

AMENDED IN ASSEMBLY AUGUST 21, 2006

AMENDED IN ASSEMBLY AUGUST 7, 2006

AMENDED IN ASSEMBLY JUNE 22, 2006

AMENDED IN SENATE APRIL 24, 2006

**SENATE BILL**

**No. 1368**

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**Introduced by Senator Perata**  
(Coauthor: Assembly Member Levine)

February 21, 2006

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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~~ *load-serving* entity, including ~~electrical corporations, community choice aggregators,~~

~~electric service providers as defined, and any local publicly owned electric utilities utility, from entering into a long-term financial commitment, as defined, unless any baseload generation, as defined, complies with a greenhouse gases emission performance standard that the bill would require to be established by March 31, 2007, 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 the PUC, by February 1, 2007, at a duly noticed public hearing and in consultation with the Energy Commission and the State Air Resources Board, to establish a greenhouse gases emission performance standard for all baseload generation of load-serving entities. The bill would require the Energy Commission, by June 30, 2007, at a duly noticed public hearing and in consultation with the PUC and the State Air Resources Board, to establish a greenhouse gases emission performance standard for all baseload generation of local publicly owned electric utilities. The bill would require that the greenhouse gases emission performance standard not exceed the rate of emissions of greenhouse gases for combined-cycle natural gas, as defined, 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 require authorize the PUC to review any long-term financial commitment proposed to be entered into by an electric service provider or community choice aggregator in order to enforce the bill's requirements. The bill would require the PUC to adopt rules to enforce these requirements for electrical corporations, electric service providers, and community choice aggregators load-serving entities and would require the PUC to adopt procedures, for all load-serving entities, 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 the PUC, in a duly noticed public hearing and in consultation with the Energy Commission and the State Air Resources Control Board, to reevaluate and continue, modify, or replace the greenhouse gases emissions performance standard when an enforceable greenhouse gases emissions limit is established and in operation, that is applicable to load-serving entities.~~

The bill would 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 *and continue, modify, or replace* 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~~ *local publicly owned electric utilities*. ~~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

1 efficiency, conservation, and renewable energy resources in order  
2 to promote a sustainable energy future that ensures an adequate  
3 and reliable energy supply at reasonable and stable prices.

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

11 (e) California’s investor-owned electric utilities currently have  
12 long-term procurement plans that include proposals for making  
13 new long-term financial commitments to electrical generating  
14 resources over the next decade, which will generate electricity  
15 while producing emissions of greenhouse gases for the next 30  
16 years or longer. *New long-term financial commitments for*  
17 *electrical generating resources that eliminate all emissions of*  
18 *greenhouse gases, or that substantially reduce emissions of*  
19 *greenhouse gases, should be encouraged.*

20 (f) The Public Utilities Commission (PUC) and State Energy  
21 Resources Conservation and Development Commission (Energy  
22 Commission) both have concluded, and the Legislature finds,  
23 that federal regulation of emissions of greenhouse gases is likely  
24 during this decisionmaking timeframe.

25 (g) It is vital to ensure all electricity ~~load-serving~~ *load-serving*  
26 entities internalize the significant and underrecognized cost of  
27 emissions recognized by the PUC with respect to the  
28 investor-owned electric utilities, and to reduce California’s  
29 exposure to costs associated with future federal regulation of  
30 these emissions.

31 (h) The establishment of a policy to reduce emissions of  
32 greenhouse gases, including an emissions performance standard  
33 for all procurement of electricity by ~~load-serving~~ *load-serving*  
34 entities, is a logical and necessary step to meet the goals of the  
35 Energy Action Plan II and the Governor’s goals for reduction of  
36 emissions of greenhouse gases.

37 (i) A greenhouse gases emission performance standard for new  
38 long-term financial commitments to electrical generating  
39 resources will reduce potential financial risk to California  
40 consumers for future pollution-control costs.

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

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

9 (l) The 2005 Integrated Energy Policy Report adopted by the  
 10 Energy Commission recommends that any greenhouse gases  
 11 emission performance standard for utility procurement of  
 12 baseload generation be set no lower than levels achieved by a  
 13 new combined-cycle natural gas turbine.

14 (m) As the largest electricity consumer in the region,  
 15 California has an obligation to provide clear guidance on  
 16 performance standards for procurement of electricity by ~~load~~  
 17 *load-serving* entities.

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

20

21 CHAPTER 3. GREENHOUSE GASES EMISSION PERFORMANCE  
 22 STANDARD FOR BASELOAD ELECTRICAL GENERATING RESOURCES

23

24 8340. For purposes of this chapter, the following terms have  
 25 the following meanings:

26 (a) “Baseload generation” means electricity generation from a  
 27 powerplant that is designed and intended to provide electricity at  
 28 *an annualized* plant capacity factor of at least 60 percent.

29 (b) “*Combined-cycle natural gas*” system of generation means  
 30 *the use of a natural gas combustion turbine generator and a*  
 31 *steam turbine generator in a single plant to produce electricity.*

32 ~~(b)~~

33 (c) “Community choice aggregator” means a “community  
 34 choice aggregator” as defined in Section 331.1.

35 ~~(e)~~

36 (d) “Electrical corporation” means an “electrical corporation”  
 37 as defined in Section 218.

38 ~~(d)~~

39 (e) “Electric service provider” means an “electric service  
 40 provider” as defined in Section 218.3, but does not include

1 corporations or persons employing cogeneration technology or  
2 producing electricity from other than a conventional power  
3 source consistent with subdivision (b) of Section 218.

4 ~~(e)~~

5 (f) “Energy Commission” means the State Energy Resources  
6 Conservation and Development Commission.

7 ~~(f)~~

8 (g) “Greenhouse gases” means those gases listed in  
9 subdivision (h) of Section 42801.1 of the Health and Safety  
10 Code.

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

15 (h) “Load-serving entity” means a “load-serving entity” as  
16 defined in subdivision (j) of Section 380.

17 ~~(h)~~

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

20 ~~(i)~~

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

25 ~~(j)~~

26 (k) “Output-based methodology” means a greenhouse gases  
27 emission performance standard that is expressed in pounds of  
28 greenhouse gases emitted per megawatthour 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).~~

39 (l) “Plant capacity factor” means the ratio of the electricity  
40 produced during a given time period, measured in kilowatthours,

1 *to the electricity the unit could have produced if it had been*  
2 *operated at its rated capacity during that period, expressed in*  
3 *kilowatthours.*

4 ~~(t)~~

5 (m) “Powerplant” means a facility for the generation of  
6 electricity, and includes one or more generating units at the same  
7 location.

8 (n) “Zero- or low-carbon generating resource” means an  
9 *electrical generating resource that will generate electricity while*  
10 *producing emissions of greenhouse gases at a rate substantially*  
11 *below the greenhouse gas emission performance standard, as*  
12 *determined by the commission.*

13 8341. ~~(a) No load-serving entity~~ *load-serving entity or local*  
14 *publicly owned electric utility* may enter into a long-term  
15 financial commitment unless any baseload generation supplied  
16 under the long-term financial commitment complies with the  
17 greenhouse gases emission performance standard established by  
18 *the commission, pursuant to subdivision (d), for a load-serving*  
19 *entity, or by the Energy Commission, pursuant to subdivision (e),*  
20 *for a local publicly owned electric utility.*

21 (b) (1) The commission shall not approve a long-term  
22 financial commitment by an electrical corporation unless any  
23 baseload generation supplied under the long-term financial  
24 commitment complies with the greenhouse gases emission  
25 performance standard established by the ~~Energy Commission~~  
26 *commission pursuant to subdivision (d).*

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

31 (3) The commission shall adopt rules to enforce the  
32 requirements of this section, ~~for electrical corporations, electric~~  
33 ~~service providers, and community choice aggregators~~  
34 *load-serving entities.* The commission shall adopt procedures, *for*  
35 *all load-serving entities,* to verify the emissions of greenhouse  
36 gases from any baseload generation supplied under a contract  
37 subject to the greenhouse gases emission performance standard  
38 to ensure compliance with the standard.

39 (4) In determining whether a long-term financial commitment  
40 is for baseload generation, the commission shall consider the



1 design of the powerplant and the intended use of the powerplant,  
2 as determined by the commission based upon the electricity  
3 purchase contract, any certification received from the Energy  
4 Commission, any other permit or certificate necessary for the  
5 operation of the powerplant, including a certificate of public  
6 convenience and necessity, any procurement approval decision  
7 for the ~~load-serving~~ *load-serving* entity, and any other matter the  
8 commission determines is relevant under the circumstances.

9 (5) Costs incurred by an electrical corporation to comply with  
10 *this section, including those costs incurred for electricity*  
11 *purchase agreements that are approved by the commission that*  
12 *comply with the greenhouse gases emission performance*  
13 *standard, are to be treated as procurement costs incurred pursuant*  
14 *to an approved procurement plan and the commission shall*  
15 *ensure timely cost recovery of those costs pursuant to paragraph*  
16 *(3) of subdivision (d) of Section 454.5.*

17 (6) *A long-term financial commitment entered into through a*  
18 *contract approved by the commission, for electricity generated*  
19 *by a zero- or low-carbon generating resource that is delivered to*  
20 *consumers of this state on a cost-of-service basis, shall be*  
21 *recoverable in rates, in a manner determined by the commission*  
22 *consistent with Section 380. The commission may, after a*  
23 *hearing, approve an increase from one-half to 1 percent in the*  
24 *rate of return otherwise allowed on an investment in zero- or*  
25 *low-carbon generation resources authorized pursuant to this*  
26 *subdivision.*

27 (c) (1) The Energy Commission shall adopt regulations for the  
28 enforcement of this chapter with respect to a local publicly  
29 owned electric utility.

30 (2) The Energy Commission may, in order to ensure  
31 compliance with the greenhouse gases emission performance  
32 standard by local publicly owned electric utilities, apply the  
33 procedures adopted by the commission to verify the emissions of  
34 greenhouse gases from baseload generation pursuant to  
35 subdivision (b).

36 (3) In determining whether a long-term financial commitment  
37 is for baseload generation, the Energy Commission shall consider  
38 the design of the powerplant and the intended use of the  
39 powerplant, as determined by the Energy Commission based  
40 upon the electricity purchase contract, any certification received

1 from the Energy Commission, any other permit for the operation  
2 of the powerplant, any procurement approval decision for the  
3 ~~load-serving~~ load-serving entity, and any other matter the Energy  
4 Commission determines is relevant under the circumstances.

5 *(d) (1) On or before February 1, 2007, the commission, at a*  
6 *duly noticed public hearing and in consultation with the Energy*  
7 *Commission and the State Air Resources Board, shall establish a*  
8 *greenhouse gases emission performance standard for all*  
9 *baseload generation of load-serving entities, at a rate of*  
10 *emissions of greenhouse gases that is no higher than the rate of*  
11 *emissions of greenhouse gases for combined-cycle natural gas*  
12 *baseload generation. All powerplants using a combined-cycle*  
13 *natural gas system for generation of electricity that are in*  
14 *operation, or that have an Energy Commission final permit*  
15 *decision to operate as of June 30, 2007, shall be deemed to be in*  
16 *compliance with the greenhouse gases emission performance*  
17 *standard.*

18 *(2) In determining the rate of emissions of greenhouse gases*  
19 *for baseload generation, the commission shall include the net*  
20 *emissions resulting from the production of electricity by the*  
21 *baseload generation.*

22 *(3) The commission shall establish an output-based*  
23 *methodology to ensure that the calculation of emissions of*  
24 *greenhouse gases for cogeneration recognizes the total usable*  
25 *energy output of the process, and includes all greenhouse gases*  
26 *emitted by the facility in the production of both electrical and*  
27 *thermal energy.*

28 *(4) In calculating the emissions of greenhouse gases by*  
29 *facilities generating electricity from biomass, biogas, or landfill*  
30 *gas energy, the commission shall consider net emissions from the*  
31 *process of growing, processing, and generating the electricity*  
32 *from the fuel source.*

33 *(5) Carbon dioxide that is captured from the emissions of a*  
34 *powerplant and that is permanently disposed of in geological*  
35 *formations in compliance with applicable laws and regulations,*  
36 *shall not be counted as emissions from the powerplant.*

37 *(6) In adopting and implementing the greenhouse gases*  
38 *emission performance standard, the commission, in consultation*  
39 *with the Independent System Operator shall consider the effects*

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

3 (7) In developing and implementing the greenhouse gases  
4 emission performance standard, the commission shall address  
5 long-term purchases of electricity from unspecified sources in a  
6 manner consistent with this chapter.

7 (8) In developing and implementing the greenhouse gases  
8 emission performance standard, the commission shall consider  
9 and act in a manner consistent with any rules adopted pursuant  
10 to Section 824a-3 of Title 16 of the United States Code.

11 (9) An electrical corporation that provides electric service to  
12 75,000 or fewer retail end-use customers in California may file  
13 with the commission a proposal for alternative compliance with  
14 this section, which the commission may accept upon a showing  
15 by the electrical corporation of both of the following:

16 (A) A majority of the electrical corporation's retail end-use  
17 customers for electric service are located outside of California.

18 (B) The emissions of greenhouse gases to generate electricity  
19 for the retail end-use customers of the electrical corporation are  
20 subject to a review by the utility regulatory commission of at  
21 least one other state in which the electrical corporation provides  
22 regulated retail electric service.

23 ~~(d) (1) On or before March 31~~

24 (e) (1) On or before June 30, 2007, the Energy Commission,  
25 at a duly noticed public hearing and in consultation with the  
26 commission, the Independent System Operator, and the State Air  
27 Resources Board, shall establish a greenhouse gases emission  
28 performance standard for all baseload generation of local  
29 publicly owned electric utilities at a rate of emissions of  
30 greenhouse gases that is no higher than the rate of emissions of  
31 greenhouse gases for combined-cycle natural gas baseload  
32 generation. The greenhouse gases emission performance  
33 standard established by the Energy Commission for local  
34 publicly owned electric utilities shall be consistent with the  
35 standard adopted by the commission for load-serving entities. All  
36 powerplants using a combined-cycle natural gas system for  
37 generation of electricity that are in operation, or that have an  
38 Energy Commission final permit decision to operate as of June  
39 30, 2007, shall be deemed to be in compliance with the  
40 greenhouse gases emission performance standard.

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

5 (3) In determining the rate of emissions of greenhouse gases  
6 for baseload generation, the Energy Commission shall include  
7 the net emissions resulting from the production of electricity by  
8 the baseload generation.

9 (4) The Energy Commission shall establish an output-based  
10 methodology to ensure that the calculation of ~~greenhouse gases~~  
11 *emissions emissions of greenhouse gases* for cogeneration  
12 recognizes the total usable energy output of the process, and  
13 includes all greenhouse gas emitted by the facility in the  
14 production of both electrical and thermal energy.

15 (5) In calculating the ~~greenhouse gas emissions of facilities~~  
16 *generating electricity from biomass emissions of greenhouse*  
17 *gases by facilities generating electricity from biomass, biogas, or*  
18 *landfill gas* energy, the Energy Commission shall consider net  
19 emissions from the process of growing, processing, and  
20 generating the electricity from the ~~biomass feedstock~~. *fuel*  
21 *source*.

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

26 (7) In adopting *and implementing* the greenhouse gases  
27 emission performance standard, the Energy Commission, *in*  
28 *consultation with the Independent System Operator*, shall  
29 consider the effects of the standard on system reliability and  
30 overall costs to electricity customers.

31 (8) *In developing and implementing the greenhouse gases*  
32 *emission performance standard, the Energy Commission shall*  
33 *address long-term purchases of electricity from unspecified*  
34 *sources in a manner consistent with this chapter.*

35 (9) *In developing and implementing the greenhouse gases*  
36 *emission performance standard, the Energy Commission shall*  
37 *consider and act in a manner consistent with any rules adopted*  
38 *pursuant to Section 824a-3 of Title 16 of the United States Code.*

39 (e)–

1 (f) The Energy Commission, in a duly noticed public hearing  
2 and in consultation with the commission, ~~the Independent System~~  
3 ~~Operator, and the State Air Resources Board, shall reevaluate the~~  
4 *and the State Air Resources Board, shall reevaluate and*  
5 *continue, modify, or replace the greenhouse gases emission*  
6 *performance standard when an enforceable greenhouse gases*  
7 *emissions limit is established and in operation, that is applicable*  
8 *to the electricity sector. The Energy Commission shall report its*  
9 *findings and any recommendations to continue, modify, or*  
10 *replace the greenhouse gases emission performance standard to*  
11 *the Legislature for action. local publicly owned electric utilities.*

12 (g) *The commission, in a duly noticed public hearing and in*  
13 *consultation with the Energy Commission and the State Air*  
14 *Resources Board, shall reevaluate and continue, modify, or*  
15 *replace the greenhouse gases emission performance standard*  
16 *when an enforceable greenhouse gases emissions limit is*  
17 *established and in operation, that is applicable to load serving*  
18 *entities.*

19 SEC. 3. No reimbursement is required by this act pursuant to  
20 Section 6 of Article XIII B of the California Constitution because  
21 the only costs that may be incurred by a local agency or school  
22 district will be incurred because this act creates a new crime or  
23 infraction, eliminates a crime or infraction, or changes the  
24 penalty for a crime or infraction, within the meaning of Section  
25 17556 of the Government Code, or changes the definition of a  
26 crime within the meaning of Section 6 of Article XIII B of the  
27 California Constitution.