

Introduced by Senator PerataFebruary 23, 2007

An act to amend Sections 25742, 25744, 25748, and 25751 of, to amend and repeal Section 25740.5 of, and to repeal and add Section 25743 of, the Public Resources Code, and to amend Sections 399.8, 399.13, 399.14, 399.15, 399.16, and 454.5 of the Public Utilities Code, relating to energy, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1036, as introduced, Perata. Energy: renewable energy resources.

(1) Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations. The Public Utilities Act requires the PUC to review and adopt a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program. The renewables portfolio standard program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, but not including local publicly owned electric utilities, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard). Existing law requires the PUC to require the state's 3 largest electrical corporations, Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison, to identify a separate electrical rate component to fund programs that enhance system reliability and provide in-state benefits. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing PUC resolutions refer to the

nonbypassable rate component as a “public goods charge.” The public goods charge moneys are collected to support cost-effective energy efficiency and conservation activities, public interest, research, and development not adequately provided by competitive and regulated markets, and renewable energy resources.

Existing law establishes the Renewable Resource Trust Fund as a continuously appropriated fund in the State Treasury, and provides that 51.5% of the money collected by the public goods charge for renewable energy resources, after deducting certain administrative expenses, be deposited in the New Renewable Resources Account in the fund, for use by the State Energy Resources Conservation and Development Commission (Energy Commission) to foster the development of new in-state renewable electricity generation facilities. Existing law requires the 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 award production incentives and allocate and award supplemental energy payments from the New Renewable Resources Account to cover above-market costs of purchasing electricity from eligible renewable energy resources.

This bill would, effective July 1, 2008, repeal those provisions providing for the New Renewable Resources Account within the Renewable Resource Trust Fund. The bill would delete the requirement that the Energy Commission award production incentives and allocate and award supplemental energy payments to eligible renewable energy resources to cover above-market costs of renewable energy. The bill would require the Energy Commission to terminate all production incentives awarded prior to January 1, 2002, from the New Renewable Resources Account, unless the renewable energy project began generating electricity by January 1, 2007. The Energy Commission would be required by March 1, 2008, to transfer to retail sellers serving customers subject to the renewable energy public goods charge the remaining unencumbered funds in the New Renewable Resources Account, to be allocated amongst retail sellers on the basis of annual retail sales of electricity. The bill would require each retail seller to refund to customers all funds received from the Energy Commission within 180 days of receipt unless directed to provide such refunds on a different schedule authorized by the PUC. The bill would place certain cost limitations upon the requirements placed upon electrical

corporations pursuant to the renewables portfolio standard. The bill would make other conforming changes.

Because this bill would make moneys in the New Renewable Resources Account within the Renewable Resource Trust Fund available for use for a new purpose, it would make an appropriation.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to reform
2 elements of the renewables portfolio standard program relating to
3 cost containment. In recognition of numerous problems associated
4 with the current process for awarding supplemental energy
5 payments, the Legislature intends to restructure the renewables
6 portfolio standard program to streamline the approval of contracts
7 executed by electrical corporations for the purchase of electricity
8 generated by eligible renewable energy resources involving costs
9 above the market prices determined in subdivision (c) of Section
10 399.15 of the Public Utilities Code, to ensure that any above-market
11 costs sought by generators may be relied upon in obtaining project
12 financing, and to minimize both unnecessary delays and duplicative
13 agency reviews. In achieving these objectives, the Legislature
14 intends to continue meaningful ratepayer protections through limits
15 on the total costs of meeting the renewable energy goals established
16 pursuant to Article 16 (commencing with Section 399.11) of Part
17 1 of Division 1 of the Public Utilities Code.

18 SEC. 2. Section 25740.5 of the Public Resources Code, as
19 added by Section 4 of Chapter 464 of the Statutes of 2006, is
20 amended to read:

21 25740.5. (a) The commission shall optimize public investment
22 and ensure that the most cost-effective and efficient investments
23 in renewable energy resources are vigorously pursued.

24 (b) The commission's long-term goal shall be a fully competitive
25 and self-sustaining supply of electricity generated from renewable
26 sources.

27 (c) The program objective shall be to increase, in the near term,
28 the quantity of California's electricity generated by in-state
29 renewable electricity generation facilities, while protecting system

1 reliability, fostering resource diversity, and obtaining the greatest
2 environmental benefits for California residents.

3 (d) An additional objective of the program shall be to identify
4 and support emerging renewable technologies in distributed
5 generation applications that have the greatest near-term commercial
6 promise and that merit targeted assistance.

7 (e) The Legislature recommends allocations among all of the
8 following:

9 ~~(1) (A) Except as provided in subparagraph (B), production~~
10 ~~incentives for new in-state renewable electricity generation~~
11 ~~facilities, including repowered or refurbished facilities.~~

12 ~~(B) Allocations shall not be made for electricity that is generated~~
13 ~~by an in-state renewable electricity generation facility that remains~~
14 ~~under an electricity purchase contract with an electrical corporation~~
15 ~~originally entered into prior to September 24, 1996, whether~~
16 ~~amended or restated thereafter.~~

17 ~~(C) Notwithstanding subparagraph (B), production incentives~~
18 ~~may be allowed in any month for incremental new electricity~~
19 ~~generated by an in-state renewable electricity generation facility~~
20 ~~that is repowered or refurbished, where the electricity is delivered~~
21 ~~under an electricity purchase contract with an electrical corporation~~
22 ~~originally entered into prior to September 24, 1996, whether~~
23 ~~amended or restated thereafter, if all of the following occur:~~

24 ~~(i) The facility's electricity purchase contract provides that all~~
25 ~~electricity delivered and sold under the contract is paid at a price~~
26 ~~that does not exceed the Public Utilities Commission approved~~
27 ~~short-run avoided cost of energy.~~

28 ~~(ii) Either of the following is true:~~

29 ~~(I) The electricity purchase contract is amended to provide that~~
30 ~~the kilowatthours used to determine the capacity payment in any~~
31 ~~time-of-delivery period in any month under the contract shall be~~
32 ~~equal to the actual kilowatthour production, but no greater than~~
33 ~~the five-year average of the kilowatthours delivered for the~~
34 ~~corresponding time-of-delivery period and month, in the years~~
35 ~~1994 to 1998, inclusive.~~

36 ~~(II) The facility's installed capacity as of December 31, 1998,~~
37 ~~is less than 75 percent of the nameplate capacity as stated in the~~
38 ~~electricity purchase contract, the electricity purchase contract is~~
39 ~~amended to provide that the kilowatthours used to determine the~~
40 ~~capacity payment in any time-of-delivery period in any month~~

1 under the contract shall be equal to the actual kilowatthour
2 production, but no greater than the product of the five-year average
3 of the kilowatthours delivered for the corresponding
4 time-of-delivery period and month, in the years 1994 to 1998,
5 inclusive, and the ratio of installed capacity as of December 31 of
6 the previous year, but not to exceed contract nameplate capacity,
7 to the installed capacity as of December 31, 1998.

8 (iii) The production incentive is payable only with respect to
9 the kilowatthours delivered in a particular month that exceeds the
10 corresponding five-year average calculated pursuant to clause (ii):

11 (2)

12 (1) Rebates, buydowns, or equivalent incentives for emerging
13 renewable technologies.

14 (3)

15 (2) Customer education.

16 (4) Incentives

17 (3) *Production incentives* for reducing fuel costs, that are
18 confirmed to the satisfaction of the commission, at solid fuel
19 biomass energy facilities in order to provide demonstrable
20 environmental and public benefits, including improved air quality.

21 (5)

22 (4) Solar thermal generating resources that enhance the
23 environmental value or reliability of the electrical system and that
24 require financial assistance to remain economically viable, as
25 determined by the commission. The commission may require
26 financial disclosure from applicants for purposes of this paragraph.

27 (6)

28 (5) Specified fuel cell technologies, if the commission makes
29 all of the following findings:

30 (A) The specified technologies have similar or better air
31 pollutant characteristics than renewable technologies in the report
32 made pursuant to Section 25748.

33 (B) The specified technologies require financial assistance to
34 become commercially viable by reference to wholesale generation
35 prices.

36 (C) The specified technologies could contribute significantly
37 to the infrastructure development or other innovation required to
38 meet the long-term objective of a self-sustaining, competitive
39 supply of electricity generated from renewable sources.

40 (7)

(6) Existing wind-generating resources, if the commission finds that the existing wind-generating resources are a cost-effective source of reliable energy and environmental benefits compared with other in-state renewable electricity generation facilities, and that the existing wind-generating resources require financial assistance to remain economically viable. The commission may require financial disclosure from applicants for the purposes of this paragraph.

(f) Notwithstanding any other provision of law, moneys collected for renewable energy pursuant to Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code shall be transferred to the Renewable Resource Trust Fund. Moneys collected between January 1, 2007, and January 1, 2012, shall be used for the purposes specified in this chapter.

SEC. 3. Section 25740.5 of the Public Resources Code, as added by Section 9 of Chapter 512 of the Statutes of 2006, is repealed.

~~25740.5.—(a) The commission shall optimize public investment and ensure that the most cost-effective and efficient investments in renewable resources are vigorously pursued.~~

~~(b) The commission's long-term goal shall be a fully competitive and self-sustaining California renewable energy supply.~~

~~(c) The program objective shall be to increase, in the near term, the quantity of California's electricity generated by in-state renewable energy resources, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents.~~

~~(d) An additional objective of the program shall be to identify and support emerging renewable energy technologies that have the greatest near-term commercial promise and that merit targeted assistance.~~

~~(e) The Legislature recommends allocations among all of the following:~~

~~(1) (A) Except as provided in subparagraph (B), production incentives for new renewable energy, including repowered or refurbished renewable energy.~~

~~(B) Allocations shall not be made for renewable energy that is generated by a project that remains under a power purchase contract~~

1 ~~with an electrical corporation originally entered into prior to~~
2 ~~September 24, 1996, whether amended or restated thereafter.~~

3 ~~(C) Notwithstanding subparagraph (B), production incentives~~
4 ~~for incremental new, repowered, or refurbished renewable energy~~
5 ~~from existing projects under a power purchase contract with an~~
6 ~~electrical corporation originally entered into prior to September~~
7 ~~24, 1996, whether amended or restated thereafter, may be allowed~~
8 ~~in any month, if all of the following occur:~~

9 ~~(i) The project's power purchase contract provides that all~~
10 ~~energy delivered and sold under the contract is paid at a price that~~
11 ~~does not exceed the Public Utilities Commission approved~~
12 ~~short-run avoided cost of energy.~~

13 ~~(ii) Either of the following:~~

14 ~~(I) The power purchase contract is amended to provide that the~~
15 ~~kilowatthours used to determine the capacity payment in any~~
16 ~~time-of-delivery period in any month under the contract shall be~~
17 ~~equal to the actual kilowatthour production, but no greater than~~
18 ~~the five-year average of the kilowatthours delivered for the~~
19 ~~corresponding time-of-delivery period and month, in the years~~
20 ~~1994 to 1998, inclusive.~~

21 ~~(II) If a project's installed capacity as of December 31, 1998,~~
22 ~~is less than 75 percent of the nameplate capacity as stated in the~~
23 ~~power purchase contract, the power purchase contract is amended~~
24 ~~to provide that the kilowatthours used to determine the capacity~~
25 ~~payment in any time-of-delivery period in any month under the~~
26 ~~contract shall be equal to the actual kilowatthour production, but~~
27 ~~no greater than the product of the five-year average of the~~
28 ~~kilowatthours delivered for the corresponding time-of-delivery~~
29 ~~period and month, in the years 1994 to 1998, inclusive, and the~~
30 ~~ratio of installed capacity as of December 31 of the previous year,~~
31 ~~but not to exceed contract nameplate capacity, to the installed~~
32 ~~capacity as of December 31, 1998.~~

33 ~~(iii) The production incentive is payable only with respect to~~
34 ~~the kilowatthours delivered in a particular month that exceeds the~~
35 ~~corresponding five-year average calculated pursuant to clause (ii).~~

36 ~~(2) Rebates, buydowns, or equivalent incentives for emerging~~
37 ~~renewable technologies.~~

38 ~~(3) Customer education.~~

39 ~~(4) Incentives for reducing fuel costs that are confirmed to the~~
40 ~~satisfaction of the commission at solid fuel biomass energy~~

1 facilities in order to provide demonstrable environmental and
2 public benefits, including, but not limited to, air quality.

3 ~~(5) Solar thermal generating resources that enhance the~~
4 ~~environmental value or reliability of the electrical system and that~~
5 ~~require financial assistance to remain economically viable, as~~
6 ~~determined by the commission. The commission may require~~
7 ~~financial disclosure from applicants for purposes of this paragraph.~~

8 ~~(6) Specified fuel cell technologies, if the commission makes~~
9 ~~all of the following findings:~~

10 ~~(A) The specified technologies have similar or better air~~
11 ~~pollutant characteristics than renewable technologies in the report~~
12 ~~made pursuant to Section 25748.~~

13 ~~(B) The specified technologies require financial assistance to~~
14 ~~become commercially viable by reference to wholesale generation~~
15 ~~prices.~~

16 ~~(C) The specified technologies could contribute significantly~~
17 ~~to the infrastructure development or other innovation required to~~
18 ~~meet the long-term objective of a self-sustaining, competitive~~
19 ~~supply of renewable energy.~~

20 ~~(7) Existing wind-generating resources, if the commission finds~~
21 ~~that the existing wind-generating resources are a cost-effective~~
22 ~~source of reliable energy and environmental benefits compared~~
23 ~~with other eligible sources, and that the existing wind-generating~~
24 ~~resources require financial assistance to remain economically~~
25 ~~viable. The commission may require financial disclosure from~~
26 ~~applicants for the purposes of this paragraph.~~

27 ~~(f) Notwithstanding any other provision of law, moneys~~
28 ~~collected for renewable energy pursuant to Article 15 (commencing~~
29 ~~with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the~~
30 ~~Public Utilities Code shall be transferred to the Renewable~~
31 ~~Resource Trust Fund. Moneys collected between January 1, 2007,~~
32 ~~and January 1, 2012, shall be used for the purposes specified in~~
33 ~~this chapter.~~

34 SEC. 4. Section 25742 of the Public Resources Code is
35 amended to read:

36 25742. (a) ~~Ten~~ *Twenty* percent of the funds collected pursuant
37 to the renewable energy public goods charge shall be used for
38 programs that are designed to achieve fully competitive and
39 self-sustaining existing in-state renewable electricity generation
40 facilities, and to secure for the state the environmental, economic,

1 and reliability benefits that continued operation of those facilities
2 will provide, during the 2007–2011 investment cycle. Eligibility
3 for *production* incentives under this section shall be limited to
4 those technologies found eligible for funds by the commission
5 pursuant to paragraphs ~~(4), (5), and (7)~~ (3), (4), and (6) of
6 subdivision (e) of Section 25740.5.

7 (b) Any funds used to support in-state renewable electricity
8 generation facilities pursuant to this section shall be expended in
9 accordance with the provisions of this chapter.

10 (c) Facilities that are eligible to receive funding pursuant to this
11 section shall be registered in accordance with criteria developed
12 by the commission and those facilities shall not receive payments
13 for any electricity produced that has any of the following
14 characteristics:

15 (1) Is sold at monthly average rates equal to or greater than the
16 applicable target price, as determined by the commission.

17 (2) Is used onsite.

18 (d) *(1) Existing facilities generating electricity from biomass*
19 *energy shall be eligible for funding and otherwise considered an*
20 *in-state renewable electricity generation facility only if they report*
21 *to the commission the types and quantities of biomass fuels used*
22 *and certify to the satisfaction of the commission that fuel utilization*
23 *is limited to the fuels specified in subdivision (f) of Section 25743.*
24 *The commission shall report the types and quantities of biomass*
25 *fuels used by each facility to the Legislature in the reports prepared*
26 *pursuant to Section 25748: any of the following:*

27 *(A) Agricultural crops and agricultural wastes and residues.*

28 *(B) Solid waste materials such as waste pallets, crates, dunnage,*
29 *manufacturing, and construction wood wastes, landscape or*
30 *right-of-way tree trimmings, mill residues that are directly the*
31 *result of the milling of lumber, and rangeland maintenance*
32 *residues.*

33 *(C) Wood and wood wastes that meet all of the following*
34 *requirements:*

35 *(i) The wood or wood waste has been harvested pursuant to an*
36 *approved timber harvest plan prepared in accordance with the*
37 *Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8*
38 *(commencing with Section 4511) of Part 2 of Division 4).*

39 *(ii) The wood or wood waste has been harvested for the purpose*
40 *of forest fire fuel reduction or forest stand improvement.*

1 (iii) *Do not transport or cause the transportation of species*
2 *known to harbor insect or disease nests outside zones of infestation*
3 *or quarantine zones, as identified by the Department of Food and*
4 *Agriculture or the Department of Forestry and Fire Protection,*
5 *unless approved by the Department of Food and Agriculture and*
6 *the Department of Forestry and Fire Protection.*

7 (2) *The commission shall report the types and quantities of*
8 *biomass fuels used by each facility to the Legislature in the reports*
9 *prepared pursuant to Section 25748.*

10 (e) Each existing facility seeking an award pursuant to this
11 section shall be evaluated by the commission to determine the
12 amount of the funds being sought, the cumulative amount of funds
13 the facility has received previously from the commission and other
14 state sources, the value of any past and current federal or state tax
15 credits, the facility's contract price for energy and capacity, the
16 prices received by similar facilities, the market value of the facility,
17 and the likelihood that the award will make the facility competitive
18 and self-sustaining within the 2007–2011 investment cycle. The
19 commission shall use this evaluation to determine the value of an
20 award to the public relative to other renewable energy investment
21 alternatives. The commission shall compile its findings and report
22 them to the Legislature in the reports prepared pursuant to Section
23 25748.

24 SEC. 5. Section 25743 of the Public Resources Code is
25 repealed.

26 ~~25743. (a) Fifty-one and one-half percent of the money~~
27 ~~collected pursuant to the renewable energy public goods charge~~
28 ~~shall be used for programs designed to foster the development of~~
29 ~~new in-state renewable electricity generation facilities, and to~~
30 ~~secure for the state the environmental, economic, and reliability~~
31 ~~benefits that operation of those facilities will provide.~~

32 ~~(b) Any funds used for new in-state renewable electricity~~
33 ~~generation facilities pursuant to this section shall be expended in~~
34 ~~accordance with the report, subject to all of the following~~
35 ~~requirements:~~

36 ~~(1) In order to cover the above market costs of eligible~~
37 ~~renewable energy resources as approved by the Public Utilities~~
38 ~~Commission and selected by retail sellers to fulfill their obligations~~
39 ~~under Article 16 (commencing with Section 399.11) of Chapter~~
40 ~~2.3 of Part 1 of Division 1 of the Public Utilities Code, the~~

1 commission shall award funds in the form of supplemental energy
2 payments, subject to the following criteria:

3 (A) The commission may establish caps on supplemental energy
4 payments. The caps shall be designed to provide for a viable energy
5 market capable of achieving the goals of Article 16 (commencing
6 with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the
7 Public Utilities Code. The commission may waive application of
8 the caps to accommodate a facility if it is demonstrated to the
9 satisfaction of the commission that operation of the facility would
10 provide substantial economic and environmental benefits to end-use
11 customers subject to the renewable energy public goods charge.

12 (B) Supplemental energy payments shall be awarded only to
13 facilities that are eligible for funding under this section.

14 (C) Supplemental energy payments awarded to facilities selected
15 by a retail seller or procurement entity pursuant to Article 16
16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of
17 Division 1 of the Public Utilities Code shall be paid for no longer
18 than 10 years, but shall, subject to the payment caps in
19 subparagraph (A), be equal to the cumulative above-market costs
20 relative to the applicable market price referent at the time of initial
21 contracting, over the duration of the contract with the retail seller
22 or procurement entity.

23 (D) The commission shall reduce or terminate supplemental
24 energy payments for projects that fail either to commence and
25 maintain operations consistent with the contractual obligations to
26 an electrical corporation, or that fail to meet eligibility
27 requirements.

28 (E) Funds shall be managed in an equitable manner in order for
29 retail sellers to meet their obligation under Article 16 (commencing
30 with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the
31 Public Utilities Code.

32 (F) A project selected by an electrical corporation may receive
33 supplemental energy payments only if it results from a competitive
34 solicitation that is found by the Public Utilities Commission to
35 comply with the California Renewables Portfolio Standard Program
36 under Article 16 (commencing with Section 399.11) of Chapter
37 2.3 of Part 1 of Division 1 of the Public Utilities Code, and the
38 project has entered into an electricity purchase agreement resulting
39 from that solicitation, that is approved by the Public Utilities
40 Commission. A project selected for an electricity purchase

~~1 agreement by another retail seller or procurement entity may
2 receive supplemental energy payments only if the Public Utilities
3 Commission determines that the selection of the project is
4 consistent with the results of a least-cost and best-fit process, and
5 the supplemental energy payments are reasonable in comparison
6 to those paid under similar contracts with other retail sellers. The
7 commission may not award supplemental energy payments to
8 service load that is not subject to the renewable energy public
9 goods charge.~~

~~10 (G) (i) Supplemental energy payments shall not be awarded
11 for any purchases of renewable energy credits.~~

~~12 (ii) Supplemental energy payments shall not be awarded for
13 electricity purchase agreements that have a duration of less than
14 10 years. The ineligibility of agreements of less than 10 years
15 duration for supplemental energy payments does not constitute an
16 insufficiency in supplemental energy payments pursuant to
17 paragraph (4) or (5) of subdivision (b) of Section 399.15.~~

~~18 (2) (A) A facility that is located outside of California shall not
19 be eligible for funding under this section unless it satisfies the
20 requirements of this subdivision and the criteria of subparagraph
21 (B) of paragraph (2) of subdivision (b) of Section 25741.~~

~~22 (B) No more than 10 percent of the funds available under this
23 section shall be awarded to facilities located outside of California.~~

~~24 (3) Facilities that are eligible to receive funding pursuant to this
25 section shall be registered in accordance with criteria developed
26 by the commission and those facilities may not receive payments
27 for any electricity produced that has any of the following
28 characteristics:~~

~~29 (A) Is sold under an existing long-term contract with an existing
30 in-state electrical corporation if the contract includes fixed energy
31 or capacity payments, except for that electricity that satisfies
32 subparagraph (C) of paragraph (1) of subdivision (c) of Section
33 399.6 of the Public Utilities Code.~~

~~34 (B) Is used onsite or is sold to customers in a manner that
35 excludes competition transition charge payments, or is otherwise
36 excluded from competition transition charge payments.~~

~~37 (C) Is a hydroelectric generation project that will require a new
38 or increased appropriation of water under Part 2 (commencing
39 with Section 1200) of Division 2 of the Water Code, or any other
40 provision authorizing an appropriation of water.~~

1 ~~(D) Is a solid waste conversion facility, unless the facility meets~~
2 ~~the criteria established in paragraph (3) of subdivision (b) of~~
3 ~~Section 25741 and the facility certifies that any local agency~~
4 ~~sending solid waste to the facility is in compliance with Division~~
5 ~~30 (commencing with Section 40000), has reduced, recycled, or~~
6 ~~composted solid waste to the maximum extent feasible, and shall~~
7 ~~have been found by the California Integrated Waste Management~~
8 ~~Board to have diverted at least 30 percent of all solid waste through~~
9 ~~source reduction, recycling, and composting.~~

10 ~~(4) Eligibility to compete for funds or to receive funds shall be~~
11 ~~contingent upon having to sell the electricity generated by the~~
12 ~~renewable electricity generation facility to customers subject to~~
13 ~~the renewable energy public goods charge.~~

14 ~~(5) The commission may require applicants competing for~~
15 ~~funding to post a forfeitable bid bond or other financial guaranty~~
16 ~~as an assurance of the applicant's intent to move forward~~
17 ~~expeditiously with the project proposed. The amount of any bid~~
18 ~~bond or financial guaranty may not exceed 10 percent of the total~~
19 ~~amount of the funding requested by the applicant.~~

20 ~~(6) In awarding funding, the commission may provide preference~~
21 ~~to projects that provide tangible demonstrable benefits to~~
22 ~~communities with a plurality of minority or low-income~~
23 ~~populations.~~

24 ~~(e) Repowered existing facilities shall be eligible for funding~~
25 ~~under this subdivision if the capital investment to repower the~~
26 ~~existing facility equals at least 80 percent of the value of the~~
27 ~~repowered facility.~~

28 ~~(d) Facilities engaging in the direct combustion of municipal~~
29 ~~solid waste or tires are not eligible for funding under this~~
30 ~~subdivision.~~

31 ~~(e) Production incentives awarded under this subdivision prior~~
32 ~~to January 1, 2002, shall commence on the date that a project~~
33 ~~begins electricity production, provided that the project was~~
34 ~~operational prior to January 1, 2002, unless the commission finds~~
35 ~~that the project will not be operational prior to January 1, 2002,~~
36 ~~due to circumstances beyond the control of the developer. Upon~~
37 ~~making a finding that the project will not be operational due to~~
38 ~~circumstances beyond the control of the developer, the commission~~
39 ~~shall pay production incentives over a five-year period,~~
40 ~~commencing on the date of operation, provided that the date that~~

~~a project begins electricity production may not extend beyond January 1, 2007.~~

~~(f) Facilities generating electricity from biomass energy shall be considered an in-state renewable electricity generation facility to the extent that they report to the commission the types and quantities of biomass fuels used and certify to the satisfaction of the commission that fuel utilization is limited to the following:~~

~~(1) Agricultural crops and agricultural wastes and residues.~~

~~(2) Solid waste materials such as waste pallets, crates, dunnage, manufacturing, and construction wood wastes, landscape or right-of-way tree trimmings, mill residues that are directly the result of the milling of lumber, and rangeland maintenance residues.~~

~~(3) Wood and wood wastes that meet all of the following requirements:~~

~~(A) Have been harvested pursuant to an approved timber harvest plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4).~~

~~(B) Have been harvested for the purpose of forest fire fuel reduction or forest stand improvement.~~

~~(C) Do not transport or cause the transportation of species known to harbor insect or disease nests outside zones of infestation or current quarantine zones, as identified by the Department of Food and Agriculture or the Department of Forestry and Fire Protection, unless approved by the Department of Food and Agriculture and the Department of Forestry and Fire Protection.~~

SEC. 6. Section 25743 is added to the Public Resources Code, to read:

25743. (a) The commission shall terminate all production incentives awarded from the New Renewable Resources Account prior to January 1, 2002, unless the project began generating electricity by January 1, 2007.

(b) The commission shall, by March 1, 2008, transfer to retail sellers serving customers subject to the renewable energy public goods charge the remaining unencumbered funds in the New Renewable Resources Account. Funds shall be allocated among retail sellers on the basis of annual retail sales of electricity. Each retail seller shall refund to customers all funds received from the commission within 180 days of their receipt, unless directed to

1 provide such refunds on a different schedule authorized by the
2 Public Utilities Commission.

3 SEC. 7. Section 25744 of the Public Resources Code is
4 amended to read:

5 25744. (a) ~~Thirty-seven and one-half~~ *Seventy-nine* percent of
6 the money collected pursuant to the renewable energy public goods
7 charge shall be used for a multiyear, consumer-based program to
8 foster the development of emerging renewable technologies in
9 distributed generation applications.

10 (b) Any funds used for emerging technologies pursuant to this
11 section shall be expended in accordance with this chapter, subject
12 to all of the following requirements:

13 (1) Funding for emerging technologies shall be provided through
14 a competitive, market-based process that is in place for a period
15 of not less than five years, and is structured to allow eligible
16 emerging technology manufacturers and suppliers to anticipate
17 and plan for increased sale and installation volumes over the life
18 of the program.

19 (2) The program shall provide monetary rebates, buydowns, or
20 equivalent incentives, subject to paragraph (3), to purchasers,
21 lessees, lessors, or sellers of eligible electricity generating systems.
22 Incentives shall benefit the end-use consumer of renewable
23 generation by directly and exclusively reducing the purchase or
24 lease cost of the eligible system, or the cost of electricity produced
25 by the eligible system. Incentives shall be issued on the basis of
26 the rated electrical generating capacity of the system measured in
27 watts, or the amount of electricity production of the system,
28 measured in kilowatthours. Incentives shall be limited to a
29 maximum percentage of the system price, as determined by the
30 commission. The commission may establish different incentive
31 levels for systems based on technology type and system size, and
32 may provide different incentive levels for systems used in
33 conjunction with energy-efficiency measures.

34 (3) Eligible distributed emerging technologies are fuel cell
35 technologies that utilize renewable fuels, including fuel cell
36 technologies with an emission profile equivalent or better than the
37 State Air Resources Board 2007 standard, and that serve as backup
38 generation for emergency, safety, or telecommunications systems.
39 Eligible renewable fuels may include wind turbines of not more
40 than 50 kilowatts rated electrical generating capacity per customer

1 site and other distributed renewable emerging technologies that
2 meet the emerging technology eligibility criteria established by
3 the commission and are not eligible for rebates, buydowns, or
4 similar incentives from any other commission or Public Utilities
5 Commission program. Eligible electricity generating systems are
6 intended primarily to offset part or all of the consumer's own
7 electricity demand, including systems that are used as backup
8 power for emergency, safety, or telecommunications, and shall
9 not be owned by local publicly owned electric utilities, nor be
10 located at a customer site that is not receiving distribution service
11 from an electrical corporation that is subject to the renewable
12 energy public goods charge and contributing funds to support
13 programs under this chapter. All eligible electricity generating
14 system components shall be new and unused, shall not have been
15 previously placed in service in any other location or for any other
16 application, and shall have a warranty of not less than five years
17 to protect against defects and undue degradation of electrical
18 generation output. Systems and their fuel resources shall be located
19 on the same premises of the end-use consumer where the
20 consumer's own electricity demand is located, and all eligible
21 electricity generating systems shall be connected to the utility grid,
22 unless the system purpose is for backup generation used in
23 emergency, safety, or telecommunications, in California. The
24 commission may require eligible electricity generating systems to
25 have meters in place to monitor and measure a system's
26 performance and generation. Only systems that will be operated
27 in compliance with applicable law and the rules of the Public
28 Utilities Commission shall be eligible for funding.

29 (4) The commission shall limit the amount of funds available
30 for a system or project of multiple systems and reduce the level
31 of funding for a system or project of multiple systems that has
32 received, or may be eligible to receive, any government or utility
33 funds, incentives, or credit.

34 (5) In awarding funding, the commission may provide preference
35 to systems that provide tangible demonstrable benefits to
36 communities with a plurality of minority or low-income
37 populations.

38 (6) In awarding funding, the commission shall develop and
39 implement eligibility criteria and a system that provides preference
40 to systems based upon system performance, taking into account

1 factors, including shading, insulation levels, and installation
2 orientation.

3 (7) At least once annually, the commission shall publish and
4 make available to the public the balance of funds available for
5 emerging renewable energy resources for rebates, buydowns, and
6 other incentives for the purchase of these resources.

7 (c) Notwithstanding Section 27540.5, the commission may
8 expend, until December 31, 2008, up to sixty million dollars
9 (\$60,000,000) of the funding allocated to the Renewable Resources
10 Trust Fund for the program established in this section, subject to
11 the repayment requirements of subdivision (f) of Section 25751.

12 (d) Any funds for photovoltaic or solar thermal electric
13 technologies shall be awarded in compliance with Chapter 8.8
14 (commencing with Section 25780), ~~as proposed to be added by~~
15 ~~Senate Bill 1 of the 2005-06 Regular Session of the Legislature,~~
16 and not with this section.

17 SEC. 8. Section 25748 of the Public Resources Code is
18 amended to read:

19 25748. (a) The commission shall report to the Legislature on
20 or before November 1, 2007, and annually thereafter, regarding
21 the results of the mechanisms funded pursuant to this chapter. The
22 report shall contain all of the following:

23 (1) A description of the allocation of funds among existing,
24 new, and emerging technologies, the allocation of funds among
25 programs, including consumer-side incentives, and the need for
26 the reallocation of money among those technologies.

27 (2) The status of account transfers and repayments.

28 (3) A description of the cumulative commitment of claims by
29 account, the relative demand for funds by account, and a forecast
30 of future awards.

31 (4) A list identifying the types and quantities of biomass fuels
32 used by facilities receiving funds pursuant to Section 25742 ~~or~~
33 ~~25743~~ and their impacts on improving air quality.

34 (5) A discussion of the progress being made toward achieving
35 the targets established under Section 25740 by each funding
36 category authorized pursuant to this chapter.

37 (6) A description of the allocation of funds from interest on the
38 accounts described in this chapter, and money in the accounts
39 described in subdivision (b) of Section 25751.

(7) An itemized list, including project descriptions, award amounts, and outcomes for projects awarded funding in the prior year.

(8) Other matters the commission determines may be of importance to the Legislature.

(b) Money may be reallocated without further legislative action among existing, new, and emerging technologies and consumer-side programs in a manner consistent with the report and with the latest report provided to the Legislature pursuant to this section, except that reallocations shall not ~~reduce the allocation established in Section 25743~~ nor increase the allocation established in Section 25742.

SEC. 9. Section 25751 of the Public Resources Code is amended to read:

25751. (a) The Renewable Resource Trust Fund is hereby created in the State Treasury.

(b) The following accounts are hereby established within the Renewable Resource Trust Fund:

(1) ~~The Existing Renewable Resources Account.~~

~~(2) New Renewable Resources Account.~~

~~(3)~~

(2) Emerging Renewable Resources Account.

~~(4)~~

(3) Renewable Resources Consumer Education Account.

(c) The money in the fund may be expended, only upon appropriation by the Legislature in the annual Budget Act, for the following purposes:

(1) The administration of this article by the state.

(2) The state's expenditures associated with the accounting system established by the commission pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code.

(d) That portion of revenues collected by electrical corporations for the benefit of in-state operation and development of existing and new and emerging renewable resource technologies, pursuant to Section 399.8 of the Public Utilities Code, shall be transmitted to the commission at least quarterly for deposit in the Renewable Resource Trust Fund pursuant to Section 25740.5. After setting aside in the fund money that may be needed for expenditures authorized by the annual Budget Act in accordance with subdivision (c), the Treasurer shall immediately deposit money

1 received pursuant to this section into the accounts created pursuant
2 to subdivision (b) in proportions designated by the commission
3 for the current calendar year. Notwithstanding Section 13340 of
4 the Government Code, the money in the fund and the accounts
5 within the fund are hereby continuously appropriated to the
6 commission without regard to fiscal year for the purposes
7 enumerated in this chapter.

8 (e) Upon notification by the commission, the Controller shall
9 pay all awards of the money in the accounts created pursuant to
10 subdivision (b) for purposes enumerated in this chapter. The
11 eligibility of each award shall be determined solely by the
12 commission based on the procedures it adopts under this chapter.
13 Based on the eligibility of each award, the commission shall also
14 establish the need for a multiyear commitment to any particular
15 award and so advise the Department of Finance. Eligible awards
16 submitted by the commission to the Controller shall be
17 accompanied by information specifying the account from which
18 payment should be made and the amount of each payment; a
19 summary description of how payment of the award furthers the
20 purposes enumerated in this chapter; and an accounting of future
21 costs associated with any award or group of awards known to the
22 commission to represent a portion of a multiyear funding
23 commitment.

24 (f) The commission may transfer funds between accounts for
25 cashflow purposes, provided that the balance due each account is
26 restored and the transfer does not adversely affect any of the
27 accounts.

28 (g) The Department of Finance shall conduct an independent
29 audit of the Renewable Resource Trust Fund and its related
30 accounts annually, and provide an audit report to the Legislature
31 not later than March 1 of each year for which this article is
32 operative. The Department of Finance's report shall include
33 information regarding revenues, payment of awards, reserves held
34 for future commitments, unencumbered cash balances, and other
35 matters that the Director of Finance determines may be of
36 importance to the Legislature.

37 SEC. 10. Section 399.8 of the Public Utilities Code is amended
38 to read:

39 399.8. (a) In order to ensure that the citizens of this state
40 continue to receive safe, reliable, affordable, and environmentally

1 sustainable electric service, it is the policy of this state and the
2 intent of the Legislature that prudent investments in energy
3 efficiency, renewable energy, and research, development and
4 demonstration shall continue to be made.

5 (b) (1) Every customer of an electrical corporation shall pay a
6 nonbypassable system benefits charge authorized pursuant to this
7 article. The system benefits charge shall fund energy efficiency,
8 renewable energy, and research, development and demonstration.

9 (2) Local publicly owned electric utilities shall continue to
10 collect and administer system benefits charges pursuant to Section
11 385.

12 (c) (1) The commission shall require each electrical corporation
13 to identify a separate rate component to collect revenues to fund
14 energy efficiency, renewable energy, and research, development
15 and demonstration programs authorized pursuant to this section
16 beginning January 1, 2002, ~~through and ending~~ January 1, 2012.
17 The rate component shall be a nonbypassable element of the local
18 distribution service and collected on the basis of usage.

19 (2) This rate component may not exceed, for any tariff schedule,
20 the level of the rate component that was used to recover funds
21 authorized pursuant to Section 381 on January 1, 2000. If the
22 amounts specified in paragraph (1) of subdivision (d) are not
23 recovered fully in any year, the commission shall reset the rate
24 component to restore the unrecovered balance, provided that the
25 rate component may not exceed, for any tariff schedule, the level
26 of the rate component that was used to recover funds authorized
27 pursuant to Section 381 on January 1, 2000. Pending restoration,
28 any annual shortfalls shall be allocated pro rata among the three
29 funding categories in the proportions established in paragraph (1)
30 of subdivision (d).

31 (d) The commission shall order San Diego Gas and Electric
32 Company, Southern California Edison Company, and Pacific Gas
33 and Electric Company to collect these funds commencing on
34 January 1, 2002, as follows:

35 (1) Two hundred twenty-eight million dollars (\$228,000,000)
36 per year in total for energy efficiency and conservation activities,
37 ~~one hundred thirty-five million dollars (\$135,000,000)~~ *sixty-five*
38 *million five hundred thousand dollars (\$65,500,000)* in total per
39 year for renewable energy, and sixty-two million five hundred
40 thousand dollars (\$62,500,000) in total per year for research,

1 development and demonstration. The funds for energy efficiency
2 and conservation activities shall continue to be allocated in
3 proportions established for the year 2000 as set forth in paragraph
4 (1) of subdivision (c) of Section 381.

5 (2) The amounts shall be adjusted annually at a rate equal to
6 the lesser of the annual growth in electric commodity sales or
7 inflation, as defined by the gross domestic product deflator.

8 (e) The commission and the Energy Commission shall retain
9 and continue their oversight responsibilities as set forth in Sections
10 381 and 383, and Chapter 7.1 (commencing with Section 25620)
11 and Chapter 8.6 (commencing with Section 25740) of Division 15
12 of the Public Resources Code.

13 (f) An applicant for the Large Nonresidential Standard
14 Performance Contract Program funded pursuant to paragraph (1)
15 of subdivision (b) and an electrical corporation shall promptly
16 attempt to resolve disputes that arise related to the program's
17 guidelines and parameters prior to entering into a program
18 agreement. The applicant shall provide the electrical corporation
19 with written notice of any dispute. Within 10 business days after
20 receipt of the notice, the parties shall meet to resolve the dispute.
21 If the dispute is not resolved within 10 business days after the date
22 of the meeting, the electrical corporation shall notify the applicant
23 of his or her right to file a complaint with the commission, which
24 complaint shall describe the grounds for the complaint, injury, and
25 relief sought. The commission shall issue its findings in response
26 to a filed complaint within 30 business days of the date of receipt
27 of the complaint. Prior to issuance of its findings, the commission
28 shall provide a copy of the complaint to the electrical corporation,
29 which shall provide a response to the complaint to the commission
30 within five business days of the date of receipt. During the dispute
31 period, the amount of estimated financial incentives shall be held
32 in reserve until the dispute is resolved.

33 SEC. 11. Section 399.13 of the Public Utilities Code is
34 amended to read:

35 399.13. The Energy Commission shall do all of the following:

36 (a) Certify eligible renewable energy resources that it determines
37 meet the criteria described in subdivision (b) of Section 399.12.

38 (b) Design and implement an accounting system to verify
39 compliance with the renewables portfolio standard by retail sellers,
40 to ensure that electricity generated by an eligible renewable energy

1 resource is counted only once for the purpose of meeting the
2 renewables portfolio standard of this state or any other state, to
3 certify renewable energy credits produced by eligible renewable
4 energy resources, and to verify retail product claims in this state
5 or any other state. In establishing the guidelines governing this
6 accounting system, the Energy Commission shall collect data from
7 electricity market participants that it deems necessary to verify
8 compliance of retail sellers, in accordance with the requirements
9 of this article and the California Public Records Act (Chapter 3.5
10 (commencing with Section 6250) of Division 7 of Title 1 of the
11 Government Code). In seeking data from electrical corporations,
12 the Energy Commission shall request data from the commission.
13 The commission shall collect data from electrical corporations and
14 remit the data to the Energy Commission within 90 days of the
15 request.

16 (c) Establish a system for tracking and verifying renewable
17 energy credits that, through the use of independently audited data,
18 verifies the generation and delivery of electricity associated with
19 each renewable energy credit and protects against multiple counting
20 of the same renewable energy credit. The Energy Commission
21 shall consult with other western states and with the Western
22 Electricity Coordinating Council in the development of this system.

23 (d) Certify, for purposes of compliance with the renewable
24 portfolio standard requirements by a retail seller, the eligibility of
25 renewable energy credits associated with deliveries of electricity
26 by an eligible renewable energy resource to a local publicly owned
27 electric utility, if the Energy Commission determines that the
28 following conditions have been satisfied:

29 (1) The local publicly owned electric utility that is procuring
30 the electricity is in compliance with the requirements of Section
31 387.

32 (2) The local publicly owned electric utility has established an
33 annual renewables portfolio standard target comparable to those
34 applicable to an electrical corporation, is procuring sufficient
35 eligible renewable energy resources to satisfy the targets, and will
36 not fail to satisfy the targets in the event that the renewable energy
37 credit is sold to another retail seller.

38 ~~(e) Allocate and award supplemental energy payments pursuant~~
39 ~~to Chapter 8.6 (commencing with Section 25740) of Division 15~~
40 ~~of the Public Resources Code, to eligible renewable energy~~

resources to cover above-market costs of renewable energy. A project selected by an electrical corporation may receive supplemental energy payments only if it results from a competitive solicitation that is found by the commission to comply with the California Renewables Portfolio Standard Program under this article and the project has entered into an electricity purchase agreement resulting from that solicitation that is approved by the commission. A project selected for an electricity purchase agreement by another retail seller may receive supplemental energy payments only if the retail seller demonstrates to the commission that the selection of the project is consistent with the results of a least-cost and best-fit process, and that the supplemental energy payments are reasonable in comparison to those paid under similar contracts with other retail sellers.

SEC. 12. Section 399.14 of the Public Utilities Code is amended to read:

399.14. (a) (1) The commission shall direct each electrical corporation to prepare a renewable energy procurement plan that includes the matter in paragraph (3), to satisfy its obligations under the renewables portfolio standard. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the commission as part of, and pursuant to, a general procurement plan process. The commission shall require each electrical corporation to review and update its renewable energy procurement plan as it determines to be necessary.

(2) The commission shall adopt, by rulemaking, all of the following:

(A) A process for determining market prices pursuant to subdivision (c) of Section 399.15. The commission shall make specific determinations of market prices after the closing date of a competitive solicitation conducted by an electrical corporation for eligible renewable energy resources.

(B) A process that provides criteria for the rank ordering and selection of least-cost and best-fit eligible renewable energy resources to comply with the annual California Renewables Portfolio Standard Program obligations on a total cost basis. This process shall consider estimates of indirect costs associated with needed transmission investments and ongoing utility expenses resulting from integrating and operating eligible renewable energy resources.

(C) (i) Flexible rules for compliance, including rules permitting retail sellers to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years. The flexible rules for compliance shall apply to all years, including years before and after a retail seller procures at least 20 percent of total retail sales of electricity from eligible renewable energy resources.

(ii) The flexible rules for compliance shall address situations where, as a result of insufficient transmission, a retail seller is unable to procure eligible renewable energy resources sufficient to satisfy the requirements of this article. Any rules addressing insufficient transmission shall require a finding by the commission that the retail seller has undertaken all reasonable efforts to do all of the following:

(I) Utilize flexible delivery points.

(II) Ensure the availability of any needed transmission capacity.

(III) If the retail seller is an electric corporation, to construct needed transmission facilities.

(IV) Nothing in this subparagraph shall be construed to revise any portion of Section 454.5.

(D) Standard terms and conditions to be used by all electrical corporations in contracting for eligible renewable energy resources, including performance requirements for renewable generators. A contract for the purchase of electricity generated by an eligible renewable energy resource shall, at a minimum, include the renewable energy credits associated with all electricity generation specified under the contract. The standard terms and conditions shall include the requirement that, no later than six months after the commission's approval of an electricity purchase agreement entered into pursuant to this article, the following information about the agreement shall be disclosed by the commission: party names, resource type, project location, and project capacity.

(3) Consistent with the goal of procuring the least-cost and best-fit eligible renewable energy resources, the renewable energy procurement plan submitted by an electrical corporation shall include all of the following:

(A) An assessment of annual or multiyear portfolio supplies and demand to determine the optimal mix of eligible renewable energy resources with deliverability characteristics that may include peaking, dispatchable, baseload, firm, and as-available capacity.

1 (B) Provisions for employing available compliance flexibility
2 mechanisms established by the commission.

3 (C) A bid solicitation setting forth the need for eligible
4 renewable energy resources of each deliverability characteristic,
5 required online dates, and locational preferences, if any.

6 (4) In soliciting and procuring eligible renewable energy
7 resources, each electrical corporation shall offer contracts of no
8 less than 10 years in duration, unless the commission approves of
9 a contract of shorter duration.

10 (5) In soliciting and procuring eligible renewable energy
11 resources, each electrical corporation may give preference to
12 projects that provide tangible demonstrable benefits to communities
13 with a plurality of minority or low-income populations.

14 (b) The commission may authorize a retail seller to enter into
15 a contract of less than 10 years' duration with an eligible renewable
16 energy resource, ~~subject to the following conditions: if the~~
17 ~~commission has established, for each retail seller, minimum~~
18 ~~quantities of eligible renewable energy resources to be procured~~
19 ~~either through contracts of at least 10 years' duration or from new~~
20 ~~facilities commencing commercial operations on or after January~~
21 ~~1, 2005.~~

22 (1) ~~No supplemental energy payments shall be awarded for a~~
23 ~~contract of less than 10 years' duration. The ineligibility of~~
24 ~~contracts of less than 10 years' duration for supplemental energy~~
25 ~~payments pursuant to this paragraph does not constitute an~~
26 ~~insufficiency in supplemental energy payments pursuant to~~
27 ~~paragraph (4) or (5) of subdivision (b) of Section 399.15.~~

28 (2) ~~The commission has established, for each retail seller,~~
29 ~~minimum quantities of eligible renewable energy resources to be~~
30 ~~procured either through contracts of at least 10 years' duration or~~
31 ~~from new facilities commencing commercial operations on or after~~
32 ~~January 1, 2005.~~

33 (c) The commission shall review and accept, modify, or reject
34 each electrical corporation's renewable energy procurement plan
35 prior to the commencement of renewable procurement pursuant
36 to this article by an electrical corporation.

37 (d) The commission shall review the results of an eligible
38 renewable energy resources solicitation submitted for approval by
39 an electrical corporation and accept or reject proposed contracts
40 with eligible renewable energy resources based on consistency

1 with the approved renewable energy procurement plan. If the
2 commission determines that the bid prices are elevated due to a
3 lack of effective competition amongst the bidders, the commission
4 shall direct the electrical corporation to renegotiate the contracts
5 or conduct a new solicitation.

6 (e) If an electrical corporation fails to comply with a commission
7 order adopting a renewable energy procurement plan, the
8 commission shall exercise its authority pursuant to Section 2113
9 to require compliance. The commission shall enforce comparable
10 penalties on any other retail seller that fails to meet annual
11 procurement targets established pursuant to Section 399.15.

12 (f) (1) The commission may authorize a procurement entity to
13 enter into contracts on behalf of customers of a retail seller for
14 deliveries of eligible renewable energy resources to satisfy annual
15 renewables portfolio standard obligations. The commission may
16 not require any person or corporation to act as a procurement entity
17 or require any party to purchase eligible renewable energy
18 resources from a procurement entity.

19 (2) Subject to review and approval by the commission, the
20 procurement entity shall be permitted to recover reasonable
21 administrative and procurement costs through the retail rates of
22 end-use customers that are served by the procurement entity and
23 are directly benefiting from the procurement of eligible renewable
24 energy resources.

25 ~~(3) A project selected for a long-term electricity purchase~~
26 ~~contract of more than 10 years' duration by a procurement entity~~
27 ~~through a competitive solicitation, and approved by the~~
28 ~~commission, may receive supplemental energy payments from the~~
29 ~~Energy Commission if the transaction satisfies the requirements~~
30 ~~of subdivision (b) of Section 25743 of the Public Resources Code.~~

31 (g) Procurement and administrative costs associated with
32 long-term contracts entered into by an electrical corporation for
33 eligible renewable energy resources pursuant to this article, ~~at or~~
34 ~~below the market price determined by the commission pursuant~~
35 ~~to subdivision (e) of Section 399.15, and approved by the~~
36 *commission* shall be deemed reasonable per se, and shall be
37 recoverable in rates.

38 (h) Construction, alteration, demolition, installation, and repair
39 work on an eligible renewable energy resource that receives
40 production incentives ~~or supplemental energy payments pursuant~~

1 to Sections 25742 and 25743 Section 25742 of the Public Resources
2 Code, including work performed to qualify, receive, or maintain
3 production incentives or supplemental energy payments is “public
4 works” for the purposes of Chapter 1 (commencing with Section
5 1720) of Part 7 of Division 2 of the Labor Code.

6 SEC. 13. Section 399.15 of the Public Utilities Code is
7 amended to read:

8 399.15. (a) In order to fulfill unmet long-term resource needs,
9 the commission shall establish a renewables portfolio standard
10 requiring all electrical corporations to procure a minimum quantity
11 of electricity generated by eligible renewable energy resources as
12 a specified percentage of total kilowatthours sold to their retail
13 end-use customers each calendar year, if sufficient funds are made
14 available pursuant to Section 399.6 and Chapter 8.6 (commencing
15 with Section 25740) of Division 15 of the Public Resources Code,
16 to cover the above-market costs of eligible renewable energy
17 resources subject to limits on the total amount of costs expended
18 above the market prices determined in subdivision (c), to achieve
19 the targets established under this article.

20 (b) The commission shall implement annual procurement targets
21 for each retail seller as follows:

22 (1) Each retail seller shall, pursuant to subdivision (a), increase
23 its total procurement of eligible renewable energy resources by at
24 least an additional 1 percent of retail sales per year so that 20
25 percent of its retail sales are procured from eligible renewable
26 energy resources no later than December 31, 2010. A retail seller
27 with 20 percent of retail sales procured from eligible renewable
28 energy resources in any year shall not be required to increase its
29 procurement of renewable energy resources in the following year.

30 (2) For purposes of setting annual procurement targets, the
31 commission shall establish an initial baseline for each retail seller
32 based on the actual percentage of retail sales procured from eligible
33 renewable energy resources in 2001, and to the extent applicable,
34 adjusted going forward pursuant to Section 399.12.

35 (3) Only for purposes of establishing these targets, the
36 commission shall include all electricity sold to retail customers by
37 the Department of Water Resources pursuant to Section 80100 of
38 the Water Code in the calculation of retail sales by an electrical
39 corporation.

(4) In the event that a retail seller fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the retail seller shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall if sufficient funds are made available pursuant to Section 399.6 and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to cover any above-market costs of eligible renewable energy resources subject to the limitation on costs for electrical corporations established pursuant to subdivision (d).

(5) If supplemental energy payments from the Energy Commission, in combination with the market prices approved by the commission, are insufficient to cover any above-market costs of electricity procured from eligible renewable energy resources through an electricity purchase agreement of at least 10 years' duration, the commission shall allow a retail seller to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments. A retail seller shall not be required to enter into long-term contracts with operators of eligible renewable energy resources that exceed the market prices established pursuant to subdivision (e).

(c) The commission shall establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with eligible renewable energy resources, in consideration of the following:

(1) The long-term market price of electricity for fixed price contracts, determined pursuant to an electrical corporation's general procurement activities as authorized by the commission.

(2) The long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities.

(3) The value of different products including baseload, peaking, and as-available electricity.

(d) The Energy Commission shall provide supplemental energy payments from funds in the New Renewable Resources Account of the Renewable Resource Trust Fund to eligible renewable energy resources pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, consistent with this article, for any above-market costs. Indirect costs

1 associated with the purchase of eligible renewable energy resources
2 by an electrical corporation, including imbalance energy charges,
3 sale of excess energy, decreased generation from existing resources,
4 or transmission upgrades, shall not be eligible for supplemental
5 energy payments, but are recoverable in rates, as authorized by
6 the commission. The Energy Commission shall not award
7 supplemental energy payments to service load that is not subject
8 to the renewable energy public goods charge.

9 *(d) The commission shall establish, for each electrical*
10 *corporation, a limitation on the total costs expended above the*
11 *market prices determined in subdivision (c) for the procurement*
12 *of eligible renewable energy resources to achieve the annual*
13 *procurement targets established under this article.*

14 *(1) The cost limitation shall be equal to the amount of funds*
15 *transferred to each electrical corporation by the Energy*
16 *Commission pursuant to subdivision (b) of Section 25743 of the*
17 *Public Resources Code and the 51.5 percent of the funds which*
18 *would have been collected through January 1, 2012, from the*
19 *customers of the electrical corporation based on the renewable*
20 *energy public goods charge in effect as of January 1, 2007.*

21 *(2) The above-market costs of a contract selected by an*
22 *electrical corporation may be counted toward the cost limitation*
23 *if all of the following conditions are satisfied:*

24 *(A) The contract has been approved by the commission and was*
25 *selected through a competitive solicitation pursuant to the*
26 *requirements of subdivision (d) of Section 399.14.*

27 *(B) The contract covers a duration of no less than 10 years.*

28 *(C) The contracted project is a new or repowered facility*
29 *commencing commercial operations on or after January 1, 2005.*

30 *(D) No purchases of renewable energy credits may be eligible*
31 *for consideration as an above-market cost.*

32 *(E) The above-market costs of a contract do not include any*
33 *indirect expenses including imbalance energy charges, sale of*
34 *excess energy, decreased generation from existing resources, or*
35 *transmission upgrades.*

36 *(3) If the cost limitation for an electrical corporation is*
37 *insufficient to support the total costs expended above the market*
38 *prices determined in subdivision (c) for the procurement of eligible*
39 *renewable energy resources satisfying the conditions of paragraph*
40 *(2), the commission shall allow the electrical corporation to limit*

1 *its procurement to the quantity of eligible renewable energy*
2 *resources that can be procured at or below the market prices*
3 *established in subdivision (c).*

4 *(4) Nothing in this section prevents an electrical corporation*
5 *from voluntarily proposing to procure eligible renewable energy*
6 *resources at above-market prices that are not counted toward the*
7 *cost limitation. Any voluntary procurement involving above-market*
8 *costs shall be subject to commission approval prior to the expense*
9 *being recovered in rates.*

10 (e) The establishment of a renewables portfolio standard shall
11 not constitute implementation by the commission of the federal
12 Public Utility Regulatory Policies Act of 1978 (Public Law
13 95-617).

14 (f) The commission shall consult with the Energy Commission
15 in calculating market prices under subdivision (c) and establishing
16 other renewables portfolio standard policies.

17 SEC. 14. Section 399.16 of the Public Utilities Code is
18 amended to read:

19 399.16. (a) The commission, by rule, may authorize the use
20 of renewable energy credits to satisfy the requirements of the
21 renewables portfolio standard established pursuant to this article,
22 subject to the following conditions:

23 (1) Prior to authorizing any renewable energy credit to be used
24 toward satisfying annual procurement targets, the commission and
25 the Energy Commission shall conclude that the tracking system
26 established pursuant to subdivision (c) of Section 399.13, is
27 operational, is capable of independently verifying the electricity
28 generated by an eligible renewable energy resource and delivered
29 to the retail seller, and can ensure that renewable energy credits
30 shall not be double counted by any seller of electricity within the
31 service territory of the Western Electricity Coordinating Council
32 (WECC).

33 (2) A renewable energy credit shall be counted only once for
34 compliance with the renewables portfolio standard of this state or
35 any other state, or for verifying retail product claims in this state
36 or any other state.

37 (3) The electricity is delivered to a retail seller, the Independent
38 System Operator, or a local publicly owned electric utility.

1 (4) All revenues received by an electrical corporation for the
2 sale of a renewable energy credit shall be credited to the benefit
3 of ratepayers.

4 (5) No renewable energy credits shall be created for electricity
5 generated pursuant to any electricity purchase contract with a retail
6 seller or a local publicly owned electric utility executed before
7 January 1, 2005, unless the contract contains explicit terms and
8 conditions specifying the ownership or disposition of those credits.
9 Deliveries under those contracts shall be tracked through the
10 accounting system described in subdivision (b) of Section 399.13
11 and included in the baseline quantity of eligible renewable energy
12 resources of the purchasing retail seller pursuant to Section 399.15.

13 (6) No renewable energy credits shall be created for electricity
14 generated under any electricity purchase contract executed after
15 January 1, 2005, pursuant to the federal Public Utility Regulatory
16 Policies Act of 1978 (16 U.S.C. Sec. 2601 et seq.). Deliveries
17 under the electricity purchase contracts shall be tracked through
18 the accounting system described in subdivision (b) of Section
19 399.12 and count towards the renewables portfolio standard
20 obligations of the purchasing retail seller.

21 (7) The commission may limit the quantity of renewable energy
22 credits that may be procured unbundled from electricity generation
23 by any retail seller, to meet the requirements of this article.

24 (8) ~~No retail seller electrical corporation shall be obligated to~~
25 ~~procure renewable energy credits to satisfy the requirements of~~
26 ~~this article in the event that supplemental energy payments, in~~
27 ~~combination with the market prices approved by the commission,~~
28 ~~are insufficient to cover the above-market costs of long-term~~
29 ~~contracts, of more than 10 years' duration, with eligible renewable~~
30 ~~energy resources~~ *the total costs expended above the applicable*
31 *market prices for the procurement of eligible renewable energy*
32 *resources exceeds the cost limitation established pursuant to*
33 *subdivision (d) of Section 399.15.*

34 (9) Any additional condition that the commission determines
35 is reasonable.

36 (b) The commission shall allow an electrical corporation to
37 recover the reasonable costs of purchasing renewable energy credits
38 in rates.

39 SEC. 15. Section 454.5 of the Public Utilities Code is amended
40 to read:

1 454.5. (a) The commission shall specify the allocation of
2 electricity, including quantity, characteristics, and duration of
3 electricity delivery, that the Department of Water Resources shall
4 provide under its power purchase agreements to the customers of
5 each electrical corporation, which shall be reflected in the electrical
6 corporation's proposed procurement plan. Each electrical
7 corporation shall file a proposed procurement plan with the
8 commission not later than 60 days after the commission specifies
9 the allocation of electricity. The proposed procurement plan shall
10 specify the date that the electrical corporation intends to resume
11 procurement of electricity for its retail customers, consistent with
12 its obligation to serve. After the commission's adoption of a
13 procurement plan, the commission shall allow not less than 60
14 days before the electrical corporation resumes procurement
15 pursuant to this section.

16 (b) An electrical corporation's proposed procurement plan shall
17 include, but not be limited to, all of the following:

18 (1) An assessment of the price risk associated with the electrical
19 corporation's portfolio, including any utility-retained generation,
20 existing power purchase and exchange contracts, and proposed
21 contracts or purchases under which an electrical corporation will
22 procure electricity, electricity demand reductions, and
23 electricity-related products and the remaining open position to be
24 served by spot market transactions.

25 (2) A definition of each electricity product, electricity-related
26 product, and procurement related financial product, including
27 support and justification for the product type and amount to be
28 procured under the plan.

29 (3) The duration of the plan.

30 (4) The duration, timing, and range of quantities of each product
31 to be procured.

32 (5) A competitive procurement process under which the
33 electrical corporation may request bids for procurement-related
34 services, including the format and criteria of that procurement
35 process.

36 (6) An incentive mechanism, if any incentive mechanism is
37 proposed, including the type of transactions to be covered by that
38 mechanism, their respective procurement benchmarks, and other
39 parameters needed to determine the sharing of risks and benefits.

(7) The upfront standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to execution of the transaction. This shall include an expedited approval process for the commission's review of proposed contracts and subsequent approval or rejection thereof. The electrical corporation shall propose alternative procurement choices in the event a contract is rejected.

(8) Procedures for updating the procurement plan.

(9) A showing that the procurement plan will achieve the following:

(A) The electrical corporation will, in order to fulfill its unmet resource needs and in furtherance of Section 701.3, until a 20 percent renewable resources portfolio is achieved, procure renewable energy resources with the goal of ensuring that at least an additional 1 percent per year of the electricity sold by the electrical corporation is generated from renewable energy resources, provided sufficient funds are made available pursuant to ~~Section 399.6~~ *Sections 399.6 and 399.15*, to cover the above-market costs for new renewable energy resources.

(B) The electrical corporation will create or maintain a diversified procurement portfolio consisting of both short-term and long-term electricity and electricity-related and demand reductions products.

(C) The electrical corporation will first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.

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

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

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

(c) The commission shall review and accept, modify, or reject each electrical corporation's procurement plan. The commission's review shall consider each electrical corporation's individual procurement situation, and shall give strong consideration to that situation in determining which one or more of the features set forth

1 in this subdivision shall apply to that electrical corporation. A
2 procurement plan approved by the commission shall contain one
3 or more of the following features, provided that the commission
4 may not approve a feature or mechanism for an electrical
5 corporation if it finds that the feature or mechanism would impair
6 the restoration of an electrical corporation's creditworthiness or
7 would lead to a deterioration of an electrical corporation's
8 creditworthiness:

9 (1) A competitive procurement process under which the
10 electrical corporation may request bids for procurement-related
11 services. The commission shall specify the format of that
12 procurement process, as well as criteria to ensure that the auction
13 process is open and adequately subscribed. Any purchases made
14 in compliance with the commission-authorized process shall be
15 recovered in the generation component of rates.

16 (2) An incentive mechanism that establishes a procurement
17 benchmark or benchmarks and authorizes the electrical corporation
18 to procure from the market, subject to comparing the electrical
19 corporation's performance to the commission-authorized
20 benchmark or benchmarks. The incentive mechanism shall be
21 clear, achievable, and contain quantifiable objectives and standards.
22 The incentive mechanism shall contain balanced risk and reward
23 incentives that limit the risk and reward of an electrical corporation.

24 (3) Upfront achievable standards and criteria by which the
25 acceptability and eligibility for rate recovery of a proposed
26 procurement transaction will be known by the electrical corporation
27 prior to the execution of the bilateral contract for the transaction.
28 The commission shall provide for expedited review and either
29 approve or reject the individual contracts submitted by the electrical
30 corporation to ensure compliance with its procurement plan. To
31 the extent the commission rejects a proposed contract pursuant to
32 this criteria, the commission shall designate alternative procurement
33 choices obtained in the procurement plan that will be recoverable
34 for ratemaking purposes.

35 (d) A procurement plan approved by the commission shall
36 accomplish each of the following objectives:

37 (1) Enable the electrical corporation to fulfill its obligation to
38 serve its customers at just and reasonable rates.

39 (2) Eliminate the need for after-the-fact reasonableness reviews
40 of an electrical corporation's actions in compliance with an

1 approved procurement plan, including resulting electricity
2 procurement contracts, practices, and related expenses. However,
3 the commission may establish a regulatory process to verify and
4 assure that each contract was administered in accordance with the
5 terms of the contract, and contract disputes which may arise are
6 reasonably resolved.

7 (3) Ensure timely recovery of prospective procurement costs
8 incurred pursuant to an approved procurement plan. The
9 commission shall establish rates based on forecasts of procurement
10 costs adopted by the commission, actual procurement costs
11 incurred, or combination thereof, as determined by the commission.
12 The commission shall establish power procurement balancing
13 accounts to track the differences between recorded revenues and
14 costs incurred pursuant to an approved procurement plan. The
15 commission shall review the power procurement balancing
16 accounts, not less than semiannually, and shall adjust rates or order
17 refunds, as necessary, to promptly amortize a balancing account,
18 according to a schedule determined by the commission. Until
19 January 1, 2006, the commission shall ensure that any
20 overcollection or undercollection in the power procurement
21 balancing account does not exceed 5 percent of the electrical
22 corporation's actual recorded generation revenues for the prior
23 calendar year excluding revenues collected for the Department of
24 Water Resources. The commission shall determine the schedule
25 for amortizing the overcollection or undercollection in the
26 balancing account to ensure that the 5 percent threshold is not
27 exceeded. After January 1, 2006, this adjustment shall occur when
28 deemed appropriate by the commission consistent with the
29 objectives of this section.

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

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

37 (e) The commission shall provide for the periodic review and
38 prospective modification of an electrical corporation's procurement
39 plan.

1 (f) The commission may engage an independent consultant or
2 advisory service to evaluate risk management and strategy. The
3 reasonable costs of any consultant or advisory service is a
4 reimbursable expense and eligible for funding pursuant to Section
5 631.

6 (g) The commission shall adopt appropriate procedures to ensure
7 the confidentiality of any market sensitive information submitted
8 in an electrical corporation's proposed procurement plan or
9 resulting from or related to its approved procurement plan,
10 including, but not limited to, proposed or executed power purchase
11 agreements, data request responses, or consultant reports, or any
12 combination, provided that the Office of Ratepayer Advocates and
13 other consumer groups that are nonmarket participants shall be
14 provided access to this information under confidentiality
15 procedures authorized by the commission.

16 (h) Nothing in this section alters, modifies, or amends the
17 commission's oversight of affiliate transactions under its rules and
18 decisions or the commission's existing authority to investigate and
19 penalize an electrical corporation's alleged fraudulent activities,
20 or to disallow costs incurred as a result of gross incompetence,
21 fraud, abuse, or similar grounds. Nothing in this section expands,
22 modifies, or limits the State Energy Resources Conservation and
23 Development Commission's existing authority and responsibilities
24 as set forth in Sections 25216, 25216.5, and 25323 of the Public
25 Resources Code.

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

30 (j) (1) Prior to its approval pursuant to Section 851 of any
31 divestiture of generation assets owned by an electrical corporation
32 on or after the date of enactment of the act adding this section, the
33 commission shall determine the impact of the proposed divestiture
34 on the electrical corporation's procurement rates and shall approve
35 a divestiture only to the extent it finds, taking into account the
36 effect of the divestiture on procurement rates, that the divestiture
37 is in the public interest and will result in net ratepayer benefits.

38 (2) Any electrical corporation's procurement necessitated as a
39 result of the divestiture of generation assets on or after the effective
40 date of the act adding this subdivision shall be subject to the

1 mechanisms and procedures set forth in this section only if its
2 actual cost is less than the recent historical cost of the divested
3 generation assets.

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

7 SEC. 16. The amendments made to Section 25751 of the Public
8 Resources Code made by Section 9 of this act shall become
9 operative on July 1, 2008.

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