

AMENDED IN SENATE JULY 15, 2010

AMENDED IN ASSEMBLY APRIL 13, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2037**

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**Introduced by Assembly Members V. Manuel Pérez and Salas**

February 17, 2010

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An act to add Chapter 3.5 (commencing with Section 8350) to Division 4.1 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 2037, as amended, V. Manuel Pérez. Electricity: air pollution.

~~(1) Under~~

*Under* existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, as defined. The existing Public Utilities Act requires the PUC to review and approve, modify, or reject a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives. Existing law prohibits any load-serving entity, and any local publicly owned electric utility, from entering into a long-term financial commitment for baseload generation, unless that baseload generation complies with a greenhouse gases emission performance standard. Existing law requires the PUC, by February 1, 2007, through a rulemaking proceeding and in consultation with the State Energy Resources Conservation and Development Commission (Energy Commission) and the State Air Resources Board (state board), to establish a greenhouse gases emission performance standard for all baseload generation of load-serving entities. Existing law requires the Energy Commission, by June 30, 2007, at a duly noticed

public hearing and in consultation with the PUC and the state board, to establish a greenhouse gases emission performance standard for all baseload generation of local publicly owned electric utilities, as defined.

This bill would prohibit a load-serving entity or local publicly owned electric utility from entering into, and would prohibit the PUC from approving for an electrical corporation, a long-term financial commitment with or for a new electrical generation facility constructed in California, or in a shared pollution area, as defined, that does not meet specified air pollution criteria.

~~The bill would require the PUC, the Energy Commission, local air pollution control districts and air quality management districts, and the State Air Resources Board to explore with federal agencies, and with other governments, methods to encourage the recognition by all relevant agencies of offsets achieved anywhere in a shared pollution area and the use of cross-border trading of offsets, emission reduction credits, and available mitigation funds. By imposing additional requirements on local air pollution control districts and air quality management districts, the bill would impose a state-mandated local program.~~

~~(2) 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.~~

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

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

1 SECTION 1. Chapter 3.5 (commencing with Section 8350) is  
2 added to Division 4.1 of the Public Utilities Code, to read:

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4 CHAPTER 3.5. AIR POLLUTION PERFORMANCE STANDARD FOR  
5 NEW GENERATION

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7 8350. (a) For purposes of this section, the following terms  
8 have the following meanings:

9 (1) "Load-serving entity" has the same meaning as that term is  
10 defined in Section 8340.

1 (2) “Long-term financial commitment” has the same meaning  
2 as that term is defined in Section 8340.

3 (3) “New electrical generating facility” means an electrical  
4 generating unit ~~constructed for which all legally required permits~~  
5 ~~have been received~~ after January 1, 2011. If an electrical generating  
6 unit is added to an existing powerplant after January 1, 2011, only  
7 the incremental capacity from that unit added after January 1, 2011,  
8 is a new electrical generating facility.

9 ~~(4) “Shared pollution area” means an area encompassing~~  
10 ~~California and another state or country, determined by the United~~  
11 ~~States Environmental Protection Agency to share air pollution~~  
12 ~~such that air pollution emitted in that area, but not within~~  
13 ~~California, affects public health in California.~~

14 *(4) “Shared pollution area” means an airshed encompassing*  
15 *a portion of California and a portion of an adjacent state or*  
16 *country, as determined by the United States Environmental*  
17 *Protection Agency.*

18 (b) A load-serving entity or local publicly owned electric utility  
19 shall not enter into, and the commission shall not approve for an  
20 electrical corporation, a long-term financial commitment with or  
21 for a new electrical generating facility constructed in California  
22 or in a shared pollution area if that facility does not meet the  
23 following requirements:

24 ~~(1) (A) If the facility was constructed in California, the facility~~  
25 ~~was constructed to meet best available control technology (BACT)~~  
26 ~~standards, to control air pollution emissions from the operation of~~  
27 ~~the facility, that applied at the time construction began in the air~~  
28 ~~basin in California in which the facility was constructed.~~

29 ~~(B) If the facility was constructed outside of California in a~~  
30 ~~shared pollution area, the facility was constructed to meet best~~  
31 ~~available control technology (BACT) standards, to control air~~  
32 ~~pollution emissions from the operation of the facility, that applied~~  
33 ~~at the time construction began in the air basin in California adjacent~~  
34 ~~to the facility.~~

35 ~~(2) (A) If the facility was constructed in California, offsets to~~  
36 ~~mitigate air pollution from operation of the facility were obtained~~  
37 ~~for any pollutant determined to be nonattainment of federal ambient~~  
38 ~~air quality standards by the United States Environmental Protection~~  
39 ~~Agency in the air basin in which the facility was constructed, at~~  
40 ~~the time that construction of the facility began.~~

1     ~~(B) If the facility was constructed outside of California in a~~  
 2 ~~shared pollution area, offsets to mitigate air pollution from~~  
 3 ~~operation of the facility were obtained for any pollutant determined~~  
 4 ~~to be nonattainment of federal ambient air quality standards by the~~  
 5 ~~United States Environmental Protection Agency in the air basin~~  
 6 ~~in California adjacent to the facility, at the time that construction~~  
 7 ~~of the facility began.~~

8     ~~(C) Offsets shall not be required pursuant to this paragraph if~~  
 9 ~~the air pollution emissions caused by operation of the facility are~~  
 10 ~~otherwise fully mitigated by other measures.~~

11     ~~(e) The Public Utilities Commission, the Energy Commission,~~  
 12 ~~local air pollution control districts and air quality management~~  
 13 ~~districts, and the State Air Resources Board shall explore with~~  
 14 ~~federal agencies, and with other governments, methods to~~  
 15 ~~encourage the recognition by all relevant agencies of offsets~~  
 16 ~~achieved anywhere in a shared pollution area, and the use of~~  
 17 ~~cross-border trading of offsets, emission reduction credits, and~~  
 18 ~~available mitigation funds.~~

19     ~~SEC. 2. If the Commission on State Mandates determines that~~  
 20 ~~this act contains costs mandated by the state, reimbursement to~~  
 21 ~~local agencies and school districts for those costs shall be made~~  
 22 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
 23 ~~4 of Title 2 of the Government Code.~~

24     ~~(1) If the new electrical generating facility is in California, the~~  
 25 ~~facility meets best available control technology (BACT) standards,~~  
 26 ~~to control air pollution emissions from the operation of the facility,~~  
 27 ~~and complies with air pollution control district or air quality~~  
 28 ~~management district rules and regulations, and state and federal~~  
 29 ~~law.~~

30     ~~(2) If the new electrical generating facility is outside of~~  
 31 ~~California in a shared pollution area, the facility meets best~~  
 32 ~~available control technology (BACT) standards, to control air~~  
 33 ~~pollution emissions from the operation of the facility, that apply~~  
 34 ~~in the air basin in California adjacent to the facility.~~