

AMENDED IN ASSEMBLY MAY 28, 2009

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 222**

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**Introduced by Assembly Members Adams and Ma**  
**(Coauthors: Assembly Members Blakeslee, Conway, Duvall,**  
**Emmerson, Fletcher, Fuentes, Galgiani, Gilmore, Knight,**  
**Mendoza, Smyth, and Torrico)**

February 4, 2009

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An act to amend Sections 25741, 25806, ~~and 40194~~ 40194, and 40201 of, ~~and~~ to add Section 41786.5 to, *and to repeal Section 40117 of*, the Public Resources Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 222, as amended, Adams. Energy: biofuels.

(1) Existing law establishes the Public Interest Research, Development, and Demonstration Fund in the State Treasury, and provides that the money collected by the public goods charge to support cost-effective energy efficiency and conservation activities and public interest energy research, development, and demonstration projects not adequately provided by competitive and regulated markets, be deposited in the fund for use by the State Energy Resources Conservation and Development Commission (Energy Commission). Existing law requires the Energy Commission to use those funds to develop, implement, and administer the Public Interest Research, Development, and Demonstration Program to develop technologies to, among other things, improve environmental quality, enhance electrical system reliability,

increase efficiency of energy-using technologies, lower electrical system costs, or provide other tangible benefits to electric utility customers. Existing law defines “in-state renewable electricity generation facility” for the purposes of the program to include, among other things, a facility that uses municipal solid waste conversion.

This bill would instead define “in-state renewable electricity generation facility” to include a facility that uses conversion at a biorefinery. The bill would define “biorefinery” to mean a facility that uses a noncombustion thermal, chemical, biological, or mechanical conservation process, or a combination of those processes, to produce electricity or a renewable fuel from carbonaceous materials.

(2) The California Integrated Waste Management Act of 1989 requires cities and counties, on and after January 1, 2000, to divert 50% of all solid waste through source reduction, recycling, and composting activities. ~~The act defines various terms, including “recycling” which means the process of collecting, sorting, cleansing, treating, and reconstituting solid waste and returning that solid waste to the economic mainstream in the form of raw material or new, reused, or reconstituted products, but excludes “transformation.” The act defines “transformation” to mean incineration, pyrolysis, distillation, or biological conversion, but excludes composting, gasification, and biomass conversion.~~

~~This bill would authorize~~ *authorize, if the act requires a solid waste diversion of more than 50%, a local jurisdiction to consider solid waste diverted by to include solid waste diverted to a biorefinery as disposal reduction in meeting a requirement to divert the solid waste above diversion level requirement above 50% if the local jurisdiction makes specified certification to the California Integrated Waste Management Board and the board finds that the local jurisdiction has diverted at least 50% of all solid waste through source reduction, recycling, and composting. The bill would additionally define “solid waste facility” to include a biorefinery that processes solid waste a specified certification to the board.*

(3) ~~The act defines various terms, including “gasification,” “solid waste facility,” and “transformation” for the purposes of the act.~~

*This bill would repeal the term “gasification.” The bill would additionally define “solid waste facility” to include a biorefinery that processes solid waste. The bill would revise and recast the definition of “transformation” to exclude from that definition, among other things, solid waste conversion at a biorefinery.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

- 1 SECTION 1. Section 25741 of the Public Resources Code is  
2 amended to read:  
3 25741. As used in this chapter, the following terms have the  
4 following meaning:  
5 (a) (1) “Biorefinery” means a facility that uses a noncombustion  
6 thermal, chemical, biological, or mechanical conversion process,  
7 or a combination of those processes, to produce electricity or a  
8 renewable fuel from carbonaceous material, including, but not  
9 limited to, any of the following:  
10 (A) Dedicated energy crops.  
11 (B) Agricultural crop residues.  
12 (C) Bark, lawn, yard, and garden clippings.  
13 (D) Leaves, silvicultural residue, and tree and brush-pruning  
14 *prunings*.  
15 (E) Wood, wood chips, and wood waste.  
16 (F) Nonrecyclable pulp or nonrecyclable paper materials.  
17 (G) Waste fat, oils, and greases.  
18 (H) Other types of solid waste.  
19 (2) A biorefinery shall satisfy all of the following criteria:  
20 (A) Meet or exceed standards set by the State Air Resources  
21 Board, local air pollution control districts, or local air quality  
22 management districts regarding air contaminants or emissions,  
23 including greenhouse gases, as defined in subdivision (g) of Section  
24 38505 of the Health and Safety Code.  
25 (B) Meet or exceed standards set by the State Water Resources  
26 Control Board or regional water quality control boards regarding  
27 discharges to surface waters or groundwaters of the state.  
28 (C) Routinely test the ash or other residue from the facility at  
29 least once quarterly, or on a more frequent basis as determined by  
30 the agency responsible for regulating the testing and disposal of  
31 ash or residue. Notwithstanding Section 25143.5 of the Health and  
32 Safety Code, if hazardous wastes are present, the ash or residue is  
33 sent to a class 1 hazardous waste disposal facility.

1 (D) Preprocess the solid waste feedstock to remove, to the  
2 maximum extent feasible, all recyclable materials prior to the  
3 conversion process.

4 (E) Meet all of the requirements of ~~this division~~ *Division 30*  
5 *(commencing with Section 40000)* for solid waste handling prior  
6 to the conversion process, and convert the solid waste feedstock  
7 into products that have market value.

8 (F) Is in compliance with all applicable laws, regulations, and  
9 ordinances.

10 (b) “Delivered” and “delivery” mean the electricity output of  
11 an in-state renewable electricity generation facility that is used to  
12 serve end-use retail customers located within the state. Subject to  
13 verification by the accounting system established by the  
14 commission pursuant to subdivision (b) of Section 399.13 of the  
15 Public Utilities Code, electricity shall be deemed delivered if it is  
16 either generated at a location within the state, or is scheduled for  
17 consumption by California end-use retail customers. Subject to  
18 criteria adopted by the commission, electricity generated by an  
19 eligible renewable energy resource may be considered “delivered”  
20 regardless of whether the electricity is generated at a different time  
21 from consumption by a California end-use customer.

22 (c) “In-state renewable electricity generation facility” means a  
23 facility that meets all of the following criteria:

24 (1) The facility uses biomass, solar thermal, photovoltaic, wind,  
25 geothermal, fuel cells using renewable fuels, small hydroelectric  
26 generation of 30 megawatts or less, digester gas, conversion at a  
27 biorefinery, landfill gas, ocean wave, ocean thermal, or tidal  
28 current, and any additions or enhancements to the facility using  
29 that technology.

30 (2) The facility satisfies one of the following requirements:

31 (A) The facility is located in the state or near the border of the  
32 state with the first point of connection to the transmission network  
33 within this state and electricity produced by the facility is delivered  
34 to an in-state location.

35 (B) The facility has its first point of interconnection to the  
36 transmission network outside the state and satisfies all of the  
37 following requirements:

38 (i) It is connected to the transmission network within the  
39 Western Electricity Coordinating Council (WECC) service  
40 territory.

1 (ii) It commences initial commercial operation after January 1,  
2 2005.

3 (iii) Electricity produced by the facility is delivered to an in-state  
4 location.

5 (iv) It will not cause or contribute to any violation of a California  
6 environmental quality standard or requirement.

7 (v) If the facility is outside of the United States, it is developed  
8 and operated in a manner that is as protective of the environment  
9 as a similar facility located in the state.

10 (vi) It participates in the accounting system to verify compliance  
11 with the renewables portfolio standard by retail sellers, once  
12 established by the Energy Commission pursuant to subdivision  
13 (b) of Section 399.13 of the Public Utilities Code.

14 (C) The facility meets the requirements of clauses (i), (iii), (iv),  
15 (v), and (vi) in subparagraph (B), but does not meet the  
16 requirements of clause (ii) because it commences initial operation  
17 prior to January 1, 2005, if the facility satisfies either of the  
18 following requirements:

19 (i) The electricity is from incremental generation resulting from  
20 expansion or repowering of the facility.

21 (ii) The facility has been part of the existing baseline of eligible  
22 renewable energy resources of a retail seller established pursuant  
23 to paragraph (2) of subdivision (b) of Section 399.15 of the Public  
24 Utilities Code or has been part of the existing baseline of eligible  
25 renewable energy resources of a local publicly owned electric  
26 utility established pursuant to Section 387 of the Public Utilities  
27 Code.

28 (d) “Procurement entity” means any person or corporation that  
29 enters into an agreement with a retail seller to procure eligible  
30 renewable energy resources pursuant to subdivision (f) of Section  
31 399.14 of the Public Utilities Code.

32 (e) “Renewable energy public goods charge” means that portion  
33 of the nonbypassable system benefits charge authorized to be  
34 collected and to be transferred to the Renewable Resource Trust  
35 Fund pursuant to the Reliable Electric Service Investments Act  
36 (Article 15 (commencing with Section 399) of Chapter 2.3 of Part  
37 1 of Division 1 of the Public Utilities Code).

38 (f) “Report” means the report entitled “Investing in Renewable  
39 Electricity Generation in California” (June 2001, Publication

1 Number P500-00-022) submitted to the Governor and the  
2 Legislature by the commission.

3 (g) “Retail seller” means a “retail seller” as defined in Section  
4 399.12 of the Public Utilities Code.

5 SEC. 2. Section 25806 of the Public Resources Code is  
6 amended to read:

7 25806. (a) A person who submits to the commission an  
8 application for certification for a proposed generating facility shall  
9 submit with the application a fee of one hundred thousand dollars  
10 (\$100,000) plus two hundred fifty dollars (\$250) per megawatt of  
11 gross generating capacity of the proposed facility. The total fee  
12 accompanying an application may not exceed three hundred fifty  
13 thousand dollars (\$350,000).

14 (b) A person who receives certification of a proposed generating  
15 facility shall pay an annual fee of fifteen thousand dollars  
16 (\$15,000). The first payment of the annual fee is due on the date  
17 this section takes effect. For a facility certified on or after the  
18 effective date of this section, the first payment of the annual fee  
19 is due on the date the commission adopts the final decision. All  
20 subsequent payments are due by July 1 of each year in which the  
21 facility retains its certification. The fiscal year for the annual fee  
22 is July 1 to June 30, inclusive.

23 (c) The fees in subdivisions (a) and (b) shall be adjusted annually  
24 to reflect the percentage change in the Implicit Price Deflator for  
25 State and Local Government Purchases of Goods and Services, as  
26 published by the United States Department of Commerce.

27 (d) No fee is required to accompany an application for  
28 certification, and no annual fee is required thereafter, for a  
29 generating facility that uses a renewable resource as its primary  
30 fuel or power source. For purposes of this subdivision, a renewable  
31 resource includes, but is not limited to, biomass, solar thermal,  
32 geothermal, digester gas, conversion at a biorefinery *as defined in*  
33 *Section 25741*, landfill gas, ocean thermal, and solid waste  
34 converted to a clean burning fuel by using a noncombustion thermal  
35 process.

36 (e) The Energy Facility License and Compliance Fund is hereby  
37 created in the State Treasury. All fees received by the commission  
38 pursuant to this section shall be remitted to the Treasurer for  
39 deposit in the fund. The money in the fund shall be expended, upon

1 appropriation by the Legislature, for processing applications for  
2 certification and for compliance monitoring.

3 *SEC. 3. Section 40117 of the Public Resources Code is*  
4 *repealed.*

5 ~~40117. “Gasification” means a technology that uses a~~  
6 ~~noncombustion thermal process to convert solid waste to a clean~~  
7 ~~burning fuel for the purpose of generating electricity, and that, at~~  
8 ~~minimum, meets all of the following criteria:~~

9 ~~(a) The technology does not use air or oxygen in the conversion~~  
10 ~~process, except ambient air to maintain temperature control.~~

11 ~~(b) The technology produces no discharges of air contaminants~~  
12 ~~or emissions, including greenhouse gases, as defined in subdivision~~  
13 ~~(g) of Section 38505 of the Health and Safety Code.~~

14 ~~(c) The technology produces no discharges to surface or~~  
15 ~~groundwaters of the state.~~

16 ~~(d) The technology produces no hazardous waste.~~

17 ~~(e) To the maximum extent feasible, the technology removes~~  
18 ~~all recyclable materials and marketable green waste compostable~~  
19 ~~materials from the solid waste stream prior to the conversion~~  
20 ~~process and the owner or operator of the facility certifies that those~~  
21 ~~materials will be recycled or composted.~~

22 ~~(f) The facility where the technology is used is in compliance~~  
23 ~~with all applicable laws, regulations, and ordinances.~~

24 ~~(g) The facility certifies to the board that any local agency~~  
25 ~~sending solid waste to the facility is in compliance with this~~  
26 ~~division and has reduced, recycled, or composted solid waste to~~  
27 ~~the maximum extent feasible, and the board makes a finding that~~  
28 ~~the local agency has diverted at least 30 percent of all solid waste~~  
29 ~~through source reduction, recycling, and composting.~~

30 ~~SEC. 3.~~

31 *SEC. 4. Section 40194 of the Public Resources Code is*  
32 *amended to read:*

33 40194. “Solid waste facility” includes a solid waste transfer  
34 or processing station, a composting facility, ~~a gasification facility,~~  
35 a transformation facility, a biorefinery *as defined in Section 25741*  
36 that processes solid waste, and a disposal facility. For purposes of  
37 Part 5 (commencing with Section 45000), “solid waste facility”  
38 additionally includes a solid waste operation that may be carried  
39 out pursuant to an enforcement agency notification, as provided  
40 in regulations adopted by the board.

1     *SEC. 5. Section 40201 of the Public Resources Code is*  
 2     *amended to read:*

3     40201. “Transformation” means incineration, ~~pyrolysis,~~  
 4     ~~distillation, or biological conversion other than composting of solid~~  
 5     ~~waste, with or without the recovery of energy.~~ “Transformation”  
 6     does not include composting, ~~gasification, or biomass conversion,~~  
 7     ~~or solid waste conversion at a biorefinery as defined in Section~~  
 8     ~~25741.~~

9     ~~SEC. 4.~~

10    *SEC. 6. Section 41786.5 is added to the Public Resources Code,*  
 11    *to read:*

12    ~~41786.5. (a) A local jurisdiction shall not include solid waste~~  
 13    ~~diverted to a biorefinery in meeting the requirement to divert 50~~  
 14    ~~percent of all solid waste. A local jurisdiction may include solid~~  
 15    ~~waste diverted to a biorefinery in meeting a requirement to divert~~  
 16    ~~solid waste that is above 50 percent. A local jurisdiction shall~~  
 17    ~~certify to the board that the local jurisdiction is in compliance with~~  
 18    ~~this division and has reduced, recycled, or composted solid waste~~  
 19    ~~to the maximum extent feasible and the board makes a finding that~~  
 20    ~~the local jurisdiction has diverted at least 50 percent of all solid~~  
 21    ~~waste through source reduction, recycling, and composting.~~

22    ~~(b) (1) As used in this section, “biorefinery” has the same~~  
 23    ~~meaning as that set forth in Section 25741.~~

24    ~~(2) A gasification facility is not a biorefinery.~~

25    41786.5. (a) *For the purposes of meeting a solid waste*  
 26    *diversion level of up to 50 percent, a jurisdiction shall not include*  
 27    *solid waste diverted to a biorefinery as defined in Section 25741*  
 28    *as disposal reduction as calculated under Section 41780.05.*

29    (b) *For the purposes of meeting a solid waste diversion level*  
 30    *above 50 percent, a jurisdiction may include solid waste diverted*  
 31    *to a biorefinery as defined in Section 25741 that is above the*  
 32    *50-percent diversion level as disposal reduction as calculated*  
 33    *under Section 41780.05, if the jurisdiction certifies to the board*  
 34    *as a part of the jurisdiction’s annual report that the jurisdiction*  
 35    *has removed all recyclable materials from the diverted solid waste*  
 36    *to the maximum extent feasible.*

37    (c) *This section shall become operative if this division requires*  
 38    *a solid waste diversion level of above 50-percent.*

O