

AMENDED IN ASSEMBLY JUNE 22, 2006

AMENDED IN SENATE APRIL 24, 2006

SENATE BILL

No. 1368

Introduced by Senator Perata
(Coauthor: Assembly Member Levine)

February 21, 2006

An act 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.

The existing restructuring of the electrical industry within the Public Utilities Act provides for the establishment of an Independent System Operator (ISO) as a nonprofit public benefit corporation. Existing law requires the ISO to ensure efficient use and reliable operation of the transmission grid consistent with achieving planning and operating reserve criteria no less stringent than those established by the Western Electricity Coordinating Council and the American Electric Reliability Council.

Under existing law, the State Air Resources Board, the Energy Commission, and the California Climate Action Registry all have responsibilities with respect to the control of emissions of greenhouse gases, as defined, and the Secretary for Environmental Protection is required to coordinate emission reductions of greenhouse gases and climate change activity in state government.

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 a long-term financial commitment, as defined, unless any baseload generation, as defined, complies with a greenhouse gases emission performance standard established by the Energy

Commission, by regulation, *at a duly noticed public hearing and in consultation with the PUC, the ISO, and the State Air Resources Board.* The bill would require that the greenhouse gases emission performance standard not exceed the rate of emissions of greenhouse gases for ~~existing~~ combined-cycle natural gas baseload generation, *as of March 31, 2007.* 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~~ *require* 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~~ *require* 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~~

The bill would ~~authorize~~ require 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. The bill would require the Energy Commission, in a duly noticed public hearing and in consultation with the PUC, the ISO, and the State Air Resources Board, to reevaluate the greenhouse gases emission performance standard when an enforceable greenhouse gases emissions limit is established and in operation, that is applicable to the electricity sector. The Energy Commission would be required to report its findings and any recommendations to continue, modify, or replace the greenhouse gases emission performance standard to the Legislature for action.

(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.
- 14 (d) To the extent energy efficiency and renewable resources
15 are unable to satisfy increasing energy and capacity needs, the
16 Energy Action Plan II establishes a policy that the state will rely
17 on clean and efficient fossil fuel fired generation and will
18 “encourage the development of cost-effective, highly-efficient,
19 and environmentally-sound supply resources to provide
20 reliability and consistency with the state’s energy priorities.”
- 21 (e) California’s investor-owned electric utilities currently have
22 long-term procurement plans that include proposals for making
23 new long-term financial commitments to electrical generating
24 resources over the next decade, which will generate electricity
25 while producing emissions of greenhouse gases for the next 30
26 years or longer.
- 27 (f) The Public Utilities Commission (PUC) and State Energy
28 Resources Conservation and Development Commission (Energy
29 Commission) both have concluded, and the Legislature finds,
30 that federal regulation of emissions of greenhouse gases is likely
31 during this decisionmaking timeframe.
- 32 (g) It is vital to ensure all electricity load serving entities
33 internalize the significant and underrecognized cost of emissions

1 recognized by the PUC with respect to the investor-owned
2 electric utilities, and to reduce California’s exposure to costs
3 associated with future federal regulation of these emissions.

4 (h) The establishment of a policy to reduce emissions of
5 greenhouse gases, including an emissions performance standard
6 for all procurement of electricity by load serving entities, is a
7 logical and necessary step to meet the goals of the Energy Action
8 Plan II and the Governor’s goals for reduction of emissions of
9 greenhouse gases.

10 (i) A greenhouse gases emission performance standard for new
11 long-term financial commitments to electrical generating
12 resources will reduce potential financial risk to California
13 consumers for future pollution-control costs.

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

18 (k) In order to have any meaningful impact on climate change,
19 the Governor’s goals for reducing emissions of greenhouse gases
20 must be applied to the state’s electricity consumption, not just the
21 state’s electricity production.

22 (l) The 2005 Integrated Energy Policy Report adopted by the
23 Energy Commission recommends that any greenhouse gases
24 emission performance standard for utility procurement of
25 *baseload generation* be set no lower than levels achieved by a
26 new combined-cycle natural gas turbine.

27 (m) As the largest electricity consumer in the region,
28 California has an obligation to provide clear guidance on
29 performance standards for procurement of electricity by load
30 serving entities.

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

36

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

39 (a) “Baseload generation” means electricity generation from a
40 powerplant that is designed to provide electricity for at least 60

1 percent of the hours in a year, and intended to provide electricity
2 at a plant capacity factor of at least 60 percent.

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

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

7 (d) “Electric service provider” means an “electric service
8 provider” as defined in Section 218.3, *but does not include*
9 *corporations or persons employing cogeneration technology or*
10 *producing electricity from other than a conventional power*
11 *source consistent with subdivision (b) of Section 218.*

12 (e) “Energy Commission” means the State Energy Resources
13 Conservation and Development Commission.

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

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

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

22 (i) “Long-term financial commitment” means either ~~an~~ *a new*
23 *ownership investment in baseload generation or a contract with a*
24 ~~term of three~~ *new or renewed contract with a term of five or more*
25 *years, which includes procurement of baseload generation.*

26 (j) “Output-based methodology” means *a greenhouse gases*
27 *emission performance standard that is expressed in pounds of*
28 *greenhouse gases emitted per megawatt hour and factoring in the*
29 *useful thermal energy employed for purposes other than the*
30 *generation of electricity.*

31 (k) “Plant capacity factor” means *the ratio of the total*
32 *electricity that a powerplant produces during a year (or other*
33 *appropriate period of time determined by the commission or*
34 *Energy Commission) compared to the total potential electricity*
35 *that would have been produced if the powerplant operated at 100*
36 *percent capacity during every hour of the year (or other*
37 *appropriate period of time determined by the commission or*
38 *Energy Commission).*

1 (l) “Powerplant” means a facility for the generation of
2 electricity, and includes one or more generating units at the same
3 location.

4 8341. (a) No load serving entity may enter into a long-term
5 financial commitment unless any baseload generation supplied
6 under the long-term financial commitment complies with the
7 greenhouse gases emission performance standard established by
8 the Energy Commission.

9 (b) (1) The commission ~~may~~ shall not approve a long-term
10 financial commitment by an electrical corporation unless any
11 baseload generation supplied under the long-term financial
12 commitment complies with the greenhouse gases emission
13 performance standard established by the Energy Commission.

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

18 (3) The commission ~~may~~ shall adopt rules to enforce the
19 requirements of this section, for electrical corporations, electric
20 service providers, and community choice aggregators. The
21 commission shall adopt procedures to verify the emissions of
22 greenhouse gases from any baseload generation supplied under a
23 contract subject to the greenhouse gases emission performance
24 standard to ensure compliance with the standard.

25 (4) *In determining whether a long-term financial commitment*
26 *is for baseload generation, the commission shall consider the*
27 *design of the powerplant and the intended use of the powerplant,*
28 *as determined by the commission based upon the electricity*
29 *purchase contract, any certification received from the Energy*
30 *Commission, any other permit or certificate necessary for the*
31 *operation of the powerplant, including a certificate of public*
32 *convenience and necessity, any procurement approval decision*
33 *for the load serving entity, and any other matter the commission*
34 *determines is relevant under the circumstances.*

35 (5) *Costs incurred by an electrical corporation to comply with*
36 *the greenhouse gases emission performance standard are to be*
37 *treated as procurement costs incurred pursuant to an approved*
38 *procurement plan and the commission shall ensure timely cost*
39 *recovery of those costs pursuant to paragraph (3) of subdivision*
40 *(d) of Section 454.5.*

1 (c) ~~The Energy Commission may~~ (1) *The Energy Commission*
2 *shall* adopt regulations for the enforcement of this chapter with
3 respect to a local publicly owned electric utility. ~~The~~

4 (2) *The Energy Commission* may, in order to ensure
5 compliance with the greenhouse gases emission performance
6 standard by local publicly owned electric utilities, apply the
7 procedures adopted by the commission to verify the emissions of
8 greenhouse gases from baseload generation pursuant to
9 subdivision (b).

10 (3) *In determining whether a long-term financial commitment*
11 *is for baseload generation, the Energy Commission shall*
12 *consider the design of the powerplant and the intended use of the*
13 *powerplant, as determined by the Energy Commission based*
14 *upon the electricity purchase contract, any certification received*
15 *from the Energy Commission, any other permit for the operation*
16 *of the powerplant, any procurement approval decision for the*
17 *load serving entity, and any other matter the Energy Commission*
18 *determines is relevant under the circumstances.*

19 (d) (1) *The Energy Commission, at a duly noticed public*
20 *hearing and in consultation with the commission, the*
21 *Independent System Operator, and the State Air Resources*
22 *Board, shall establish a greenhouse gases emission performance*
23 *standard for all baseload generation at a rate of emissions of*
24 *greenhouse gases that is no higher than the—average rate of*
25 *emissions of greenhouse gases for—existing combined-cycle*
26 *natural gas baseload generation, as of March 31, 2007.*

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

31 (3) *In determining the rate of emissions of greenhouse gases*
32 *for baseload generation, the Energy Commission shall include*
33 *the net—lifecycle emissions resulting from the production of*
34 *electricity by the baseload generation.*

35 (4) *The Energy Commission shall establish an output-based*
36 *methodology to ensure that the calculation of greenhouse gases*
37 *emissions for cogeneration recognizes the total usable energy*
38 *output of the process, and includes all greenhouse gas emitted by*
39 *the facility in the production of both electrical and thermal*
40 *energy.*

1 (5) *In calculating the greenhouse gas emissions of facilities*
2 *generating electricity from biomass energy, the Energy*
3 *Commission shall consider net emissions from the process of*
4 *growing, processing and generating the electricity from the*
5 *biomass feedstock.*

6 (6) *Carbon dioxide that is captured from the emissions of a*
7 *powerplant and that is permanently disposed of in geological*
8 *formations in compliance with applicable laws and regulations,*
9 *shall not be counted as emissions from the powerplant.*

10 ~~(4)~~

11 (7) *In adopting the greenhouse gases emission performance*
12 *standard, the Energy Commission shall consider the effects of the*
13 *standard on system reliability and overall costs to electricity*
14 *customers.*

15 (e) *The Energy Commission, in a duly noticed public hearing*
16 *and in consultation with the commission, the Independent System*
17 *Operator, and the State Air Resources Board, shall reevaluate*
18 *the greenhouse gases emission performance standard when an*
19 *enforceable greenhouse gases emissions limit is established and*
20 *in operation, that is applicable to the electricity sector. The*
21 *Energy Commission shall report its findings and any*
22 *recommendations to continue, modify, or replace the greenhouse*
23 *gases emission performance standard to the Legislature for*
24 *action.*

25 SEC. 3. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district because, in that regard, this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the
30 penalty for a crime or infraction, within the meaning of Section
31 17556 of the Government Code, or changes the definition of a
32 crime within the meaning of Section 6 of Article XIII B of the
33 California Constitution.

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