

AMENDED IN ASSEMBLY AUGUST 29, 2011

AMENDED IN ASSEMBLY JULY 12, 2011

**SENATE BILL**

**No. 870**

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**Introduced by Senator Padilla**

February 18, 2011

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*An act to amend Section 25217.5 of, and to repeal the heading of Chapter 6.5 (commencing with Section 25550) of Division 15 of, the Public Resources Code, relating to energy. An act to add and repeal Article 2 (commencing with Section 25620.10) of Chapter 7.1 of Division 15 of, and to repeal and add Chapter 7.1 (commencing with Section 25620) of Division 15 of, the Public Resources Code, and to amend Section 384 of the Public Utilities Code, relating to energy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 870, as amended, Padilla. ~~Energy: State Energy Resources Conservation and Development Commission. California Energy Research and Technology program.~~

*(1) Under the Public Utilities Act, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations. The act requires the PUC to require, until January 1, 2012, an electrical corporation to identify a separate electrical rate component to fund energy efficiency, renewable energy, and research, development, and demonstration programs that enhance system reliability and provide in-state benefits. Existing law requires the rate component collected for the purposes of funding the research, development, and demonstration programs be transferred to the Public Interest Research, Development, and Demonstration Fund.*

*Existing law requires that the moneys collected between January 1, 2007, and January 1, 2012, from the electrical corporations for public*

*interest research, development, and demonstration projects be transferred to the Public Interest Research, Development, and Demonstration Fund and be used for the purposes of the Public Interest Research, Demonstration, and Development Program.*

*This bill would repeal the Public Interest Research, Demonstration, and Development Program and would eliminate the Public Interest Research, Development, and Demonstration Fund for the above purpose and would instead establish the California Energy Research and Technology Program Fund for those purposes described in (3) below.*

*(3) This bill would require the State Energy Resources Conservation and Development Commission (Energy Commission) to establish and administer the California Energy Research and Technology program (CERT) to fund research, development, and demonstration projects that may lead to advancement and other breakthroughs to overcome those barriers that prevent the achievement of the state's statutory energy goals. The bill would require the Energy Commission to convene, no less than twice a year, meetings of the CERT Coordinating Council consisting of members representing specified entities and would require the council to identify the technological and other challenges that most warranted funding under the CERT and opportunities for joint funding of projects and to make recommendations for avoiding the funding of duplicative projects. The bill would require the Energy Commission to adopt regulations or modify existing regulations to implement the CERT. The bill would require the Energy Commission to consult with the CERT Coordinating Council to establish a process for tracking the progress and outcome of funded projects. The bill would require the Energy Commission to consult with the CERT Coordinating Council and the Treasurer to establish terms that may be imposed as conditions for the receipt of CERT funding. The bill would, upon appropriation by the Legislature, authorize the Energy Commission to expend moneys in the California Energy Research and Technology Program Fund to implement the CERT. The bill would establish the CERT Cost-Share Account in the California Energy Research and Technology Program Fund and, upon appropriation by the Legislature, would provide up to \$10,000,000 per year for the Energy Commission to make cost-share commitments as leverage to help California-based entities to obtain matching funds from the United States Department of Energy. The bill would require the Energy Commission, no later than March 31 of each year, to prepare and submit to the Legislature an annual report regarding projects funded by the CERT. The bill would require the*

*Energy Commission to contract with an independent entity to review the CERT and would require the Energy Commission, no later than an October 1, 2015, to report to the Legislature regarding the CERT. The bill would repeal these provisions on January 1, 2020.*

~~(1) Existing law requires the chair of the State Energy Resources Conservation and Development Commission to direct the various personnel within the commission to conform the performance of their duties with the policies and guidelines established by the commission.~~

~~This bill would require the chair of the commission to appear annually before the appropriate policy committees of the Senate and the Assembly to report on the activities of the commission.~~

~~(2) The bill would make other technical, nonsubstantive changes.~~

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

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

1     SECTION 1. Chapter 7.1 (commencing with Section 25620)  
2     of Division 15 of the Public Resources Code is repealed.

3     SEC. 2. Chapter 7.1 (commencing with Section 25620) is added  
4     to Division 15 of the Public Resources Code, to read:

5  
6                   CHAPTER 7.1. CLEAN ENERGY PROGRAMS

7  
8                             Article 1. [Reserved]

9  
10                   25620. [Reserved]

11  
12                   Article 2. California Energy Research and Technology

13  
14     25620.10. The Legislature finds and declares all of the  
15     following:

16     (a) California has been a national leader in reducing energy  
17     consumption by establishing ambitious goals, policies, and  
18     programs to increase energy efficiency and generation from  
19     renewable energy sources.

20     (b) Achieving these state energy goals will benefit the public  
21     and energy utility ratepayers through reduced system costs and  
22     reduced end-user charges for service.

1 (c) Barriers to achieving these energy goals and ratepayer  
2 benefits include significant technological and other challenges  
3 relating to energy efficiency technologies, energy storage,  
4 integrating renewable energy into the electric grid, and accurately  
5 forecasting the availability of renewable energy for integration  
6 into the grid.

7 (d) Breakthroughs to overcome those technological and other  
8 challenges referred to in subdivision (c) and to enable the state to  
9 achieve its statutory energy goals require strategically focused  
10 research, development, and demonstration projects.

11 (e) It is appropriate and necessary for the state to administer  
12 a program of research, development, and demonstration to  
13 accelerate technological advancement and other breakthroughs  
14 that may enable the state to achieve its statutory energy goals.

15 25620.11. For the purpose of this article, “California-based  
16 entity” means either of the following:

17 (a) A corporation or other business form organized for the  
18 transaction of business that has its headquarters in California and  
19 manufactures in California the product that qualifies for the  
20 incentive or award pursuant to this chapter.

21 (b) A corporation or other business form organized for the  
22 transaction of business that has an office for the transaction of  
23 business in California and substantially manufactures in California  
24 the product that qualifies for the incentive or award pursuant to  
25 this chapter, or substantially develops within California the  
26 research that qualifies for the incentive or award pursuant to this  
27 chapter, as determined by the commission.

28 25620.12. (a) The California Energy Research and Technology  
29 program (CERT) is hereby established for the purpose of funding  
30 research, development, and demonstration projects that may lead  
31 to technological advancement and other breakthroughs to  
32 overcome the most significant barriers that prevent the achievement  
33 of the state’s statutory energy goals.

34 (b) The CERT may fund projects relating to energy efficiency  
35 technologies, energy storage, integrating renewable energy into  
36 the electrical grid, accurately forecasting the availability of  
37 renewable energy for integration into the electrical grid, and  
38 additional areas identified by the CERT Coordinating Council  
39 pursuant to subdivision (c) of Section 25620.13.

1 (c) *The commission shall develop and administer the program*  
2 *consistent with this article.*

3 25620.13. (a) *The commission shall, no less than twice a year,*  
4 *convene a meeting of the CERT Coordinating Council, which shall*  
5 *consist of the following:*

6 (1) *Members representing public entities consisting of the*  
7 *following:*

8 (A) *The chair of the commission, who shall serve as the chair*  
9 *of the council.*

10 (B) *One representative from the Independent System Operator.*

11 (C) *One representative from the State Air Resources Board.*

12 (D) *One representative from the Division of Ratepayer*  
13 *Advocates within the Public Utilities Commission.*

14 (E) *One representative from the Public Utilities Commission.*

15 (2) *Members representing stakeholders, which shall consist of*  
16 *the following:*

17 (A) *One representative from Pacific Gas and Electric*  
18 *Corporation.*

19 (B) *One representative from Southern California Edison*  
20 *Corporation.*

21 (C) *One representative from San Diego Gas and Electric*  
22 *Corporation.*

23 (D) *One representative from Southern California Gas Company.*

24 (E) *Two representatives from consumer organizations, with one*  
25 *appointed by the Senate Committee on Rules and one appointed*  
26 *by the Speaker of the Assembly.*

27 (F) *Two representatives from environmental organizations, with*  
28 *one appointed by the Senate Committee on Rules and one appointed*  
29 *by the Speaker of the Assembly.*

30 (G) *Two representatives from environmental justice*  
31 *organizations, with one appointed by the Senate Committee on*  
32 *Rules and one appointed by the Speaker of the Assembly.*

33 (H) *Two representatives from university research institutions,*  
34 *with one appointed by the Senate Committee on Rules and one*  
35 *appointed by the Speaker of the Assembly.*

36 (I) *Two representatives from clean energy businesses,*  
37 *organizations, or investors appointed by the Governor.*

38 (J) *Two at-large members appointed by the Governor.*

1     (3) (A) *Two ex officio, nonvoting members from the Legislature,*  
2 *with one Senator appointed by the Senate Committee on Rules and*  
3 *one Assembly Member appointed by the Speaker of the Assembly.*

4     (B) *The Members of the Legislature shall participate in the*  
5 *activities of the council to the extent that the participation is not*  
6 *incompatible with their respective positions as Members of the*  
7 *Legislature.*

8     (b) *Each member of the council specified in paragraph (2) of*  
9 *subdivision (a) shall serve a term of three years.*

10    (c) *The council shall annually identify the technological or other*  
11 *challenges that are the most significant barriers to achieving the*  
12 *state's statutory energy goals for which CERT funding is most*  
13 *warranted.*

14    (d) *The council shall identify opportunities for joint funding of*  
15 *research, development, and demonstration projects, and make*  
16 *recommendations to help the commission avoid funding projects*  
17 *that would duplicate projects already being funded by the Public*  
18 *Utilities Commission, the State Air Resources Board, or any other*  
19 *public agency or private organization.*

20    (e) *The council shall comply with the requirements of the*  
21 *Bagley-Keene Open Meeting Act (Article 9 (commencing with*  
22 *Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of*  
23 *the Government Code).*

24    25620.14. (a) *The commission shall award CERT funds for*  
25 *research, development, and demonstration projects that result in*  
26 *a portfolio of project awards that does all of the following:*

27     (1) *Is strategically focused and sufficiently narrow to make*  
28 *advancement on the technological or other challenges that are the*  
29 *most significant barriers to achieving the state's statutory energy*  
30 *goals pursuant to Section 25620.12.*

31     (2) *Ensures that prior, current, and future research,*  
32 *development, and demonstration projects are not unnecessarily*  
33 *duplicated.*

34     (3) *Invests in projects of California-based entities unless there*  
35 *is a unique need that can be met only by an entity based outside*  
36 *of California.*

37     (4) *Results in a reasonably equitable distribution of awards*  
38 *from various geographic regions of California, if consistent with*  
39 *this article.*

1     (5) Maximizes expenditure of funds for research, development,  
2 and demonstration projects and minimizes expenditure of funds  
3 for administration and overhead costs.

4     (b) The commission shall not award or expend CERT funds for  
5 any purposes except as provided in this article.

6     25620.15. The commission shall, prior to awarding any CERT  
7 funds, adopt regulations for the solicitation and evaluation of  
8 applications, and the award of funds consistent with this article.  
9 The regulations shall do all of the following:

10    (a) Require each applicant to demonstrate how the proposed  
11 project may lead to technological advancement or other  
12 breakthroughs to overcome barriers to achieving the state's  
13 statutory energy goals.

14    (b) Require each award recipient, as a condition of receiving  
15 CERT funds, to agree to any terms the commission determines are  
16 appropriate for the state to accrue any intellectual property interest  
17 or royalties that may derive from CERT funding, including a  
18 requirement that each recipient report progress and outcomes of  
19 each funded project for up to five years.

20    (c) Prohibit any person from participating in the evaluation or  
21 disposition of any application if that person has a conflict of  
22 interest regarding that application, within the meaning of Section  
23 87100 of the Government Code.

24     25620.16. The commission, prior to awarding any CERT funds,  
25 and in consultation with the CERT Coordinating Council, shall  
26 establish a process for tracking the progress and outcomes of each  
27 funded project, including an accounting of the amount of funds  
28 spent on administrative and overhead costs and whether the project  
29 resulted in any technological advancement or other breakthroughs  
30 to overcome barriers to achieving the state's statutory energy  
31 goals.

32     25620.17. The commission, prior to awarding any CERT funds,  
33 and in consultation with the CERT Coordinating Council and the  
34 Treasurer, shall establish terms that may be imposed as a condition  
35 to receipt of funding, as the commission determines appropriate,  
36 for the state to accrue any intellectual property interest or royalties  
37 that may derive from CERT funding. The commission, when  
38 determining if imposition of these terms is appropriate, shall  
39 balance the potential benefit to the state from those terms and the

1 effect those terms may have on the state achieving its statutory  
2 energy goals.

3 25620.18. (a) The commission shall establish a cost-share  
4 program to help California entities to obtain research funds from  
5 the United States Department of Energy.

6 (b) The commission shall, upon appropriation by the Legislature,  
7 use funds in the CERT Cost-Share Account, which is hereby  
8 established in the California Energy Research and Technology  
9 Program Fund established pursuant to Section 384 of the Public  
10 Utilities Code, to enable California-based entities seeking energy  
11 research funds from the United States Department of Energy to  
12 meet the federal cost-share requirements.

13 (c) A California university, research institution, nonprofit  
14 organization, or a California-based entity is eligible to participate  
15 in the cost-share program if the energy research project for which  
16 that entity is seeking federal funds would otherwise be eligible for  
17 CERT funds pursuant to this chapter.

18 (d) The commission shall establish a process to provide timely  
19 and sufficient documentation to the United States Department of  
20 Energy to demonstrate that funds for the cost-share program will  
21 be available if the federal funds are awarded to an entity specified  
22 in subdivision (c).

23 (e) The commission may make cost-share commitments of up  
24 to ten million dollars (\$10,000,000) per year and shall maintain  
25 a balance in the CERT Cost-Share Account to ensure that all  
26 outstanding commitments can be met if federal funds are awarded  
27 to an entity specified in subdivision (c).

28 25620.19. (a) The commission may solicit applications and  
29 award CERT funds using a sealed competitive bid, interagency  
30 agreement, or sole source method.

31 (b) A sealed competitive bid method shall be used in all cases  
32 in which a research project can be described with sufficient  
33 specificity so that bids can be evaluated against specifications and  
34 criteria set forth in the solicitation for bids.

35 (c) The commission shall not award CERT funds to the  
36 University of California through the sole source or interagency  
37 agreement method for a research project for which funds could  
38 be awarded through a sealed competitive bid method.  
39 Notwithstanding any other law, standard terms and conditions  
40 that generally apply to contracts between any state agency and

1 *the University of California do not automatically preclude the*  
2 *award of CERT funds to the University of California through the*  
3 *sealed competitive bid method.*

4 *(d) If an award cannot be made using the competitive bid method*  
5 *pursuant to subdivision (a), the commission, in accordance with*  
6 *subdivision (e) and in consultation with the Department of General*  
7 *Services, may provide awards on a sole source basis when the cost*  
8 *to the state is reasonable and any of the following apply:*

9 *(1) The proposal was unsolicited and meets the evaluation*  
10 *criteria of this chapter.*

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

12 *(3) The award funds the next phase of a multiphased proposal*  
13 *and the existing agreement is being satisfactorily performed.*

14 *(e) (1) The commission shall not use a sole source basis for an*  
15 *award pursuant to subdivision (d), or a sole source or interagency*  
16 *agreement for an award to the University of California, unless*  
17 *both of the following conditions are met:*

18 *(A) The commission, at least 60 days prior to making an award*  
19 *pursuant to this subdivision, notifies the Joint Legislative Budget*  
20 *Committee and the relevant policy committees in both houses of*  
21 *the Legislature, in writing, of its intent to take the proposed action.*

22 *(B) The Joint Legislative Budget Committee either approves or*  
23 *does not disapprove the proposed action within 60 days from the*  
24 *date of notification required by subparagraph (A).*

25 *(2) It is the intent of the Legislature to enact the subdivision to*  
26 *ensure legislative oversight for awards made on a sole source*  
27 *basis, or awards to the University of California through a sole*  
28 *source or interagency agreement.*

29 *(f) The commission shall give priority to California-based*  
30 *entities in making awards pursuant to this chapter.*

31 *(g) The provisions of this section are severable. If any provision*  
32 *of this section or its application is held to be invalid, that invalidity*  
33 *does not affect other provisions or applications that can be given*  
34 *effect without the invalid provision or application.*

35 *25620.20. (a) The commission, not later than March 31 of*  
36 *each year, shall prepare and submit to the Legislature an annual*  
37 *report in compliance with Section 9795 of the Government Code*  
38 *that shall include all of the following:*

39 *(1) A brief description of each project for which funding was*  
40 *awarded in the immediately prior calendar year, including the*

1 *name of the recipient and amount of award, and a description of*  
2 *how the project may lead to technological advancement or other*  
3 *breakthroughs to overcome barriers to achieving the state's*  
4 *statutory energy goals.*

5 (2) *A brief description of each CERT-funded project that was*  
6 *completed in the immediately prior calendar year, including the*  
7 *name of the recipient, the amount of the award, and the outcomes*  
8 *of the funded project, in accordance with the process described*  
9 *in Section 25620.16.*

10 (3) *A brief description of each CERT-funded project for which*  
11 *an award was made in the previous years but that is not completed,*  
12 *including the name of the recipient and amount of the award, and*  
13 *a description of how the project may lead to technological*  
14 *advancement or other breakthroughs to overcome barriers to*  
15 *achieving the state's statutory energy goals.*

16 (4) *A list and description of the technological or other*  
17 *challenges that the council identifies as the most significant*  
18 *barriers to achieving the state's statutory energy goals, as*  
19 *identified by the council pursuant to Section 25620.13 for the*  
20 *current year and all prior years.*

21 (5) *Designation of which award recipients are California-based*  
22 *entities and which award recipients are small businesses or*  
23 *businesses owned by women, minorities, or disabled veterans.*

24 (6) *A list of entities participating in the cost-share program*  
25 *pursuant to Section 25620.18 and the total amount of cost-share*  
26 *commitments made by the commission.*

27 (b) *The commission shall post on its Internet Web site each*  
28 *annual report, and a searchable database containing information*  
29 *in the annual report, and shall also include information on awards*  
30 *made under the former Public Interest Research, Development,*  
31 *and Demonstration Program.*

32 (c) *The commission shall establish procedures for protecting*  
33 *confidential or proprietary information in public reports about*  
34 *CERT-funded projects.*

35 25620.21. *The commission shall contract with an independent*  
36 *entity to conduct a review of the CERT and pursuant to Section*  
37 *9795 of the Government Code report the conclusions and*  
38 *recommendations from that review to the Legislature no later than*  
39 *October 1, 2015.*

1 25620.22. *This article shall remain in effect only until January*  
2 *1, 2020, and as of that date is repealed, unless a later enacted*  
3 *statute, that is enacted before January 1, 2020, deletes or extends*  
4 *that date.*

5 *SEC. 3. Section 384 of the Public Utilities Code is amended*  
6 *to read:*

7 384. (a) Funds transferred to the ~~State Energy Resources~~  
8 ~~Conservation and Development~~ Commission pursuant to this article  
9 for purposes of public interest research, development, and  
10 demonstration shall be transferred to the ~~Public Interest Research,~~  
11 ~~Development, and Demonstration~~ *California Energy Research*  
12 *and Technology Program* Fund, which is hereby created in the  
13 State Treasury. The fund is a trust fund and shall contain money  
14 from all interest, repayments, disencumbrances, royalties, and any  
15 other proceeds appropriated, transferred, or otherwise received for  
16 purposes pertaining to public interest research, development, and  
17 demonstration. Any appropriations that are made from the fund  
18 shall have an encumbrance period of not longer than two years,  
19 and a liquidation period of not longer than four years.

20 ~~(b) Funds deposited in the Public Interest Research,~~  
21 ~~Development, and Demonstration Fund may be expended for~~  
22 ~~projects that serve the energy needs of both stationary and~~  
23 ~~transportation purposes if the research provides an electricity~~  
24 ~~ratepayer benefit.~~

25 (e)

26 ~~(b) The State Energy Resources Conservation and Development~~  
27 ~~Commission shall report annually to the appropriate budget~~  
28 ~~committees of the Legislature on any encumbrances or liquidations~~  
29 ~~that are outstanding at the time the commission's~~ *Energy*  
30 *Commission's* budget is submitted to the Legislature for review.

31 ~~(c) Moneys in the Public Interest Research, Development, and~~  
32 ~~Demonstration Fund that have not been encumbered as of the~~  
33 ~~effective date of this section shall be transferred to the California~~  
34 ~~Energy Research and Technology Program Fund.~~

35 ~~(d) Moneys in the California Energy Research and Technology~~  
36 ~~Program Fund, upon appropriation by the Legislature, shall be~~  
37 ~~expended by the Energy Commission to implement Article 2~~  
38 ~~(commencing with Section 25620.10) of Chapter 7.1 of Division~~  
39 ~~15 of the Public Resources Code.~~

1 (e) Any reference in any law or regulation to the Public Interest  
2 Research, Development, and Demonstration Fund shall hereafter  
3 be to the California Energy Research and Technology Program  
4 Fund.

5 SECTION 1. ~~Section 25217.5 of the Public Resources Code~~  
6 ~~is amended to read:~~

7 ~~25217.5. The chair of the commission shall do both of the~~  
8 ~~following:~~

9 ~~(a) Direct the adviser, the executive director, and other staff in~~  
10 ~~the performance of their duties in conformance with the policies~~  
11 ~~and guidelines established by the commission.~~

12 ~~(b) Annually appear before the appropriate policy committees~~  
13 ~~of the Senate and the Assembly to report on the activities of the~~  
14 ~~commission.~~

15 SEC. 2. ~~The heading of Chapter 6.5 (commencing with Section~~  
16 ~~25550) of Division 15 of the Public Resources Code is repealed.~~