

AMENDED IN ASSEMBLY AUGUST 5, 2010

AMENDED IN SENATE JUNE 30, 2010

AMENDED IN SENATE JUNE 21, 2010

AMENDED IN SENATE MAY 25, 2010

AMENDED IN SENATE MARCH 22, 2010

**SENATE BILL**

**No. 1247**

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**Introduced by Senator Dutton  
(Coauthors: Senators Aanestad and Cox)**

February 19, 2010

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An act to amend ~~Section~~ *Sections 399.12 and 399.12.5* of the Public Utilities Code, relating to energy, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1247, as amended, Dutton. Renewable energy resources: hydroelectric generation facilities.

The existing California Renewables Portfolio Standard Program (RPS program) requires the Public Utilities Commission to implement annual procurement targets for the procurement of eligible renewable energy resources for all retail sellers, as defined, to achieve the targets and goals of the program. ~~Pursuant to the RPS program, the incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility is electricity from an eligible renewable energy resource if certain requirements are met. One of these requirements is that the hydroelectric generation~~ *The existing definition of an eligible renewable energy resource includes certain small hydroelectric generation facilities,*

*conduit hydroelectric facilities, and the incremental increase in electrical generation resulting from efficiency improvements (repowering) of existing larger hydroelectric facilities, subject to the condition that a new small or conduit hydroelectric facility or repowered facility not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.*

*This bill would revise that condition to provide that the new small or conduit hydroelectric facility, or repowered facility, not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow pursuant to a current license issued pursuant to the Federal Power Act.*

*An additional requirement for eligibility for the incremental increase in electrical generation resulting from repowering of an existing larger hydroelectric facility, is that the facility has been certified within the immediately preceding 15 years by the State Water Resources Control Board pursuant to the federal Clean Water Act or by a California regional water quality control board to which the state board has delegated authority.*

This bill would adopt an alternative to that requirement for the Rock Creek Powerhouse hydroelectric generation facility.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . 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 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) “Delivered” and “delivery” have the same meaning as
- 11    provided in subdivision (a) of Section 25741 of the Public
- 12    Resources Code.

1 (c) “Eligible renewable energy resource” means an electric  
2 generating facility that meets the definition of “in-state renewable  
3 electricity generation facility” in Section 25741 of the Public  
4 Resources Code, subject to the following limitations:

5 (1) (A) An existing small hydroelectric generation facility of  
6 30 megawatts or less shall be eligible only if a retail seller or local  
7 publicly owned electric utility owned or procured the electricity  
8 from the facility as of December 31, 2005. A new hydroelectric  
9 facility is not an eligible renewable energy resource if it will cause  
10 an adverse impact on instream beneficial uses or cause a change  
11 in the volume or timing of streamflow *pursuant to a current license*  
12 *issued pursuant to the Federal Power Act (Chapter 12*  
13 *(commencing with Section 791a) of Title 16 of the United States*  
14 *Code).*

15 (B) Notwithstanding subparagraph (A), a conduit hydroelectric  
16 facility of 30 megawatts or less that commenced operation before  
17 January 1, 2006, is an eligible renewable energy resource. A  
18 conduit hydroelectric facility of 30 megawatts or less that  
19 commences operation after December 31, 2005, is an eligible  
20 renewable energy resource so long as it does not cause an adverse  
21 impact on instream beneficial uses or cause a change in the volume  
22 or timing of streamflow *pursuant to a current license issued*  
23 *pursuant to the Federal Power Act (Chapter 12 (commencing with*  
24 *Section 791a) of Title 16 of the United States Code).*

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

29 (d) “Procure” means that a retail seller or local publicly owned  
30 electric utility receives delivered electricity generated by an eligible  
31 renewable energy resource that it owns or for which it has entered  
32 into an electricity purchase agreement. Nothing in this article is  
33 intended to imply that the purchase of electricity from third parties  
34 in a wholesale transaction is the preferred method of fulfilling a  
35 retail seller’s obligation to comply with this article or the obligation  
36 of a local publicly owned electric utility to meet its renewables  
37 portfolio standard implemented pursuant to Section 387.

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

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

16 (3) No electricity generated by an eligible renewable energy  
17 resource attributable to the use of nonrenewable fuels, beyond a  
18 de minimis quantity, as determined by the Energy Commission,  
19 shall result in the creation of a renewable energy credit.

20 (g) “Retail seller” means an entity engaged in the retail sale of  
21 electricity to end-use customers located within the state, including  
22 any of the following:

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

24 (2) A community choice aggregator. The commission shall  
25 institute a rulemaking to determine the manner in which a  
26 community choice aggregator will participate in the renewables  
27 portfolio standard program subject to the same terms and conditions  
28 applicable to an electrical corporation.

29 (3) An electric service provider, as defined in Section 218.3,  
30 for all sales of electricity to customers beginning January 1, 2006.  
31 The commission shall institute a rulemaking to determine the  
32 manner in which electric service providers will participate in the  
33 renewables portfolio standard program. The electric service  
34 provider shall be subject to the same terms and conditions  
35 applicable to an electrical corporation pursuant to this article.  
36 Nothing in this paragraph shall impair a contract entered into  
37 between an electric service provider and a retail customer prior to  
38 the suspension of direct access by the commission pursuant to  
39 Section 80110 of the Water Code.

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

1 (A) A corporation or person employing cogeneration technology  
2 or producing electricity consistent with subdivision (b) of Section  
3 218.

4 (B) The Department of Water Resources acting in its capacity  
5 pursuant to Division 27 (commencing with Section 80000) of the  
6 Water Code.

7 (C) A local publicly owned electric utility.

8 **SECTION 1.**

9 *SEC. 2.* Section 399.12.5 of the Public Utilities Code is  
10 amended to read:

11 399.12.5. (a) Notwithstanding subdivision (c) of Section  
12 399.12, a small hydroelectric generation facility that satisfies the  
13 criteria for an eligible renewable energy resource pursuant to  
14 Section 399.12 shall not lose its eligibility if efficiency  
15 improvements undertaken after January 1, 2008, cause the  
16 generating capacity of the facility to exceed 30 megawatts, and  
17 the efficiency improvements do not result in an adverse impact on  
18 instream beneficial uses or cause a change in the volume or timing  
19 of streamflow *pursuant to a current license issued pursuant to the*  
20 *Federal Power Act (Chapter 12 (commencing with Section 791a)*  
21 *of Title 16 of the United States Code)*. The entire generating  
22 capacity of the facility shall be eligible.

23 (b) Notwithstanding subdivision (c) of Section 399.12, the  
24 incremental increase in the amount of electricity generated from  
25 a hydroelectric generation facility as a result of efficiency  
26 improvements at the facility, is electricity from an eligible  
27 renewable energy resource, without regard to the electrical output  
28 of the facility, if all of the following conditions are met:

29 (1) The incremental increase is the result of efficiency  
30 improvements from a retrofit that do not result in an adverse impact  
31 on instream beneficial uses or cause a change in the volume or  
32 timing of streamflow *pursuant to a current license issued pursuant*  
33 *to the Federal Power Act (Chapter 12 (commencing with Section*  
34 *791a) of Title 16 of the United States Code)*.

35 (2) The hydroelectric generation facility meets one of the  
36 following certification mechanisms:

37 (A) The hydroelectric generation facility has, within the  
38 immediately preceding 15 years, received certification from the  
39 State Water Resources Control Board pursuant to Section 401 of  
40 the federal Clean Water Act (33 U.S.C. Sec. 1341), or has received

1 certification from a regional board to which the state board has  
2 delegated authority to issue certification, unless the facility is not  
3 subject to certification because there is no potential for discharge  
4 into waters of the United States.

5 (B) If the hydroelectric facility is not located in California, the  
6 certification pursuant to Section 401 of the federal Clean Water  
7 Act (33 U.S.C. Sec. 1341) may be received from the applicable  
8 state board or agency or from a regional board to which the state  
9 board has delegated authority to issue the certification.

10 (C) If the hydroelectric generation facility is the Rock Creek  
11 Powerhouse, Federal Energy Regulatory Commission Project  
12 Number 1962, the efficiency improvements have received any  
13 necessary incremental certification from the State Water Resources  
14 Control Board.

15 (3) The hydroelectric generation facility is owned by a retail  
16 seller or a local publicly owned electric utility, was operational  
17 prior to January 1, 2007, the efficiency improvements are initiated  
18 on or after January 1, 2008, the efficiency improvements are not  
19 the result of routine maintenance activities, as determined by the  
20 Energy Commission, and the efficiency improvements were not  
21 included in any resource plan sponsored by the facility owner prior  
22 to January 1, 2008.

23 (4) All of the incremental increase in electricity resulting from  
24 the efficiency improvements are demonstrated to result from a  
25 long-term financial commitment by the retail seller or local publicly  
26 owned electric utility. For purposes of this paragraph, “long-term  
27 financial commitment” means either new ownership investment  
28 in the facility by the retail seller or local publicly owned electric  
29 utility or a new or renewed contract with a term of 10 or more  
30 years, which includes procurement of the incremental generation.

31 (c) The incremental increase in the amount of electricity  
32 generated from a hydroelectric generation facility as a result of  
33 efficiency improvements at the facility are not eligible for  
34 supplemental energy payments pursuant to the Renewable Energy  
35 Resources Program (Chapter 8.6 (commencing with Section 25740)  
36 of Division 15 of the Public Resources Code), or a successor  
37 program.

38 SEC. 2. This act is an urgency statute necessary for the  
39 immediate preservation of the public peace, health, or safety within

1 the meaning of Article IV of the Constitution and shall go into  
2 immediate effect. The facts constituting the necessity are:  
3 In order to address, as soon as possible, rising electricity rates  
4 that will slow the economic recovery of this state, it is necessary  
5 that this act take effect immediately.

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