

SENATE BILL

No. 71

Introduced by Senator Perata

May 17, 2001

An act to add Section 12334 to the Government Code, to add Section 25216.6 to the Public Resources Code, to add Section 367.1 to the Public Utilities Code, to amend Sections 17250 and 24349 of, to add Section 6902.3 to, and to add and repeal Sections 6367.5, 17053.84, and 23684 of, the Revenue and Taxation Code, and to amend Section 80110 of the Water Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 71, as introduced, Perata. Income and bank and corporation tax credits: power generation.

(1) Provisions of the Public Utilities Act restructuring the electrical services industry enable electrical corporations to recover certain uneconomic costs associated with electrical deregulation through the imposition of a nonbypassable competition transition charge on classes of consumers until December 31, 2001, with specified exceptions. Existing law defines a standby charge as a charge by an electrical corporation for providing standby generation, transmission, and distribution facilities to a private energy producer employing other than a conventional power source for the generation of electricity.

This bill would require the Public Utilities Commission to establish for a customer that installs a power generating system, as defined, a reasonable standby charge, as provided.

(2) The Personal Income Tax Law and the Bank and Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would, under both laws, allow until January 1, 2006, a credit in an amount equal to the applicable percent of certain costs paid or incurred by a taxpayer during the taxable year for the purchase or lease and installation of a power generation system for the production of electricity installed on property in this state. Any unused credit amount would be subject to a 6-year maximum carryover period. This bill would, in lieu of those credits, allow either an exemption from sales and use taxes on the purchase of the power generation system or accelerated depreciation of the system, as provided.

This bill would also permit a retailer, who is eligible to claim the tax credits and has paid sales tax reimbursement to a retailer or use tax on a purchase or lease of a power generation system, to elect to claim a sales and use tax credit in lieu of the other tax credits, the sales tax exemption, and accelerated depreciation. The bill would require the State Board of Equalization to provide an annual listing to the Franchise Tax Board of persons who claim the sales or use tax credit.

This bill would provide that the amounts of the credits and exemptions be allocated by the Tax Allocation Committee created by the bill within the Treasurer's office, as provided, and would limit the aggregate amount of credits and exemptions to \$50,000,000 per calendar year.

(3) Existing law authorizes the Department of Water Resources to enter into contracts for the purchase of electric power, and to sell power to retail end use customers and, with specified exceptions, local publicly owned electric utilities, at not more than the department's acquisition costs. Existing law suspends, after a period of time to be determined by the Public Utilities Commission, and until the department no longer supplies power under those provisions, the right of retail end use customers to acquire service from other electric service providers pursuant to specified existing law.

This bill would prohibit that suspension from being construed to prohibit retail end use customers from obtaining the majority of their electrical needs from on site generation capacity.

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. The Legislature finds and declares it is the intent
2 of the Legislature to do the following:



1 (a) Reduce overall system demand for current electrical energy
2 supplies by creating an incentive for individual electrical energy
3 users to install onsite generation equipment.

4 (b) Reduce system and individual facility vulnerability to
5 blackouts and temporary service interruptions during periods of
6 heavy power demands.

7 (c) Lower the costs of obtaining additional electrical energy
8 needed for operations during demand peaks.

9 SEC. 2. Section 12334 is added to the Government Code, to
10 read:

11 12334. For purposes of allocating the tax credits and
12 incentives provided by Sections 6902.3, 6367.5, 17053.84, and
13 23684 of the Revenue and Taxation Code, a tax allocation
14 committee is created within the Treasurer’s office. The members
15 of the committee shall be the Director of Finance, the Treasurer,
16 and the Controller. This committee shall be referred to as “the Tax
17 Allocation Committee.”

18 SEC. 3. Section 25216.6 is added to the Public Resources
19 Code, to read:

20 25216.6. The commission shall make the certifications
21 specified by Sections 17053.84 and 23684 of the Revenue and
22 Taxation Code, relating to power generation systems, and
23 promulgate any rules, regulations, and procedures as are necessary
24 in connection thereto.

25 SEC. 4. Section 367.1 is added to the Public Utilities Code, to
26 read:

27 367.1. (a) Within 60 days of the effective date of this bill, the
28 commission shall establish for customers that install an onsite
29 power generation system, as defined in Section 17053.84 of the
30 Revenue and Taxation Code, reasonable standby rates that
31 accurately reflect the net costs and benefits resulting from the
32 installation of onsite power generation systems.

33 (b) The standby charges established by the commission
34 pursuant to this section shall also apply to customers that place in
35 service a qualified onsite power generation system, as defined in
36 Section 17053.84 of the Revenue and Taxation Code, that was
37 purchased prior to the effective date of the act adding this section.

38 SEC. 5. Section 6367.5 is added to the Revenue and Taxation
39 Code, to read:



1 6367.5. (a) Until January 1, 2006, there are exempted from
2 the taxes imposed by this part, the gross receipts from the sale in
3 this state of, and the storage, use, or other consumption in this state
4 by a qualified taxpayer, as defined in Sections 17053.84 and
5 23684, of any qualified power generation systems, as defined by
6 Sections 17053.84 and 23684. The amount of the exemption for
7 a qualified taxpayer may not exceed the amount allocated to that
8 taxpayer by the ____ Committee.

9 (b) In order to be allowed the exemption under this section, the
10 qualified taxpayer shall make an irrevocable election to be allowed
11 the exemption under this section in lieu of any credits or
12 deductions that may have been allowable for any qualified power
13 generation system for any and all taxable periods under Section
14 6902.3, subdivision (c) of Section 17250, or Section 17053.84 or
15 23684.

16 (c) A qualified taxpayer claiming a credit under this section
17 shall retain records substantiating that it meets all of the
18 requirements for receiving a credit under Section 17053.84 or
19 23684, as applicable. Those records shall be in the form of
20 documentation, in a readily understood form, establishing that the
21 taxpayer meets those credit requirements. The State Board of
22 Equalization may, upon request, require the taxpayer to make
23 those records available for review.

24 (d) (1) The Tax Allocation Committee shall allocate to each
25 qualified taxpayer the amount of the exemption that may be
26 allowed by this section in accordance with a qualified allocation
27 plan, as defined in ____.

28 (2) A qualified taxpayer shall apply for the allocation in the
29 form and manner prescribed by the Tax Allocation Committee.

30 (3) The Tax Allocation Committee shall report annually to the
31 Legislature regarding the utilization of the tax incentives provided
32 by this section and Sections 6902.3, 17053.84, and 23684. The
33 report shall describe the Tax Allocation Committee's activities in
34 connection with those tax incentives and any recommendations for
35 improvement in those incentives.

36 (4) The Tax Allocation Committee shall promulgate rules,
37 regulations, and procedures as are necessary to implement this
38 section and its duties in connection with Sections 6902.3,
39 17053.84, and 23684.



1 (e) The aggregate amount of exemptions and credits allowed
2 under this section and Sections 6902.3, 17053.84, and 23684 for
3 each calendar year may not exceed fifty million dollars
4 (\$50,000,000).

5 (f) This section shall remain in effect only until December 1,
6 2006, and as of that date is repealed.

7 SEC. 6. Section 6902.3 is added to the Revenue and Taxation
8 Code, to read:

9 6902.3. (a) Any retailer who is a qualified taxpayer, as
10 defined in Sections 17053.84 and 23684, and is required to file
11 returns pursuant to this part may elect to claim a credit under this
12 section, in lieu of a credit under either of those sections, any
13 depreciation deductions as provided by subdivision (c) of Section
14 17250, and any exemption under Section 6367.5. Any retailer who
15 so elects shall be allowed a credit against the tax liability due under
16 this part in an amount equal to the amount of the credit that would
17 otherwise be allowed pursuant to the applicable of either Section
18 17053.84 or 23684. The credit allowed by this section shall include
19 any amount that would otherwise exceed the “net tax” in the case
20 of Section 17053.84 or the “tax” in the case of Section 23684 and
21 would be required to be carried over under those provisions. If the
22 credit allowed by this section exceeds the amount of taxes due and
23 payable under this part for the period for which the return is filed,
24 the excess may be carried over to reduce the amount of tax due and
25 payable on the following return, and the succeeding returns, if
26 necessary, until the credit is exhausted.

27 (b) The board shall provide an annual listing to the Franchise
28 Tax Board, in a form and manner agreed upon by the board and the
29 Franchise Tax Board, of the retailers who during the year have
30 claimed a credit under this section.

31 (c) The credit allowed under this section may only be allowed
32 to a retailer if the retailer paid either sales tax reimbursement to a
33 retailer or use tax with respect to the purchase or lease of power
34 generation equipment, as defined under Sections 17053.84 and
35 23684, for which the credit is being claimed.

36 (d) In order to be allowed the credit under this section, the
37 qualified taxpayer shall make an irrevocable election, in the form
38 prescribed by the board and the Franchise Tax Board, to be allowed
39 the credit under this section in lieu of any exemption, accelerated
40 depreciation deduction, or credit that may have been allowable for



1 any qualified power generation system for any and all taxable
2 periods under Section 6367.5, 17053.84, subdivision (c) of
3 Section 17250, or Section 23684.

4 (e) A qualified taxpayer claiming a credit under this section
5 shall retain records substantiating that all of the requirements for
6 the credit are met. Those records shall be in the form of
7 documentation, in a readily understood form, establishing that the
8 taxpayer meets those credit requirements. The State Board of
9 Equalization may, upon request, require the taxpayer to make
10 those records available for review.

11 (f) (1) The Tax Allocation Committee shall allocate to each
12 qualified taxpayer the amount of credit that may be allowed by this
13 section in accordance with a qualified allocation plan, as defined
14 in ____.

15 (2) A qualified taxpayer shall apply for the allocation in the
16 form and manner prescribed by the Tax Allocation Committee.

17 (3) The Tax Allocation Committee shall report annually to the
18 Legislature regarding the utilization of the tax incentives provided
19 by this section and Sections 6367.5, 17053.84, and 23684 of the
20 Revenue and Taxation Code. The report shall describe the Tax
21 Allocation Committee's activities in connection with those tax
22 incentives and any recommendations for improvement in those
23 incentives.

24 (4) The Tax Allocation Committee shall promulgate rules,
25 regulations, and procedures as are necessary to implement this
26 section and its duties in connection with Sections 6367.5,
27 17053.84, and 23684.

28 (g) The aggregate amount of exemptions and credits allowed
29 under this section and Sections 6902.3, 17053.84, and 23684 for
30 each calendar year may not exceed fifty million dollars
31 (\$50,000,000).

32 SEC. 7. Section 17053.84 is added to the Revenue and
33 Taxation Code, to read:

34 17053.84. (a) (1) For taxable years beginning on or after
35 January 1, 2001, and before January 1, 2006, a qualified taxpayer
36 shall be allowed a credit against the "net tax," as defined in
37 Section 17039, in an amount equal to the applicable percentage of
38 the qualified cost of a qualified power generation system installed
39 and placed in service in this state, but not to exceed the amount



1 allocated to the qualified taxpayer by the Tax Allocation
2 Committee.

3 (2) (A) The credit allowed by this section shall be allowed in
4 the taxable year that the qualified power generation system is
5 placed in service by the qualified taxpayer generating electrical
6 power in this state.

7 (B) Any costs that would otherwise be qualified costs that are
8 paid or incurred in taxable years prior to the taxable year in which
9 the qualified power generation system is placed in service shall be
10 carried over and aggregated with the costs described in
11 subparagraph (A).

12 (3) No deduction may be allowed under this part for any cost
13 for which a credit is allowed by this section.

14 (b) For purposes of this section:

15 (1) “Qualified taxpayer” means any taxpayer that purchases or
16 leases a qualified power generation system as an alternative means
17 of supplying its power needs and installs that qualified power
18 generation system in this state.

19 (2) “Applicable percentage” means:

20 (A) Thirty percent for any solar energy, wind-driven, or
21 photovoltaic power generation system.

22 (B) Twenty-five percent for any power generation system that
23 is placed in service on or after January 1, 2001, and on or before
24 September 1, 2001.

25 (C) Twenty percent for any other power generation system.

26 (3) “Qualified cost” means any cost paid or incurred on or after
27 January 1, 2001, and before January 1, 2006, by the qualified
28 taxpayer that satisfies each of the following requirements:

29 (A) The cost paid or incurred is for the purchase or lease of a
30 qualified power generation system as described in paragraph (4)
31 that has been certified as specified in subdivision (e) and is placed
32 in service in this state.

33 (B) The cost paid or incurred is an amount properly chargeable
34 to the capital account of the qualified taxpayer within the meaning
35 of Section 179 of the Internal Revenue Code.

36 (C) The cost paid or incurred is an amount for which the
37 qualified taxpayer has not elected to claim the enhanced cost
38 recovery deduction allowed under subdivision (c) of Section
39 17250, and is not an amount for which the qualified taxpayer has
40 filed a claim for refund under Section 6902.3.



- 1 (4) “Qualified power generation system” means devices,
2 either newly installed or converted from a preexisting power
3 generation system, used for the individual function of producing
4 electricity at the rate of 50 megawatts or less per day, and includes
5 any solar energy, wind-driven, fuel cell, microturbine,
6 photovoltaic, and natural gas generation system, but does not
7 include any diesel, oil, gasoline, or steam generation system.
- 8 (5) “Solar energy system” means a power generation system
9 that utilizes the sun as its energy source through the absorption,
10 collection, storage, or distribution of solar energy by solar panels
11 or other materials or devices used for the absorption, collection,
12 storage, or distribution of solar energy.
- 13 (6) “Wind-driven system” means a power generation system
14 that utilizes the wind as its energy source by capturing wind energy
15 through wind turbines with blades that rotate and generate energy.
- 16 (7) “Fuel cell system” means a power generation system that
17 utilizes a catalytic converter to convert fuel into electricity.
- 18 (8) “Microturbine system” means a power generation system
19 that utilizes a small turbine engine fueled by natural gas.
- 20 (9) “Photovoltaic system” means the same as a solar energy
21 system.
- 22 (10) “Natural gas generation system” means a power
23 generation system that utilizes a large turbine engine fueled by
24 natural gas.
- 25 (11) “Compliance period” means the 60-month period
26 commencing with the first full month following the month during
27 which the qualified power generation system is placed in service
28 in this state by the qualified taxpayer.
- 29 (12) “Peak load hours” means the three consecutive hours
30 during which the total energy use by the taxpayer is at its highest
31 level during the day.
- 32 (13) “Placed in service” shall have the same meaning provided
33 in Section 1.46-3(d) of the Treasury Regulations issued by the
34 Secretary of the Treasury and in effect as of January 1, 2001.
- 35 (14) “Steam generation system” means a power generation
36 system that burns a substance to generate steam to power a turbine
37 generator.
- 38 (c) (1) In the case of any lease of a qualified power generation
39 system where the lessee is not treated as the tax owner of the



1 property for California income and franchise tax depreciation
2 purposes, each of the following special rules shall apply:

3 (A) Only the taxpayer actually using the qualified power
4 generation system in its business activity may be treated as a
5 qualified taxpayer that may claim the credit allowed under this
6 section.

7 (B) In computing the qualified costs paid or incurred by the
8 lessee during the taxable year, the portion of each lease payment
9 that is allocable to interest including, for this purpose, any discount
10 factor used to price the lease payments under the terms of the lease,
11 taxes, maintenance, insurance, and any other noncapital costs of
12 the lease, shall be excluded from qualified costs for purposes of
13 this section.

14 (C) The inception date of the lease or, if earlier, the first date on
15 which the lessee becomes unconditionally obligated to pay lease
16 payments under the terms of the lease, shall be treated as the placed
17 in service date.

18 (D) A qualified taxpayer that is a lessee shall be entitled to
19 claim the credit each year of the lease term in which lease
20 payments (as adjusted under paragraph (2)) are paid or incurred,
21 subject to the taxable year limitations set forth in subdivision (a).

22 (2) In the case of any lease of a qualified power generation
23 system where the lessee is treated as the tax owner of the property
24 for California income and franchise tax depreciation purposes, the
25 rules of paragraph (3) of subdivision (b) shall apply.

26 (d) (1) Notwithstanding any other provision of this section to
27 the contrary, the credit allowed under this section may be allowed
28 to a qualified taxpayer only if all of the following requirements
29 have been satisfied for each taxable year during the compliance
30 period:

31 (A) At least 80 percent of the electricity used by the taxpayer
32 during any taxable year of the compliance period is generated by
33 the qualified power generation system.

34 (B) During any taxable year within the compliance period that
35 is less than 12 months, the 80 percent requirement for that year
36 shall apply only to those months within that year that are within the
37 compliance period.

38 (C) In the case of any qualified power generation system that
39 suffers significant operational problems that limit the ability of the
40 taxpayer to meet the requirements of subparagraph (A) or (B) of



1 this paragraph during any portion of a taxable year within the
2 compliance period, the taxpayer may seek certification from the
3 State Energy Resources Conservation and Development
4 Commission verifying the operational problem and the duration of
5 time (in days) the qualified power generation system was
6 nonoperational due to no fault of the qualified taxpayer. In these
7 cases, the 80 percent requirement shall be prorated based on the
8 ratio that the number of days the power generation system was
9 operational during that taxable year bears to the total number of
10 calendar days in that taxable year (reduced by the number of days
11 that the qualified power system was nonoperational). The taxpayer
12 shall retain a copy of the nonoperational certification and provide
13 it upon request to the Franchise Tax Board.

14 (D) The qualified taxpayer uses electricity generated by the
15 qualified power generation system during peak load hours.

16 (E) The electricity generated by the qualified power generation
17 system is used solely by the qualified taxpayer for its own trade or
18 business activities, and is not sold, transferred, exchanged, or
19 traded in the ordinary course of business.

20 (2) If the qualified taxpayer fails to meet any of the
21 requirements of paragraph (1) for any taxable year within the
22 compliance period, a portion of the credit previously allowed shall
23 be recaptured in the manner provided in subdivision (f).

24 (e) The qualified taxpayer shall do all of the following:

25 (1) Obtain from the State Energy Resources Conservation and
26 Development Commission written certification that a power
27 generation system is a qualified power generation system within
28 the meaning of paragraph (4) of subdivision (b).

29 (2) Retain a copy of the certification described in paragraph (1)
30 and provide it upon request to the Franchise Tax Board.

31 (3) If the qualified taxpayer fails to meet the conditions of
32 paragraphs (1) and (2), then no credit shall be allowed under this
33 section until the requirements of paragraphs (1) and (2) are
34 satisfied.

35 (f) (1) In the case of any failure of the qualified taxpayer to
36 comply with the requirements specified in subdivision (d), there
37 shall be added to the tax imposed under this part, for the taxable
38 year in which the failure to comply occurs, the recapture amount
39 computed under paragraph (2).



1 (2) For purposes of this subdivision, the “recapture amount”
2 shall mean an amount determined by multiplying the entire
3 amount of the credit previously allowed under this section by a
4 fraction, the numerator of which is the number of months of the
5 compliance period remaining following the month in which the
6 failure to comply occurs and the denominator of which is 60.

7 (g) In the case where the credit allowed by this section exceeds
8 the “net tax,” the excess may be carried over to reduce the “net
9 tax” in the following year, and the five succeeding years if
10 necessary, until it is exhausted.

11 (h) In order to be allowed the credit under this section, the
12 qualified taxpayer shall make an irrevocable election to be allowed
13 the credit under this section in lieu of any exemption, accelerated
14 depreciation deduction, or credit that may have been allowable for
15 any qualified power generation system for any and all taxable
16 periods under Section 6367.5, 6902.3, subdivision (c) of Section
17 17250, or Section 23684.

18 (i) A qualified taxpayer claiming a credit under this section
19 shall retain records substantiating that he or she meets all of the
20 requirements for receiving a credit under this section. Those
21 records shall be in the form of documentation, in a readily
22 understood form, establishing that the taxpayer meets those
23 requirements. The Franchise Tax Board may, upon request,
24 require the taxpayer to make those records available for review.

25 (j) (1) The Tax Allocation Committee shall allocate to each
26 qualified taxpayer the amount of credit that may be allowed by this
27 section in accordance with a qualified allocation plan, as defined
28 in ____.

29 (2) A qualified taxpayer shall apply for the allocation in the
30 form and manner prescribed by the Tax Allocation Committee.

31 (3) The ____ Tax Allocation Committee shall report annually
32 to the Legislature regarding the utilization of the tax incentives
33 provided by this section and Sections 6367.5, 6902.3, and 23684.
34 The report shall describe the Tax Allocation Committee’s
35 activities in connection with those tax incentives and any
36 recommendations for improvement in those incentives.

37 (4) The Tax Allocation Committee shall promulgate rules,
38 regulations, and procedures as are necessary to implement this
39 section and its duties in connection with Sections 6367.5, 6902.3,
40 and 23684.



1 (k) The aggregate amount of exemptions and credits allowed
2 under this section and Sections 6367.5, 6902.3, and 23684 for each
3 calendar year may not exceed fifty million dollars (\$50,000,000).

4 (l) This section shall remain in effect only until December 1,
5 2006, and as of that date is repealed.

6 SEC. 8. Section 17250 of the Revenue and Taxation Code is
7 amended to read:

8 17250. (a) Section 168 of the Internal Revenue Code is
9 modified as follows:

10 (1) Any reference to “tax imposed by this chapter” in Section
11 168 of the Internal Revenue Code means “net tax,” as defined in
12 Section 17039.

13 (2) (A) Section 168(e)(3) of the *Internal Revenue Code* is
14 modified to provide that any grapevine, replaced in a vineyard in
15 California in any taxable year beginning on or after January 1,
16 1992, as a direct result of a phylloxera infestation in that vineyard,
17 or replaced in a vineyard in California in any taxable year
18 beginning on or after January 1, 1997, as a direct result of Pierce’s
19 Disease in that vineyard, shall be “five-year property,” rather than
20 “10-year property.”

21 (B) Section 168(g)(3) of the Internal Revenue Code is
22 modified to provide that any grapevine, replaced in a vineyard in
23 California in any taxable year beginning on or after January 1,
24 1992, as a direct result of a phylloxera infestation in that vineyard,
25 or replaced in a vineyard in California in any taxable year
26 beginning on or after January 1, 1997, as a direct result of Pierce’s
27 Disease in that vineyard, shall have a class life of 10 years.

28 (C) Every taxpayer claiming a depreciation deduction with
29 respect to grapevines as described in this paragraph shall obtain a
30 written certification from an independent state-certified integrated
31 pest management adviser, or a state agricultural commissioner or
32 adviser, that specifies that the replanting was necessary to restore
33 a vineyard infested with phylloxera or Pierce’s Disease. The
34 taxpayer shall retain the certification for future audit purposes.

35 (3) Section 168(j) of the Internal Revenue Code, relating to
36 property on Indian reservations, shall not apply.

37 (b) Section 169 of the Internal Revenue Code, relating to
38 amortization of pollution control facilities, is modified as follows:



1 (1) The deduction allowed by Section 169 of the Internal
2 Revenue Code shall be allowed only with respect to facilities
3 located in this state.

4 (2) The “state certifying authority,” as defined in Section
5 169(d)(2) of the Internal Revenue Code, means the State Air
6 Resources Board, in the case of air pollution, and the State Water
7 Resources Control Board, in the case of water pollution.

8 (c) (1) *For each taxable year beginning on or after January 1,*
9 *2001, and before January 1, 2006, in lieu of any credit allowed by*
10 *Section 17053.84 or Section 6902.3, any exemption allowed under*
11 *Section 6367.5, or any deduction otherwise allowed by this part for*
12 *any qualified power generation system, a qualified taxpayer may*
13 *elect to depreciate the qualified power generation system over five*
14 *taxable years using the straight-line method of depreciation.*

15 (2) *For purposes of this subdivision, the terms “compliance*
16 *period,” “qualified power generation system,” and “qualified*
17 *taxpayer” shall have the same meaning as described in Section*
18 *17053.84.*

19 (3) *The taxpayer shall comply with the requirements described*
20 *in subdivisions (d) and (e) of Section 17053.84.*

21 (4) *If the qualified taxpayer fails to comply with the*
22 *requirements of subdivision (d) of Section 17053.84 for any*
23 *taxable year during the compliance period, each of the following*
24 *rules shall apply:*

25 (A) *Any deductions allowed or allowable under paragraph (1)*
26 *of this subdivision for exhaustion, wear and tear, obsolescence, or*
27 *amortization of a qualified power generation system for all prior*
28 *taxable years in excess of the deductions otherwise allowed or*
29 *allowable under this part for exhaustion, wear and tear,*
30 *obsolescence, or amortization of a qualified power generation*
31 *system for those taxable years shall be included in the gross income*
32 *of the taxpayer for the taxable year the taxpayer fails to comply.*

33 (B) *Any amount included in gross income pursuant to*
34 *subparagraph (A) of this paragraph shall increase the basis of the*
35 *qualified power generation system.*

36 (C) *The deduction of any amount allowed by this part with*
37 *respect to a qualified power generation system shall be determined*
38 *as if no election had been made under this subdivision.*

39 SEC. 9. Section 23684 is added to the Revenue and Taxation
40 Code, to read:



1 23684. (a) (1) For taxable years beginning on or after
2 January 1, 2001, and before January 1, 2006, a qualified taxpayer
3 shall be allowed a credit against the “tax,” as defined in Section
4 23036, an amount equal to the applicable percentage of the
5 qualified cost of a qualified power generation system installed and
6 placed in service in this state, but not in excess of the amount
7 allocated to the qualified taxpayer by the Tax Allocation
8 Committee.

9 (2) (A) The credit allowed by this section shall be allowed in
10 the taxable year that the qualified power generation system is
11 placed in service by the qualified taxpayer generating electrical
12 power in this state.

13 (B) Any costs that would otherwise be qualified costs that are
14 paid or incurred in taxable years prior to the taxable year in which
15 the qualified power generation system is placed in service shall be
16 carried over and aggregated with the costs described in
17 subparagraph (A).

18 (3) No deduction may be allowed under this part for any cost
19 for which a credit is allowed by this section.

20 (b) For purposes of this section:

21 (1) “Qualified taxpayer” means any taxpayer that purchases or
22 leases a qualified power generation system as an alternative means
23 of supplying its power needs and installs that qualified power
24 generation system in this state.

25 (2) “Applicable percentage” means:

26 (A) Thirty percent for any solar energy, wind-driven, or
27 photovoltaic power generation system.

28 (B) Twenty-five percent for any power generation system that
29 is placed in service on or after January 1, 2001, and on or before
30 September 1, 2001.

31 (C) Twenty percent for any other power generation system.

32 (3) “Qualified cost” means any cost paid or incurred on or after
33 January 1, 2001, and before January 1, 2006, by the qualified
34 taxpayer that satisfies each of the following requirements:

35 (A) The cost paid or incurred is for the purchase or lease of a
36 qualified power generation system as described in paragraph (4)
37 that has been certified as specified in subdivision (e) and is placed
38 in service in this state.



1 (B) The cost paid or incurred is an amount properly chargeable
2 to the capital account of the qualified taxpayer within the meaning
3 of Section 179 of the Internal Revenue Code.

4 (C) The cost paid or incurred is an amount for which the
5 qualified taxpayer has not elected to claim the enhanced cost
6 recovery deduction allowed under subdivision (c) of Section
7 24349, and is not an amount for which the qualified taxpayer has
8 filed a claim for refund under Section 6902.3.

9 (4) “Qualified power generation system” means devices,
10 either newly installed or converted from a preexisting power
11 generation system, used for the individual function of producing
12 electricity at the rate of 50 megawatts or less per day, and includes
13 any solar energy, wind-driven, fuel cell, microturbine,
14 photovoltaic, and natural gas generation system, but does not
15 include any diesel, oil, gasoline, or steam generation system.

16 (5) “Solar energy system” means a power generation system
17 that utilizes the sun as its energy source through the absorption,
18 collection, storage, or distribution of solar energy by solar panels
19 or other materials or devices used for the absorption, collection,
20 storage, or distribution of solar energy.

21 (6) “Wind-driven system” means a power generation system
22 that utilizes the wind as its energy source by capturing wind energy
23 through turbines with blades that rotate and generate energy.

24 (7) “Fuel cell system” means a power generation system that
25 utilizes a catalytic converter to convert fuel into electricity.

26 (8) “Microturbine system” means a power generation system
27 that utilizes a small turbine engine fueled by natural gas.

28 (9) “Photovoltaic system” means the same as solar energy
29 system.

30 (10) “Natural gas generation system” means a power
31 generation system that utilizes a large turbine engine fueled by
32 natural gas.

33 (11) “Compliance period” means the 60-month period
34 commencing with the first full month following the month during
35 which the qualified power generation system is placed in service
36 in this state by the qualified taxpayer.

37 (12) “Peak load hours” means the three consecutive hours
38 during which the total energy use by the taxpayer is at its highest
39 level during the day.



1 (13) “Placed in service” shall have the same meaning provided
2 in Section 1.46-3(d) of the Treasury Regulations issued by the
3 Secretary of the Treasury and in effect as of January 1, 2001.

4 (14) “Steam generation system” means a power generation
5 system that burns a substance to generate steam to power a turbine
6 generator.

7 (c) (1) In the case of any lease of a qualified power generation
8 system where the lessee is not treated as the tax owner of the
9 property for California income and franchise tax depreciation
10 purposes, each of the following special rules shall apply:

11 (A) Only the taxpayer actually using the qualified power
12 generation system in its business activity may be treated as a
13 qualified taxpayer that may claim the credit allowed under this
14 section.

15 (B) In computing the qualified costs paid or incurred by the
16 lessee during the taxable year, the portion of each lease payment
17 that is allocable to interest including, for this purpose, any discount
18 factor used to price the lease payments under the terms of the lease,
19 taxes, maintenance, insurance, and any other noncapital costs of
20 the lease, shall be excluded from qualified costs for purposes of
21 this section.

22 (C) The inception date of the lease or, if earlier, the first date on
23 which the lessee becomes unconditionally obligated to pay lease
24 payments under the terms of the lease, shall be treated as the placed
25 in service date.

26 (D) A qualified taxpayer that is a lessee shall be entitled to
27 claim the credit each year of the lease term in which lease
28 payments (as adjusted under paragraph (2)) are paid or incurred,
29 subject to the taxable year limitations set forth in subdivision (a).

30 (2) In the case of any lease of a qualified power generation
31 system where the lessee is treated as the tax owner of the property
32 for California income and franchise tax depreciation purposes, the
33 rules of paragraph (3) of subdivision (b) shall apply.

34 (d) (1) Notwithstanding any other provision of this section to
35 the contrary, the credit allowed under this section may be allowed
36 to a qualified taxpayer only if all of the following requirements
37 have been satisfied for each taxable year during the compliance
38 period:



1 (A) At least 80 percent of the electricity used by the taxpayer
2 during any taxable year of the compliance period is generated by
3 the qualified power generation system.

4 (B) During any taxable year within the compliance period that
5 is less than 12 months, the 80 percent requirement for that year
6 shall apply only to those months within that year that are within the
7 compliance period.

8 (C) In the case of any qualified power generation system that
9 suffers significant operational problems that limit the ability of the
10 taxpayer to meet the requirements of subparagraph (A) or (B) of
11 this paragraph during any portion of a taxable year within the
12 compliance period, the taxpayer may seek certification from the
13 State Energy Resources Conservation and Development
14 Commission verifying the operational problem and the duration of
15 time (in days) the qualified power generation system was
16 nonoperational due to no fault of the qualified taxpayer. In these
17 cases, the 80 percent requirement shall be prorated based on the
18 ratio that the number of days the power generation system was
19 operational during that taxable year bears to the total number of
20 calendar days in that taxable year (reduced by the number of days
21 that the qualified power system was nonoperational). The taxpayer
22 shall retain a copy of the nonoperational certification and provide
23 it upon request to the Franchise Tax Board.

24 (D) The qualified taxpayer uses electricity generated by the
25 qualified power generation system during peak load hours.

26 (E) The electricity generated by the qualified power generation
27 system is used solely by the qualified taxpayer for its own trade or
28 business activities, and is not sold, transferred, exchanged, or
29 traded in the ordinary course of business.

30 (2) If the qualified taxpayer fails to meet any of the
31 requirements of paragraph (1) for any taxable year within the
32 compliance period, a portion of the credit previously allowed shall
33 be recaptured in the manner provided in subdivision (f).

34 (e) The qualified taxpayer shall do all of the following:

35 (1) Obtain from the State Energy Resources Conservation and
36 Development Commission written certification that a power
37 generation system is a qualified power generation system within
38 the meaning of paragraph (4) of subdivision (b).

39 (2) Retain a copy of the certification described in paragraph (1)
40 and provide it upon request to the Franchise Tax Board.



1 (3) If the qualified taxpayer fails to meet the conditions of
2 paragraphs (1) and (2), then no credit shall be allowed under this
3 section until the requirements of paragraphs (1) and (2) are
4 satisfied.

5 (f) (1) In the case of any failure of the qualified taxpayer to
6 comply with the requirements specified in subdivision (d), there
7 shall be added to the tax imposed under this part, for the taxable
8 year in which the failure to comply occurs, the recapture amount
9 computed under paragraph (2).

10 (2) For purposes of this subdivision, the “recapture amount”
11 shall mean an amount determined by multiplying the entire
12 amount of the credit previously allowed under this section by a
13 fraction, the numerator of which is the number of months of the
14 compliance period remaining following the month in which the
15 failure to comply occurs and the denominator of which is 60.

16 (g) In the case where the credit allowed by this section exceeds
17 the “tax,” the excess may be carried over to reduce the “tax” in
18 the following year, and the five succeeding years if necessary, until
19 it is exhausted.

20 (h) In order to be allowed the credit under this section, the
21 qualified taxpayer shall make an irrevocable election to be allowed
22 the credit under this section in lieu of any exemption, accelerated
23 depreciation deduction, or credits that may have been allowable
24 for any qualified power generation system for any and all taxable
25 periods under Section 6367.5, 6902.3, subdivision (c) of Section
26 17250, or Section 17053.84.

27 (i) A qualified taxpayer claiming a credit under this section
28 shall retain records substantiating that it meets all of the
29 requirements for receiving the credit. Those records shall be in the
30 form of documentation, in a readily understood form, establishing
31 that the taxpayer meets the requirements of this section. The
32 Franchise Tax Board may, upon request, require the taxpayer to
33 make those documents available for review.

34 (j) (1) The Tax Allocation Committee shall allocate to each
35 qualified taxpayer the amount of credit that may be allowed by this
36 section in accordance with a qualified allocation plan, as defined
37 in ____.

38 (2) A qualified taxpayer shall apply for the allocation in the
39 form and manner prescribed by the Tax Allocation Committee.



1 (3) The Tax Allocation Committee shall report annually to the
2 Legislature regarding the utilization of the tax incentives provided
3 by this section and Sections 6367.5, 6902.3, and 17053.84. The
4 report shall describe the Tax Allocation Committee’s activities in
5 connection with those tax incentives and any recommendations for
6 improvement in those incentives.

7 (4) The Tax Allocation Committee shall promulgate rules,
8 regulations, and procedures as are necessary to implement this
9 section and its duties in connection with this section and Sections
10 6367.5, 6902.3, and 17053.84.

11 (k) The aggregate amounts of credits allowed by this section
12 and amounts of exemptions and credits allowed by this section and
13 Sections 6367.5, 6902.3, and 17053.84 for each calendar year may
14 not exceed fifty million dollars (\$50,000,000).

15 (l) This section shall remain in effect only until December 1,
16 2006, and as of that date is repealed.

17 SEC. 10. Section 24349 of the Revenue and Taxation Code is
18 amended to read:

19 24349. (a) There shall be allowed as a depreciation deduction
20 a reasonable allowance for the exhaustion, wear, and tear
21 (including a reasonable allowance for obsolescence)—

22 (1) Of property used in the trade or business; or
23 (2) Of property held for the production of income.

24 (b) Except as otherwise provided in subdivision (c), for taxable
25 years ending after December 31, 1958, the term “reasonable
26 allowance” as used in subdivision (a) shall include, but shall not
27 be limited to, an allowance computed in accordance with
28 regulations prescribed by the Franchise Tax Board, under any of
29 the following methods:

30 (1) The straight-line method.

31 (2) The declining balance method, using a rate not exceeding
32 twice the rate that would have been used had the annual allowance
33 been computed under the method described in paragraph (1).

34 (3) The sum of the years-digits method.

35 (4) Any other consistent method productive of an annual
36 allowance that, when added to all allowances for the period
37 commencing with the taxpayer’s use of the property and including
38 the taxable year, does not, during the first two-thirds of the useful
39 life of the property, exceed the total of those allowances that would



1 have been used had those allowances been computed under the
2 method described in paragraph (2).

3 Nothing in this subdivision shall be construed to limit or reduce
4 an allowance otherwise allowable under subdivision (a).

5 (c) Any grapevine replaced in a vineyard in California in a
6 taxable year beginning on or after January 1, 1992, as a direct
7 result of a phylloxera infestation in that vineyard, and any
8 grapevine replaced in a vineyard in California in a taxable year
9 beginning on or after January 1, 1997, as a direct result of Pierce’s
10 Disease in that vineyard, shall have a useful life of five years,
11 except that it shall have a class life of 10 years for purposes of
12 depreciation under Section 168(g)(2) of the Internal Revenue
13 Code where the taxpayer has made an election under Section
14 263A(d)(3) of the Internal Revenue Code not to capitalize costs of
15 the infested vineyard. Every taxpayer claiming a deduction under
16 this section with respect to a grapevine as described in this
17 subdivision shall obtain a written certification from an
18 independent state-certified integrated pest management adviser, or
19 a state agricultural commissioner or adviser, that specifies that the
20 replanting was necessary to restore a vineyard infested with
21 phylloxera or Pierce’s Disease. The taxpayer shall retain the
22 certification for future audit purposes.

23 (d) For purposes of this part, the deduction for property leased
24 to governments and other tax-exempt entities, as defined in
25 Section 168(h) of the Internal Revenue Code, shall be limited to
26 the amount determined under Section 168(g) of the Internal
27 Revenue Code, relating to alternative depreciation system for
28 certain property.

29 (e) (1) In the case of any building erected or improvements
30 made on leased property, if the building or improvement is
31 property to which this section applies, the depreciation deduction
32 shall be determined under the provisions of this section.

33 (2) An improvement shall be treated for purposes of
34 determining gain or loss under this part as disposed of by the lessor
35 when so disposed of or abandoned if both of the following occur:

36 (A) The improvement is made by the lessor of leased property
37 for the lessee of that property.

38 (B) The improvement is irrevocably disposed of or abandoned
39 by the lessor at the termination of the lease by the lessee.



1 This subdivision shall not apply to any property to which
2 Section 168 of the Internal Revenue Code does not apply for
3 federal purposes by reason of Section 168(f) of the Internal
4 Revenue Code. Any election made under Section 168(f)(1) of the
5 Internal Revenue Code for federal purposes with respect to that
6 property shall be treated as a binding election for state purposes
7 under this subdivision with respect to that same property and no
8 separate election under subdivision (e) of Section 23051.5 with
9 respect to that property shall be allowed.

10 (3) (A) In determining a lease term, both of the following shall
11 apply:

12 (i) There shall be taken into account options to renew.

13 (ii) Two or more successive leases which are part of the same
14 transaction (or a series of related transactions) with respect to the
15 same or substantially similar property shall be treated as one lease.

16 (B) For purposes of clause (i) of subparagraph (A), in the case
17 of nonresidential real property or residential rental property, there
18 shall not be taken into account any option to renew at fair market
19 value determined at the time of renewal.

20 (f) (1) Section 167(g) of the Internal Revenue Code, relating
21 to depreciation under income forecast method, shall apply except
22 as otherwise provided.

23 (2) Section 167(g)(2)(C) of the Internal Revenue Code is
24 modified by substituting “Section 19521” in lieu of “Section
25 460(b)(7)” of the Internal Revenue Code.

26 (3) Section 167(g)(5)(D) of the Internal Revenue Code is
27 modified by substituting “Part 10.2 (commencing with Section
28 18401) (other than Article 2 (commencing with Section 19021)
29 and Sections 19142 to 19150, inclusive)” in lieu of “Subtitle F
30 (other than Sections 6654 and 6655).”

31 (g) (1) *For each taxable year beginning on or after January 1,*
32 *2001, and before January 1, 2006, in lieu of any credit allowed by*
33 *Section 23684, any claim for refund allowed under Section 6902.3,*
34 *or any deduction otherwise allowed by this part for any qualified*
35 *power generation system, a qualified taxpayer may elect to*
36 *depreciate the qualified power generation system over five taxable*
37 *years using the straight-line method of depreciation.*

38 (2) *For purposes of this subdivision, the terms “compliance*
39 *period,” “qualified power generation system,” and “qualified*



1 taxpayer” shall have the same meaning as described in Section
2 23684.

3 (3) The taxpayer shall comply with the requirements described
4 in subdivisions (d) and (e) of Section 23684.

5 (4) If the qualified taxpayer fails to comply with the
6 requirements of subdivision (d) of Section 23684 for any taxable
7 year during the compliance period, each of the following rules
8 shall apply:

9 (A) Any deductions allowed or allowable under paragraph (1)
10 of this subdivision for exhaustion, wear and tear, obsolescence, or
11 amortization of a qualified power generation system for all prior
12 taxable years in excess of the deductions otherwise allowed or
13 allowable under this part for exhaustion, wear and tear,
14 obsolescence, or amortization of a qualified power generation
15 system for those taxable years shall be included in the gross income
16 of the taxpayer for the taxable year the taxpayer fails to comply.

17 (B) Any amount included in gross income pursuant to
18 subparagraph (A) of this paragraph shall increase the basis of the
19 qualified power generation system.

20 (C) The deduction of any amount allowed by this part with
21 respect to a qualified power generation system shall be determined
22 as if no election had been made under this subdivision.

23 SEC. 11. Section 80110 of the Water Code is amended to read:

24 80110. (a) The department shall retain title to all power sold
25 by it to the retail end use customers. The department shall be
26 entitled to recover, as a revenue requirement, amounts and at the
27 times necessary to enable it to comply with Section 80134, and
28 shall advise the commission as the department determines to be
29 appropriate. ~~Such~~ Those revenue requirements may also include
30 any advances made to the department hereunder or hereafter for
31 purposes of this division, or from the Department of Water
32 Resources Electric Power Fund, and General Fund moneys
33 expended by the department pursuant to the Governor’s
34 Emergency Proclamation dated January 17, 2001. ~~For~~

35 (b) For purposes of this division, and except as otherwise
36 provided in this section, the ~~Public Utility Commission’s~~
37 ~~commission’s~~ authority as set forth in Section 451 of the Public
38 Utilities Code shall apply, except any just and reasonable review
39 under Section 451 shall be conducted and determined by the
40 department. The commission may enter into an agreement with the

1 department with respect to charges under Section 451 for purposes
2 of this division, and that agreement shall have the force and effect
3 of a financing order adopted in accordance with Article 5.5
4 (commencing with Section 840) of Chapter 4 of Part 1 of Division
5 1 of the Public Utilities Code, as determined by the commission.
6 In no case shall the commission increase the electricity charges in
7 effect on the date that the act that adds this section becomes
8 effective for residential customers for existing baseline quantities
9 or usage by those customers of up to 130 percent of existing
10 baseline quantities, until such time as the department has
11 recovered the costs of power it has procured for the electrical
12 corporation's retail end use customers as provided in this division.

13 ~~After~~

14 (c) (1) *Except as specified in paragraph (2), after the passage*
15 *of such period of time after the effective date of this section as shall*
16 *be determined by the commission, the right of retail end use*
17 *customers pursuant to Article 6 (commencing with Section 360)*
18 *of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code*
19 *to acquire service from other providers shall be suspended until the*
20 *department no longer supplies power hereunder. The*

21 (2) *This subdivision must not be construed to prohibit a retail*
22 *end use customer from obtaining the majority of their electrical*
23 *needs from onsite generation.*

24 (c) *The department shall have the same rights with respect to*
25 *the payment by retail end use customers for power sold by the*
26 *department as do providers of power to such customers.*

27 SEC. 12. The utilization of the tax credits created by this act
28 may not be construed to reduce or eliminate a taxpayer's
29 obligation to fund the California Alternate Rates for Energy
30 (CARE) program or any other public purpose or public benefit
31 program, as defined in Section 381 of the Public Utilities Code.

32 SEC. 13. The Franchise Tax Board and the State Board of
33 Equalization shall promulgate any rules or regulations and
34 interagency agreements necessary to implement this act.

O

