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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 authorizes the PUC to establish rules for all public utilities, and the Legislature has established procedures for rulemaking proceedings before the PUC.* 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, as defined, and any local publicly owned electric 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. The bill would require the PUC, by February 1, 2007, ~~at a duly noticed public hearing~~ *through a rulemaking proceeding* 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 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 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~~ *through a rulemaking proceeding* 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 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 local publicly owned electric utilities.

(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

1 on clean and efficient fossil fuel fired generation and will
2 “encourage the development of cost-effective, highly-efficient,
3 and environmentally-sound supply resources to provide
4 reliability and consistency with the state’s energy priorities.”

5 (e) California’s investor-owned electric utilities currently have
6 long-term procurement plans that include proposals for making
7 new long-term financial commitments to electrical generating
8 resources over the next decade, which will generate electricity
9 while producing emissions of greenhouse gases for the next 30
10 years or longer. New long-term financial commitments ~~for~~
11 ~~electrical generating resources that eliminate all emissions of~~
12 ~~greenhouse gases, or that substantially reduce emissions of~~
13 ~~greenhouse gases, should be encouraged. to zero- or low-carbon~~
14 ~~generating resources should be encouraged.~~

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

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

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

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

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

39 (k) In order to have any meaningful impact on climate change,
40 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 of
6 baseload generation be set no lower than levels achieved by a
7 new combined-cycle natural gas 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
11 load-serving entities.

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

14
15 CHAPTER 3. GREENHOUSE GASES EMISSION PERFORMANCE
16 STANDARD FOR BASELOAD ELECTRICAL GENERATING RESOURCES
17

18 8340. For purposes of this chapter, the following terms have
19 the following meanings:

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

23 (b) ~~“Combined-cycle natural gas” system of generation means~~
24 ~~the use of a natural gas combustion turbine generator and a steam~~
25 ~~turbine generator in a single plant to produce electricity. with~~
26 *respect to a powerplant means the powerplant employs a*
27 *combination of one or more gas turbines and steam turbines in*
28 *which electricity is produced in the steam turbine from otherwise*
29 *lost waste heat exiting from one or more of the gas turbines.*

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

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

34 (e) “Electric service provider” means an “electric service
35 provider” as defined in Section 218.3, but does not include
36 corporations or persons employing cogeneration technology or
37 producing electricity from other than a conventional power
38 source consistent with subdivision (b) of Section 218.

39 (f) “Energy Commission” means the State Energy Resources
40 Conservation and Development Commission.

1 (g) “Greenhouse gases” means those gases listed in
2 subdivision (h) of Section 42801.1 of the Health and Safety
3 Code.

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

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

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

12 (k) “Output-based methodology” means a greenhouse gases
13 emission performance standard that is expressed in pounds of
14 greenhouse gases emitted per megawatthour and factoring in the
15 useful thermal energy employed for purposes other than the
16 generation of electricity.

17 (l) “Plant capacity factor” means the ratio of the electricity
18 produced during a given time period, measured in kilowatthours,
19 to the electricity the unit could have produced if it had been
20 operated at its rated capacity during that period, expressed in
21 kilowatthours.

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

25 (n) “Zero- or low-carbon generating resource” means an
26 electrical generating resource that will generate electricity while
27 producing emissions of greenhouse gases at a rate substantially
28 below the greenhouse gas emission performance standard, as
29 determined by the commission.

30 8341. (a) No load-serving entity or local publicly owned
31 electric utility may enter into a long-term financial commitment
32 unless any baseload generation supplied under the long-term
33 financial commitment complies with the greenhouse gases
34 emission performance standard established by the commission,
35 pursuant to subdivision (d), for a load-serving entity, or by the
36 Energy Commission, pursuant to subdivision (e), for a local
37 publicly owned electric utility.

38 (b) (1) The commission shall not approve a long-term
39 financial commitment by an electrical corporation unless any
40 baseload generation supplied under the long-term financial

1 commitment complies with the greenhouse gases emission
2 performance standard established by the commission pursuant to
3 subdivision (d).

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

8 (3) The commission shall adopt rules to enforce the
9 requirements of this section, for load-serving entities. The
10 commission shall adopt procedures, for all load-serving entities,
11 to verify the emissions of greenhouse gases from any baseload
12 generation supplied under a contract subject to the greenhouse
13 gases emission performance standard to ensure compliance with
14 the standard.

15 (4) In determining whether a long-term financial commitment
16 is for baseload generation, the commission shall consider the
17 design of the powerplant and the intended use of the powerplant,
18 as determined by the commission based upon the electricity
19 purchase contract, any certification received from the Energy
20 Commission, any other permit or certificate necessary for the
21 operation of the powerplant, including a certificate of public
22 convenience and necessity, any procurement approval decision
23 for the load-serving entity, and any other matter the commission
24 determines is relevant under the circumstances.

25 (5) Costs incurred by an electrical corporation to comply with
26 this section, including those costs incurred for electricity
27 purchase agreements that are approved by the commission that
28 comply with the greenhouse gases emission performance
29 standard, are to be treated as procurement costs incurred pursuant
30 to an approved procurement plan and the commission shall
31 ensure timely cost recovery of those costs pursuant to paragraph
32 (3) of subdivision (d) of Section 454.5.

33 (6) A long-term financial commitment entered into through a
34 contract approved by the commission, for electricity generated by
35 a zero- or low-carbon generating resource that is ~~delivered to~~
36 *contracted for, on behalf of* consumers of this state on a
37 cost-of-service basis, shall be recoverable in rates, in a manner
38 determined by the commission consistent with Section 380. The
39 commission may, after a hearing, approve an increase from
40 one-half to 1 percent in the ~~rate of return otherwise allowed on an~~

1 *return on investment by the third party entering into the contract*
2 *with an electrical corporation with respect to investment in zero-*
3 *or low-carbon generation resources authorized pursuant to this*
4 *subdivision.*

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

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

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

23 (d) (1) On or before February 1, 2007, the commission, ~~at a~~
24 ~~duly noticed public hearing through a rulemaking proceeding,~~
25 and in consultation with the Energy Commission and the State
26 Air Resources Board, shall establish a greenhouse gases emission
27 performance standard for all baseload generation of load-serving
28 entities, at a rate of emissions of greenhouse gases that is no
29 higher than the rate of emissions of greenhouse gases for
30 combined-cycle natural gas baseload generation. ~~All powerplants~~
31 ~~using a combined-cycle natural gas system for generation of~~
32 ~~electricity~~ *Enforcement of the greenhouse gases emission*
33 *performance standard shall begin immediately upon the*
34 *establishment of the standard. All combined-cycle natural gas*
35 *powerplants* that are in operation, or that have an Energy
36 Commission final permit decision to operate as of June 30, 2007,
37 shall be deemed to be in compliance with the greenhouse gases
38 emission performance standard.

39 (2) In determining the rate of emissions of greenhouse gases
40 for baseload generation, the commission shall include the net

1 emissions resulting from the production of electricity by the
2 baseload generation.

3 (3) The commission shall establish an output-based
4 methodology to ensure that the calculation of emissions of
5 greenhouse gases for cogeneration recognizes the total usable
6 energy output of the process, and includes all greenhouse gases
7 emitted by the facility in the production of both electrical and
8 thermal energy.

9 (4) In calculating the emissions of greenhouse gases by
10 facilities generating electricity from biomass, biogas, or landfill
11 gas energy, the commission shall consider net emissions from the
12 process of growing, processing, and generating the electricity
13 from the fuel source.

14 (5) Carbon dioxide that is captured from the emissions of a
15 powerplant and that is permanently disposed of in geological
16 formations in compliance with applicable laws and regulations,
17 shall not be counted as emissions from the powerplant.

18 (6) In adopting and implementing the greenhouse gases
19 emission performance standard, the commission, in consultation
20 with the Independent System Operator shall consider the effects
21 of the standard on system reliability and overall costs to
22 electricity customers.

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

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

31 (9) An electrical corporation that provides electric service to
32 75,000 or fewer retail end-use customers in California may file
33 with the commission a proposal for alternative compliance with
34 this section, which the commission may accept upon a showing
35 by the electrical corporation of both of the following:

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

38 (B) The emissions of greenhouse gases to generate electricity
39 for the retail end-use customers of the electrical corporation are
40 subject to a review by the utility regulatory commission of at

1 least one other state in which the electrical corporation provides
2 regulated retail electric service.

3 (e) (1) On or before June 30, 2007, the Energy Commission,
4 at a duly noticed public hearing and in consultation with the
5 commission and the State Air Resources Board, shall establish a
6 greenhouse gases emission performance standard for all baseload
7 generation of local publicly owned electric utilities at a rate of
8 emissions of greenhouse gases that is no higher than the rate of
9 emissions of greenhouse gases for combined-cycle natural gas
10 baseload generation. The greenhouse gases emission
11 performance standard established by the Energy Commission for
12 local publicly owned electric utilities shall be consistent with the
13 standard adopted by the commission for load-serving entities. ~~All~~
14 ~~powerplants using a combined-cycle natural gas system for~~
15 ~~generation of electricity~~ *Enforcement of the greenhouse gases*
16 *emission performance standard shall begin immediately upon the*
17 *establishment of the standard. All combined-cycle natural gas*
18 *powerplants* that are in operation, or that have an Energy
19 Commission final permit decision to operate as of June 30, 2007,
20 shall be deemed to be in compliance with the greenhouse gases
21 emission performance standard.

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

26 (3) In determining the rate of emissions of greenhouse gases
27 for baseload generation, the Energy Commission shall include
28 the net emissions resulting from the production of electricity by
29 the baseload generation.

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

36 (5) In calculating the emissions of greenhouse gases by
37 facilities generating electricity from biomass, biogas, or landfill
38 gas energy, the Energy Commission shall consider net emissions
39 from the process of growing, processing, and generating the
40 electricity from the fuel source.

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

5 (7) In adopting and implementing the greenhouse gases
6 emission performance standard, the Energy Commission, in
7 consultation with the Independent System Operator, shall
8 consider the effects of the standard on system reliability and
9 overall costs to electricity customers.

10 (8) In developing and implementing the greenhouse gases
11 emission performance standard, the Energy Commission shall
12 address long-term purchases of electricity from unspecified
13 sources in a manner consistent with this chapter.

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

18 (f) The Energy Commission, in a duly noticed public hearing
19 and in consultation with the commission and the State Air
20 Resources Board, shall reevaluate and continue, modify, or
21 replace the greenhouse gases emission performance standard
22 when an enforceable greenhouse gases emissions limit is
23 established and in operation, that is applicable to local publicly
24 owned electric utilities.

25 (g) The commission, ~~in a duly noticed public hearing~~ *through*
26 *a rulemaking proceeding* and in consultation with the Energy
27 Commission and the State Air Resources Board, shall reevaluate
28 and continue, modify, or replace the greenhouse gases emission
29 performance standard when an enforceable greenhouse gases
30 emissions limit is established and in operation, that is applicable
31 to load serving entities.

32 SEC. 3. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the
37 penalty for a crime or infraction, within the meaning of Section
38 17556 of the Government Code, or changes the definition of a

1 crime within the meaning of Section 6 of Article XIII B of the
2 California Constitution.

O