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AMENDED IN ASSEMBLY MARCH 18, 2009  
AMENDED IN ASSEMBLY FEBRUARY 18, 2009  
CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 21**

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**Introduced by Assembly Members ~~Bonnie Lowenthal and Saldana~~  
*Member Krekorian*  
(Coauthor: Senator Simitian)**

December 1, 2008

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~~An act to amend Sections 15620, 15621, 16401, and 16421 of, and to add Chapter 8.5 (commencing with Section 15560) to Division 15 of, the Elections Code, relating to elections. An act to amend Section 399.12 of, and repeal and add Section 399.15 of the Public Utilities Code, relating to energy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 21, as amended, ~~Bonnie Lowenthal~~ *Krekorian*. Elections: ~~audits.~~ *Renewable energy resources.*

~~Under existing law, an elections official must conduct a public manual tally of votes cast in an election and tabulated by a mechanical, electromechanical, or electronic system in 1% of the precincts in the jurisdiction, chosen at random by the elections official.~~

~~This bill would require an elections official, after an election, to calculate the margin of victory for each contest on the ballot at the~~

election. For each contest in which the margin of victory was less than  $\frac{1}{2}$  of 1%, this bill would require the elections official to conduct a public manual tally for a specified percentage of precincts within the jurisdiction, which would be known as a postcanvass audit. The bill would require an elections official to report to the public any variances between the results of the machine tally and postcanvass audit. The bill would require the elections official to calculate the percentage of variance in the audited precincts, by dividing the number of variances found in the audited precincts by the total number of votes cast within those precincts. If the percentage of variance is 50% or greater of the margin of victory for the contest, this bill would require the elections official to add precincts to the postcanvass audit until either the percentage of variance is less than 50% of the margin of victory for the contest or all of the votes cast for the contest in the jurisdiction have been manually tallied, whichever occurs first. If the postcanvass audit includes all of the precincts in the jurisdiction and reveals that the outcome of a contest in a precinct was different than that found by the machine tally, this bill would require the elections official to amend the certified statement of results for that precinct to reflect the result revealed by the postcanvass audit. The bill would also provide other related procedures for conducting the postcanvass audit.

Because this bill would require a higher level of service from local elections officials, it would impose a state-mandated local program.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, as defined. The Public Utilities Act imposes various duties and responsibilities on the PUC with respect to the purchase of electricity and requires the PUC to review and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program (RPS program). The RPS program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, 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. The RPS program requires the PUC to implement annual procurement targets for each retail seller to increase its total procurement of electricity generated by eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales of electricity are procured from eligible renewable energy resources no later than December 31, 2010. Existing law requires the PUC to make a determination of the existing market cost for electricity, which PUC decisions call the market price referent, and to limit an electrical corporation's obligation to procure electricity from eligible renewable energy resources, that exceeds the market price referent, by a specified amount.*

*This bill would instead require the PUC to require that a retail seller procure the following percentages of electricity from eligible renewable energy resources by the following dates: (A) Until December 31, 2012, the same percentage as actually achieved by the retail seller during 2009; (B) 20% by December 31, 2013; (C) 25% by December 31, 2016; and (D) 33% by December 31, 2020. The bill would authorize the PUC to permit a retail seller to delay compliance with (B) or (C) procurement levels when specified circumstances are present, but would not authorize the PUC to permit a retail seller to delay compliance with the (D) procurement level. The bill would delete the existing market price referent provisions and instead require the PUC to 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, and reflecting, certain matters. The bill would require the PUC to establish a limitation on the annual expenditures made above the market price, by an electrical corporation, in order to achieve the procurement levels established by the PUC. The bill would require the PUC to permit an electrical corporation to limit its procurement of electricity from eligible renewable energy resources to that quantity that can be procured at or below the market prices established by the PUC, up to the limitation. The bill would delete an existing requirement that the PUC adopt flexible rules for compliance for retail sellers. The bill would revise the definitions of certain terms for purposes of the RPS program.*

*Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the PUC is a crime.*

*Because the provisions of this bill are within the act and require action by the PUC to implement its requirements, a violation of these provisions would impose a state-mandated local program by expanding the definition of a crime.*

*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. Section 399.12 of the Public Utilities Code is  
 2 amended to read:

3     399.12. For purposes of this article, the following terms have  
 4 the following meanings:

5     (a) “Conduit hydroelectric facility” means a facility for the  
 6 generation of electricity that uses only the hydroelectric potential  
 7 of an existing pipe, ditch, flume, siphon, tunnel, canal, or other  
 8 manmade conduit that is operated to distribute water for a  
 9 beneficial use.

10    (b) (1) ~~“Delivered” and “delivery” have the same meaning as~~  
 11 ~~provided in subdivision (a) of Section 25741 of the Public~~  
 12 ~~Resources Code. “delivery,” with respect to electricity, means~~  
 13 *that the electricity is used to serve end-use retail customers or*  
 14 *energy storage facilities located within the state, and meets either*  
 15 *of the following conditions:*

16     (A) *The electricity is generated at a location within the state.*

17     (B) *The electricity is generated at a location outside the state*  
 18 *and scheduled for consumption by California end-use retail*  
 19 *customers or energy storage facilities located within the state.*  
 20 *Compliance with this requirement is demonstrated by one of the*  
 21 *following means:*

22     (i) *Showing that the generator’s first point of interconnection*  
 23 *is with facilities of a Transmission Service Provider, as that term*  
 24 *is defined by North American Electric Reliability Corporation*  
 25 *primarily located in this state.*

1 (ii) Showing that the 24-hour metered output of the generator  
2 matches the import schedules of electricity flow from the generator,  
3 through the balancing authority area in which the generator is  
4 located, through any intermediate balancing authorities, to the  
5 balancing authority area of the end-use retail customers or energy  
6 storage facility located in this state.

7 (2) Notwithstanding clause (ii) of subparagraph (B) of  
8 paragraph (1), electricity is not delivered to the extent that either  
9 of the following occurs:

10 (A) The physical delivery of electricity is scheduled from a  
11 source other than a renewable electrical generation facility, as  
12 defined in Section 27541 of the Public Resources Code.

13 (B) The electricity output is scheduled for delivery to customers  
14 in a different 24-hour period from the time of generation by the  
15 renewable electrical generation facility.

16 (3) Consistent with subparagraph (A) of paragraph (2), the  
17 physical delivery of electricity from a renewable electrical  
18 generation facility may be accompanied by electricity provided  
19 by another source for purposes of facilitating scheduling. For  
20 purposes of this article, only the portion of electricity provided  
21 directly from the renewable electrical generation facility shall  
22 count toward meeting the renewables portfolio standard  
23 procurement requirements of this article.

24 (4) For purposes of determining compliance by an intermittent  
25 resource located outside California with the delivery requirements  
26 of this subdivision, any positive imbalance energy provided under  
27 applicable tariffs by the balancing authority in which the facility  
28 is located shall, in an amount not exceeding any negative  
29 imbalance energy provided by the intermittent resource, be  
30 included in the 24-hour metered output and considered generated  
31 by the eligible renewable energy resource.

32 (c) “Eligible renewable energy resource” means an ~~electric~~  
33 ~~electrical~~ generating facility that meets the definition of ~~“in-state~~  
34 ~~renewable electricity~~ a “renewable electrical generation facility”  
35 in Section 25741 of the Public Resources Code; subject to the  
36 following ~~limitations~~:

37 (1) (A) An existing small hydroelectric generation facility of  
38 30 megawatts or less shall be eligible only if a retail seller or local  
39 publicly owned electric utility owned or procured the electricity  
40 from the facility as of December 31, 2005. A *small hydroelectric*

1 generation unit with a nameplate capacity not exceeding 40  
2 megawatts that is operated as part of a water supply or conveyance  
3 system serving the jurisdiction of a local publicly owned electric  
4 utility is an eligible renewable energy resource if the local publicly  
5 owned electric utility owned or procured the electricity from the  
6 facility as of December 31, 2005. A new hydroelectric facility is  
7 not an eligible renewable energy resource if it will cause an adverse  
8 impact on instream beneficial uses or cause a change in the volume  
9 or timing of streamflow.

10 (B) Notwithstanding subparagraph (A), a conduit hydroelectric  
11 facility of 30 megawatts or less that commenced operation before  
12 January 1, 2006, is an eligible renewable energy resource. A  
13 conduit hydroelectric facility of 30 megawatts or less that  
14 commences operation after December 31, 2005, is an eligible  
15 renewable energy resource so long as it does not cause an adverse  
16 impact on instream beneficial uses or cause a change in the volume  
17 or timing of streamflow.

18 (2) A facility engaged in the combustion of municipal solid  
19 waste shall not be considered an eligible renewable resource unless  
20 it is located in Stanislaus County and was operational prior to  
21 September 26, 1996.

22 (d) ~~“Procure” means that a retail seller or local publicly owned~~  
23 ~~electric utility receives delivered electricity generated by an eligible~~  
24 ~~renewable energy resource that it owns or for which it has entered~~  
25 ~~into an electricity purchase agreement to acquire through~~  
26 ~~ownership or contract. For purposes of meeting the renewables~~  
27 ~~portfolio standard procurement requirements, a retail seller or~~  
28 ~~local publicly owned electric utility may procure either delivered~~  
29 ~~electricity generated by an eligible renewable energy resource or~~  
30 ~~renewable energy credits associated with electricity generated,~~  
31 ~~but not necessarily delivered by, an eligible renewable energy~~  
32 ~~resource. Nothing in this article is intended to imply that the~~  
33 ~~purchase of electricity from third parties in a wholesale transaction~~  
34 ~~is the preferred method of fulfilling a retail seller’s obligation to~~  
35 ~~comply with this article or the obligation of a local publicly owned~~  
36 ~~electric utility to meet its renewables portfolio standard~~  
37 ~~implemented pursuant to Section 387 399.30.~~

38 (e) ~~“Renewables portfolio standard” means the specified~~  
39 ~~percentage of electricity generated by eligible renewable energy~~  
40 ~~resources that a retail seller is required to procure pursuant to this~~

1 ~~article or the obligation of a local publicly owned electric utility~~  
2 ~~to meet its renewables portfolio standard implemented pursuant~~  
3 ~~to Section 387.~~

4 (f)

5 (e) (1) “Renewable energy credit” means a certificate of proof  
6 *associated with the generation of electricity from an eligible*  
7 *renewable energy resource*, issued through the accounting system  
8 established by the Energy Commission pursuant to Section ~~399.13~~  
9 ~~399.25~~, that one unit of electricity was generated ~~and delivered~~ by  
10 an eligible renewable energy resource.

11 (2) “Renewable energy credit” includes all renewable and  
12 environmental attributes associated with the production of  
13 electricity from the eligible renewable energy resource, except for  
14 an emissions reduction credit issued pursuant to Section 40709 of  
15 the Health and Safety Code and any credits or payments associated  
16 with the reduction of solid waste and treatment benefits created  
17 by the utilization of biomass or biogas fuels.

18 (3) (A) No electricity generated by an eligible renewable energy  
19 resource attributable to the use of nonrenewable fuels, beyond a  
20 de minimis quantity, as determined by the Energy Commission  
21 *for each renewable energy technology*, shall result in the creation  
22 of a renewable energy credit.

23 (B) *No electricity generated by a small hydroelectric generation*  
24 *facility shall result in the creation of a renewable energy credit*  
25 *unless the facility meets the requirements of subparagraph (A) of*  
26 *paragraph (1) of subdivision (c).*

27 (C) *No electricity generated by a conduit hydroelectric*  
28 *generation facility shall result in the creation of a renewable*  
29 *energy credit unless the facility meets the requirements of*  
30 *subparagraph (B) of paragraph (1) of subdivision (c).*

31 (D) *No electricity generated by a facility engaged in the*  
32 *combustion of municipal solid waste shall result in the creation*  
33 *of a renewable energy credit unless the facility meets the*  
34 *requirements of paragraph (2) of subdivision (c).*

35 (f) “Renewable energy public goods charge” means *that portion*  
36 *of the nonbypassable system benefits charge required to be*  
37 *collected to fund renewable energy pursuant to the Reliable*  
38 *Electric Service Investments Act (Article 15 (commencing with*  
39 *Section 399) of Chapter 2.3 of Part 1 of Division 1, for an electrical*

1 corporation, and pursuant to Section 385 for a local publicly  
2 owned electric utility.

3 (g) “Renewables portfolio standard” means the specified  
4 percentage of electricity generated by eligible renewable energy  
5 resources that a retail seller or a local publicly owned electric  
6 utility is required to procure pursuant to this article.

7 ~~(g)~~

8 (h) “Retail seller” means an entity engaged in the retail sale of  
9 electricity to end-use customers located within the state, including  
10 any of the following:

11 (1) An electrical corporation, as defined in Section 218.

12 (2) A community choice aggregator. The commission shall  
13 institute a rulemaking to determine the manner in which a  
14 community choice aggregator will participate in the renewables  
15 portfolio standard program subject to the same terms and conditions  
16 applicable to an electrical corporation.

17 (3) An electric service provider, as defined in Section 218.3,  
18 for all sales of electricity to customers beginning January 1, 2006.  
19 The commission shall institute a rulemaking to determine the  
20 manner in which electric service providers will participate in the  
21 renewables portfolio standard program. The electric service  
22 provider shall be subject to the same terms and conditions  
23 applicable to an electrical corporation pursuant to this article.  
24 Nothing in this paragraph shall impair a contract entered into  
25 between an electric service provider and a retail customer prior to  
26 the suspension of direct access by the commission pursuant to  
27 Section 80110 of the Water Code.

28 (4) “Retail seller” does not include any of the following:

29 (A) A corporation or person employing cogeneration technology  
30 or producing electricity consistent with subdivision (b) of Section  
31 218.

32 (B) The Department of Water Resources acting in its capacity  
33 pursuant to Division 27 (commencing with Section 80000) of the  
34 Water Code.

35 (C) A local publicly owned electric utility.

36 *SEC. 2. Section 399.15 of the Public Utilities Code is repealed.*

37 ~~399.15.—(a) In order to fulfill unmet long-term resource needs,~~  
38 ~~the commission shall establish a renewables portfolio standard~~  
39 ~~requiring all electrical corporations to procure a minimum quantity~~  
40 ~~of electricity generated by eligible renewable energy resources as~~

1 a specified percentage of total kilowatthours sold to their retail  
2 end-use customers each calendar year, subject to limits on the total  
3 amount of costs expended above the market prices determined in  
4 subdivision (c), to achieve the targets established under this article.

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

7 (1) Each retail seller shall, pursuant to subdivision (a), increase  
8 its total procurement of eligible renewable energy resources by at  
9 least an additional 1 percent of retail sales per year so that 20  
10 percent of its retail sales are procured from eligible renewable  
11 energy resources no later than December 31, 2010. A retail seller  
12 with 20 percent of retail sales procured from eligible renewable  
13 energy resources in any year shall not be required to increase its  
14 procurement of renewable energy resources in the following year.

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

20 (3) Only for purposes of establishing these targets, the  
21 commission shall include all electricity sold to retail customers by  
22 the Department of Water Resources pursuant to Section 80100 of  
23 the Water Code in the calculation of retail sales by an electrical  
24 corporation.

25 (4) In the event that a retail seller fails to procure sufficient  
26 eligible renewable energy resources in a given year to meet any  
27 annual target established pursuant to this subdivision, the retail  
28 seller shall procure additional eligible renewable energy resources  
29 in subsequent years to compensate for the shortfall, subject to the  
30 limitation on costs for electrical corporations established pursuant  
31 to subdivision (d).

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

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

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

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

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

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

18     ~~(2) The above-market costs of a contract selected by an electrical~~  
19 ~~corporation may be counted toward the cost limitation if all of the~~  
20 ~~following conditions are satisfied:~~

21     ~~(A) The contract has been approved by the commission and was~~  
22 ~~selected through a competitive solicitation pursuant to the~~  
23 ~~requirements of subdivision (d) of Section 399.14.~~

24     ~~(B) The contract covers a duration of no less than 10 years.~~

25     ~~(C) The contracted project is a new or repowered facility~~  
26 ~~commencing commercial operations on or after January 1, 2005.~~

27     ~~(D) No purchases of renewable energy credits may be eligible~~  
28 ~~for consideration as an above-market cost.~~

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

33     ~~(3) If the cost limitation for an electrical corporation is~~  
34 ~~insufficient to support the total costs expended above the market~~  
35 ~~prices determined in subdivision (c) for the procurement of eligible~~  
36 ~~renewable energy resources satisfying the conditions of paragraph~~  
37 ~~(2), the commission shall allow the electrical corporation to limit~~  
38 ~~its procurement to the quantity of eligible renewable energy~~  
39 ~~resources that can be procured at or below the market prices~~  
40 ~~established in subdivision (c).~~

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

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

11 ~~(f) The commission shall consult with the Energy Commission~~  
12 ~~in calculating market prices under subdivision (e) and establishing~~  
13 ~~other renewables portfolio standard policies.~~

14 *SEC. 3. Section 399.15 is added to the Public Utilities Code,*  
15 *to read:*

16 *399.15. (a) In order to fulfill unmet long-term resource needs,*  
17 *the commission shall establish a renewables portfolio standard*  
18 *requiring all retail sellers to procure a minimum quantity of*  
19 *electricity generated by eligible renewable energy resources as a*  
20 *specified percentage of total kilowatthours sold to their retail*  
21 *end-use customers each compliance period to achieve the targets*  
22 *established under this article.*

23 *(b) The commission shall implement renewables portfolio*  
24 *standard procurement requirements only as follows:*

25 *(1) Each retail seller shall procure the following minimum*  
26 *percentages of eligible renewable energy resources in the following*  
27 *years, and continue to procure at least those percentages in*  
28 *subsequent years:*

29 *(A) Until December 31, 2012, the same percentage as actually*  
30 *achieved by the retail seller during 2009.*

31 *(B) Twenty percent by December 31, 2013.*

32 *(C) Twenty-five percent by December 31, 2016.*

33 *(D) Thirty-three percent by December 31, 2020.*

34 *(2) A retail seller with 33 percent of its retail sales of electricity*  
35 *procured from eligible renewable energy resources in any year*  
36 *shall not be required to increase its procurement of renewable*  
37 *energy resources, except to the extent required to maintain a 33*  
38 *percent renewables portfolio standard. A retail seller may*  
39 *voluntarily increase its procurement of eligible renewable energy*

1 resources beyond the renewables portfolio standard procurement  
2 requirements.

3 (3) Only for purposes of establishing the renewables portfolio  
4 standard procurement requirements of paragraph (1), the  
5 commission shall include all electricity sold to retail customers  
6 by the Department of Water Resources pursuant to Section 80100  
7 of the Water Code in the calculation of retail sales by an electrical  
8 corporation.

9 (4) The commission may only allow a retail seller for a  
10 maximum of two years per request to delay compliance with a  
11 renewables portfolio standard procurement requirement  
12 established pursuant to subparagraph (B) or (C) of paragraph  
13 (1), if it finds that the retail seller has demonstrated that either of  
14 the following conditions will prevent timely compliance:

15 (A) There is inadequate transmission capacity to allow for  
16 sufficient electricity to be delivered from proposed eligible  
17 renewable energy resource projects using the current operational  
18 protocols of the Independent System Operator (ISO). The  
19 commission shall consult with the ISO in making its findings  
20 relative to the existence of this condition. In making its findings  
21 relative to the existence of this condition with respect to a retail  
22 seller that owns transmission lines, the commission shall consider  
23 both of the following:

24 (i) Whether the retail seller has undertaken all reasonable  
25 measures to develop and construct new transmission lines or  
26 upgrades to existing lines in a timely fashion.

27 (ii) Whether the retail seller has taken all reasonable  
28 operational measures, as verified by the ISO, to maximize  
29 deliveries of electricity from eligible renewable energy resources  
30 in advance of transmission availability.

31 (B) Unanticipated permitting, interconnection, or other delays  
32 for procured eligible renewable energy resource projects, or there  
33 is an insufficient supply of delivered electricity from eligible  
34 renewable energy resources available to the retail seller. In making  
35 this finding, the commission shall consider whether the retail seller  
36 has prudently managed portfolio risks, relied on sufficient viable  
37 projects, sought to develop its own eligible renewable energy  
38 resources, and procured an appropriate minimum margin of  
39 procurement above the minimum procurement level necessary to

1 *comply with the renewables portfolio standard to compensate for*  
2 *foreseeable delays or insufficient supply.*

3 *(5) Prior to granting a delay pursuant to paragraph (4), the*  
4 *commission shall require a retail seller to demonstrate that it has*  
5 *presented evidence that it has made material progress in reducing*  
6 *its compliance deficit and has taken all reasonable measures*  
7 *consistent with this article to procure cost-effective distributed*  
8 *generation and renewable energy credits consistent with the*  
9 *restrictions in paragraph (6) of subdivision (a) of Section 399.21.*

10 *(6) The commission may not approve any request to delay a*  
11 *compliance obligation for which it has already granted a delay*  
12 *unless a retail seller presents evidence that it has made material*  
13 *progress in reducing its compliance deficiency and has identified*  
14 *and taken all reasonable actions under its control to pursue*  
15 *additional options to comply with the delayed interim procurement*  
16 *obligation and remove impediments that are related to its delay.*

17 *(7) The commission may not authorize any delay in achieving*  
18 *the 33 percent by December 31, 2020, renewables portfolio*  
19 *standard procurement requirement of subparagraph (D) of*  
20 *paragraph (1).*

21 *(8) If a retail seller fails to procure sufficient eligible renewable*  
22 *energy resources to comply with a renewables portfolio standard*  
23 *procurement requirement and fails to obtain an order from the*  
24 *commission authorizing a compliance delay pursuant to paragraph*  
25 *(4), the commission shall exercise its authority pursuant to Section*  
26 *2113.*

27 *(c) The commission shall establish a methodology to determine*  
28 *the market price of electricity for terms corresponding to the length*  
29 *of contracts with eligible renewable energy resources, in*  
30 *consideration of the long-term ownership, operating, and*  
31 *fixed-price fuel costs associated with fixed-price electricity from*  
32 *new generating facilities. The methodology shall reflect all of the*  
33 *following:*

34 *(1) The value of different products including baseload, peaking,*  
35 *and as-available electricity.*

36 *(2) All current and anticipated environmental compliance costs,*  
37 *including mitigation of emissions of greenhouse gases and air*  
38 *pollution offsets associated with the operation of new generating*  
39 *facilities.*

1 (d) (1) *The commission shall establish a limitation for each*  
2 *electrical corporation on the expenditures above the market costs*  
3 *determined in subdivision (c) for the procurement of all eligible*  
4 *renewable energy resources that are used to comply with the*  
5 *electrical corporation's renewables portfolio standard. The cost*  
6 *limitation shall equal 6 percent of the total bundled electric*  
7 *revenues recorded by the electrical corporation in 2008 multiplied*  
8 *by the number of years remaining until 2020. Total bundled electric*  
9 *revenues shall include revenues collected by the electrical*  
10 *corporation on behalf of the Department of Water Resources for*  
11 *procurement activities conducted pursuant to Division 27*  
12 *(commencing with Section 80000) of the Water Code.*

13 (2) *The calculation of the above-market costs shall include all*  
14 *procurement of eligible renewable energy resources that are used*  
15 *to comply with the electrical corporation's renewables portfolio*  
16 *standard that are submitted for approval to the commission after*  
17 *January 1, 2010.*

18 (3) *The above-market costs of procurement do not include any*  
19 *indirect expenses, including imbalance energy charges, sale of*  
20 *excess energy, decreased generation from existing resources, or*  
21 *transmission upgrades.*

22 (4) *Calculations of the above-market costs shall include, as a*  
23 *reduction to the total above-market costs, procurement from*  
24 *eligible renewable energy resources that are used to meet the*  
25 *renewables portfolio standard procurement requirements*  
26 *established pursuant to paragraph (1) of subdivision (b) that are*  
27 *below the market prices determined in subdivision (c) for each*  
28 *year.*

29 (5) *In calculating the limit on above-market costs established*  
30 *in paragraph (1), the commission shall account for the potential*  
31 *that some procured resources may be delayed or canceled.*

32 (e) *If the cost limitation for an electrical corporation is*  
33 *insufficient to support the projected net above-market costs*  
34 *identified in subdivision (d), the commission shall allow the*  
35 *electrical corporation to refrain from entering into new contracts*  
36 *or to construct facilities for that future year beyond the quantity*  
37 *of eligible renewable energy resources that can be procured at or*  
38 *below the market prices established in subdivision (c).*

39 (f) *Notwithstanding subdivision (e), if an electrical corporation's*  
40 *net annual above-market costs for a future year exceed the*

1 *electrical corporation's cost limitation, the electrical corporation*  
2 *may voluntarily propose to procure eligible renewable energy*  
3 *resources at above-market prices. Any voluntary procurement*  
4 *under this paragraph shall be subject to commission approval*  
5 *prior to the expense being recovered in rates.*

6 (g) (1) *The commission shall monitor the status of the cost*  
7 *limitation for each electrical corporation in order to ensure*  
8 *compliance with this article.*

9 (2) *If the commission determines that an electrical corporation*  
10 *may exceed its cost limitation prior to achieving the renewables*  
11 *portfolio standard procurement requirements, the commission*  
12 *shall do all of the following within 60 days of making that*  
13 *determination:*

14 (A) *Investigate and identify the reasons why the electrical*  
15 *corporation may exceed its annual cost limitation.*

16 (B) *Identify those actions that can be taken to ensure that the*  
17 *electrical corporation continues to comply with its renewables*  
18 *portfolio standard procurement requirements.*

19 (C) *Notify the appropriate policy and fiscal committees of the*  
20 *Legislature that the electrical corporation may exceed its cost*  
21 *limitation, the reasons why the electrical corporation may exceed*  
22 *its cost limitation, and those actions that may be taken by the*  
23 *electrical corporation to comply with the renewables portfolio*  
24 *standard procurement requirements.*

25 (3) *The commission shall examine mechanisms for mitigating*  
26 *the potential impact of low fossil fuel prices on the cost limitation*  
27 *of each electrical corporation and make recommendations to the*  
28 *Legislature on any changes in law it identifies to mitigate those*  
29 *impacts.*

30 (h) *The commission shall examine and adopt mechanisms to*  
31 *limit the potential influence of the market prices established in*  
32 *subdivision (c) on seller pricing and buyer contract selection.*

33 (i) *The establishment of a renewables portfolio standard shall*  
34 *not constitute implementation by the commission of the federal*  
35 *Public Utility Regulatory Policies Act of 1978 (Public Law 95-617).*

36 (j) *The commission shall consult with the Energy Commission*  
37 *in establishing renewables portfolio standard policies.*

38 SEC. 4. *No reimbursement is required by this act pursuant to*  
39 *Section 6 of Article XIII B of the California Constitution because*  
40 *the only costs that may be incurred by a local agency or school*

1 *district will be incurred because this act creates a new crime or*  
 2 *infraction, eliminates a crime or infraction, or changes the penalty*  
 3 *for a crime or infraction, within the meaning of Section 17556 of*  
 4 *the Government Code, or changes the definition of a crime within*  
 5 *the meaning of Section 6 of Article XIII B of the California*  
 6 *Constitution.*

7 *SEC. 5. This bill shall only become operative if this bill,*  
 8 *Assembly Bill 64, and Senate Bill 14 are all enacted and become*  
 9 *effective on or before January 1, 2010.*

10 SECTION 1. ~~Chapter 8.5 (commencing with Section 15560)~~  
 11 ~~is added to Division 15 of the Elections Code, to read:~~

12

13 ~~CHAPTER 8.5. POSTCANVASS AUDITS~~

14

15 ~~15560. For purposes of this chapter:~~

16 (a) ~~“Postcanvass audit” means a public manual tally of the votes~~  
 17 ~~cast in a contest in a percentage of precincts within the jurisdiction,~~  
 18 ~~pursuant to this chapter.~~

19 (b) ~~“Unofficial final results” means the election results upon~~  
 20 ~~completion of the official canvass, as defined in Section 335.5 and~~  
 21 ~~subdivisions (a) to (g), inclusive, of Section 15302, but before~~  
 22 ~~reporting final results to the governing board or the Secretary of~~  
 23 ~~State, or both, as specified in subdivision (h) of Section 15302.~~

24 (c) ~~“Variance” means a difference between the machine tally~~  
 25 ~~and the postcanvass audit for a contest, including differences due~~  
 26 ~~to a machine or operational malfunction or due to a ballot that has~~  
 27 ~~been marked in a manner that cannot be machine counted.~~

28 (d) ~~“Vote-for-one contest” means an election on a measure or~~  
 29 ~~a contest in an election for an office in which a voter may select~~  
 30 ~~only one candidate.~~

31 (e) ~~“Vote-for-multiple contest” means a contest in an election~~  
 32 ~~for an office in which a voter may select two or more candidates.~~

33 ~~15561. After an election, each elections official shall determine~~  
 34 ~~the margin of victory within the jurisdiction of that election in each~~  
 35 ~~contest in the election based upon the official canvass results as~~  
 36 ~~follows:~~

37 (a) ~~For a vote-for-one contest, the margin of victory is the~~  
 38 ~~difference between the percentage of overall votes cast for the~~  
 39 ~~winning candidate or position and the percentage of overall votes~~  
 40 ~~cast for the second place candidate or position.~~

1 ~~(b) For a vote-for-multiple contest, the margin of victory is the~~  
2 ~~difference between the percentage of overall votes cast for the~~  
3 ~~candidate with the lowest number of votes needed to win a seat~~  
4 ~~and the percentage of overall votes cast for the candidate with the~~  
5 ~~next lowest number of votes.~~

6 ~~(c) For a ballot measure contest, including a recall contest, the~~  
7 ~~margin of victory is the difference between the percentage of votes~~  
8 ~~cast in favor of the measure and the percentage of overall votes~~  
9 ~~required for the measure to pass.~~

10 ~~15562. (a) In an election contest in which the margin of~~  
11 ~~victory, based upon the official canvass results or the unofficial~~  
12 ~~final results, as provided in subdivision (b), is less than one-half~~  
13 ~~of 1 percent, the elections official shall conduct a postcanvass audit~~  
14 ~~of the votes cast in that contest as follows:~~

15 ~~(1) For a statewide contest, the postcanvass audit shall include~~  
16 ~~2 percent of the precincts, chosen at random, in each county.~~

17 ~~(2) For a legislative or congressional contest, or a contest~~  
18 ~~involving 100 precincts or more that is not a statewide contest, the~~  
19 ~~postcanvass audit shall include 5 percent of the precincts in the~~  
20 ~~jurisdiction in which votes were cast in the contest, chosen at~~  
21 ~~random.~~

22 ~~(3) For a contest not subject to paragraph (1) or (2), the~~  
23 ~~postcanvass audit shall include 10 percent of the precincts in each~~  
24 ~~jurisdiction in which votes were cast in the contest, chosen at~~  
25 ~~random.~~

26 ~~(4) In lieu of the requirements set forth in paragraphs (1) to (3),~~  
27 ~~inclusive, an elections official may instead conduct a postcanvass~~  
28 ~~audit of a higher percentage of randomly selected precincts. If the~~  
29 ~~postcanvass audit does not include 100 percent of the precincts~~  
30 ~~involved in the contest, then the elections official must comply~~  
31 ~~with Section 15571.~~

32 ~~(b) If the unofficial final results indicate that a postcanvass audit~~  
33 ~~will be required by this chapter, an elections official may begin~~  
34 ~~the postcanvass audit during the canvass period based on the~~  
35 ~~unofficial final results.~~

36 ~~15563. (a) In a contest voted upon in more than one~~  
37 ~~jurisdiction, the elections official of each jurisdiction in which~~  
38 ~~votes were cast in the contest shall do the following:~~

1     ~~(1) Determine whether a postcanvass audit is required by Section~~  
2 ~~15562 by calculating the overall margin of victory in all~~  
3 ~~jurisdictions in which votes were cast in the contest.~~

4     ~~(2) If a postcanvass audit is required, conduct the audit pursuant~~  
5 ~~to this chapter separate of any postcanvass audit conducted in~~  
6 ~~another jurisdiction in which the contest was voted upon, except~~  
7 ~~that the determination of whether additional precincts must be~~  
8 ~~included in the postcanvass audit pursuant to Section 15571 shall~~  
9 ~~be determined based on the overall variance percentage for all~~  
10 ~~jurisdictions in which votes were cast in the contest after~~  
11 ~~completion of the initial audit pursuant to Section 15561 in all~~  
12 ~~jurisdictions.~~

13     ~~(b) For a legislative, congressional, or statewide contest, the~~  
14 ~~Secretary of State shall determine whether a postcanvass audit is~~  
15 ~~required based upon the official canvass results and margin of~~  
16 ~~victory for the entire district for a legislative or congressional~~  
17 ~~contest or the entire state for a state contest.~~

18     ~~15564. Before beginning a postcanvass audit, the elections~~  
19 ~~official shall do the following:~~

20     ~~(a) Provide public notice of the time and place of the random~~  
21 ~~selection of the precincts to be manually tallied and of the time~~  
22 ~~and place of the postcanvass audit at least five days prior to the~~  
23 ~~selection of the precincts.~~

24     ~~(b) Make the official canvass precinct tally results, or the~~  
25 ~~unofficial final precinct tally results if the audit is being performed~~  
26 ~~in accordance with subdivision (b) of Section 15562, available to~~  
27 ~~the public.~~

28     ~~15565. (a) A postcanvass audit shall commence as soon as~~  
29 ~~possible after the random selection of precincts and in no event~~  
30 ~~later than five days after the elections official prepares a certified~~  
31 ~~statement of the results of the election pursuant to Section 15372.~~  
32 ~~If a contest voted upon in more than one jurisdiction is subject to~~  
33 ~~a postcanvass audit pursuant to this chapter, the elections officials~~  
34 ~~from each jurisdiction shall begin the postcanvass audit not later~~  
35 ~~than 5 days after the certified statement of results of the election~~  
36 ~~has been completed in all of the jurisdictions involved in the~~  
37 ~~contest.~~

38     ~~(b) The elections official shall permit the public to observe the~~  
39 ~~postcanvass audit process, including the random selection of~~  
40 ~~precincts. The elections official shall not permit members of the~~

1 public to touch ballots, voter verifiable paper audit trail records,  
2 or other official materials used in the postcanvass audit process or  
3 to interfere in any way with the postcanvass audit process.

4 (e) Nothing in this chapter permits the examination of ballots  
5 and other materials as permitted in a recount pursuant to Section  
6 15630.

7 15566. (a) Results for ballots manually tallied pursuant to  
8 Section 15360 may be included as part of the postcanvass audit  
9 required by this chapter, provided that ballots tallied after election  
10 night remain segregated and can be tallied separately.

11 (b) The elections official shall comply with the tally procedures  
12 established for conducting manual tallies under Section 15360  
13 when conducting a postelection postcanvass audit required by this  
14 chapter, except that the elections official is not required to include  
15 a report of the results in the certification of the official tally in  
16 accordance with subdivision (e) of Section 15360.

17 15567. An individual performing a postcanvass audit shall  
18 perform the audit by hand without the use of electronic scanning  
19 equipment. At no time during the postcanvass audit process shall  
20 the individual be informed of the corresponding machine tally  
21 results. An individual performing a postcanvass audit shall not be  
22 assigned to tally the results from a precinct in which he or she was  
23 a poll worker on election day.

24 15568. The elections official shall take appropriate measures  
25 to ensure the following:

26 (a) That voter verifiable paper audit trail records from direct  
27 recording electronic ballots that were canceled before being cast  
28 are not tallied as valid ballots in the postcanvass audit.

29 (b) That a damaged or defective ballot that has been substituted  
30 for by a duplicate copy pursuant to Section 15210 is not tallied as  
31 a valid ballot in the postcanvass audit.

32 15569. The elections official shall establish security procedures  
33 for the secure interim storage of ballots and to detect any  
34 unauthorized access to ballots.

35 15570. An elections official shall document and disclose to  
36 the public any variances. Variances shall be calculated as follows:

37 (a) If a postcanvass audit establishes that the machine tally  
38 erroneously attributed a vote for one candidate or measure instead  
39 of another candidate or measure, two variances result because the

1 vote totals for each candidate or measure are changed by one vote  
2 in the postcanvass audit.

3 (b) If the postcanvass audit determines that a vote was cast in  
4 a contest on a ballot that the machine tally interpreted as an  
5 undervote in the contest, one variance results because the machine  
6 tally undervote becomes a vote for a candidate or a vote for or  
7 against a measure in the postcanvass audit.

8 15571. (a) For a contest in which there exists one or more  
9 variances, the elections official shall calculate the percentage of  
10 variance as follows:

11 (1) For vote-for-one contests, only variances that narrow the  
12 margin between the winner and any of the losers shall be included  
13 in the total number of variances.

14 (2) For vote-for-multiple contests, only variances that narrow  
15 the margin of victory between any of the winners and any of the  
16 losers shall be included in the total number of variances.

17 (3) For any contest, variances resulting from ballots cast for  
18 unqualified write-in candidates shall not be included in the total  
19 number of variances.

20 (4) After deducting variances in accordance with paragraphs  
21 (1) to (3), inclusive, the elections official shall divide the remaining  
22 number of variances found in the postcanvass audit for the contest  
23 by the total number of votes cast for that contest in precincts  
24 included in the postcanvass audit.

25 (b) If the percentage of variance is equal to or greater than 50  
26 percent of the margin of victory for that contest based on the  
27 official canvass results, or based on the unofficial final results if  
28 the audit was performed in accordance with subdivision (b) of  
29 Section 15562, additional precincts shall be manually tallied for  
30 that contest.

31 (c) Precincts added to the postcanvass audit pursuant to  
32 subdivision (b) shall be tallied in randomly selected blocks of 5  
33 percent of the precincts in which votes were cast in the contest  
34 until the percentage of variance, recalculated using the method set  
35 forth in subdivision (a), is less than 50 percent of the overall margin  
36 of victory in that contest, or until all votes cast for the contest in  
37 the jurisdiction have been manually tallied, whichever occurs first.

38 (d) If a variance is found between manually tallied voter  
39 verifiable paper audit trail records and corresponding electronic  
40 vote results that cannot be accounted for by some obvious

1 mechanical problem, the elections official shall preserve the voter  
2 verifiable paper audit trail records, memory cards and devices, and  
3 direct recording electronic voting machines and notify the Secretary  
4 of State in order to investigate the cause of the problem.

5 15572. ~~If a postcanvass audit to which all precincts in the~~  
6 ~~jurisdiction were subject reveals a different outcome in a contest~~  
7 ~~than that shown by the machine tally for that contest, the elections~~  
8 ~~official shall amend the certified statement of results of the election;~~  
9 ~~prepared pursuant to Section 15372, by entering the result of the~~  
10 ~~postcanvass audit in each precinct affected, which result shall, for~~  
11 ~~all purposes thereafter, be the official return of the precinct for the~~  
12 ~~contest subject to the postcanvass audit.~~

13 ~~(b) The elections official shall submit the amended statement~~  
14 ~~of the results of the election to the governing body of the~~  
15 ~~jurisdiction or the Secretary of State, as required for the original~~  
16 ~~statement of results of the election.~~

17 15573. ~~(a) The elections official shall keep a log to record the~~  
18 ~~postcanvass audit process, including the results of each round of~~  
19 ~~postcanvass auditing for each precinct included in the audit, how~~  
20 ~~variances were reconciled, and details of actions taken contrary to~~  
21 ~~this chapter. The elections official shall make the log available to~~  
22 ~~the public.~~

23 ~~(b) The elections official shall compile and submit to the~~  
24 ~~Secretary of State a report summarizing the results of a postcanvass~~  
25 ~~audit required by this chapter. The report shall contain, at a~~  
26 ~~minimum, the following information:~~

27 ~~(1) For each precinct in the postcanvass audit, a comparison of~~  
28 ~~the results tallied by machine and the postcanvass audit results,~~  
29 ~~including undervotes and overvotes.~~

30 ~~(2) Identification of any variances between the machine count~~  
31 ~~and the postcanvass audit.~~

32 ~~(3) A description of how each identified variance was reconciled.~~

33 15574. ~~This chapter does not:~~

34 ~~(a) Authorize the opening or auditing of ballots for a precinct~~  
35 ~~except for the purposes specified in this chapter.~~

36 ~~(b) Limit other provisions of law regarding an election recount~~  
37 ~~or contest.~~

38 15575. ~~This chapter does not apply to the following election~~  
39 ~~contests:~~

1 (a) ~~A political party central committee election, as provided for~~  
2 ~~in Division 7 (commencing with Section 7050).~~

3 (b) ~~An advisory election, as provided for in Section 9603.~~

4 ~~15576. The Secretary of State shall adopt regulations consistent~~  
5 ~~with this chapter and may promulgate regulations to develop a~~  
6 ~~statistical auditing model that achieves a higher level of statistical~~  
7 ~~confidence in the audited election results.~~

8 ~~SEC. 2. Section 15620 of the Elections Code is amended to~~  
9 ~~read:~~

10 ~~15620. (a) Following completion of the official canvass and~~  
11 ~~any postcanvass audit conducted pursuant to Chapter 8.5~~  
12 ~~(commencing with Section 15560), a voter may, within five days~~  
13 ~~thereafter, file with the elections official responsible for conducting~~  
14 ~~an election in the county wherein the recount is sought a written~~  
15 ~~request for a recount of the votes cast for candidates for any office,~~  
16 ~~for slates of presidential electors, or for or against any measure,~~  
17 ~~provided the office, slate, or measure is not voted on statewide.~~  
18 ~~The request shall specify on behalf of which candidate, slate of~~  
19 ~~electors, or position on a measure (affirmative or negative) it is~~  
20 ~~filed.~~

21 (b) ~~If an election is conducted in more than one county, the~~  
22 ~~request for the recount may be filed with the elections official of,~~  
23 ~~and the recount conducted within, any or all of the affected~~  
24 ~~counties.~~

25 (c) ~~For the purposes of this section “completion of the canvass”~~  
26 ~~shall be presumed to be that time when the elections official signs~~  
27 ~~the certified statement of the results of the election except that, in~~  
28 ~~the case of a city election, if a city council canvasses the returns~~  
29 ~~itself and does not order the elections official to conduct the~~  
30 ~~canvass as permitted by Section 10263, “completion of the~~  
31 ~~canvass” shall be presumed to be that time when the governing~~  
32 ~~body declares the persons elected or the measures approved or~~  
33 ~~defeated.~~

34 ~~SEC. 3. Section 15621 of the Elections Code is amended to~~  
35 ~~read:~~

36 ~~15621. (a) Following completion of the official canvass and~~  
37 ~~any postcanvass audit conducted pursuant to Chapter 8.5~~  
38 ~~(commencing with Section 15560), a voter may, within five days~~  
39 ~~beginning on the 29th day after a statewide election, file with the~~  
40 ~~Secretary of State a written request for a recount of the votes cast~~

1 for candidates for any statewide office or for or against any measure  
2 voted on statewide. The request shall specify in which county or  
3 counties the recount is sought and shall specify on behalf of which  
4 candidate, slate of electors, or position on a measure (affirmative  
5 or negative) it is filed.

6 (b) ~~The Secretary of State shall forthwith send by registered~~  
7 ~~mail one copy of the request to the elections official of each county~~  
8 ~~in which a recount of the votes is sought.~~

9 (c) ~~All the other provisions of this article shall apply to recounts~~  
10 ~~conducted under this section.~~

11 SEC. 4. ~~Section 16401 of the Elections Code is amended to~~  
12 ~~read:~~

13 16401. ~~The contestant shall verify the statement of contest, as~~  
14 ~~provided by Section 446 of the Code of Civil Procedure, and shall~~  
15 ~~file it within the following times after the declaration of the result~~  
16 ~~of the election or of a postcanvass audit conducted pursuant to~~  
17 ~~Chapter 8.5 (commencing with Section 15560) by the body~~  
18 ~~canvassing the returns thereof:~~

19 (a) ~~In cases other than cases of a tie, where the contest is brought~~  
20 ~~on any of the grounds mentioned in subdivision (c) of Section~~  
21 ~~16100, six months.~~

22 (b) ~~In all cases of tie, 20 days.~~

23 (c) ~~In cases involving presidential electors, 10 days.~~

24 (d) ~~In all other cases, 30 days.~~

25 SEC. 5. ~~Section 16421 of the Elections Code is amended to~~  
26 ~~read:~~

27 16421. ~~The affidavit shall be filed in the office of the clerk of~~  
28 ~~the superior court having jurisdiction, within five days after either~~  
29 ~~the completion of the official canvass or of a postcanvass audit~~  
30 ~~conducted pursuant to Chapter 8.5 (commencing with Section~~  
31 ~~15560) by the county last making the declaration.~~

32 SEC. 6. ~~If the Commission on State Mandates determines that~~  
33 ~~this act contains costs mandated by the state, reimbursement to~~  
34 ~~local agencies and school districts for those costs shall be made~~  
35 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
36 ~~4 of Title 2 of the Government Code.~~

O