

AMENDED IN ASSEMBLY SEPTEMBER 5, 2003

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~~ 279, 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.

LEGISLATIVE COUNSEL'S DIGEST

SB 168, as amended, Committee on Energy, Utilities and Communications. Renewable Resource Trust Fund: *Payphone Service Providers Committee*.

(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 existing law, the Payphone Service Providers Committee, which is an advisory board to the Public Utilities Commission (PUC), advises the PUC on the development, implementation, and administration of programs to educate payphone service providers, ensure compliance with the PUC's requirements for payphone operations, and educate consumers on matters related to payphones, and provides for the placement of telecommunications devices capable of servicing the needs of the deaf or the hearing impaired in existing buildings and public accommodations.*

This bill would delete the requirement that the committee advise the PUC on programs to provide for the placement of telecommunications devices capable of servicing the needs of the deaf or the hearing impaired in existing buildings and public accommodations.



(5) Under the Public Utilities Act, the ~~Public Utilities Commission~~ (PUC) PUC requires electrical corporations to identify a separate rate component to fund ~~in-state~~ *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)~~

(6) 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)~~

(7) 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)~~

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



Vote: majority. Appropriation: no. 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
27 technical advisory group recommends. The technical advisory
28 group shall terminate on January 1, 1993.

29 SEC. 2. Section 25523 of the Public Resources Code is
30 amended to read:

31 25523. The commission shall prepare a written decision after
32 the public hearing on an application, which includes all of the
33 following:



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

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

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

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

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



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

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

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

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

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

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

35 25525. The commission may not certify a facility contained
36 in the application when it finds, pursuant to subdivision (d) of
37 Section 25523, that the facility does not conform with any
38 applicable state, local, or regional standards, ordinances, or laws,
39 unless the commission determines that the facility is required for
40 public convenience and necessity and that there are not more

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

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

12 25620.5. (a) The commission may solicit applications for
13 awards, using a sealed competitive bid, competitive negotiation
14 process, commission-issued intradepartmental master agreement,
15 the methods for selection of professional services firms set forth
16 in Chapter 10 (commencing with Section 4525) of Division 5 of
17 Title 1 of the Government Code, interagency agreement, single
18 source, or sole source method. When scoring teams are convened
19 to review and score proposals, the scoring teams may include
20 persons not employed by the commission, as long as employees of
21 the state constitute no less than 50 percent of the membership of
22 the scoring team. A person participating on a scoring team may not
23 have any conflict of interest with respect to the proposal before the
24 scoring team.

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

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

- 31 (1) Whenever the desired award is not for a fixed price.
- 32 (2) Whenever project specifications cannot be drafted in
33 sufficient detail so as to be applicable to a sealed competitive bid.
- 34 (3) Whenever there is a need to compare the different price,
35 quality, and structural factors of the bids submitted.
- 36 (4) Whenever there is a need to afford bidders an opportunity
37 to revise their proposals.
- 38 (5) Whenever oral or written discussions with bidders
39 concerning the technical and price aspects of their proposals will
40 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 279 of the Public Utilities Code is amended to read:*

(a) There is hereby created the Payphone Service Providers Committee, which is an advisory board to advise the commission regarding the development, implementation, and administration of programs to educate payphone service providers, ensure compliance with the commission's requirements for payphone operations, and educate consumers on matters related to payphones, as provided for in commission Decision 90-06-018, ~~and to provide for the placement of telecommunications devices capable of servicing the needs of the deaf or the hearing impaired in existing buildings and public accommodations, as specified in subdivision (a) of Section 2881.2.~~

(b) All revenues collected by telephone corporations in rates authorized by the commission to fund the programs specified in subdivision (a) shall be submitted to the commission pursuant to a schedule established by the commission. Commencing on October 1, 2001, and continuing thereafter, the commission shall transfer the moneys received, and all unexpended revenues collected prior to October 1, 2001, to the Controller for deposit in the Payphone Service Providers Committee Fund. All interest earned by moneys in the fund shall be deposited in the fund.

(c) Moneys appropriated from the Payphone Service Providers Committee Fund to the commission shall be utilized exclusively by the commission for the program specified in subdivision (a), including all costs of the board and the commission associated with the administration and oversight of the program and the fund.

SEC. 7. *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

1 generated per year, so that it equals at least 17 percent of the total
2 electricity generated for consumption in California.

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

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

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

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

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

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

24 (ii) The technology produces no discharges of air contaminants
25 or emissions, including greenhouse gases as defined in Section
26 42801 of the Health and Safety Code.

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

29 (iv) The technology produces no hazardous wastes.

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

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

37 (vii) The technology meets any other conditions established by
38 the State Energy Resources Conservation and Development
39 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

1 per kilowatthour established in the report, as those payment caps
2 are revised in guidelines adopted by the commission, representing
3 the difference between target prices and the market clearing price
4 for electricity, if sufficient funds are available. If there are
5 insufficient funds in any payment period to pay either the
6 difference between the target and market clearing price or the
7 payment caps, production incentives shall be based on the amount
8 determined by dividing available funds by eligible generation. The
9 market clearing price for electricity shall be determined by the
10 Energy Commission based on the energy prices paid to nonutility
11 power generators as authorized by the commission, or on
12 otherwise available measures of market price. For the first tier
13 biomass technologies, the Energy Commission shall establish a
14 time-differentiated incentive structure that encourages plants to
15 run the maximum feasible amount of time and that provides a
16 higher incentive when the plants are receiving the lowest price.
17 The Energy Commission may establish a different incentive rate
18 within the same technology tier to account for discounted
19 contracts.

20 (D) Facilities that are eligible to receive funding pursuant to
21 this subdivision shall be registered in accordance with criteria
22 developed by the Energy Commission and those facilities may not
23 receive payments for any electricity produced that has any of the
24 following characteristics:

25 (i) Is sold at monthly average rates equal to or greater than the
26 applicable target price, as determined by the Energy Commission.

27 (ii) Is that portion of electricity generation attributable to the
28 use of qualified agricultural biomass fuel, for a facility that is
29 receiving fuel-based incentives through the Agricultural
30 Biomass-to-Energy Incentive Grant Program established pursuant
31 to Part 3 (commencing with Section 1101) of Division 1 of the
32 Food and Agricultural Code. Notwithstanding subdivision (f) of
33 Section 1104 of the Food and Agricultural Code, facilities that
34 receive funding from the Agricultural Biomass-to-Energy
35 Incentive Grant Program are eligible to receive funding pursuant
36 to this subdivision.

37 (iii) Is used onsite or is sold to customers in a manner that
38 excludes competitive transition charge payments, or is otherwise
39 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

1 forward expeditiously with the project proposed. The amount of
2 any bid bond or financial guaranty may not exceed 10 percent of
3 the total amount of the funding requested by the applicant.

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

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

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

14 (5) Production incentives awarded under this subdivision prior
15 to January 1, 2002, shall commence on the date that a project
16 begins electricity production, provided that the project was
17 operational prior to January 1, 2002, unless the Energy
18 Commission finds that the project will not be operational prior to
19 January 1, 2002, due to circumstances beyond the control of the
20 developer. Upon making a finding that the project will not be
21 operational due to circumstances beyond the control of the
22 developer, the Energy Commission shall pay production
23 incentives over a five-year period, commencing on the date of
24 operation, provided that the date that a project begins electricity
25 production may not extend beyond January 1, 2007.

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

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

32 (B) Solid waste materials such as waste pallets, crates,
33 dunnage, manufacturing, and construction wood wastes,
34 landscape or right-of-way tree trimmings, mill residues that are
35 directly the result of the milling of lumber, and rangeland
36 maintenance residues.

37 (C) Wood and wood wastes that meet all of the following
38 requirements:

39 (i) Have been harvested pursuant to an approved timber harvest
40 plan prepared in accordance with the Z'berg-Nejedly Forest

1 Practice Act of 1973 (Chapter 8 (commencing with Section 4511),
2 Part 2, Division 4, Public Resource Code).

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

5 (iii) Do not transport or cause the transportation of species
6 known to harbor insect or disease nests outside zones of infestation
7 or current quarantine zones, as identified by the Department of
8 Food and Agriculture or the Department of Forestry and Fire
9 Protection, unless approved by the Department of Food and
10 Agriculture and the Department of Forestry and Fire Protection.

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

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

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

25 (B) The program shall provide monetary rebates, buydowns, or
26 equivalent incentives, subject to subparagraph (C), to purchasers,
27 lessees, lessors, or sellers of eligible electricity generating
28 systems. Incentives shall benefit the end-use consumer of
29 renewable generation by directly and exclusively reducing the
30 purchase or lease cost of the eligible system, or the cost of
31 electricity produced by the eligible system. Incentives shall be
32 issued on the basis of the rated electrical capacity of the system
33 measured in watts, or in the amount of electricity production of the
34 system, measured in kilowatthours, determined by the Energy
35 Commission.

36 (C) Eligible distributed emerging technologies are
37 photovoltaic, solar thermal electric, fuel cell technologies that
38 utilize renewable fuels, and wind turbines of not more than 50
39 kilowatts rated electrical generating capacity per customer site,
40 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

1 produced by registered in-state renewable electricity generating
2 facilities.

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

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

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

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

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

37 (E) By March 31, 2003, the Energy Commission shall report to
38 the Governor and the Legislature on how to most effectively utilize
39 the funds for customer credits, including whether, and under what
40 conditions, the program should be continued. The report shall

1 include an examination of trends in markets for renewable energy,
2 including the trading of nonenergy attributes, and the role of
3 customer credits in these markets. The report will recommend an
4 appropriate funding allocation for the customer credits and how
5 implementation of the customer credits should be structured, if
6 appropriate.

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

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

17 (h) (1) The Energy Commission shall adopt guidelines
18 governing the funding programs authorized under this section and
19 Section 399.13, at a publicly noticed meeting offering all
20 interested parties an opportunity to comment. Substantive changes
21 to the guidelines may not be adopted without at least 10 days'
22 written notice to the public. The public notice of meetings required
23 by this paragraph may not be less than 30 days. Notwithstanding
24 any other provision of law, any guidelines adopted pursuant to this
25 section shall be exempt from the requirements of Chapter 3.5
26 (commencing with Section 11340) of Division 3 of Title 2 of the
27 Government Code. The Legislature declares that the changes
28 made to this paragraph by the act amending this section during the
29 2002 portion of the 2001–02 Regular Session are declaratory of,
30 and not a change in existing law.

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

33 (3) Awards made pursuant to this section are grants, subject to
34 appeal to the Energy Commission upon a showing that factors
35 other than those described in the guidelines adopted by the Energy
36 Commission were applied in making the awards and payments.
37 Any actions taken by an applicant to apply for, or become or
38 remain eligible and registered to receive, payments or awards,
39 including satisfying conditions specified by the Energy

1 Commission, shall not constitute the rendering of goods, services,
2 or a direct benefit to the Energy Commission.

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

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

11 (B) The status of account transfers and repayments.

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

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

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

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

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

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

35 (j) The Energy Commission shall, by December 1, 2003,
36 prepare and submit to the Legislature a comprehensive renewable
37 electricity generation resource plan that describes the renewable
38 resource potential available in California, and recommendations
39 for a plan for development to achieve the target of increasing the
40 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.—~~

SEC. 8. 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

1 Commission for the current calendar year. Notwithstanding
2 Section 13340 of the Government Code, the money in the fund and
3 the accounts within the fund are hereby continuously appropriated
4 to the Energy Commission without regard to fiscal year for the
5 purposes enumerated in Section 383.5.

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

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

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

36 ~~SEC. 8.—~~

37 *SEC. 9.* Division 4.7 (commencing with Section 9201) of the
38 Public Utilities Code is repealed.

39 ~~SEC. 9.—~~

1 *SEC. 10.* Section 2 of Chapter 850 of the Statutes of 2002 is
2 amended to read:

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

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

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

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

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

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

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

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

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

30 ~~SEC. 10.~~

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