AMENDED IN ASSEMBLY SEPTEMBER 2, 2003

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 $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~~ *majority*. Appropriation: ~~yes~~ *no*. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 25401.2 of the Public Resources Code is amended to read:

25401.2. (a) As part of the report required by Section 25302, the commission shall develop and update an inventory of current and potential cost-effective opportunities in each utility's service territory, to improve efficiencies and to help utilities manage loads in all sectors of natural gas and electricity use. The report shall include estimates of the overall magnitude of these resources, load shapes, and the projected costs associated with delivering the various types of energy savings that are identified in the inventory. 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 25523 of the Public Resources Code is amended to read:

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

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

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

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

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

(2) The commission may not find that the proposed facility conforms with applicable air quality standards pursuant to paragraph (1) unless the applicable air pollution control district or 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. 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.

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

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

(4) Whenever there is a need to afford bidders an opportunity 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 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 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 programs that are designed to improve the competitiveness of existing 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. Eligibility for incentives under this subdivision shall be limited to those technologies found eligible for funds by the Energy Commission pursuant to paragraphs (5), (6), and (8) of subdivision (c) of Section 399.6.

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

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

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

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

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

(ii) 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.

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

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

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

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

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

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

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

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

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

(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 (Chapter 8 (commencing with Section 4511), Part 2, Division 4, Public Resource Code).

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) (1) The Energy Commission shall adopt guidelines governing the funding programs authorized under this section and 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.

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

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

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

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

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

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

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

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

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

(1) The Existing Renewable Resources Account.

(2) New Renewable Resources Account.

(3) Emerging Renewable Resources Account.

(4) Customer-Credit Renewable Resource Purchases Account.

(5) Renewable Resources Consumer Education Account.

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

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

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

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

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

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

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

Sec. 2. (a) On or before 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 incorporating demand responsiveness into the wholesale competitive market and operations of the California Independent System Operator.

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

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

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

~~SEC. 11.~~

SEC. 10. It is the intent of the Legislature that the report required by subdivision (i) of Section 383.5 of the Public Utilities Code, is the annual report required by Item 3360-001-0381 of the Supplemental Budget Report of the 1999 Budget Act.

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