

AMENDED IN SENATE SEPTEMBER 8, 2011

AMENDED IN SENATE SEPTEMBER 2, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1391

**Introduced by Assembly Member Bradford
(Principal coauthor: Assembly Member Smyth)**

February 23, 2011

An act to amend Section 399.30 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1391, as amended, Bradford. Energy Commission: penalties.

Existing law creates the California renewables portfolio standard program (RPS program) and the Renewable Energy Resources Program to increase the amount of electricity generated per year from eligible renewable resources, as defined.

Existing law, effective on _____, requires the Energy Commission to refer a local publicly owned electric utility to the State Air Resources Board if the utility fails to comply with these programs and authorizes the state board to impose penalties.

This bill would delete these provisions and instead authorize the Energy Commission to impose certain civil penalties on a local publicly owned utility that fails to comply with these programs. The bill would require the Energy Commission to establish, by regulation, a prescribed penalty structure. The bill would subject any order imposing penalties to judicial review and enforcement.

Existing law requires the State Air Resources Board to deposit any penalties it collects to enforce these programs into the Air Pollution Control Fund.

This bill would delete this requirement and instead require the Energy Commission to deposit any civil penalties imposed on a local publicly owned utility in the Energy Resources Programs Account of the General Fund, to be available, upon appropriation, for the purposes of the program.

The bill would make conforming changes.

This bill would incorporate additional changes in Section 399.30 of the Public Utilities Code, proposed by SB 23, to be operative only if SB 23 and this bill are both chaptered and become effective January 1, 2012, and this bill is chaptered last.

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 399.30 of the Public Utilities Code, as
2 added by Section 29 of Chapter 1 of the First Extraordinary Session
3 of the Statutes of 2011, is amended to read:

4 399.30. (a) In order to fulfill unmet long-term generation
5 resource needs, each local publicly owned electric utility shall
6 adopt and implement a renewable energy resources procurement
7 plan that requires the utility to procure a minimum quantity of
8 electricity products from eligible renewable energy resources,
9 including renewable energy credits, as a specified percentage of
10 total kilowatthours sold to the utility’s retail end-use customers,
11 each compliance period, to achieve the targets of subdivision (c).

12 (b) The governing board shall implement procurement targets
13 for a local publicly owned electric utility that require the utility to
14 procure a minimum quantity of eligible renewable energy resources
15 for each of the following compliance periods:

- 16 (1) January 1, 2011, to December 31, 2013, inclusive.
- 17 (2) January 1, 2014, to December 31, 2016, inclusive.
- 18 (3) January 1, 2017, to December 31, 2020, inclusive.

19 (c) The governing board of a local publicly owned electric utility
20 shall ensure all of the following:

- 21 (1) The quantities of eligible renewable energy resources to be
22 procured for the compliance period from January 1, 2011, to

1 December 31, 2013, inclusive, are equal to an average of 20 percent
2 of retail sales.

3 (2) The quantities of eligible renewable energy resources to be
4 procured for all other compliance periods reflect reasonable
5 progress in each of the intervening years sufficient to ensure that
6 the procurement of electricity products from eligible renewable
7 energy resources achieves 25 percent of retail sales by December
8 31, 2016, and 33 percent of retail sales by December 31, 2020.
9 The local governing board shall require the local publicly owned
10 utilities to procure not less than 33 percent of retail sales of
11 electricity products from eligible renewable energy resources in
12 all subsequent years.

13 (3) A local publicly owned electric utility shall adopt
14 procurement requirements consistent with Section 399.16.

15 (d) The governing board of a local publicly owned electric utility
16 may adopt the following measures:

17 (1) Rules permitting the utility to apply excess procurement in
18 one compliance period to subsequent compliance periods in the
19 same manner as allowed for retail sellers pursuant to Section
20 399.13.

21 (2) Conditions that allow for delaying timely compliance
22 consistent with subdivision (b) of Section 399.15.

23 (3) Cost limitations for procurement expenditures consistent
24 with subdivision (c) of Section 399.15.

25 (e) The governing board of the local publicly owned electric
26 utility shall adopt a program for the enforcement of this article on
27 or before January 1, 2012. The program shall be adopted at a
28 publicly noticed meeting offering all interested parties an
29 opportunity to comment. Not less than 30 days' notice shall be
30 given to the public of any meeting held for purposes of adopting
31 the program. Not less than 10 days' notice shall be given to the
32 public before any meeting is held to make a substantive change to
33 the program.

34 (f) (1) Each local publicly owned electric utility shall annually
35 post notice, in accordance with Chapter 9 (commencing with
36 Section 54950) of Part 1 of Division 2 of Title 5 of the Government
37 Code, whenever its governing body will deliberate in public on its
38 renewable energy resources procurement plan.

39 (2) Contemporaneous with the posting of the notice of a public
40 meeting to consider the renewable energy resources procurement

1 plan, the local publicly owned electric utility shall notify the
2 Energy Commission of the date, time, and location of the meeting
3 in order to enable the Energy Commission to post the information
4 on its Internet Web site. This requirement is satisfied if the local
5 publicly owned electric utility provides the uniform resource
6 locator (URL) that links to this information.

7 (3) Upon distribution to its governing body of information
8 related to its renewable energy resources procurement status and
9 future plans, for its consideration at a noticed public meeting, the
10 local publicly owned electric utility shall make that information
11 available to the public and shall provide the Energy Commission
12 with an electronic copy of the documents for posting on the Energy
13 Commission's Internet Web site. This requirement is satisfied if
14 the local publicly owned electric utility provides the uniform
15 resource locator (URL) that links to the documents or information
16 regarding other manners of access to the documents.

17 (g) A local publicly owned electric utility shall annually submit
18 to the Energy Commission documentation regarding eligible
19 renewable energy resources procurement contracts that it executed
20 during the prior year, as follows:

21 (1) A description of the eligible renewable energy resource,
22 including the duration of the contract or electricity purchase
23 agreement.

24 (2) A description and identification of the electrical generating
25 facility providing the eligible renewable energy resource under
26 the contract.

27 (3) An estimate of the percentage increase in the utility's total
28 retail sales of electricity from eligible renewable energy resources
29 that will result from the contract.

30 (h) A public utility district that receives all of its electricity
31 pursuant to a preference right adopted and authorized by the United
32 States Congress pursuant to Section 4 of the Trinity River Division
33 Act of August 12, 1955 (Public Law 84-386) shall be in compliance
34 with the renewable energy procurement requirements of this article.

35 (i) For a local publicly owned electric utility that was in
36 existence on or before January 1, 2009, that provides retail electric
37 service to 15,000 or fewer customer accounts in California, and is
38 interconnected to a balancing authority located outside this state
39 but within the WECC, an eligible renewable energy resource
40 includes a facility that is located outside California that is

1 connected to the WECC transmission system, if all of the following
2 conditions are met:

3 (1) The electricity generated by the facility is procured by the
4 local publicly owned electric utility, is delivered to the balancing
5 authority area in which the local publicly owned electric utility is
6 located, and is not used to fulfill renewable energy procurement
7 requirements of other states.

8 (2) The local publicly owned electric utility participates in, and
9 complies with, the accounting system administered by the Energy
10 Commission pursuant to this article.

11 (3) The Energy Commission verifies that the electricity
12 generated by the facility is eligible to meet the renewables portfolio
13 standard procurement requirements.

14 (j) Notwithstanding subdivision (a), for a local publicly owned
15 electric utility that is a joint powers authority of districts established
16 pursuant to state law on or before January 1, 2005, that furnish
17 electric services other than to residential customers, and is formed
18 pursuant to the Irrigation District Law (Division 11 (commencing
19 with Section 20500) of the Water Code), the percentage of total
20 kilowatthours sold to the district's retail end-use customers, upon
21 which the renewables portfolio standard procurement requirements
22 in subdivision (b) are calculated, shall be based on the authority's
23 average retail sales over the previous seven years. If the authority
24 has not furnished electric service for seven years, then the
25 calculation shall be based on average retail sales over the number
26 of completed years during which the authority has provided electric
27 service.

28 (k) A local publicly owned electric utility in a city and county
29 that only receives greater than 67 percent of its electricity sources
30 from hydroelectric generation located within the state that it owns
31 and operates, and that does not meet the definition of a "renewable
32 electrical generation facility" pursuant to Section 25741 of the
33 Public Resources Code, shall be required to procure eligible
34 renewable energy resources, including renewable energy credits,
35 to meet only the electricity demands unsatisfied by its hydroelectric
36 generation in any given year, in order to satisfy its renewable
37 energy procurement requirements.

38 (l) Each local publicly owned electric utility shall report, on an
39 annual basis, to its customers and to the Energy Commission, all
40 of the following:

1 (1) Expenditures of public goods funds collected pursuant to
2 Section 385 for eligible renewable energy resource development.
3 Reports shall contain a description of programs, expenditures, and
4 expected or actual results.

5 (2) The resource mix used to serve its customers by energy
6 source.

7 (3) The utility's status in implementing a renewables portfolio
8 standard pursuant to subdivision (a) and the utility's progress
9 toward attaining the standard following implementation.

10 (m) A local publicly owned electric utility shall retain discretion
11 over both of the following:

12 (1) The mix of eligible renewable energy resources procured
13 by the utility and those additional generation resources procured
14 by the utility for purposes of ensuring resource adequacy and
15 reliability.

16 (2) The reasonable costs incurred by the utility for eligible
17 renewable energy resources owned by the utility.

18 (n) On or before July 1, 2012, the Energy Commission shall
19 adopt regulations specifying procedures for enforcement of this
20 article. The regulations shall include a public process under which
21 the Energy Commission may issue a notice of violation and
22 correction against a local publicly owned electric utility for failure
23 to comply with this article, and for the assessment of civil penalties
24 pursuant to subdivision (o).

25 (o) (1) Upon a determination by the Energy Commission that
26 a local publicly owned electric utility has failed to comply with
27 this article, the Energy Commission may impose penalties to
28 enforce this article, consistent with this section. Any penalty
29 imposed upon a local publicly owned electric utility pursuant to
30 this section shall parallel those adopted by the commission for
31 noncompliance with the requirements of this article by a retail
32 seller. *The Energy Commission has exclusive authority to assess*
33 *penalties upon a local publicly owned electric utility for a failure*
34 *to comply with this article.*

35 (2) A local publicly owned electric utility that violates any order,
36 rule, or regulation of the Energy Commission issued or adopted
37 pursuant to this article, may be assessed a civil penalty in
38 accordance with the procedures described in Section 25534.1 of
39 the Public Resources Code. In lieu of the penalty structure set forth
40 in Section 25534 of the Public Resources Code, the Energy

1 Commission shall establish the penalty structure by regulation,
2 which shall consider, in addition to other relevant factors, the
3 penalty structure adopted by the commission for noncompliance
4 by retail sellers.

5 (3) Any order of the Energy Commission that imposes penalties
6 pursuant to this section shall be subject to judicial review and
7 enforcement as specified in subdivisions (a) and (b) of Section
8 25534.2 of the Public Resources Code.

9 (4) Any civil penalties collected by the Energy Commission
10 from a local publicly owned electric utility pursuant to this section
11 shall be deposited in the Energy Resources Programs Account and,
12 upon appropriation by the Legislature, shall be expended for the
13 purposes of meeting the goals of this article. Those penalty
14 revenues may be used by the Energy Commission for the
15 administration of this article.

16 (p) *The commission has no authority or jurisdiction to enforce*
17 *any of the requirements of this article on a local publicly owned*
18 *electric utility.*

19 *SEC. 1.5. Section 399.30 of the Public Utilities Code, as added*
20 *by Section 29 of Chapter 1 of the First Extraordinary Session of*
21 *the Statutes of 2011, is amended to read:*

22 399.30. (a) In order to fulfill unmet long-term generation
23 resource needs, each local publicly owned electric utility shall
24 adopt and implement a renewable energy resources procurement
25 plan that requires the utility to procure a minimum quantity of
26 electricity products from eligible renewable energy resources,
27 including renewable energy credits, as a specified percentage of
28 total kilowatthours sold to the utility's retail end-use customers,
29 each compliance period, to achieve the targets of subdivision (c).

30 (b) The governing board shall implement procurement targets
31 for a local publicly owned electric utility that require the utility to
32 procure a minimum quantity of eligible renewable energy resources
33 for each of the following compliance periods:

- 34 (1) January 1, 2011, to December 31, 2013, inclusive.
- 35 (2) January 1, 2014, to December 31, 2016, inclusive.
- 36 (3) January 1, 2017, to December 31, 2020, inclusive.

37 (c) The governing board of a local publicly owned electric utility
38 shall ensure all of the following:

- 39 (1) The quantities of eligible renewable energy resources to be
40 procured for the compliance period from January 1, 2011, to

1 December 31, 2013, inclusive, are equal to an average of 20 percent
2 of retail sales.

3 (2) The quantities of eligible renewable energy resources to be
4 procured for all other compliance periods reflect reasonable
5 progress in each of the intervening years sufficient to ensure that
6 the procurement of electricity products from eligible renewable
7 energy resources achieves 25 percent of retail sales by December
8 31, 2016, and 33 percent of retail sales by December 31, 2020.
9 The local governing board shall require the local publicly owned
10 utilities to procure not less than 33 percent of retail sales of
11 electricity products from eligible renewable energy resources in
12 all subsequent years.

13 (3) A local publicly owned electric utility shall adopt
14 procurement requirements consistent with Section 399.16.

15 (d) The governing board of a local publicly owned electric utility
16 may adopt the following measures:

17 (1) Rules permitting the utility to apply excess procurement ~~in~~
18 *of eligible renewable energy resources accumulated through*
19 *December 31, 2010, or from one compliance period to subsequent*
20 *compliance periods, in the same manner as allowed for retail sellers*
21 ~~pursuant to Section 399.13. Those rules shall ensure that excess~~
22 *procurement accumulated through December 31, 2010, is*
23 *calculated based on annual eligible renewable energy resource*
24 *procurement targets in effect since 2006, provided that the*
25 *procurement targets, as amended, specified the achievement of*
26 *not less than a 20 percent renewables portfolio standard by no*
27 *later than December 31, 2010, and included increasing*
28 *procurement targets for each intervening year.*

29 (2) Conditions that allow for delaying timely compliance
30 consistent with subdivision (b) of Section 399.15.

31 (3) Cost limitations for procurement expenditures consistent
32 with subdivision (c) of Section 399.15.

33 (e) The governing board of the local publicly owned electric
34 utility shall adopt a program for the enforcement of this article on
35 or before January 1, ~~2012~~ 2013. The program shall be adopted at
36 a publicly noticed meeting offering all interested parties an
37 opportunity to comment. Not less than 30 days' notice shall be
38 given to the public of any meeting held for purposes of adopting
39 the program. Not less than 10 days' notice shall be given to the

1 public before any meeting is held to make a substantive change to
2 the program.

3 (f) (1) Each local publicly owned electric utility shall annually
4 post notice, in accordance with Chapter 9 (commencing with
5 Section 54950) of Part 1 of Division 2 of Title 5 of the Government
6 Code, whenever its governing body will deliberate in public on its
7 renewable energy resources procurement plan.

8 (2) Contemporaneous with the posting of the notice of a public
9 meeting to consider the renewable energy resources procurement
10 plan, the local publicly owned electric utility shall notify the
11 Energy Commission of the date, time, and location of the meeting
12 in order to enable the Energy Commission to post the information
13 on its Internet Web site. This requirement is satisfied if the local
14 publicly owned electric utility provides the uniform resource
15 locator (URL) that links to this information.

16 (3) Upon distribution to its governing body of information
17 related to its renewable energy resources procurement status and
18 future plans, for its consideration at a noticed public meeting, the
19 local publicly owned electric utility shall make that information
20 available to the public and shall provide the Energy Commission
21 with an electronic copy of the documents for posting on the Energy
22 Commission's Internet Web site. This requirement is satisfied if
23 the local publicly owned electric utility provides the uniform
24 resource locator (URL) that links to the documents or information
25 regarding other manners of access to the documents.

26 (g) A local publicly owned electric utility shall annually submit
27 to the Energy Commission documentation regarding eligible
28 renewable energy resources procurement contracts that it executed
29 during the prior year, as follows:

30 (1) A description of the eligible renewable energy resource,
31 including the duration of the contract or electricity purchase
32 agreement.

33 (2) A description and identification of the electrical generating
34 facility providing the eligible renewable energy resource under
35 the contract.

36 (3) An estimate of the percentage increase in the utility's total
37 retail sales of electricity from eligible renewable energy resources
38 that will result from the contract.

39 (h) A public utility district that receives all of its electricity
40 pursuant to a preference right adopted and authorized by the United

1 States Congress pursuant to Section 4 of the Trinity River Division
2 Act of August 12, 1955 (Public Law 84-386) shall be in compliance
3 with the renewable energy procurement requirements of this article.

4 (i) For a local publicly owned electric utility that was in
5 existence on or before January 1, 2009, that provides retail electric
6 service to 15,000 or fewer customer accounts in California, and is
7 interconnected to a balancing authority located outside this state
8 but within the WECC, an eligible renewable energy resource
9 includes a facility that is located outside California that is
10 connected to the WECC transmission system, if all of the following
11 conditions are met:

12 (1) The electricity generated by the facility is procured by the
13 local publicly owned electric utility, is delivered to the balancing
14 authority area in which the local publicly owned electric utility is
15 located, and is not used to fulfill renewable energy procurement
16 requirements of other states.

17 (2) The local publicly owned electric utility participates in, and
18 complies with, the accounting system administered by the Energy
19 Commission pursuant to this article.

20 (3) The Energy Commission verifies that the electricity
21 generated by the facility is eligible to meet the renewables portfolio
22 standard procurement requirements.

23 (j) Notwithstanding subdivision (a), for a local publicly owned
24 electric utility that is a joint powers authority of districts established
25 pursuant to state law on or before January 1, 2005, that furnish
26 electric services other than to residential customers, and is formed
27 pursuant to the Irrigation District Law (Division 11 (commencing
28 with Section 20500) of the Water Code), the percentage of total
29 kilowatthours sold to the district's retail end-use customers, upon
30 which the renewables portfolio standard procurement requirements
31 in subdivision (b) are calculated, shall be based on the authority's
32 average retail sales over the previous seven years. If the authority
33 has not furnished electric service for seven years, then the
34 calculation shall be based on average retail sales over the number
35 of completed years during which the authority has provided electric
36 service.

37 (k) A local publicly owned electric utility in a city and county
38 that only receives greater than 67 percent of its electricity sources
39 from hydroelectric generation located within the state that it owns
40 and operates, and that does not meet the definition of a "renewable

1 electrical generation facility” pursuant to Section 25741 of the
2 Public Resources Code, shall be required to procure eligible
3 renewable energy resources, including renewable energy credits,
4 to meet only the electricity demands unsatisfied by its hydroelectric
5 generation in any given year, in order to satisfy its renewable
6 energy procurement requirements.

7 (l) Each local publicly owned electric utility shall report, on an
8 annual basis, to its customers and to the Energy Commission, all
9 of the following:

10 (1) Expenditures of public goods funds collected pursuant to
11 Section 385 for eligible renewable energy resource development.
12 Reports shall contain a description of programs, expenditures, and
13 expected or actual results.

14 (2) The resource mix used to serve its customers by energy
15 source.

16 (3) The utility’s status in implementing a renewables portfolio
17 standard pursuant to subdivision (a) and the utility’s progress
18 toward attaining the standard following implementation, *including*
19 *information that demonstrates the conditions, if any, delaying the*
20 *utility’s timely compliance with the renewables portfolio standard*
21 *consistent with paragraph (5) of subdivision (b) of Section 399.15.*

22 (m) A local publicly owned electric utility shall retain discretion
23 over both of the following:

24 (1) The mix of eligible renewable energy resources procured
25 by the utility and those additional generation resources procured
26 by the utility for purposes of ensuring resource adequacy and
27 reliability.

28 (2) The reasonable costs incurred by the utility for eligible
29 renewable energy resources owned by the utility.

30 (n) On or before July 1, ~~2011~~ 2012, the Energy Commission
31 shall adopt regulations specifying procedures for enforcement of
32 this article. The regulations shall include a public process under
33 which the Energy Commission may issue a notice of violation and
34 correction against a local publicly owned electric utility for failure
35 to comply with this article, and for ~~referral of violations to the~~
36 ~~State Air Resources Board for the assessment of civil penalties~~
37 pursuant to subdivision (o).

38 (o) (1) Upon a determination by the Energy Commission that
39 a local publicly owned electric utility has failed to comply with
40 this article, the Energy Commission ~~shall refer the failure to comply~~

1 with this article to the State Air Resources Board, which may
2 impose penalties to enforce this article, consistent with Part 6
3 (commencing with Section 38580) of Division 25.5 of the Health
4 and Safety Code. Any penalties imposed shall be comparable to
5 those adopted by the commission for noncompliance by retail
6 sellers. *this section. Any penalty imposed upon a local publicly
7 owned electric utility pursuant to this section shall parallel those
8 adopted by the commission for noncompliance with the
9 requirements of this article by a retail seller. The Energy
10 Commission has exclusive authority to assess penalties upon a
11 local publicly owned electric utility for a failure to comply with
12 this article.*

13 ~~(2) If Division 25.5 (commencing with Section 38500) of the
14 Health and Safety Code is suspended or repealed, the State Air
15 Resources Board may take action to enforce this article on local
16 publicly owned electric utilities consistent with Section 41513 of
17 the Health and Safety Code, and impose penalties on a local
18 publicly owned electric utility consistent with Article 3
19 (commencing with Section 42400) of Chapter 4 of Part 4 of, and
20 Chapter 1.5 (commencing with Section 43025) of Part 5 of,
21 Division 26 of the Health and Safety Code.~~

22 ~~(3) For the purpose of this subdivision, this section is an
23 emissions reduction measure pursuant to Section 38580 of the
24 Health and Safety Code.~~

25 ~~(4) If the State Air Resources Board has imposed a penalty upon
26 a local publicly owned electric utility for the utility's failure to
27 comply with this article, the State Air Resources Board shall not
28 impose an additional penalty for the same infraction, or the same
29 failure to comply, with any renewables procurement requirement
30 imposed upon the utility pursuant to the California Global Warming
31 Solutions Act of 2006 (Division 25.5 (commencing with Section
32 38500) of the Health and Safety Code).~~

33 *(2) A local publicly owned electric utility that violates any order,
34 rule, or regulation of the Energy Commission issued or adopted
35 pursuant to this article, may be assessed a civil penalty in
36 accordance with the procedures described in Section 25534.1 of
37 the Public Resources Code. In lieu of the penalty structure set
38 forth in Section 25534 of the Public Resources Code, the Energy
39 Commission shall establish the penalty structure by regulation,
40 which shall consider, in addition to other relevant factors, the*

1 *penalty structure adopted by the commission for noncompliance*
2 *by retail sellers.*

3 (3) *Any order of the Energy Commission that imposes penalties*
4 *pursuant to this section shall be subject to judicial review and*
5 *enforcement as specified in subdivisions (a) and (b) of Section*
6 *25534.2 of the Public Resources Code.*

7 ~~(5)~~

8 (4) *Any civil penalties collected by the ~~State Air Resources~~*
9 *~~Board~~ Energy Commission from a local publicly owned electric*
10 *utility pursuant to this ~~article~~ section shall be deposited in the ~~Air~~*
11 *~~Pollution Control Fund~~ Energy Resources Programs Account and,*
12 *upon appropriation by the Legislature, shall be expended for*
13 *reducing emissions of air pollution or greenhouse gases within the*
14 *same geographic area as the local publicly owned electric utility*
15 *the purposes of meeting the goals of this article. Those penalty*
16 *revenues may be used by the Energy Commission for the*
17 *administration of this article.*

18 (p) *The commission has no authority or jurisdiction to enforce*
19 *any of the requirements of this article on a local publicly owned*
20 *electric utility.*

21 *SEC. 2. Section 1.5 of this bill incorporates amendments to*
22 *Section 399.30 of the Public Utilities Code proposed by both this*
23 *bill and Senate Bill 23. It shall only become operative if (1) both*
24 *bills are enacted and become effective on or before January 1,*
25 *2012, (2) each bill amends Section 399.30 of the Public Utilities*
26 *Code, and (3) this bill is enacted after Senate Bill 23, in which*
27 *case Section 1 of this bill shall not become operative.*