

AMENDED IN SENATE APRIL 24, 2006

SENATE BILL

No. 1368

Introduced by Senator Perata
(Coauthor: Assembly Member Levine)

February 21, 2006

An act to ~~amend Section 454.5 of, and to add Chapter 3 (commencing with Section 8340) to Division 4.1 of, the Public Utilities Code, relating to electricity.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1368, as amended, Perata. Electricity: emissions of greenhouse gases.

(1) Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations. Existing law requires the PUC 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.

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 electricity generated by eligible renewable energy resources.

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 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 report certain information relative to renewable energy resources to its customers.

Existing law defines an “electric service provider” as an entity that offers electrical service to customers within the service territory of an electrical corporation, excluding electrical corporations, local publicly owned electric utilities, and certain cogenerators. Provisions of the existing Public Utilities Act restructuring the electrical services industry require that electric service providers register with the PUC and require the PUC to authorize and facilitate direct transactions between electric service providers and retail end-use customers. However, other existing law suspends the right of retail end-use customers other than community aggregators, to acquire service through a direct transaction, until the Department of Water Resources no longer supplies electricity under that law.

Existing law defines a “community choice aggregator” and authorizes customers to aggregate their electric loads as members of their local community with community choice aggregators.

This bill would prohibit any load serving entity, including electrical corporations, community choice aggregators, electric service providers, and local publicly owned electric utilities, from entering into, ~~and the PUC from approving,~~ a long-term financial commitment, as defined, ~~for unless any~~ baseload generation, as defined, ~~unless that baseload generation~~ complies with a greenhouse gases emission performance standard established by the Energy Commission, by regulation, in consultation with the PUC and the State Air Resources Board. The bill would require that the greenhouse gases emission performance standard not exceed the ~~per kilowatt-hour rate of emissions of greenhouse gases of a~~ *for existing* combined-cycle natural gas ~~powerplant~~ *baseload generation. The bill would prohibit the PUC from approving any long-term financial commitment by an electrical corporation unless any baseload generation supplied under the long-term commitment complies with the greenhouse gases emission performance standard. The bill would authorize the PUC to review any long-term financial commitment proposed to be entered into by an electric service provider or community choice aggregator. The bill would authorize the PUC to adopt rules to enforce these requirements for electrical corporations, electric service providers, and*

community choice aggregators *and would require the PUC to adopt procedures to verify the emissions of greenhouse gases from any baseload generation supplied under a contract subject to the greenhouse gases emission performance standard.* ~~The bill would require that a procurement plan approved by the PUC for an electrical corporation be consistent with the greenhouse gases emission performance standard.~~ The bill would authorize the Energy Commission to adopt regulations for the enforcement of the greenhouse gases emission performance standard with respect to a local publicly owned electric utility.

(2) Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Because certain of the provisions of this bill are within the act and require action by the commission to implement its requirements, a violation of these provisions would impose a state-mandated local program by creating a new crime.

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

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

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Global warming will have serious adverse consequences on
- 4 the economy, health, and environment of California.
- 5 (b) The Governor, in Executive Order S-3-05, has called for
- 6 the reduction of California’s emission of greenhouse gases to
- 7 1990 levels by 2020.
- 8 (c) Over the past three decades, the state has taken significant
- 9 strides towards implementing an environmentally and
- 10 economically sound energy policy through reliance on energy
- 11 efficiency, conservation, and renewable energy resources in order
- 12 to promote a sustainable energy future that ensures an adequate
- 13 and reliable energy supply at reasonable and stable prices.

1 (d) To the extent energy efficiency and renewable resources
2 are unable to satisfy increasing energy and capacity needs, the
3 Energy Action Plan II establishes a policy that the state will rely
4 on clean and efficient fossil fuel fired generation and will
5 “encourage the development of cost-effective, highly-efficient,
6 and environmentally-sound supply resources to provide
7 reliability and consistency with the State’s energy priorities.”

8 (e) California’s investor-owned electric utilities currently have
9 long-term procurement plans that include proposals for making
10 new long-term financial commitments to electrical generating
11 resources over the next decade, which will generate electricity
12 while producing emissions of greenhouse gases for the next 30
13 years or longer.

14 (f) The Public Utilities Commission (PUC) and State Energy
15 Resources Conservation and Development Commission (Energy
16 Commission) both have concluded, and the Legislature finds,
17 that federal regulation of emissions of greenhouse gases is likely
18 during this decisionmaking timeframe.

19 (g) It is vital to ensure all electricity load serving entities
20 internalize the significant and underrecognized cost of emissions
21 recognized by the PUC with respect to the investor-owned
22 electric utilities, and to reduce California’s exposure to costs
23 associated with future federal regulation of these emissions.

24 (h) The establishment of a policy to reduce emissions of
25 greenhouse gases, including an emissions performance standard
26 for all procurement of electricity by load serving entities, is a
27 logical and necessary step to meet the goals of the Energy Action
28 Plan II and the Governor’s goals for reduction of emissions of
29 greenhouse gases.

30 (i) A greenhouse gases emission performance standard for new
31 long-term financial commitments to electrical generating
32 resources will reduce potential financial risk to California
33 consumers for future pollution-control costs.

34 (j) A greenhouse gases emission performance standard for new
35 long-term financial commitments to electric generating resources
36 will reduce potential exposure of California consumers to future
37 reliability problems in electricity supplies.

38 (k) In order to have any meaningful impact on climate change,
39 the Governor’s goals for reducing emissions of greenhouse gases

1 must be applied to the state’s electricity consumption, not just the
2 state’s electricity production.

3 (l) The 2005 Integrated Energy Policy Report adopted by the
4 Energy Commission recommends that any greenhouse gases
5 emission performance standard for utility procurement be set no
6 lower than levels achieved by a new combined-cycle natural gas
7 turbine.

8 (m) As the largest electricity consumer in the region,
9 California has an obligation to provide clear guidance on
10 performance standards for procurement of electricity by load
11 serving entities.

12 ~~SEC. 2. Section 454.5 of the Public Utilities Code is amended~~
13 ~~to read:~~

14 ~~454.5. (a) The commission shall specify the allocation of~~
15 ~~electricity, including quantity, characteristics, and duration of~~
16 ~~electricity delivery, that the Department of Water Resources shall~~
17 ~~provide under its power purchase agreements to the customers of~~
18 ~~each electrical corporation, which shall be reflected in the~~
19 ~~electrical corporation’s proposed procurement plan. Each~~
20 ~~electrical corporation shall file a proposed procurement plan with~~
21 ~~the commission not later than 60 days after the commission~~
22 ~~specifies the allocation of electricity. The proposed procurement~~
23 ~~plan shall specify the date that the electrical corporation intends~~
24 ~~to resume procurement of electricity for its retail customers,~~
25 ~~consistent with its obligation to serve. After the commission’s~~
26 ~~adoption of a procurement plan, the commission shall allow not~~
27 ~~less than 60 days before the electrical corporation resumes~~
28 ~~procurement pursuant to this section.~~

29 ~~(b) An electrical corporation’s proposed procurement plan~~
30 ~~shall include, but not be limited to, all of the following:~~

31 ~~(1) An assessment of the price risk associated with the~~
32 ~~electrical corporation’s portfolio, including any utility-retained~~
33 ~~generation, existing power purchase and exchange contracts, and~~
34 ~~proposed contracts or purchases under which an electrical~~
35 ~~corporation will procure electricity, electricity demand~~
36 ~~reductions, and electricity-related products and the remaining~~
37 ~~open position to be served by spot market transactions.~~

38 ~~(2) A definition of each electricity product, electricity-related~~
39 ~~product, and procurement related financial product, including~~

- 1 support and justification for the product type and amount to be
2 procured under the plan.
- 3 ~~(3) The duration of the plan.~~
- 4 ~~(4) The duration, timing, and range of quantities of each~~
5 ~~product to be procured.~~
- 6 ~~(5) A competitive procurement process under which the~~
7 ~~electrical corporation may request bids for procurement-related~~
8 ~~services, including the format and criteria of that procurement~~
9 ~~process.~~
- 10 ~~(6) An incentive mechanism, if any incentive mechanism is~~
11 ~~proposed, including the type of transactions to be covered by that~~
12 ~~mechanism, their respective procurement benchmarks, and other~~
13 ~~parameters needed to determine the sharing of risks and benefits.~~
- 14 ~~(7) The upfront standards and criteria by which the~~
15 ~~acceptability and eligibility for rate recovery of a proposed~~
16 ~~procurement transaction will be known by the electrical~~
17 ~~corporation prior to execution of the transaction. This shall~~
18 ~~include an expedited approval process for the commission's~~
19 ~~review of proposed contracts and subsequent approval or~~
20 ~~rejection thereof. The electrical corporation shall propose~~
21 ~~alternative procurement choices in the event a contract is~~
22 ~~rejected.~~
- 23 ~~(8) Procedures for updating the procurement plan.~~
- 24 ~~(9) A showing that the procurement plan will achieve the~~
25 ~~following:~~
- 26 ~~(A) The electrical corporation will, in order to fulfill its unmet~~
27 ~~resource needs and in furtherance of Section 701.3, until a 20~~
28 ~~percent renewable resources portfolio is achieved, procure~~
29 ~~renewable energy resources with the goal of ensuring that at least~~
30 ~~an additional 1 percent per year of the electricity sold by the~~
31 ~~electrical corporation is generated from renewable energy~~
32 ~~resources, provided sufficient funds are made available pursuant~~
33 ~~to Section 399.6, to cover the above-market costs for new~~
34 ~~renewable energy resources.~~
- 35 ~~(B) The electrical corporation will create or maintain a~~
36 ~~diversified procurement portfolio consisting of both short-term~~
37 ~~and long-term electricity and electricity-related and demand~~
38 ~~reductions products.~~
- 39 ~~(C) The electrical corporation will first meet its unmet~~
40 ~~resource needs through all available energy efficiency and~~

1 demand reduction resources that are cost effective, reliable, and
2 feasible.

3 (10) The electrical corporation's risk management policy,
4 strategy, and practices, including specific measures of price
5 stability.

6 (11) A plan to achieve appropriate increases in diversity of
7 ownership and diversity of fuel supply of nonutility electrical
8 generation.

9 (12) A mechanism for recovery of reasonable administrative
10 costs related to procurement in the generation component of
11 rates.

12 (e) The commission shall review and accept, modify, or reject
13 each electrical corporation's procurement plan. The
14 commission's review shall consider each electrical corporation's
15 individual procurement situation, and shall give strong
16 consideration to that situation in determining which one or more
17 of the features set forth in this subdivision shall apply to that
18 electrical corporation. A procurement plan approved by the
19 commission shall contain one or more of the following features,
20 provided that the commission may not approve a feature or
21 mechanism for an electrical corporation if it finds that the feature
22 or mechanism would impair the restoration of an electrical
23 corporation's creditworthiness or would lead to a deterioration of
24 an electrical corporation's creditworthiness:

25 (1) A competitive procurement process under which the
26 electrical corporation may request bids for procurement-related
27 services. The commission shall specify the format of that
28 procurement process, as well as criteria to ensure that the auction
29 process is open and adequately subscribed. Any purchases made
30 in compliance with the commission-authorized process shall be
31 recovered in the generation component of rates.

32 (2) An incentive mechanism that establishes a procurement
33 benchmark or benchmarks and authorizes the electrical
34 corporation to procure from the market, subject to comparing the
35 electrical corporation's performance to the
36 commission-authorized benchmark or benchmarks. The incentive
37 mechanism shall be clear, achievable, and contain quantifiable
38 objectives and standards. The incentive mechanism shall contain
39 balanced risk and reward incentives that limit the risk and reward
40 of an electrical corporation.

1 ~~(3) Upfront achievable standards and criteria by which the~~
2 ~~acceptability and eligibility for rate recovery of a proposed~~
3 ~~procurement transaction will be known by the electrical~~
4 ~~corporation prior to the execution of the bilateral contract for the~~
5 ~~transaction. The commission shall provide for expedited review~~
6 ~~and either approve or reject the individual contracts submitted by~~
7 ~~the electrical corporation to ensure compliance with its~~
8 ~~procurement plan. To the extent the commission rejects a~~
9 ~~proposed contract pursuant to this criteria, the commission shall~~
10 ~~designate alternative procurement choices obtained in the~~
11 ~~procurement plan that will be recoverable for ratemaking~~
12 ~~purposes.~~

13 ~~(d) A procurement plan approved by the commission shall~~
14 ~~accomplish each of the following objectives:~~

15 ~~(1) Enable the electrical corporation to fulfill its obligation to~~
16 ~~serve its customers at just and reasonable rates.~~

17 ~~(2) Eliminate the need for after-the-fact reasonableness~~
18 ~~reviews of an electrical corporation's actions in compliance with~~
19 ~~an approved procurement plan, including resulting electricity~~
20 ~~procurement contracts, practices, and related expenses. However,~~
21 ~~the commission may establish a regulatory process to verify and~~
22 ~~assure that each contract was administered in accordance with the~~
23 ~~terms of the contract, and contract disputes which may arise are~~
24 ~~reasonably resolved.~~

25 ~~(3) Ensure timely recovery of prospective procurement costs~~
26 ~~incurred pursuant to an approved procurement plan. The~~
27 ~~commission shall establish rates based on forecasts of~~
28 ~~procurement costs adopted by the commission, actual~~
29 ~~procurement costs incurred, or combination thereof, as~~
30 ~~determined by the commission. The commission shall establish~~
31 ~~power procurement balancing accounts to track the differences~~
32 ~~between recorded revenues and costs incurred pursuant to an~~
33 ~~approved procurement plan. The commission shall review the~~
34 ~~power procurement balancing accounts, not less than~~
35 ~~semiannually, and shall adjust rates or order refunds, as~~
36 ~~necessary, to promptly amortize a balancing account, according~~
37 ~~to a schedule determined by the commission. Until January 1,~~
38 ~~2006, the commission shall ensure that any overcollection or~~
39 ~~undercollection in the power procurement balancing account~~
40 ~~does not exceed 5 percent of the electrical corporation's actual~~

1 recorded generation revenues for the prior calendar year
2 excluding revenues collected for the Department of Water
3 Resources. The commission shall determine the schedule for
4 amortizing the overcollection or undercollection in the balancing
5 account to ensure that the 5 percent threshold is not exceeded.
6 After January 1, 2006, this adjustment shall occur when deemed
7 appropriate by the commission consistent with the objectives of
8 this section.

9 (4) Moderate the price risk associated with serving its retail
10 customers, including the price risk embedded in its long-term
11 supply contracts, by authorizing an electrical corporation to enter
12 into financial and other electricity-related product contracts.

13 (5) Provide for just and reasonable rates, with an appropriate
14 balancing of price stability and price level in the electrical
15 corporation's procurement plan.

16 (6) Be consistent with the requirements of Chapter 3
17 (commencing with Section 8340) of Division 4.1.

18 (e) The commission shall provide for the periodic review and
19 prospective modification of an electrical corporation's
20 procurement plan.

21 (f) The commission may engage an independent consultant or
22 advisory service to evaluate risk management and strategy. The
23 reasonable costs of any consultant or advisory service is a
24 reimbursable expense and eligible for funding pursuant to
25 Section 631.

26 (g) The commission shall adopt appropriate procedures to
27 ensure the confidentiality of any market sensitive information
28 submitted in an electrical corporation's proposed procurement
29 plan or resulting from or related to its approved procurement
30 plan, including, but not limited to, proposed or executed power
31 purchase agreements, data request responses, or consultant
32 reports, or any combination, provided that the Office of
33 Ratepayer Advocates and other consumer groups that are
34 nonmarket participants shall be provided access to this
35 information under confidentiality procedures authorized by the
36 commission.

37 (h) Nothing in this section alters, modifies, or amends the
38 commission's oversight of affiliate transactions under its rules
39 and decisions or the commission's existing authority to
40 investigate and penalize an electrical corporation's alleged

1 fraudulent activities, or to disallow costs incurred as a result of
2 gross incompetence, fraud, abuse, or similar grounds. Nothing in
3 this section expands, modifies, or limits the State Energy
4 Resources Conservation and Development Commission's
5 existing authority and responsibilities as set forth in Sections
6 25216, 25216.5, and 25323 of the Public Resources Code.

7 (i) An electrical corporation that serves less than 500,000
8 electric retail customers within the state may file with the
9 commission a request for exemption from this section, which the
10 commission shall grant upon a showing of good cause.

11 (j) (1) Prior to its approval pursuant to Section 851 of any
12 divestiture of generation assets owned by an electrical
13 corporation on or after the date of enactment of the act adding
14 this section, the commission shall determine the impact of the
15 proposed divestiture on the electrical corporation's procurement
16 rates and shall approve a divestiture only to the extent it finds,
17 taking into account the effect of the divestiture on procurement
18 rates, that the divestiture is in the public interest and will result in
19 net ratepayer benefits.

20 (2) Any electrical corporation's procurement necessitated as a
21 result of the divestiture of generation assets on or after the
22 effective date of the act adding this subdivision shall be subject
23 to the mechanisms and procedures set forth in this section only if
24 its actual cost is less than the recent historical cost of the divested
25 generation assets.

26 (3) Notwithstanding paragraph (2), the commission may deem
27 proposed procurement eligible to use the procedures in this
28 section upon its approval of asset divestiture pursuant to Section
29 851.

30 ~~SEC. 3.~~

31 *SEC. 2.* Chapter 3 (commencing with Section 8340) is added
32 to Division 4.1 of the Public Utilities Code, to read:

33
34 CHAPTER 3. GREENHOUSE GASES EMISSION PERFORMANCE
35 STANDARD FOR BASELOAD ELECTRICAL GENERATING RESOURCES
36

37 8340. For purposes of this chapter, the following terms have
38 the following meanings:

1 (a) “Baseload generation” means electricity generation from a
2 powerplant that is designed to provide electricity for *at least 60*
3 percent of the hours in a year.

4 (b) “Community choice aggregator” means a “community
5 choice aggregator” as defined in Section 331.1.

6 (c) “Electrical corporation” means an “electrical corporation”
7 as defined in Section 218.

8 (d) “Electric service provider” means an “electric service
9 provider” as defined in Section 218.3.

10 (e) “Energy Commission” means the State Energy Resources
11 Conservation and Development Commission.

12 (f) “Greenhouse gases” means those gases listed in subdivision
13 (h) of Section 42801.1 of the Health and Safety Code.

14 (g) “Load serving entity” includes every electrical corporation,
15 community choice aggregator, electric service provider, and local
16 publicly owned electric utility serving end-use customers in
17 California.

18 (h) “Local publicly owned electric utility” means a “local
19 publicly owned electric utility as defined in Section 9604.

20 (i) “Long-term financial commitment” means either an
21 ownership investment in ~~a powerplant or a contract for~~
22 ~~procurement of baseload electricity with a term of three or more~~
23 ~~years; baseload generation or a contract with a term of three or~~
24 ~~more years, which includes procurement of baseload generation.~~

25 8341. (a) No load serving entity may enter into a long-term
26 financial commitment ~~for baseload generation unless that~~
27 ~~baseload generation unless any baseload generation supplied~~
28 ~~under the long-term financial commitment~~ complies with the
29 greenhouse gases emission performance standard established by
30 the Energy Commission, ~~as required in subdivision (d).~~

31 (b) (1) The commission may not approve a long-term
32 financial commitment ~~for baseload generation for~~ by an electrical
33 corporation unless ~~that baseload generation~~ *any baseload*
34 *generation supplied under the long-term financial commitment*
35 complies with the greenhouse gases *emission* performance
36 standard established by the Energy Commission, ~~as required in~~
37 ~~subdivision (d).~~

38 (2) ~~The commission may adopt rules to enforce the~~
39 ~~requirements of this section, for electrical corporations, electric~~
40 ~~service providers, and community choice aggregators.~~

1 ~~(3)~~

2 (2) The commission may, in order to enforce the requirements
 3 of this section, review any long-term financial commitment
 4 proposed to be entered into by an electric service provider or a
 5 community choice aggregator.

6 *(3) The commission may adopt rules to enforce the*
 7 *requirements of this section, for electrical corporations, electric*
 8 *service providers, and community choice aggregators. The*
 9 *commission shall adopt procedures to verify the emissions of*
 10 *greenhouse gases from any baseload generation supplied under*
 11 *a contract subject to the greenhouse gases emission performance*
 12 *standard to ensure compliance with the standard.*

13 (c) The Energy Commission may adopt regulations for the
 14 enforcement of this chapter with respect to a local publicly
 15 owned electric utility. *The Energy Commission may, in order to*
 16 *ensure compliance with the greenhouse gases emission*
 17 *performance standard by local publicly owned electric utilities,*
 18 *apply the procedures adopted by the commission to verify the*
 19 *emissions of greenhouse gases from baseload generation*
 20 *pursuant to subdivision (b).*

21 (d) (1) The Energy Commission, in consultation with the
 22 commission and the State Air Resources Board, shall establish a
 23 greenhouse gases emission performance standard for ~~baseload~~
 24 ~~generation. The all baseload generation at a rate of emissions of~~
 25 *greenhouse gases that is no higher than the average rate of*
 26 *emissions of greenhouse gases for existing combined-cycle*
 27 *natural gas baseload generation.*

28 (2) *The greenhouse gases emission performance standard shall*
 29 *be adopted by regulation pursuant to the Administrative*
 30 *Procedure Act (Chapter 3.5 (commencing with Section 11340) of*
 31 *Part 1 of Division 3 of Title 2 of the Government Code).*

32 ~~(2) The Energy Commission shall base the greenhouse gases~~
 33 ~~emission performance standard on the anticipated life-cycle~~
 34 ~~emissions of greenhouse gases from the baseload generation. In~~

35 (3) *In determining the rate of emissions of greenhouse gases*
 36 *for baseload generation, the Energy Commission shall include*
 37 *the net lifecycle emissions resulting from the production of*
 38 *electricity by the baseload generation.*

39 (4) *In adopting the greenhouse gases emission performance*
 40 *standard, the Energy Commission shall consider the effects of the*

1 standard on system reliability and overall costs to electricity
2 customers.

3 ~~(3) The greenhouse gases emission performance standard shall~~
4 ~~not exceed the per kilowatt-hour emissions of greenhouse gases of~~
5 ~~a combined-cycle natural gas powerplant.~~

6 ~~SEC. 4.~~

7 *SEC. 3.* No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district because, in that regard, this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the
12 penalty for a crime or infraction, within the meaning of Section
13 17556 of the Government Code, or changes the definition of a
14 crime within the meaning of Section 6 of Article XIII B of the
15 California Constitution.