

AMENDED IN ASSEMBLY AUGUST 30, 2005

AMENDED IN ASSEMBLY JULY 13, 2005

AMENDED IN ASSEMBLY JUNE 21, 2005

AMENDED IN SENATE MAY 4, 2005

AMENDED IN SENATE APRIL 19, 2005

SENATE BILL

No. 107

Introduced by Senators Simitian and Perata
(Principal coauthor: Assembly Member Levine)
(Coauthor: Assembly Member Blakeslee)

January 20, 2005

An act to amend Sections 25740, 25741, 25743, and 25744 of, and to repeal Sections 25745 and 25749 of, the Public Resources Code, and to amend Sections 387, 399.11, 399.12, 399.13, 399.14, and 399.15 of, ~~and~~ to add Article 9 (commencing with Section 635) to Chapter 3 of Part 1 of Division 1 of, and to repeal Section 399.16 of, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 107, as amended, Simitian. Renewable energy.

(1) Existing law expresses the intent of the Legislature, in establishing the Renewable Energy Resources Program, to increase the amount of renewable electricity generated per year, so that it equals at least 17% of the total electricity generated for consumption in California per year by 2006.

This bill would revise and recast that intent language so that the amount of electricity generated per year from eligible renewable energy resources is increased to an amount that equals at least 20% of the total electricity sold to retail customers in California per year by

December 31, 2010. The bill would make conforming changes related to this provision.

(2) The Public Utilities Act imposes various duties and responsibilities on the California Public Utilities Commission (CPUC) with respect to the purchase of electricity and requires the CPUC to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program. The program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, but not including local publicly owned electric utilities, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard). The renewables portfolio standard requires each electrical corporation to increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2017.

This bill would instead require that each retail seller, as defined, increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010.

(3) Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to certify eligible renewable energy resources, to design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, and to allocate and award supplemental energy payments to cover above-market costs of renewable energy.

This bill would require the Energy Commission to develop tracking, accounting, verification, and enforcement mechanisms for renewable energy credits, as defined. The bill would specify that facilities located out of state shall not be eligible for supplemental energy payments unless certain requirements are met. The bill would require that deliveries of electricity from an eligible renewable energy resource under any electricity purchase contract with a retail seller executed before January 1, 2002, be tracked and included in the baseline quantity of eligible renewable energy resources of the purchasing

retail seller. The bill would require that electricity generated pursuant to a prescribed federal act and pursuant to a purchase contract executed on or after January 1, 2002, count towards the renewables portfolio standard requirements of the retail seller. The bill would provide for the tracking of deliveries under these purchase contracts through a prescribed accounting system. The bill would make other technical and conforming changes.

Existing law provides that if supplemental energy payments from the Energy Commission, in combination with the market prices approved by the CPUC, are insufficient to cover any above-market costs of eligible renewable energy resources, the CPUC is required to allow a retail seller to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments.

This bill would require that the CPUC allow a retail seller to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be delivered by existing transmission if the CPUC determines that existing transmission is insufficient to ensure deliverability of the electricity generated by eligible renewable energy resources.

(4) Existing law permits the Energy Commission to consider an electric generating facility that is located outside the state to be an eligible renewable energy resource if it meets specific criteria.

This bill would delete that provision.

(5) Under existing law, the governing board of a local publicly owned electric utility is responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable energy resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement. Existing law requires the governing board of a local publicly owned electric utility to annually report certain information relative to renewable energy resources to its customers.

This bill would additionally require that the governing board of a local publicly owned electric utility annually report the utility's status in implementing a renewables portfolio standard and progress toward attaining the standard to its customers and to report to the Energy Commission the information that the governing board is required to annually report to their customers. These additional reporting requirements would thereby impose a state-mandated local program.

(6) Under the Public Utilities Act, the CPUC requires electrical corporations to identify a separate rate component to fund programs that enhance system reliability and provide in-state benefits. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. The funds are collected to support cost-effective energy efficiency and conservation activities, public interest research and development not adequately provided by competitive and regulated markets, and renewable energy resources (renewable energy public goods charge). Under existing law, 51.5% of the money collected as part of the renewable energy public goods charge is required to be used for programs designed to foster the development of new in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that operation of those facilities will provide. Existing law also provides that any of those funds used for new in-state renewable electricity generation facilities are required to be expended in accordance with a specified report of the Energy Commission to the Legislature, subject to certain requirements, including the awarding of supplemental energy payments.

This bill would require that these funds be awarded only to a project that is selected by an electrical corporation pursuant to a competitive solicitation procedure found by the CPUC to comply with the California Renewables Portfolio Standard Program and that the project participant has entered into an electricity purchase agreement resulting from that solicitation that is approved by the CPUC. The bill would authorize certain projects supplying electricity to retail sellers, as defined, to the extent the retail seller is servicing load that is within the distribution area of an electrical corporation and subject to the renewable energy public goods charge, to receive supplemental energy payments under certain circumstances. The bill would prohibit the Energy Commission from awarding supplemental energy payments for the sale or purchase of renewable energy credits or to service load that is not subject to the renewable energy public goods charge. The bill would revise existing criteria for Energy Commission consideration of an out-of-state electrical generation facility as an eligible renewable energy resource.

(7) Existing law requires that 17.5% of the money collected under the renewable energy public goods charge be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications, and that

certain funds be expended in accordance with the above-described report, subject to, among other things, the requirement that funding for emerging technologies be provided through a competitive, market-based process.

This bill would make technical and nonsubstantive changes to these provisions.

(8) Existing law requires that 10% of the money collected under the renewable energy public goods charge be used for credits to customers that entered into a direct transaction on or before September 20, 2001, for purchases of electricity produced by registered in-state renewable electricity generating facilities.

This bill would delete this provision.

(9) Existing law requires the use of standard terms and conditions by all electrical corporations in contracting for eligible renewable energy resources.

This bill would require that those terms and conditions include the requirement that, no later than 6 months after the CPUC's approval of an electricity purchase agreement, the following information about the agreement be disclosed by the CPUC: party names, resource type, project location, and project capacity.

(10) This bill would require an electrical corporation or local publicly owned electric utility to adopt certain strategies in a long-term plan or a procurement plan, as applicable, to achieve efficiency in the use of fossil fuels and to address carbon emissions, as specified.

(11) This bill would delete certain obsolete and duplicative provisions and make technical and conforming changes.

(12) Existing law makes a violation of the Public Utilities Act or a violation of an order of the CPUC a crime.

Certain of the provisions of this bill are a part of the act and an order of the CPUC would be required to implement these provisions. Because a violation of the provisions of the bill that are part of the act or of any CPUC order implementing these provisions would be a crime, this bill would impose a state-mandated local program by creating new crimes.

(13) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

1 SECTION 1. Section 25740 of the Public Resources Code is
2 amended to read:

3 25740. It is the intent of the Legislature in establishing this
4 program, to increase the amount of electricity generated from
5 eligible renewable energy resources per year, so that it equals at
6 least 20 percent of total retail sales of electricity in California per
7 year by December 31, 2010.

8 SEC. 2. Section 25741 of the Public Resources Code is
9 amended to read:

10 25741. As used in this chapter, the following terms have the
11 following meaning:

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

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

20 (2) The facility satisfies ~~either~~ *one* of the following
21 requirements:

22 (A) The facility is located in the state or near the border of the
23 state with the first point of connection to the transmission
24 network ~~within the Western Electricity Coordinating Council~~
25 ~~(WECC) service territory located within~~ this state and electricity
26 produced by the facility is delivered to an in-state location.

27 (B) The facility has its first point of interconnection to the
28 transmission network outside the state and satisfies all of the
29 following requirements:

1 (i) It is connected to the transmission network within the
2 Western Electricity Coordinating Council (WECC) service
3 territory.

4 (ii) It commences initial commercial operation after January 1,
5 2005.

6 (iii) Electricity produced by the facility is delivered to an
7 in-state location.

8 (iv) It will not cause or contribute to any violation of a
9 California environmental quality standard or requirement.

10 (v) If the facility is outside of the United States, it is developed
11 and operated in a manner that is as protective of the environment
12 as a similar facility located in the state.

13 (vi) It participates in the accounting system to verify
14 compliance with the renewables portfolio standard by retail
15 sellers, once established by the Energy Commission pursuant to
16 subdivision (b) of Section 399.13 of the Public Utilities Code.

17 (C) *The facility meets the requirements of clauses (i), (iii), (iv),
18 (v), and (vi) in subparagraph (B), but does not meet the
19 requirements of clause (ii) because it commences initial
20 operation prior to January 1, 2005, if the facility satisfies either
21 of the following requirements:*

22 (i) *The electricity is from incremental generation resulting
23 from expansion or repowering of the facility.*

24 (ii) *The facility has been part of the existing baseline of
25 eligible renewable energy resources of a retail seller established
26 pursuant to subdivision (a) of Section 399.15 of the Public
27 Utilities Code.*

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

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

36 (B) The technology produces no discharges of air
37 contaminants or emissions, including greenhouse gases as
38 defined in Section 42801.1 of the Health and Safety Code.

39 (C) The technology produces no discharges to surface or
40 groundwaters of the state.

1 (D) The technology produces no hazardous wastes.

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

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

9 (G) The technology meets any other conditions established by
10 the commission.

11 (H) The facility certifies that any local agency sending solid
12 waste to the facility diverted at least 30 percent of all solid waste
13 it collects through solid waste reduction, recycling, and
14 composting. For purposes of this paragraph, “local agency”
15 means any city, county, or special district, or subdivision thereof,
16 which is authorized to provide solid waste handling services.

17 (b) “Renewable energy public goods charge” means that
18 portion of the nonbypassable system benefits charge authorized
19 to be collected and to be transferred to the Renewable Resource
20 Trust Fund pursuant to the Reliable Electric Service Investments
21 Act (Article 15 (commencing with Section 399) of Chapter 2.3 of
22 Part 1 of Division 1 of the Public Utilities Code).

23 (c) “Report” means the report entitled “Investing in
24 Renewable Electricity Generation in California” (June 2001,
25 Publication Number P500-00-022) submitted to the Governor
26 and the Legislature by the commission.

27 (d) “Retail seller” means a “retail seller” as defined in Section
28 399.12 of the Public Utilities Code.

29 (e) “Delivered” and “delivery” mean the electricity output of
30 an in-state renewable electric generation facility that is used to
31 serve end-use retail customers located within the state. Subject to
32 verification by the accounting system established by the
33 commission pursuant to subdivision (b) of Section 399.13 of the
34 Public Utilities Code, electricity shall be deemed delivered if it is
35 either provided at a location within the state, or, if provided at a
36 location adjacent to the state, the electricity is subsequently
37 metered and settled at a location within the state.

38 SEC. 3. Section 25743 of the Public Resources Code is
39 amended to read:

25743. (a) Fifty-one and one-half percent of the money collected pursuant to the renewable energy public goods charge shall be used for programs designed to foster the development of new in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that operation of those facilities will provide.

(b) Any funds used for new in-state renewable electricity generation facilities pursuant to this section shall be expended in accordance with the report, subject to all of the following requirements:

(1) In order to cover the above market costs of eligible renewable energy resources as approved by the Public Utilities Commission and selected by retail sellers to fulfill their obligations under Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, the commission shall award funds in the form of supplemental energy payments, subject to the following criteria:

(A) The 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) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code. The commission may waive application of the caps to accommodate a facility if it is demonstrated to the satisfaction of the commission that operation of the facility would provide substantial economic and environmental benefits to end-use customers subject to the renewable energy public goods charge.

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

(C) Supplemental energy payments awarded to facilities selected by an electrical corporation pursuant to Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code shall be paid for no longer than 10 years, but shall, subject to the payment caps in subparagraph (A), be equal to the cumulative above-market costs relative to the applicable market price referent at the time of initial contracting, over the duration of the contract with the electrical corporation.

(D) The commission shall reduce or terminate supplemental energy payments for projects that fail either to commence and

1 maintain operations consistent with the contractual obligations to
2 an electrical corporation, or that fail to meet eligibility
3 requirements.

4 (E) Funds shall be managed in an equitable manner in order
5 for retail sellers to meet their obligation under Article 16
6 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of
7 Division 1 of the Public Utilities Code.

8 (F) A project selected by an electrical corporation may receive
9 supplemental energy payments only if it results from a
10 competitive solicitation that is found by the Public Utilities
11 Commission to comply with the California Renewables Portfolio
12 Standard Program under Article 16 (commencing with Section
13 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public
14 Utilities Code, and the project has entered into an electricity
15 purchase agreement resulting from that solicitation, that is
16 approved by the Public Utilities Commission. A project selected
17 for an electricity purchase agreement by another retail seller may
18 receive supplemental energy payments only if the retail seller
19 demonstrates to the Public Utilities Commission that the
20 selection of the project is consistent with the results of a
21 least-cost and best-fit process, and the supplemental energy
22 payments are reasonable in comparison to those paid under
23 similar contracts with other retail sellers. The commission may
24 not award supplemental energy payments to service load that is
25 not subject to the renewable energy public goods charge.

26 (2) A facility that is located outside of California shall not be
27 eligible for funding under this section unless it meets all of the
28 following requirements:

29 (A) It is located near the border of the state with its first point
30 of interconnection to the Western Electricity Coordinating
31 Council (WECC) transmission system located within the state.

32 (B) It is developed with guaranteed contracts to sell its
33 generation to end-use customers subject to the funding
34 requirements of Sections 381, 399.7, and 399.8, or to marketers
35 that provide this guarantee for resale of the generation, for a
36 period of time at least equal to the amount of time it receives
37 incentive payments under this subdivision.

38 (C) It will not cause or contribute to any violation of a state
39 environmental quality standard or requirement.

1 (D) If the facility is outside of the United States, it is
2 developed and operated in a manner that is as protective of the
3 environment as a similar facility located in the state.

4 (E) It meets any other condition established by the
5 commission.

6 (3) Facilities that are eligible to receive funding pursuant to
7 this section shall be registered in accordance with criteria
8 developed by the commission and those facilities may not receive
9 payments for any electricity produced that has any of the
10 following characteristics:

11 (A) Is sold under an existing long-term contract with an
12 existing in-state electrical corporation if the contract includes
13 fixed energy or capacity payments, except for that electricity that
14 satisfies subparagraph (C) of paragraph (1) of subdivision (c) of
15 Section 399.6 of the Public Utilities Code.

16 (B) Is used onsite or is sold to customers in a manner that
17 excludes competition transition charge payments, or is otherwise
18 excluded from competition transition charge payments.

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

23 (D) Is a solid waste conversion facility, unless the facility
24 meets the criteria established in paragraph (3) of subdivision (a)
25 of Section 25741 and the facility certifies that any local agency
26 sending solid waste to the facility is in compliance with Division
27 30 (commencing with Section 40000), has reduced, recycled, or
28 composted solid waste to the maximum extent feasible, and shall
29 have been found by the California Integrated Waste Management
30 Board to have diverted at least 30 percent of all solid waste
31 through source reduction, recycling, and composting.

32 (4) Eligibility to compete for funds or to receive funds shall be
33 contingent upon having to sell the electricity generated by the
34 renewable electricity generation facility to customers subject to
35 the renewable energy public goods charge.

36 (5) The commission may require applicants competing for
37 funding to post a forfeitable bid bond or other financial guaranty
38 as an assurance of the applicant's intent to move forward
39 expeditiously with the project proposed. The amount of any bid

1 bond or financial guaranty may not exceed 10 percent of the total
2 amount of the funding requested by the applicant.

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

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

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

14 (e) 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 commission finds
18 that the project will not be operational prior to January 1, 2002,
19 due to circumstances beyond the control of the developer. Upon
20 making a finding that the project will not be operational due to
21 circumstances beyond the control of the developer, the
22 commission shall pay production incentives over a five-year
23 period, commencing on the date of operation, provided that the
24 date that a project begins electricity production may not extend
25 beyond January 1, 2007.

26 (f) Facilities generating electricity from biomass energy shall
27 be considered an in-state renewable electricity generation facility
28 to the extent that they report to the commission the types and
29 quantities of biomass fuels used and certify to the satisfaction of
30 the commission that fuel utilization is limited to the following:

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

32 (2) 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 (3) Wood and wood wastes that meet all of the following
38 requirements:

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

1 Forest Practice Act of 1973 (Chapter 8 (commencing with
2 Section 4511) of Part 2 of Division 4).

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

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

12 SEC. 4. Section 25744 of the Public Resources Code is
13 amended to read:

14 25744. (a) Seventeen and one-half percent of the money
15 collected pursuant to the renewable energy public goods charge
16 shall be used for a multiyear, consumer-based program to foster
17 the development of emerging renewable technologies in
18 distributed generation applications.

19 (b) Any funds used for emerging technologies pursuant to this
20 section shall be expended in accordance with the report, subject
21 to all of the following requirements:

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

28 (2) The program shall provide monetary rebates, buydowns, or
29 equivalent incentives, subject to paragraph (3), to purchasers,
30 lessees, lessors, or sellers of eligible electricity generating
31 systems. Incentives shall benefit the end-use consumer of
32 renewable generation by directly and exclusively reducing the
33 purchase or lease cost of the eligible system, or the cost of
34 electricity produced by the eligible system. Incentives shall be
35 issued on the basis of the rated electrical generating capacity of
36 the system measured in watts, or the amount of electricity
37 production of the system, measured in kilowatthours. Incentives
38 shall be limited to a maximum percentage of the system price, as
39 determined by the commission.

1 (3) Eligible distributed emerging technologies are
2 photovoltaic, solar thermal electric, fuel cell technologies that
3 utilize renewable fuels, and wind turbines of not more than 50
4 kilowatts rated electrical generating capacity per customer site,
5 and other distributed renewable emerging technologies that meet
6 the emerging technology eligibility criteria established by the
7 commission. Eligible electricity generating systems are intended
8 primarily to offset part or all of the consumer's own electricity
9 demand, and shall not be owned by local publicly owned electric
10 utilities, nor be located at a customer site that is not receiving
11 distribution service from an electrical corporation that is subject
12 to the renewable energy public goods charge and contributing
13 funds to support programs under this chapter. All eligible
14 electricity generating system components shall be new and
15 unused, shall not have been previously placed in service in any
16 other location or for any other application, and shall have a
17 warranty of not less than five years to protect against defects and
18 undue degradation of electrical generation output. Systems and
19 their fuel resources shall be located on the same premises of the
20 end-use consumer where the consumer's own electricity demand
21 is located, and all eligible electricity generating systems shall be
22 connected to the utility grid in California. The commission may
23 require eligible electricity generating systems to have meters in
24 place to monitor and measure a system's performance and
25 generation. Only systems that will be operated in compliance
26 with applicable law and the rules of the Public Utilities
27 Commission shall be eligible for funding.

28 (4) The commission shall limit the amount of funds available
29 for any system or project of multiple systems and reduce the
30 level of funding for any system or project of multiple systems
31 that has received, or may be eligible to receive, any government
32 or utility funds, incentives, or credit.

33 (5) In awarding funding, the commission may provide
34 preference to systems that provide tangible demonstrable benefits
35 to communities with a plurality of minority or low-income
36 populations.

37 (6) In awarding funding, the commission shall develop and
38 implement eligibility criteria and a system that provides
39 preference to systems based upon system performance, taking

1 into account factors, including shading, insulation levels, and
2 installation orientation.

3 (7) At least once annually, the commission shall publish and
4 make available to the public the balance of funds available for
5 emerging renewable energy resources for rebates, buydowns, and
6 other incentives for the purchase of these resources.

7 (c) Notwithstanding Section 399.6 of the Public Utilities Code,
8 the commission may expend, until December 31, 2008, up to
9 sixty million dollars (\$60,000,000) of the funding allocated to the
10 Renewable Resources Trust Fund for the program established in
11 this section, subject to the repayment requirements of subdivision
12 (f) of Section 25751.

13 SEC. 5. Section 25745 of the Public Resources Code is
14 repealed.

15 SEC. 6. Section 25749 of the Public Resources Code is
16 repealed.

17 SEC. 7. Section 387 of the Public Utilities Code is amended
18 to read:

19 387. (a) Each governing body of a local publicly owned
20 electric utility, as defined in Section 9604, shall be responsible
21 for implementing and enforcing a renewables portfolio standard
22 that recognizes the intent of the Legislature to encourage
23 renewable resources, while taking into consideration the effect of
24 the standard on rates, reliability, and financial resources and the
25 goal of environmental improvement.

26 (b) Each local publicly owned electric utility shall report, on
27 an annual basis, to its customers and to the State Energy
28 Resources Conservation and Development Commission, the
29 following:

30 (1) Expenditures of public goods funds collected pursuant to
31 Section 385 for eligible renewable energy resource development.
32 Reports shall contain a description of programs, expenditures,
33 and expected or actual results.

34 (2) The resource mix used to serve its customers by fuel type.
35 Reports shall contain the contribution of each type of ~~eligible~~
36 renewable energy resource with separate categories for those
37 fuels considered eligible renewable energy resources as defined
38 in Section 399.12.

(3) The utility's status in implementing a renewables portfolio standard pursuant to subdivision (a) and the utility's progress toward attaining the standard following implementation.

(c) The requirements of this section may be satisfied by electricity generated by an eligible renewable energy resource that the local publicly owned electric utility owns or for which it has entered into an electricity purchase contract. Nothing in this section is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling the responsibility of a local publicly owned electric utility to implement and enforce a renewables portfolio standard.

SEC. 8 Section 399.11 of the Public Utilities Code is amended to read:

399.11. The Legislature finds and declares all of the following:

(a) In order to attain a target of generating 20 percent of total retail sales of electricity in California from eligible renewable energy resources by December 31, 2010, and for the purposes of increasing the diversity, reliability, public health and environmental benefits of the energy mix, it is the intent of the Legislature that the commission and the State Energy Resources Conservation and Development Commission implement the California Renewables Portfolio Standard Program described in this article.

(b) Increasing California's reliance on eligible renewable energy resources may promote stable electricity prices, protect public health, improve environmental quality, stimulate sustainable economic development, create new employment opportunities, and reduce reliance on imported fuels.

(c) The development of eligible renewable energy resources and the delivery of the electricity generated by those resources to customers in California may ameliorate air quality problems throughout the state and improve public health by reducing the burning of fossil fuels and the associated environmental impacts and by reducing in-state fossil fuel consumption.

(d) The California Renewables Portfolio Standard Program is intended to complement the Renewable Energy Resources Program administered by the State Energy Resources Conservation and Development Commission and established

1 pursuant to Chapter 8.6 (commencing with Section 25740) of
2 Division 15 of the Public Resources Code.

3 (e) New and modified electric transmission facilities may be
4 necessary to facilitate the state achieving its renewables portfolio
5 standard targets.

6 SEC. 9. Section 399.12 of the Public Utilities Code is
7 amended to read:

8 399.12. For purposes of this article, the following terms have
9 the following meanings:

10 (a) “Delivered” and “delivery” have the same meaning as
11 provided in subdivision (e) of Section 25741 of the Public
12 Resources Code.

13 (b) “Eligible renewable energy resource” means an electric
14 generating facility that meets the definition of “in-state
15 renewable electricity generation facility” in Section 25741 of the
16 Public Resources Code, subject to the following limitations:

17 (1) A geothermal generation facility originally commencing
18 operation prior to September 26, 1996, shall be eligible for
19 purposes of adjusting a retail seller’s baseline quantity of eligible
20 renewable energy resources except for electricity certified as
21 incremental geothermal production by the Energy Commission,
22 provided that the incremental electricity was not sold to an
23 electrical corporation under contract entered into prior to
24 September 26, 1996. For each facility seeking certification, the
25 Energy Commission shall determine historical production trends
26 and establish criteria for measuring incremental geothermal
27 production that recognizes the declining geothermal output of
28 existing steamfields and the contribution of capital investments
29 in the facility or wellfield. This paragraph shall remain operative
30 only until January 1, 2010.

31 (2) (A) An existing small hydroelectric generation facility of
32 30 megawatts or less shall be eligible only if a retail seller owned
33 or procured the electricity from the facility as of December 31,
34 ~~2003~~ 2005, and that electricity shall be eligible only for purposes
35 of adjusting the retail seller’s baseline quantity of eligible
36 renewable energy resources. A new hydroelectric facility is not
37 an eligible renewable energy resource if it will require a new or
38 increased appropriation or diversion of water under Part 2
39 (commencing with Section 1200) of Division 2 of the Water
40 Code.

(B) Notwithstanding subparagraph (A), an existing conduit hydroelectric facility, as defined by Section 823a of Title 16 of the United States Code, of 30 megawatts or less, shall be eligible for the purposes of adjusting a retail seller's baseline quantity of eligible renewable energy resources. A new conduit hydroelectric facility, as defined by Section 823a of Title 16 of the United States Code, of 30 megawatts or less, shall be an eligible renewable energy resource so long as it does not require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

(3) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable resource unless it is located in Stanislaus County and was operational prior to September 26, 1996. Electricity generated by a facility meeting these requirements shall be eligible only for the purpose of adjusting a retail seller's baseline quantity of eligible renewable energy resources.

(4) Notwithstanding paragraph (1), any geothermal electricity included in the baseline of a retail seller from a facility under a long-term contract executed before January 1, 2004, shall be eligible to satisfy the annual procurement targets of any retail seller upon the expiration of that contract. This paragraph shall become inoperative on January 1, 2010, unless a later enacted statute deletes or extends that date.

(c) "Energy Commission" means the State Energy Resources Conservation and Development Commission.

(d) "Procure" means that a retail seller receives delivered electricity generated by an eligible renewable energy resource that it owns or for which it has entered into an electricity purchase contract. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller's obligation to comply with this article.

(e) "Retail seller" means an entity engaged in the retail sale of electricity to end-use customers located within the state, including any of the following:

(1) An electrical corporation, as defined in Section 218.

(2) A community choice aggregator. The commission shall institute a rulemaking to determine the manner in which a

1 community choice aggregator will participate in the renewables
2 portfolio standard program subject to the same terms and
3 conditions applicable to an electrical corporation.

4 (3) An electric service provider, as defined in Section 218.3,
5 subject to the following conditions:

6 (A) An electric service provider shall be considered a retail
7 seller under this article for sales to any customer acquiring
8 service after January 1, 2003.

9 (B) An electric service provider shall be considered a retail
10 seller under this article for sales to all its customers beginning on
11 the earlier of January 1, 2006, or the date on which a contract
12 between an electric service provider and a retail customer
13 expires. Nothing in this subdivision may require an electric
14 service provider to disclose the terms of the contract to the
15 commission.

16 (C) The commission shall institute a rulemaking to determine
17 the manner in which electric service providers will participate in
18 the renewables portfolio standard program. The electric service
19 provider shall be subject to the same terms and conditions
20 applicable to an electrical corporation pursuant to this article.
21 Nothing in this paragraph shall impair a contract entered into
22 between an electric service provider and a retail customer prior to
23 the suspension of direct access by the commission pursuant to
24 Section 80110 of the Water Code.

25 (4) “Retail seller” does not include any of the following:

26 (A) A corporation or person employing cogeneration
27 technology or producing electricity consistent with subdivision
28 (b) of Section 218.

29 (B) The Department of Water Resources acting in its capacity
30 pursuant to Division 27 (commencing with Section 80000) of the
31 Water Code.

32 (C) A local publicly owned electric utility as defined in
33 Section 9604.

34 (f) “Renewables portfolio standard” means the specified
35 percentage of electricity generated by eligible renewable energy
36 resources that a retail seller is required to procure pursuant to this
37 article.

38 (g) (1) “Renewable energy credit” means a certificate of proof,
39 issued through the accounting system established by the Energy
40 Commission pursuant to Section 399.13, that one unit of

1 electricity was generated by an eligible renewable energy
2 resource.

3 (2) “Renewable energy credit” includes all renewable and
4 environmental attributes associated with the production of
5 electricity from the eligible renewable energy resource, except
6 for an emissions reduction credit issued pursuant to Section
7 40709 of the Health and Safety Code *and any credits or*
8 *payments associated with the reduction of solid waste and*
9 *treatment benefits created by the utilization of biomass or biogas*
10 *fuels.*

11 (3) No electricity generated by an eligible renewable energy
12 resource attributable to the use of nonrenewable fuels, beyond a
13 de minimus quantity, as determined by the Energy Commission,
14 shall result in the creation of a renewable energy credit.

15 (4) A renewable energy credit shall not be eligible to satisfy
16 annual procurement targets established pursuant to this article,
17 ~~unless it is bundled~~ *but may be used for accounting purposes,*
18 *provided that any credit procured by a retail seller is bundled*
19 *with delivered electricity.*

20 SEC. 10. Section 399.13 of the Public Utilities Code is
21 amended to read:

22 399.13. The Energy Commission shall do all of the following:

23 (a) Certify eligible renewable energy resources that it
24 determines meet the criteria described in subdivision ~~(a)~~ (b) of
25 Section 399.12.

26 (b) Design and implement an accounting system to verify
27 compliance with the renewables portfolio standard by retail
28 sellers, to ensure that electricity generated by an eligible
29 renewable energy resource is counted only once for the purpose
30 of meeting the renewables portfolio standard of this state or any
31 other state, to certify renewable energy credits produced by
32 eligible renewable energy resources, and to verify retail product
33 claims in this state or any other state. In establishing the
34 guidelines governing this accounting system, the Energy
35 Commission shall collect data from electricity market
36 participants that it deems necessary to verify compliance of retail
37 sellers, in accordance with the requirements of this article and the
38 California Public Records Act (Chapter 3.5 (commencing with
39 Section 6250) of Division 7 of Title 1 of the Government Code).
40 In seeking data from electrical corporations, the Energy

Commission shall request data from the commission. The commission shall collect data from electrical corporations and remit the data to the Energy Commission within 90 days of the request.

(c) Establish a system for tracking and verifying renewable energy credits that, through the use of independently audited data, verifies the generation and delivery of electricity associated with each renewable energy credit and protects against multiple counting of the same renewable energy credit. The Energy Commission shall consult with other western states and with the Western Electricity Coordinating Council in the development of this system.

(d) Allocate and award supplemental energy payments pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to eligible renewable energy resources to cover above-market costs of renewable energy. A project selected by an electrical corporation may receive supplemental energy payments only if it results from a competitive solicitation that is found by the commission to comply with the California Renewables Portfolio Standard Program under this article and the project has entered into an electricity purchase agreement resulting from that solicitation that is approved by the commission. A project selected for an electricity purchase agreement by another retail seller may receive supplemental energy payments only if the retail seller demonstrates to the commission that the selection of the project is consistent with the results of a least-cost and best-fit process, and that the supplemental energy payments are reasonable in comparison to those paid under similar contracts with other retail sellers.

(e) Deliveries of electricity from an eligible renewable energy resource under an electricity purchase contract with a retail seller executed before January 1, 2002, shall be tracked through the accounting system described in subdivision (b) and included in the baseline quantity of eligible renewable energy resources of the purchasing retail seller pursuant to Section 399.15.

(f) Deliveries of electricity from an eligible renewable energy resource under an electricity purchase contract with a retail seller executed after January 1, 2002, pursuant to the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Sec. 2601 et

1 seq.), shall be tracked through the accounting system described in
2 subdivision (b) and count towards the renewables portfolio
3 standard obligations of the purchasing retail seller.

4 SEC. 11. Section 399.14 of the Public Utilities Code is
5 amended to read:

6 399.14. (a) (1) The commission shall direct each electrical
7 corporation to prepare a renewable energy procurement plan as
8 described in paragraph (3) to satisfy its obligations under the
9 renewables portfolio standard. To the extent feasible, this
10 procurement plan shall be proposed, reviewed, and adopted by
11 the commission as part of, and pursuant to, a general
12 procurement plan process. The commission shall require each
13 electrical corporation to review and update its renewable energy
14 procurement plan as it determines to be necessary.

15 (2) The commission shall adopt, by rulemaking for all
16 electrical corporations, all of the following:

17 (A) A process for determining market prices pursuant to
18 subdivision (c) of Section 399.15. The commission shall make
19 specific determinations of market prices after the closing date of
20 a competitive solicitation conducted by an electrical corporation
21 for eligible renewable energy resources. In order to ensure that
22 the market price established by the commission pursuant to
23 subdivision (c) of Section 399.15 does not influence the amount
24 of a bid submitted through the competitive solicitation in a
25 manner that would increase the amount ratepayers are obligated
26 to pay for electricity generated by eligible renewable energy
27 resources, and in order to ensure that the bid price does not
28 influence the establishment of the market price, the electrical
29 corporation shall not transmit or share the results of any
30 competitive solicitation for eligible renewable energy resources
31 until the commission has established market prices pursuant to
32 subdivision (c) of Section 399.15.

33 (B) A process that provides criteria for the rank ordering and
34 selection of least-cost and best-fit eligible renewable energy
35 resources to comply with the annual California Renewables
36 Portfolio Standard Program obligations on a total cost basis. This
37 process shall consider estimates of indirect costs associated with
38 needed transmission investments and ongoing utility expenses
39 resulting from integrating and operating eligible renewable
40 energy resources.

1 (C) Flexible rules for compliance, including rules permitting
2 electrical corporations to apply excess procurement in one year to
3 subsequent years or inadequate procurement in one year to no
4 more than the following three years.

5 (D) Standard terms and conditions to be used by all electrical
6 corporations in contracting for eligible renewable energy
7 resources, including performance requirements for renewable
8 generators. A contract for the purchase of electricity generated by
9 an eligible renewable energy resource shall, at a minimum,
10 include the renewable energy credits associated with all
11 electricity generation specified under the contract. The standard
12 terms and conditions shall include the requirement that, no later
13 than six months after the commission's approval of an electricity
14 purchase agreement entered into pursuant to this article, the
15 following information about the agreement shall be disclosed by
16 the commission: party names, resource type, project location, and
17 project capacity.

18 (3) Consistent with the goal of procuring the least-cost and
19 best-fit eligible renewable energy resources, the renewable
20 energy procurement plan submitted by an electrical corporation
21 shall include all of the following:

22 (A) An assessment of annual or multiyear portfolio supplies
23 and demand to determine the optimal mix of eligible renewable
24 energy resources with deliverability characteristics that may
25 include peaking, dispatchable, baseload, firm, and as-available
26 capacity.

27 (B) Provisions for employing available compliance flexibility
28 mechanisms established by the commission.

29 (C) A bid solicitation setting forth the need for eligible
30 renewable energy resources of each deliverability characteristic,
31 required online dates, and locational preferences, if any.

32 (4) In soliciting and procuring eligible renewable energy
33 resources, each electrical corporation shall offer contracts of no
34 less than 10 years in duration, unless the commission approves of
35 a contract of shorter duration. Any bid solicitation or contract of
36 less than 10 years in duration shall be considered nonconforming.

37 (5) In soliciting and procuring eligible renewable energy
38 resources, each electrical corporation may give preference to
39 projects that provide tangible demonstrable benefits to

1 communities with a plurality of minority or low-income
2 populations.

3 (b) The commission shall review and accept, modify, or reject
4 each electrical corporation's renewable energy procurement plan
5 prior to the commencement of renewable procurement pursuant
6 to this article by an electrical corporation.

7 (c) The commission shall review the results of an eligible
8 renewable energy resources solicitation submitted for approval
9 by an electrical corporation and accept or reject proposed
10 contracts with eligible renewable energy resources based on
11 consistency with the approved renewable energy procurement
12 plan. If the commission determines that the bid prices are
13 elevated due to a lack of effective competition amongst the
14 bidders, the commission shall direct the electrical corporation to
15 renegotiate the contracts or conduct a new solicitation.

16 (d) If an electrical corporation fails to comply with a
17 commission order adopting a renewable energy procurement
18 plan, the commission shall exercise its authority pursuant to
19 Section 2113 to require compliance. The commission shall
20 enforce comparable penalties on any other retail seller that fails
21 to meet annual procurement targets established pursuant to
22 Section 399.15.

23 (e) Upon application by a retail seller, the commission may
24 authorize a procurement entity to enter into contracts on behalf of
25 customers of the retail seller for deliveries of eligible renewable
26 energy resources to satisfy the annual renewables portfolio
27 standard obligations, subject to similar terms and conditions
28 applicable to a retail seller. If the rates of the procurement entity
29 are regulated by the commission, the commission shall allow the
30 procurement entity to recover reasonable costs through retail
31 rates subject to review and approval.

32 (f) Procurement and administrative costs associated with
33 long-term contracts entered into by an electrical corporation for
34 eligible renewable energy resources pursuant to this article, at or
35 below the market price determined by the commission pursuant
36 to subdivision (c) of Section 399.15, shall be deemed reasonable
37 per se, and shall be recoverable in rates.

38 (g) Construction, alteration, demolition, installation, and repair
39 work on an eligible renewable energy resource that receives
40 production incentives or supplemental energy payments pursuant

1 to Sections 25742 and 25743 of the Public Resources Code,
2 including work performed to qualify, receive, or maintain
3 production incentives or supplemental energy payments is
4 “public works” for the purposes of Chapter 1 (commencing with
5 Section 1720) of Part 7 of Division 2 of the Labor Code.

6 SEC. 12. Section 399.15 of the Public Utilities Code is
7 amended to read:

8 399.15. (a) In order to fulfill unmet long-term resource
9 needs, the commission shall establish a renewables portfolio
10 standard requiring all electrical corporations to procure a
11 minimum quantity of electricity generated by eligible renewable
12 energy resources as a specified percentage of total kilowatthours
13 sold to their retail end-use customers each calendar year, if
14 sufficient funds are made available pursuant to Section 399.6 and
15 Chapter 8.6 (commencing with Section 25740) of Division 15 of
16 the Public Resources Code, to cover the above-market costs of
17 eligible renewable energy resources.

18 (b) The commission shall implement annual procurement
19 targets for each retail seller as follows:

20 (1) Beginning on January 1, 2003, each retail seller shall,
21 pursuant to subdivision (a), increase its total procurement of
22 eligible renewable energy resources by at least an additional 1
23 percent of retail sales per year so that 20 percent of its retail sales
24 are procured from eligible renewable energy resources no later
25 than December 31, 2010.

26 (2) For purposes of setting annual procurement targets, the
27 commission shall establish an initial baseline for each retail seller
28 based on the actual percentage of retail sales procured from
29 eligible renewable energy resources in 2001, and, to the extent
30 applicable, adjusted going forward pursuant to subdivision (a) of
31 Section 399.12.

32 (3) Only for purposes of establishing these targets, the
33 commission shall include all electricity sold to retail customers
34 by the Department of Water Resources pursuant to Section 80100
35 of the Water Code in the calculation of retail sales by an
36 electrical corporation.

37 (4) In the event that a retail seller fails to procure sufficient
38 eligible renewable energy resources in a given year to meet any
39 annual target established pursuant to this subdivision, the retail
40 seller shall procure additional eligible renewable energy

resources in subsequent years to compensate for the shortfall if sufficient funds are made available pursuant to Section 399.6 and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to cover any above-market costs of eligible renewable energy resources.

(5) If supplemental energy payments from the Energy Commission, in combination with the market prices approved by the commission, are insufficient to cover any above-market costs of eligible renewable energy resources, the commission shall allow a retail seller to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments. A retail seller shall not be required to enter into long-term contracts with operators of eligible renewable energy resources that exceed the market prices established pursuant to subdivision (c). *If the commission determines that existing transmission is insufficient to ensure deliverability of the electricity generated by eligible renewable energy resources, the commission shall allow a retail seller to limit its annual procurement obligation to the quantity of eligible renewable energy resources that is deliverable by existing transmission.*

(c) The commission shall establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with eligible renewable energy resources, in consideration of the following:

(1) The long-term market price of electricity for fixed price contracts, determined pursuant to an electrical corporation's general procurement activities as authorized by the commission.

(2) The long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities.

(3) The value of different products including baseload, peaking, and as-available electricity.

(d) The Energy Commission shall provide supplemental energy payments from funds in the New Renewable Resources Account of the Renewable Resource Trust Fund to eligible renewable energy resources pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, consistent with this article, for any above-market costs. Indirect costs associated with the purchase

1 of eligible renewable energy resources by an electrical
2 corporation, including imbalance energy charges, sale of excess
3 energy, decreased generation from existing resources, or
4 transmission upgrades, shall not be eligible for supplemental
5 energy payments, but are recoverable in rates, as authorized by
6 the commission. The Energy Commission shall not award
7 supplemental energy payments to service load that is not subject
8 to the renewable energy public goods charge.

9 (e) The establishment of a renewables portfolio standard shall
10 not constitute implementation by the commission of the federal
11 Public Utility Regulatory Policies Act of 1978 (Public Law
12 95-617).

13 (f) The commission shall consult with the Energy Commission
14 in calculating market prices under subdivision (c) and
15 establishing other renewables portfolio standard policies.

16 SEC. 13. Section 399.16 of the Public Utilities Code is
17 repealed.

18 SEC. 14. Article 9 (commencing with Section 635) is added
19 to Chapter 3 of Part 1 of Division 1 of the Public Utilities Code,
20 to read:

21
22 Article 9. Long-Term Plans and Procurement Plans
23

24 635. In a long-term plan adopted by an electrical corporation
25 or in a procurement plan implemented by a local publicly owned
26 electric utility, the electrical corporation or local publicly owned
27 electric utility shall adopt a strategy applicable both to newly
28 constructed or repowered generation owned and procured by the
29 electrical corporation or local publicly owned electric utility to
30 achieve efficiency in the use of fossil fuels and to address carbon
31 emissions.

32 SEC. 15 No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution for
34 certain costs that may be incurred by a local agency or school
35 district because, in that regard, this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the
37 penalty for a crime or infraction, within the meaning of Section
38 17556 of the Government Code, or changes the definition of a
39 crime within the meaning of Section 6 of Article XIII B of the
40 California Constitution.

1 However, if the Commission on State Mandates determines
2 that this act contains other costs mandated by the state,
3 reimbursement to local agencies and school districts for those
4 costs shall be made pursuant to Part 7 (commencing with Section
5 17500) of Division 4 of Title 2 of the Government Code.

O