AMENDED IN ASSEMBLY SEPTEMBER 9, 2003

AMENDED IN SENATE APRIL 29, 2003

SENATE BILL No. 772

Introduced by Senator Bowen
(Coauthor: Assembly Member Reyes)

February 21, 2003

~~An act to amend Section 25322 of the Public Resources Code, relating to the State Energy Resources Conservation and Development Commission.~~ *An act to add Article 5.6 (commencing with Section 848) to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, relating to electricity.*

LEGISLATIVE COUNSEL'S DIGEST

SB 772, as amended, Bowen. ~~State Energy Resources Conservation and Development Commission: reports: confidentiality and disclosure~~ *Electricity: financing energy recovery.*

(1) Existing law establishes the California Infrastructure and Economic Development Bank and authorizes the bank to make loans and provide other assistance to public and private entities to carry out various types of projects. The existing restructuring of the electrical services industry provides for the issuance of rate reduction bonds by the bank for the recovery of transition costs, as defined, by electrical corporations.

This bill would authorize the Public Utilities Commission to issue financing orders pursuant to the above provisions, to support the issuance of energy recovery bonds by the bank, secured by a dedicated rate component, for any electrical corporation that filed for federal bankruptcy protection or for reorganization pursuant to Chapter 11 of *the Bankruptcy Code (11 U.S.C. Sec. 1101 et seq.) prior to December 31, 2002. The bonds would only be issued as part of a plan of reorganization endorsed by the commission to secure the emergence of the corporation from bankruptcy protection or to implement a confirmed plan, provided the commission finds that the corporation's ratepayers will benefit from lower rates as a result of the issuance of the bonds.*

Since existing law makes any public utility, as defined, and any corporation other than a public utility, that violates the Public Utilities Act guilty of a crime, and the provisions of the bill would be within the act, this bill would impose a state-mandated local program by creating a new crime.

(2) The bill would declare that, due to the special circumstances applicable only to the Pacific Gas and Electric Company bankruptcy, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, and the enactment of a special statute is therefore necessary.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires the State Energy Resources Conservation and Development Commission to manage a data collection system for obtaining information necessary to develop specified energy policy reports and analyses and energy shortage contingency planning efforts, and to support other duties of the commission, as prescribed. Existing law requires that the data collection system include specified requirements regarding the confidentiality of the information collected by the commission. Subject to specified confidentiality requirements, existing law authorizes the commission to grant requests for disclosure of records of information collected by the commission for the data collection system.~~

~~This bill would require the commission to grant a disclosure request if disclosure will not result in an unfair competitive disadvantage to the person who submitted the information, unless the public interest served by not disclosing the information clearly outweighs the public interest served by disclosing the information, or unless another applicable provision of law exempts the information from disclosure. The bill~~

~~would exempt information withheld by the commission from disclosure under the California Public Records Act.~~

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

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

~~SECTION 1. Section 25322 of the Public Resources Code is~~

SECTION 1. The Legislature finds and declares all of the following:

(a) Pacific Gas and Electric Company (PG&E) has filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code (11 U.S.C. Sec. 1101 et seq.) to obtain protection from its creditors under the federal bankruptcy laws.

(b) PG&E filed a plan to reorganize and emerge from bankruptcy that sought to strip the state of its ability to regulate many of the company's assets and activities and transfers that jurisdiction to the Federal Energy Regulatory Commission.

(c) PG&E and the Public Utilities Commission staff recently proposed a settlement of the PG&E bankruptcy case and related adversary proceedings that would retain state jurisdiction over PG&E's assets and activities and allow the company to regain investment grade credit status.

(d) Securitized financing backed by a dedicated rate component was successfully used to fund the 10 percent rate reduction for residential and small commercial customers, pursuant to Assembly Bill 1890 (Chapter 854 of the Statutes of 1996) and Senate Bill 477 (Chapter 275 of the Statutes of 1997).

(e) The Legislature hereby finds and declares that the technical terms and conditions established in Sections 840 to 847, inclusive, of the Public Utilities Code were highly successful in allowing the issuance of rate reduction bonds with a high credit rating and favorable interest rates and that those technical terms and conditions also allowed the bonds to withstand the PG&E bankruptcy and the financial distress of Southern California Edison Company without interruption of payments to bondholders or impairment of the security for the bonds.

(f) It is the intent of the Legislature, and in the public interest, that PG&E's emergence from bankruptcy be accomplished at the

lowest possible cost to the utility's ratepayers, without the loss of state regulatory jurisdiction over the utility's assets and activities.

(g) It is the further intent of the Legislature, and in the public interest, to adopt those same technical terms and conditions for the issuance of energy recovery bonds, modified only to the limited extent necessary to reflect the particular circumstances for this bond issuance, through the enactment of Article 5.6 (commencing with Section 848) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

(h) The Legislature finds and declares that, because of the unique circumstances applicable only to the PG&E bankruptcy, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 2. Article 5.6 (commencing with Section 848) is added to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 5.6. Financing Energy Recovery

848. The commission may, for any electrical corporation that filed for federal bankruptcy protection or for reorganization pursuant to Chapter 11 of the Bankruptcy Code (11 U.S.C. Sec. 1101 et seq.) prior to December 31, 2002, issue financing orders pursuant to Section 849 to support the issuance of energy recovery bonds secured by a dedicated rate component as part of a plan of reorganization endorsed by the commission to secure the emergence of the corporation from bankruptcy protection or to implement a confirmed plan, so long as the commission finds that the corporation's ratepayers will benefit from lower rates as a result of the issuance of the bonds.

(b) The commission may, in a financing order issued pursuant to this section, and consistent with procedural requirements of Section 1705, authorize the issuance of energy recovery bonds in the amount, and in the manner, determined by the commission to provide the maximum benefit to the corporation's ratepayers in the context of a commission-endorsed plan of reorganization for the electrical corporation. The commission may only issue a financing order pursuant to this section if issuance will not result in the

pledging of moneys, revenues, or property for energy recovery bonds which have previously been pledged to secure or repay bonds issued pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(c) Any commission-endorsed plan of reorganization shall provide for the dismissal of all pending federal court litigation brought by the electrical corporation against the commission or any other agency or official of the State of California for violation of the filed rate doctrine, for a taking of property, for impairment of the obligations of contract, or any related claims. No financing order shall be effective unless the dismissal is approved by the bankruptcy court, prior to confirmation of the plan of reorganization, or as part of the confirmed plan of reorganization.

(d) In confirming the commission's authority to approve a dedicated rate component to support the issuance of energy recovery bonds, the Legislature is not ratifying or endorsing any particular outcome of the federal bankruptcy proceeding, but rather is authorizing a means by which the commission can reduce ratepayer costs in a plan of reorganization.

849. For the purposes of this article, the following terms shall have the following meanings:

(a) "Bank" means the California Infrastructure and Economic Development Bank.

(b) "Financing entity" means the bank, any special purpose trust, as defined in Section 63010 of the Government Code, that is authorized by the bank to issue energy recovery bonds or acquire energy recovery property, or any other entity authorized by the bank to issue energy recovery bonds or acquire energy recovery property, or both. The bank may authorize an entity other than a special purpose trust, as defined in Section 63010 of the Government Code, to issue energy recovery bonds only if all of the following conditions are met:

(1) The bank by resolution has determined that allowing another entity to issue energy recovery bonds would produce greater overall ratepayer savings, taking into account all relevant considerations, including, but not limited to, the exclusion of interest on energy recovery bonds issued by the bank from investors' gross income for California or federal income tax purposes, or both, earnings on funds collected and held by the electrical corporation prior to deposit in a fund or account for the

benefit of holders of energy recovery bonds, and all costs of issuance and other transaction costs.

(2) The bank submits to the Joint Legislative Budget Committee a certified copy of the bank's resolution, together with a report setting forth the basis for the bank's determination that a financing entity other than the bank or a special purpose trust will produce greater ratepayer savings and at least 30 days have elapsed from the date of submission.

(c) "Financing order" shall mean an order of the commission adopted in accordance with this article, which shall include, without limitation, a procedure to require the expeditious approval by the commission of periodic adjustments to fixed energy recovery amounts included therein to ensure recovery of all energy recovery costs and the costs of capital associated with the proposed provision, recovery, financing, or refinancing thereof, including the costs of issuing, servicing, and retiring the energy recovery bonds contemplated by the financing order.

(d) "Fixed energy recovery amounts" means those nonbypassable rates and other charges, including, but not limited to, distribution, connection, disconnection, and termination rates and charges, that are authorized by the commission in a financing order to recover (1) energy recovery costs, and (2) the costs of providing, recovering, financing, or refinancing the energy recovery costs through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring energy recovery bonds, and specifically including the costs incurred by the bank in connection with the bond transaction. Fixed energy recovery amounts may, if approved by the commission, include nonbypassable rates and other charges to recover federal and state taxes whose recovery period is modified by the transactions approved in the financing order.

(e) "Energy recovery bonds" means bonds, notes, certificates of participation or beneficial interest, or other evidences of indebtedness or ownership, issued pursuant to an executed indenture or other agreement of a financing entity, the proceeds of which are used, directly or indirectly, to provide, recover, finance, or refinance energy recovery costs, and that are directly or indirectly secured by, or payable from, energy recovery property.

(f) "Energy recovery costs" means those costs, and categories of costs, other than and in addition to the ongoing cost of providing

utility service and the revenues recovered through rates for the period ending December 31, 2003, that the commission finds to be reasonably and necessarily incurred in order for an electrical corporation described in Section 848 to regain its financial health, and that the commission approves for recovery by the electrical corporation as part of a bankruptcy plan of reorganization for that electrical corporation.

(g) (1) "Energy recovery property" means the property right created pursuant to this article including, without limitation, the right, title, and interest of an electrical corporation or its transferee:

(A) In and to the tariff established pursuant to a financing order, as adjusted from time to time in accordance with subdivision (c) of Section 849.1 and the financing order.

(B) To be paid the amount that is determined in a financing order to be the amount that the electrical corporation or its transferee is lawfully entitled to receive pursuant to the provision of this article and the proceeds thereof, and in and to all revenues, collections, claims, payments, money, or proceeds of or arising from the tariff or constituting fixed energy recovery amounts that are the subject of a financing order including those nonbypassable rates and other charges referred to in subdivision (d). Energy recovery property shall not include any moneys, revenues, or property previously pledged to secure or repay bonds issued pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(C) In and to all rights to obtain adjustments to the tariff pursuant to the terms of subdivision (c) of Section 849.1 and the financing order.

(2) "Energy recovery property" shall constitute a current property right notwithstanding the fact that the value of the property right will depend on consumers using electricity or, in those instances where consumers are customers of a particular electrical corporation, the electrical corporation performing certain services.

(3) For purposes of Sections 63010 and 63025.1 of the Government Code, "energy recovery property" also shall mean certificates representing primarily interests in the property rights described in paragraphs (1) and (2).

849.1. (a) The commission may, in an investigation instituted on its own motion or in response to an application, determine that an electrical corporation described in Section 848 may recover certain energy recovery costs through fixed energy recovery amounts, which is energy recovery property under this article. The commission shall designate fixed energy recovery amounts as recoverable in one or more financing orders if the commission determines, as part of its findings in connection with the financing order, that the designation of the fixed energy recovery amounts, and issuance of energy recovery bonds in connection with some or all of the fixed energy recovery amounts would reduce the rates that the electrical corporation's customers would have paid if the financing order were not adopted. These customers shall continue to pay fixed energy recovery amounts until the bonds are paid in full by the financing entity. Once the bonds have been paid in full, the payment by customers of fixed energy recovery amounts shall terminate.

(b) The commission may issue financing orders in accordance with this article to facilitate the provision, recovery, financing, or refinancing of energy recovery costs. A financing order may specify how amounts collected from a customer shall be allocated between fixed energy recovery amounts and other charges.

(c) Notwithstanding Section 455.5, Section 1708, or any other provision of law, except as otherwise provided in this subdivision with respect to energy recovery property that has been made the basis for the issuance of energy recovery bonds, the financing orders and the fixed energy recovery amounts shall be irrevocable and the commission shall not have authority either by rescinding, altering, or amending the financing order or otherwise, to revalue or revise for ratemaking purposes the costs of recovering, financing, or refinancing the energy recovery costs, determine that the fixed energy recovery amounts or rates are unjust or unreasonable, or in any way reduce or impair the value of energy recovery property; nor shall the amount of revenues arising with respect thereto be subject to reduction, impairment, postponement, or termination. Except as otherwise provided in this subdivision, the State of California does hereby pledge and agree with the owners of energy recovery property and holders of energy recovery bonds that the state shall neither limit nor alter the fixed energy recovery amounts, energy recovery property, financing orders, and

all rights thereunder until the obligations, together with the interest thereon, are fully met and discharged, provided nothing contained in this section shall preclude the limitation or alteration if and when adequate provision shall be made by law for the protection of the owners and holders. The bank as agent for the state is authorized to include this pledge and undertaking for the state in these obligations. Notwithstanding any other provision of this section, the commission shall approve the adjustments to the fixed energy recovery amounts as may be necessary to ensure timely recovery of all energy recovery costs that are the subject of the pertinent financing order, and the costs of capital associated with the provision, recovery, financing, or refinancing thereof, including the costs of issuing, servicing, and retiring the energy recovery bonds contemplated by the financing order.

(d) (1) Financing orders issued under this article do not constitute a debt or liability of the state or of any political subdivision thereof, other than the financing entity, and do not constitute a pledge of the full faith and credit of the state or any of its political subdivisions, other than the financing entity, but are payable solely from the funds provided therefore under this article and shall be consistent with Sections 1 and 18 of Article XVI of the California Constitution. This subdivision shall in no way preclude bond guarantees or enhancements pursuant to this article. All the bonds shall contain on the face thereof a statement to the following effect: "Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of, or interest on, this bond."

(2) The issuance of bonds under this article shall not directly, indirectly, or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation therefore or to make any appropriation for their payment. Nothing in this section shall prevent, or be construed to prevent, the financing entity from pledging the full faith and credit of the infrastructure bank fund to the payment of bonds or issuance of bonds authorized pursuant to this article.

(e) The commission shall provide in any financing order for a procedure for the expeditious approval by the commission of periodic adjustments to the fixed energy recovery amounts that are the subject of the pertinent financing order, as required by subdivision (c). The procedure shall require the commission to

determine whether the adjustments are required on each anniversary of the issuance of the financing order, and at the additional intervals as may be provided for in the financing order, and for the adjustments, if required, to be approved within 90 days of each anniversary of the issuance of the financing order, or of each additional interval provided for in the financing order.

(f) Fixed energy recovery amounts shall constitute energy recovery property when, and to the extent that, a financing order authorizing the fixed energy recovery amounts has become effective in accordance with this article, and the energy recovery property shall thereafter continuously exist as property for all purposes with all of the rights and privileges of this article for the period and to the extent provided in the financing order, but in any event until the energy recovery bonds are paid in full, including all principal, interest, premium, costs, and arrearages thereon.

(g) Any surplus fixed energy recovery amounts in excess of the amounts necessary to pay principal, premium, if any, interest and expenses of the issuance of the energy recovery bonds shall be remitted to the financing entity and may be used to benefit the electrical corporation's customers if this would not result in a recharacterization of the tax, accounting, and other intended characteristics of the financing, including, but not limited to, the following:

(1) Avoiding the recognition of debt on the electrical corporation's balance sheet for financial accounting and regulatory purposes.

(2) Treating the energy recovery bonds as debt of the electrical corporation or its affiliates for federal income tax purposes.

(3) Treating the transfer of the energy recovery property by the electrical corporation as a true sale for bankruptcy purposes.

(4) Avoiding any adverse impact of the financing on the electrical corporation's credit rating.

849.2. (a) Financing entities may issue energy recovery bonds upon approval by the commission in the pertinent financing orders. Energy recovery bonds shall be nonrecourse to the credit or any assets of the electrical corporation, other than the financial recovery property as specified in the pertinent financing order.

(b) Electrical corporations may sell and assign all or portions of their interest in energy recovery property to an affiliate. Electrical corporations or their affiliates may sell or assign their

interests to one or more financing entities that make that property the basis for issuance of energy recovery bonds to the extent approved in the pertinent financing orders. Electrical corporations, their affiliates, or financing entities may pledge energy recovery property as collateral, directly or indirectly, for energy recovery bonds to the extent approved in the pertinent financing orders providing for a security interest in the energy recovery property, in the manner as set forth in Section 849.3. In addition energy recovery property may be sold or assigned by (1) the financing entity or a trustee for the holders of energy recovery bonds in connection with the exercise of remedies upon a default, or (2) any person acquiring the energy recovery property after a sale or assignment pursuant to this subdivision.

(c) To the extent that any interest in energy recovery property is so sold or assigned, or is so pledged as collateral, the commission shall authorize the electrical corporation to contract with the financing entity that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the fixed energy recovery amounts for the benefit and account of the financing entity, and will account for and remit these amounts to or for the account of the financing entity. Contracting with the financing entity in accordance with that authorization shall not impair or negate the characterization of the sale, assignment, or pledge as an absolute transfer, a true sale, or security interest, as applicable.

(d) Notwithstanding Section 1708 or any other provision of law, any requirement under this article or a financing order that the commission take action with respect to the subject matter of a financing order shall be binding upon the commission, as it may be constituted from time to time, and any successor agency exercising functions similar to the commission and the commission shall have no authority to rescind, alter, or amend that requirement in a financing order. The approval by the commission in a financing order of the issuance by an electrical corporation or a financing entity of energy recovery bonds shall include the approvals, if any, as may be required by Article 5 (commencing with Section 816) and Section 701.5. Nothing in Section 701.5 shall be construed to prohibit the issuance of energy recovery bonds upon the terms and conditions as may be approved by the commission in a financing order. Section 851 shall not be

applicable to the transfer or pledge of energy recovery property, the issuance of energy recovery bonds, or related transactions approved in a financing order.

849.3. (a) A security interest in energy recovery property is valid, is enforceable against the pledgor and third parties, subject to the rights of any third parties holding security interests in the energy recovery property perfected in the manner described in this section, and attaches when all of the following have taken place:

(1) The commission has issued the financing order authorizing the fixed energy recovery amounts included in the energy recovery property.

(2) Value has been given by the pledgees of the energy recovery property.

(3) The pledgor has signed a security agreement covering the energy recovery property.

(b) A valid and enforceable security interest in energy recovery property is perfected when it has attached and when a financing statement has been filed in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code naming the pledgor of the energy recovery property as "debtor" and identifying the energy recovery property. Any description of the energy recovery property shall be sufficient if it refers to the financing order creating the energy recovery property. A copy of the financing statement shall be filed with the commission by the electrical corporation that is the pledgor or transferor of the energy recovery property, and the commission may require the electrical corporation to make other filings with respect to the security interest in accordance with procedures it may establish, provided that the filings shall not affect the perfection of the security interest.

(c) A perfected security interest in energy recovery property is a continuously perfected security interest in all revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued. Conflicting security interests shall rank according to priority in time of perfection. Energy recovery property shall constitute property for all purposes, including for contracts securing energy recovery bonds, whether or not the revenues and proceeds arising with respect thereto have accrued.

(d) Subject to the terms of the security agreement covering the energy recovery property and the rights of any third parties holding

security interests in the energy recovery property perfected in the manner described in this section, the validity and relative priority of a security interest created under this section is not defeated or adversely affected by the commingling of revenues arising with respect to the energy recovery property with other funds of the electrical corporation that is the pledgor or transferor of the energy recovery property, or by any security interest in a deposit account of that electrical corporation perfected under Division 9 (commencing with Section 9101) of the Commercial Code into which the revenues are deposited. Subject to the terms of the security agreement, upon compliance with the requirements of Section 9311 of the Commercial Code, the pledgees of the energy recovery property shall have a perfected security interest in all cash and deposit accounts of the electrical corporation in which revenues arising with respect to the energy recovery property have been commingled with other funds, but the perfected security interest shall be limited to an amount not greater than the amount of the revenues with respect to the energy recovery property received by the electrical corporation within 12 months before (1) any default under the security agreement or (2) the institution of insolvency proceedings by or against the electrical corporation, less payments from the revenues to the pledgees during that 12-month period.

(e) If an event of default occurs under the security agreement covering the energy recovery property, the pledgees of the energy recovery property, subject to the terms of the security agreement, shall have all rights and remedies of a secured party upon default under Division 9 (commencing with Section 9101) of the Commercial Code, and shall be entitled to foreclose or otherwise enforce their security interest in the energy recovery property, subject to the rights of any third parties holding prior security interests in the energy recovery property perfected in the manner provided in this section. In addition, the commission may require, in the financing order creating the energy recovery property, that, in the event of default by the electrical corporation in payment of revenues arising with respect to the energy recovery property, the commission and any successor thereto, upon the application by the pledgees or transferees, including transferees under Section 849.4, of the energy recovery property, and without limiting any other remedies available to the pledgees or transferees by reason

of the default, shall order the sequestration and payment to the pledgees or transferees of revenues arising with respect to the energy recovery property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor, or transferor of the energy recovery property. Any surplus in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the energy recovery bonds, and other costs arising under the security agreement, shall be remitted to the debtor or to the pledgor or transferor.

(f) Section 5451 of the Government Code shall not apply to any pledge of energy recovery property by a financing entity. Sections 9204 and 9205 of the Commercial Code shall apply to a pledge of energy recovery property by an electrical corporation, an affiliate of an electrical corporation, or a financing entity.

(g) This section sets forth the terms by which a consensual security interest can be created and perfected in the energy recovery property. Unless otherwise ordered by the commission with respect to any series of energy recovery bonds on or prior to the issuance of the series, there shall exist a statutory lien as provided in this subdivision. Upon the effective date of the financing order, there shall exist a first priority lien on all energy recovery property then existing or thereafter arising pursuant to the terms of the financing order. This lien shall arise by operation of this section automatically without any action on the part of the electrical corporation, any affiliate thereof, the financing entity, or any other person. This lien shall secure all obligations, then existing or subsequently arising, to the holders of the energy recovery bonds issued pursuant to the financing order, the trustee or representative for the holders, and any other entity specified in the financing order. The persons for whose benefit this lien is established shall, upon the occurrence of any defaults specified in the financing order, have all rights and remedies of a secured party upon default under Division 9 (commencing with Section 9101) of the Commercial Code, and shall be entitled to foreclose or otherwise enforce this statutory lien in the energy recovery property. This lien shall attach to the energy recovery property regardless of who shall own, or shall subsequently be determined to own, the energy recovery property including any electrical corporation, any affiliate thereof, the financing entity, or any other

person. This lien shall be valid, perfected, and enforceable against the owner of the energy recovery property and all third parties upon the effectiveness of the financing order without any further public notice; provided, however, that any person may, but shall not be required to, file a financing statement in accordance with subdivision (b). Financing statements so filed may be "protective filings" and shall not be evidence of the ownership of the energy recovery property.

A perfected statutory lien in energy recovery property is a continuously perfected lien in all revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued. Conflicting liens shall rank according to priority in time of perfection. Energy recovery property shall constitute property for all purposes, including for contracts securing energy recovery bonds, whether or not the revenues and proceeds arising with respect thereto have accrued.

In addition, the commission may require, in the financing order creating the energy recovery property, that, in the event of default by the electrical corporation in payment of revenues arising with respect to energy recovery property, the commission and any successor thereto, upon the application by the beneficiaries of the statutory lien, and without limiting any other remedies available to the beneficiaries by reason of the default, shall order the sequestration and payment to the beneficiaries of revenues arising with respect to the energy recovery property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor, or transferor of the energy recovery property. Any surplus in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the energy recovery bonds, and other costs arising in connection with the documents governing the energy recovery bonds, shall be remitted to the debtor or to the pledgor or transferor.

849.4. (a) A transfer of energy recovery property by an electrical corporation to an affiliate or to a financing entity, or by an affiliate of an electrical corporation or a financing entity to another financing entity, which the parties have in the governing documentation expressly stated to be a sale or other absolute transfer, in a transaction approved in a financing order, shall be treated as an absolute transfer of all of the transferor's right, title, *and interest (as in a true sale), and not as a pledge or other financing, of the energy recovery property, other than for federal and state income and franchise tax purposes. Granting to holders of energy recovery bonds a preferred right to revenues of the electrical corporation, or the provision by the company of other credit enhancement with respect to energy recovery bonds, shall not impair or negate the characterization of any transfer as a true sale, other than for federal and state income and franchise tax purposes.*

(b) A transfer of energy recovery property shall be deemed perfected as against third persons when both of the following have taken place:

(1) The commission has issued the financing order authorizing the fixed energy recovery amounts included in the energy recovery property.

(2) An assignment of the energy recovery property in writing has been executed and delivered to the transferee.

(c) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code naming the assignor of the energy recovery property as debtor and identifying the energy recovery property has priority. Any description of the energy recovery property shall be sufficient if it refers to the financing order creating the energy recovery property. A copy of the financing statement shall be filed by the assignee with the commission, and the commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures it may establish, but these filings shall not affect the perfection of the transfer.

849.5. Any successor to the electrical corporation, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding, or pursuant to any merger, sale, or transfer, by operation of law, or otherwise, shall perform and satisfy all obligations of the electrical corporation pursuant to this article in the same manner and to the same extent as the electrical corporation, including, but not limited to, collecting and paying to the holders of energy recovery bonds or their representatives or the applicable financing entity revenues arising with respect to the *energy recovery property sold to the applicable financing entity or pledged to secure energy recovery bonds.*

849.6. The authority of the commission to issue financing orders pursuant to Section 849.1 shall expire on December 31, 2005. The expiration of the authority shall have no effect upon financing orders adopted by the commission pursuant to this article or any energy recovery property arising therefrom, or upon the charges authorized to be levied thereunder, or the rights, interests, and obligations of the electrical corporation or a financing entity or holders of energy recovery bonds pursuant to the financing order, or the authority of the commission to monitor, supervise, or take further action with respect to the order in accordance with the terms of this article and of the order.

849.7. Notwithstanding any other law, regulations adopted to implement this article shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~amended to read:~~

~~25322. (a) The data collection system managed pursuant to Section 25320 shall include the following requirements regarding the confidentiality of the information collected by the commission:~~

~~(1) A person required to present information to the commission pursuant to this section may request that specific information be held in confidence. The commission shall grant the request in the following circumstances:~~

~~(A) The information is exempt from disclosure under the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.~~

~~(B) The information satisfies the confidentiality requirements of Article 2 (commencing with Section 2501) of Chapter 7 of~~

~~Division 2 of Title 20 of the California Code of Regulations, as those regulations existed on January 1, 2002.~~

~~(C) On the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.~~

~~(2) The commission may, by regulation, designate certain categories of information as confidential, which removes the obligation to request confidentiality for that information.~~

~~(3) Confidential information pertinent to the responsibilities of the commission specified in this chapter that is obtained by another state agency or the California Independent System Operator or its successor, shall be available to the commission and shall be treated in a confidential manner.~~

~~(4) Information presented to or developed by the commission and deemed confidential pursuant to this section shall be held in confidence by the commission. Confidential information shall be aggregated or masked to the extent necessary to assure confidentiality if public disclosure of the specific information would result in an unfair competitive disadvantage to the person supplying the information.~~

~~(b) Requests for records of information shall be handled as follows:~~

~~(1) If the commission receives a written request to publicly disclose information that is being held in confidence pursuant to paragraph (1) or (2) of subdivision (a), the commission shall provide the person making the request with written justification for the confidential designation and a description of the process to seek disclosure.~~

~~(2) If the commission receives a written request to publicly disclose a disaggregated or unmasked record of information designated as confidential under paragraph (1) or (2) of subdivision (a), notice of the request shall be provided to the person who submitted the record. Upon receipt of the notice, the person who submitted the record may, within five working days of receipt of the notice, provide a written justification of the claim of confidentiality.~~

~~(3) The commission or its designee shall rule on a request made pursuant to paragraph (2) on or before 20 working days after its receipt. The commission shall deny the request if the disclosure will result in an unfair competitive disadvantage to the person who~~

~~submitted the information. If disclosure will not result in an unfair competitive disadvantage to the person who submitted the information, the commission shall grant the request unless the public interest served by not disclosing the information clearly outweighs the public interest served by disclosing the information, or unless another applicable provision of law exempts the information from disclosure.~~

~~(4) If the commission grants the request pursuant to paragraph (3), it shall withhold disclosure for a reasonable amount of time, not to exceed 14 working days, to allow the submitter of the information to seek judicial review.~~

~~(c) Information submitted to the commission pursuant to this section is not confidential if the person submitting the information has made it public.~~

~~(d) The commission shall establish, maintain, and use appropriate security practices and procedures to ensure that the information it has designated as confidential, or received with a confidential designation from another government agency, is protected against disclosure other than that authorized using the procedures in subdivision (b). The commission shall incorporate the following elements into its security practices and procedures:~~

~~(1) Commission employees shall sign a confidential data disclosure agreement providing for various remedies, including, but not limited to, fines and termination for wrongful disclosure of confidential information.~~

~~(2) Commission employees or contract employees of the commission shall only have access to confidential information when it is appropriate to their job assignments and if they have signed a nondisclosure agreement.~~

~~(3) Computer data systems that hold confidential information shall include sufficient security measures to protect the data from inadvertent or wrongful access by unauthorized commission employees and the public.~~

~~(e) Data collected by the commission on petroleum fuels in Section 25320 shall be subject to the confidentiality provisions of Sections 25364 to 25366, inclusive.~~

~~(f) Information withheld by the commission pursuant to this section is not subject to disclosure under the California Public~~

~~Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).~~

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