pay all awards of the money in the accounts for certain renewable energy purposes. Existing law requires the 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 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 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, *as revised*, 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~~ \$6,000,000 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: ²/₃. Appropriation: 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
12 unit of potential energy efficiency and load management activities.
13 Where applicable, the inventory shall include data on variations in
14 savings and costs associated with particular measures. The report
15 shall take into consideration environmental benefits as developed
16 in related commission and public utilities commission
17 proceedings.

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

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



1 technical advisory group recommends. The technical advisory
2 group shall terminate on January 1, 1993.

3 SEC. 2. Section 25523 of the Public Resources Code is
4 amended to read:

5 25523. The commission shall prepare a written decision after
6 the public hearing on an application, which includes all of the
7 following:

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

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

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

31 (d) (1) Findings regarding the conformity of the proposed site
32 and related facilities with standards adopted by the commission
33 pursuant to Section 25216.3 and subdivision (d) of Section 25402,
34 with public safety standards and the applicable air and water
35 quality standards, and with other applicable local, regional, state,
36 and federal standards, ordinances, or laws. If the commission finds
37 that there is noncompliance with a state, local, or regional
38 ordinance or regulation in the application, it shall consult and meet
39 with the state, local, or regional governmental agency concerned
40 to attempt to correct or eliminate the noncompliance. If the

1 noncompliance cannot be corrected or eliminated, the commission
2 shall inform the state, local, or regional governmental agency if it
3 makes the findings required by Section 25525.

4 (2) The commission may not find that the proposed facility
5 conforms with applicable air quality standards pursuant to
6 paragraph (1) unless the applicable air pollution control district or
7 air quality management district certifies, prior to the licensing of
8 the project by the commission, that complete emissions offsets for
9 the proposed facility have been identified and will be obtained by
10 the applicant within the time required by the district's rules or
11 unless the applicable air pollution control district or air quality
12 management district certifies that the applicant requires emissions
13 offsets to be obtained prior to the commencement of operation
14 consistent with Section 42314.3 of the Health and Safety Code and
15 prior to commencement of the operation of the proposed facility.
16 The commission shall require as a condition of certification that
17 the applicant obtain any required emission offsets within the time
18 required by the applicable district rules, consistent with any
19 applicable federal and state laws and regulations, and prior to the
20 commencement of the operation of the proposed facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (d) The commission may establish interagency agreements.

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

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

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

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

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

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

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

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

37 (1) The commission, at least 30 days prior to taking an action
38 pursuant to subdivision (f), notifies the Joint Legislative Budget
39 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 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. 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

1 thermal process to convert solid waste to a clean burning fuel for
2 the purpose of generating electricity, and that meets all of the
3 following criteria:

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

6 (ii) The technology produces no discharges of air contaminants
7 or emissions, including greenhouse gases as defined in Section
8 42801 of the Health and Safety Code.

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

11 (iv) The technology produces no hazardous wastes.

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

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

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

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

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

35 (3) "Energy Commission" means the State Energy Resources
36 Conservation and Development Commission.

37 (c) (1) Twenty percent of the funds collected pursuant to
38 paragraph (6) of subdivision (c) of Section 381 shall be used for
39 programs that are designed to improve the competitiveness of
40 existing in-state renewable electricity generation technology

1 facilities, and to secure for the state the environmental, economic,
2 and reliability benefits that continued operation of those facilities
3 will provide. Eligibility for incentives under this subdivision shall
4 be limited to those technologies found eligible for funds by the
5 Energy Commission pursuant to paragraphs (5), (6), and (8) of
6 subdivision (c) of Section 399.6.

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

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

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

20 (C) The Energy Commission shall establish a cents per
21 kilowatthour production incentive, not to exceed the payment caps
22 per kilowatthour established in the report, as those payment caps
23 are revised in guidelines adopted by the commission, representing
24 the difference between target prices and the market clearing price
25 for electricity, if sufficient funds are available. If there are
26 insufficient funds in any payment period to pay either the
27 difference between the target and market clearing price or the
28 payment caps, production incentives shall be based on the amount
29 determined by dividing available funds by eligible generation. The
30 market clearing price for electricity shall be determined by the
31 Energy Commission based on the energy prices paid to nonutility
32 power generators as authorized by the commission, or on
33 otherwise available measures of market price. For the first tier
34 biomass technologies, the Energy Commission shall establish a
35 time-differentiated incentive structure that encourages plants to
36 run the maximum feasible amount of time and that provides a
37 higher incentive when the plants are receiving the lowest price.
38 The Energy Commission may establish a different incentive rate
39 within the same technology tier to account for discounted
40 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 provide for a viable energy market capable of achieving the goals of Article 16 (commencing with Section 399.11). The Energy

Commission may waive application of the caps to accommodate a facility, if it is demonstrated to the satisfaction of the Energy Commission, that operation of the facility would provide substantial economic and environmental benefits to end use customers subject to the funding requirements of Section 381.

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

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

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

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

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

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

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

(C) 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:

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

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

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

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

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

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

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

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

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

35 (5) Production incentives awarded under this subdivision prior
36 to January 1, 2002, shall commence on the date that a project
37 begins electricity production, provided that the project was
38 operational prior to January 1, 2002, unless the Energy
39 Commission finds that the project will not be operational prior to
40 January 1, 2002, due to circumstances beyond the control of the

1 developer. Upon making a finding that the project will not be
2 operational due to circumstances beyond the control of the
3 developer, the Energy Commission shall pay production
4 incentives over a five-year period, commencing on the date of
5 operation, provided that the date that a project begins electricity
6 production may not extend beyond January 1, 2007.

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

12 (A) Agricultural crops and agricultural wastes and residues.

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

18 (C) Wood and wood wastes that meet all of the following
19 requirements:

20 (i) Have been harvested pursuant to an approved timber harvest
21 plan prepared in accordance with the Z'berg-Nejedly Forest
22 Practice Act of 1973 (Chapter 8 (commencing with Section 4511),
23 Part 2, Division 4, Public Resource Code).

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

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

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

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

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

7 (B) The program shall provide monetary rebates, buydowns, or
8 equivalent incentives, subject to subparagraph (C), to purchasers,
9 lessees, lessors, or sellers of eligible electricity generating
10 systems. Incentives shall benefit the end-use consumer of
11 renewable generation by directly and exclusively reducing the
12 purchase or lease cost of the eligible system, or the cost of
13 electricity produced by the eligible system. Incentives shall be
14 issued on the basis of the rated electrical capacity of the system
15 measured in watts, or in the amount of electricity production of the
16 system, measured in kilowatthours, determined by the Energy
17 Commission.

18 (C) Eligible distributed emerging technologies are
19 photovoltaic, solar thermal electric, fuel cell technologies that
20 utilize renewable fuels, and wind turbines of not more than 50
21 kilowatts rated electrical generating capacity per customer site,
22 and other distributed renewable emerging technologies that meet
23 the emerging technology eligibility criteria established by the
24 Energy Commission. Eligible electricity generating systems are
25 intended primarily to offset part or all of the consumer's own
26 electricity demand, and shall not be owned by local publicly
27 owned electric utilities, nor be located at a customer site that is not
28 receiving distribution service from an electrical corporation that
29 is subject to Section 381 and contributing funds to support
30 programs under this section. All eligible electricity generating
31 system components shall be new and unused, and shall not have
32 been previously placed in service in any other location or for any
33 other application, and shall have a warranty of not less than five
34 years to protect against defects and undue degradation of electrical
35 generation output. Systems and their fuel resource shall be located
36 on the same premises of the end-use consumer where the
37 consumer's own electricity demand is located, and all eligible
38 electricity generating systems shall be connected to the utility grid
39 in California. The Energy Commission may require eligible
40 electricity generating systems to have meters in place to monitor

1 and measure a system's performance and generation. Only
2 systems that will be operated in compliance with applicable law
3 and the rules of the commission shall be eligible for funding.

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

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

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

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

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

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

37 (B) Credits awarded pursuant to this paragraph may be paid
38 directly to electric service providers, energy marketers,
39 aggregators, or generators if those persons or entities account for
40 the credits on the recipient customer's utility bills. Credits may not

1 exceed one and one-half cents (\$0.015) per kilowatthour. Credits
2 awarded to members of the combined class of customers, other
3 than residential and small commercial customers, may not exceed
4 one thousand dollars (\$1,000) per customer per calendar year. In
5 no event may more than 20 percent of the total customer incentive
6 funds be awarded to members of the combined class of customers
7 other than residential and small commercial customers.

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

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

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

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

31 (g) One percent of the funds collected pursuant to paragraph (6)
32 of subdivision (c) of Section 381 shall be used in accordance with
33 the report to promote renewable energy and to disseminate
34 information on renewable energy technologies, including
35 emerging renewable technologies, and to help develop a consumer
36 market for renewable energy and for small-scale emerging
37 renewable energy technologies.

38 (h) (1) The Energy Commission shall adopt guidelines
39 governing the funding programs authorized under this section and
40 Section 399.13, at a publicly noticed meeting offering all

interested parties an opportunity to comment. Substantive changes to the guidelines may not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this paragraph may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this section shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code. The Legislature declares that the changes made to this paragraph by the act amending this section during the 2002 portion of the 2001–02 Regular Session are declaratory of, and not a change in existing law.

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

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

(i) The Energy Commission shall report to the Legislature on or before March 31, 2004, and annually thereafter, regarding the results of the mechanisms funded pursuant to this section. The report shall contain the following elements:

(A) A description of the allocation of funds among existing, new and emerging technologies; the allocation of funds among programs, including consumer-side incentives; and the need for the reallocation of money among those technologies.

(B) The status of account transfers and repayments.

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

(D) A discussion of the progress being made toward achieving the 17-percent target provided in subdivision (a) by each funding category authorized pursuant to subdivisions (c), (d), (e), (f), and (g) of this section.

1 (E) The description of the allocation of funds from interest on
2 the accounts described in this section, and money in the accounts
3 described in subdivision (e) of Section 381.

4 (F) An itemized list, including project descriptions, award
5 amounts, and outcomes for projects awarded funding in the prior
6 year.

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

9 (2) Notwithstanding subdivisions (c), (d), (e), (f), and (g) of
10 this section, money may be reallocated without further legislative
11 action among existing, new, and emerging technologies and
12 consumer-side programs in a manner consistent with the report
13 and with the latest report provided to the Legislature pursuant to
14 this subdivision, except that reallocations may not reduce the
15 allocation established in subdivision (d) nor increase the allocation
16 established in subdivision (c).

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

28 (k) The Energy Commission shall participate in proceedings at
29 the commission that relate to or affect efforts to stimulate the
30 development of electricity generated from renewable sources, in
31 order to obtain coordination of the state's efforts to achieve the
32 target of increasing the amount of electricity generated from
33 renewable sources per year, so that it equals 17 percent of the total
34 electricity generated for consumption in California by 2006.

35 SEC. 7. Section 445 of the Public Utilities Code is amended
36 to read:

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

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

- 1 (1) The Existing Renewable Resources Account.
- 2 (2) New Renewable Resources Account.
- 3 (3) Emerging Renewable Resources Account.
- 4 (4) Customer-Credit Renewable Resource Purchases Account.
- 5 (5) Renewable Resources Consumer Education Account.

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

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

27 (e) Upon notification by the Energy Commission, the
28 Controller shall pay all awards of the money in the accounts
29 created pursuant to subdivision (b) for purposes enumerated in
30 Section 383.5. The eligibility of each award shall be determined
31 solely by the Energy Commission based on the procedures it
32 adopts under subdivision (h) of Section 383.5. Based on the
33 eligibility of each award, the Energy Commission shall also
34 establish the need for a multiyear commitment to any particular
35 award and so advise the Department of Finance. Eligible awards
36 submitted by the Energy Commission to the Controller shall be
37 accompanied by information specifying the account from which
38 payment should be made and the amount of each payment; a
39 summary description of how payment of the award furthers the
40 purposes enumerated in Section 383.5; and an accounting of future

1 costs associated with any award or group of awards known to the
2 Energy Commission to represent a portion of a multiyear funding
3 commitment.

4 (f) The Energy Commission may transfer funds between
5 accounts for cashflow purposes, provided that the balance due
6 each account is restored and the transfer does not adversely affect
7 any of the accounts.

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

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

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

21 ~~Sec. 2. (a) On or before September 30, 2003, the State~~
22 ~~Energy Resources Conservation and Development Commission,~~
23 ~~in consultation with the Public Utilities Commission, shall report~~
24 ~~to the Legislature and the Governor regarding the feasibility of~~
25 ~~implementing real-time pricing, critical peak pricing, and other~~
26 ~~dynamic pricing tariffs for electricity in California, as strategies~~
27 ~~which can either reduce peak demand or shift peak demand load~~
28 ~~to off-peak periods.~~

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

30 ~~(1) How wholesale real-time prices would be calculated and~~
31 ~~made available to customers.~~

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

33 ~~(3) Options for incorporating demand responsiveness into the~~
34 ~~wholesale competitive market and operations of the California~~
35 ~~Independent System Operator.~~

36 ~~(4) Options for ensuring customer protection under a real-time,~~
37 ~~critical peak, and other dynamic pricing scenarios, including~~
38 ~~identifying potentially disadvantaged groups who may be~~
39 ~~disproportionately vulnerable to the impact of volatile prices and~~
40 ~~suggestions for effective safeguards for those customers.~~

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

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

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

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

SEC. 2. (a) On or before ~~March 31~~ September 30, 2003, the State Energy Resources Conservation and Development Commission, in consultation with the Public Utilities Commission, shall report to the Legislature and the Governor regarding the feasibility of implementing real-time pricing, critical peak pricing, 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.

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

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

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

~~(3) Options for facilitating customer response to real-time and critical peak prices and managing total customer costs, including, but not limited to, interval metering and communication systems, consumer-side of the meter notification, and automatic response equipment.~~

~~(4) An assessment of the options for a variety of customer classes, including, but not limited to, industrial, commercial, residential, and tenants of a mobilehome park, apartment building, or similar residential complex, that receive electricity from a master-meter customer through a submetered system.~~

~~(5) Estimates of potential peak load reductions, including the shifting of peak load demand to off-peak periods.~~

~~(6) Options for incorporating demand responsiveness into the wholesale competitive market and operations of the California Independent System Operator.~~

~~(7) —~~

(4) Options for ensuring customer protection under a real-time, critical peak, and other dynamic pricing scenarios, including identifying potentially disadvantaged groups who may be

1 disproportionately vulnerable to the impact of volatile prices and
2 suggestions for effective safeguards for those customers.

3 (5) *A summary of current cooperative activities to further*
4 *implementation of price responsive demand among appropriate*
5 *state agencies.*

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

9 (7) *Identification of means to ensure consumer protection.*

10 SEC. 10. (a) There is hereby appropriated from the
11 California High-Cost Fund-B Administrative Committee Fund to
12 the Public Utilities Commission, forty million dollars
13 (\$40,000,000) for the purpose of transfer payments to telephone
14 corporations providing services in high cost rural and small
15 metropolitan areas in fiscal year 2001–02 and authorized to
16 receive these funds pursuant to Chapter 1.5 (commencing with
17 Section 270) of Part 1 of Division 1 and Section 739.5 of the Public
18 Utilities Code.

19 (b) There is hereby appropriated from the Universal Lifeline
20 Telephone Service Trust Administrative Committee Fund to the
21 Public Utilities Commission, ~~nineteen~~ six million dollars
22 ~~(\$19,000,000)~~ (\$6,000,000) for the purpose of transfer payments
23 to telephone corporations providing discounted residential
24 telephone services to eligible customers in fiscal year 2001–02 and
25 authorized to receive these funds pursuant to Chapter 1.5
26 (commencing with Section 270) and Article 8 (commencing with
27 Section 871) of Chapter 3, of Part 1 of Division 1 of, the Public
28 Utilities Code.

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

32 SEC. 11. It is the intent of the Legislature that the report
33 required by subdivision (i) of Section 383.5 of the Public Utilities
34 Code, is the annual report required by Item 3360-001-0381 of the
35 Supplemental Budget Report of the 1999 Budget Act.