

AMENDED IN SENATE JUNE 26, 2012  
AMENDED IN ASSEMBLY MAY 25, 2012  
AMENDED IN ASSEMBLY MAY 10, 2012  
AMENDED IN ASSEMBLY MAY 1, 2012  
AMENDED IN ASSEMBLY MARCH 29, 2012  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1990**

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**Introduced by Assembly Member Fong**

February 23, 2012

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An act to add Section 399.23 to the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1990, as amended, Fong. Renewable energy resources: small-scale renewable generation program.

Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, as defined, while local publicly owned electric utilities, as defined, are under the direction of their governing board. Existing law requires every electrical corporation to file with the commission a standard tariff for electricity generated by an electric generation facility, as defined, that qualifies for the tariff, is owned and operated by a retail customer of the electrical corporation, and is located within the service territory of, and developed to sell electricity to, the electrical corporation. Existing law requires that, in order to qualify for the tariff, the electric generation facility: (1) have an effective capacity of not more than 3

megawatts, subject to the authority of the PUC to reduce this megawatt limitation, (2) be interconnected and operate in parallel with the electric transmission and distribution grid, (3) be strategically located and interconnected to the electric transmission system in a manner that optimizes the deliverability of electricity generated at the facility to load centers, and (4) meet the definition of an eligible renewable energy resource under the California Renewables Portfolio Standard Program. Existing decisions of the PUC implementing these requirements refer to these tariff requirements as a renewable feed-in tariff. Existing law requires a local publicly owned electric utility that sells electricity at retail to 75,000 or more customers to adopt and implement a tariff for electricity purchased from an electric generation facility meeting certain size, deliverability, and interconnection requirements and to consider certain factors.

This bill would establish the small-scale renewable generation program with the goal of installing 375 megawatts of electrical generating capacity from small-scale renewable generation facilities, as defined, in the state's most impacted and disadvantaged communities, as defined. The bill would require the PUC, in consultation with electrical corporations and interested stakeholders, to develop program elements for the program that are applicable to electrical corporations and that encourage the hiring of employees from the state's most impacted and disadvantaged communities. The bill would require each electrical corporation to file with the PUC a standard tariff for electricity purchased pursuant to a clean energy contract, as defined, with a small-scale renewable generation facility owner or operator. The bill would require the PUC to establish a schedule of standard tariff rates for electricity that electrical corporations are required to purchase through clean energy contracts with a small-scale renewable generation facility owner or operator. The bill requires each local publicly owned electric utility that sells electricity at retail to establish a schedule of standard tariff rates for electricity purchased through clean energy contracts from small-scale renewable generation facilities pursuant to a small-scale generation program for the utility. The bill would require the PUC to allocate procurement targets for each electrical corporation, and require the governing board of a local publicly owned electric utility to allocate procurement targets for the utility, in proportion to each utility's percentage share of the state's total peak demand measured in megawatts for the calendar year ending December 31, 2012. *The bill would authorize the commission to adjust the procurement target for*

*electrical corporations to account for demographic distribution of populations meeting the screening criteria for most impacted and disadvantaged communities.*

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

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime. Because the bill would impose various duties upon local publicly owned electric utilities, the bill 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 no reimbursement is required by this act for specified reasons.

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. It is the intent of the Legislature to support  
2 small-scale local clean energy in communities throughout the state  
3 in order to increase green jobs and businesses that benefit the  
4 communities where electrical utility customers live, especially in  
5 the most impacted and disadvantaged communities with high  
6 unemployment that bear a disproportionate burden from air  
7 pollution, disease, and other impacts from the generation of  
8 electricity from the burning of fossil fuels.

9 SEC. 2 Section 399.23 is added to the Public Utilities Code,  
10 to read:

11 399.23. (a) It is the goal of this state and the intent of the  
12 Legislature to install, by December 31, 2020, 375 megawatts of  
13 electrical generation capacity from small-scale renewable  
14 generation facilities in the state's most impacted and disadvantaged  
15 communities with high unemployment, supported by a program  
16 that provides carefully calibrated payments for the electricity  
17 generated and that are designed to benefit the state's most impacted  
18 and disadvantaged communities.

1 (b) *The Legislature finds and declares both of the following:*

2 (1) *Building small-scale renewable generation facilities in areas*  
 3 *with high unemployment and high levels of air pollutants is*  
 4 *beneficial to the public health and welfare and provides benefits*  
 5 *to the electrical grid.*

6 (2) *The Federal Energy Regulatory Commission in its Order*  
 7 *Denying Rehearing (Jan. 20, 2011) 134 FERC paragraph 61,044,*  
 8 *at pages 15 and 18-19, inclusive, in California Public Utilities*  
 9 *Commission, et al., Docket Nos. EL10-64-002 and EL10-66-002,*  
 10 *affirmed that “where a state requires a utility to procure energy*  
 11 *from generators with certain characteristics, generators with those*  
 12 *characteristics appropriately constitute the sources that are*  
 13 *relevant to the determination of the utility’s avoided cost for that*  
 14 *procurement requirement.”*

15 ~~(b)~~

16 (c) *For purposes of this section, the following terms have the*  
 17 *following meanings:*

18 (1) *“Clean energy contract” means a standard offer long-term*  
 19 *contract through which an electrical corporation or local publicly*  
 20 *owned electric utility is required to purchase electricity generated*  
 21 *by a small-scale renewable generation facility according to a*  
 22 *preestablished price schedule when the requirements of this section*  
 23 *are met.*

24 (2) *“Most impacted and disadvantaged communities” means*  
 25 *census tracts that are identified as being within the top 20 percent*  
 26 *of results from the regional cumulative impact screening*  
 27 *methodology using the environmental justice screening method*  
 28 *metrics developed by Professors James L. Sadd, Manuel Pastor,*  
 29 *Rachel Morello-Frosch, Justin Scoggins, and Bill Jesdale (Vol. 8,*  
 30 *International Journal of Environmental Research and Public Health*  
 31 *(May 2011), Playing It Safe: Assessing Cumulative Impact and*  
 32 *Social Vulnerability through an Environmental Justice Screening*  
 33 *Method in the South Coast Air Basin, California, pages 1441 to*  
 34 *1459, inclusive), including health risk and exposure from*  
 35 *environmental hazards, socioeconomic vulnerability, climate*  
 36 *vulnerability, and proximity of sensitive land uses. The commission,*  
 37 *in consultation with the State Air Resources Board, may modify*  
 38 *the environmental justice screening metrics and develop rules for*  
 39 *determining the most impacted and disadvantaged communities.*

1 (3) “Program” means the procurement requirements for  
2 electricity purchased through clean energy contracts generated  
3 by small-scale renewable generation facilities that provide the  
4 benefits specified in paragraph (1) of subdivision (c).

5 (4) “Ratepayer indifference” means that ratepayers should not  
6 be subject to increased rates or reduced service as the result of  
7 the program. The Legislature finds and declares that ratepayers  
8 will be made indifferent to the program if the price paid for  
9 electricity generated by small-scale renewable generation facilities  
10 complies with the avoid cost methodology for qualifying facilities  
11 developed by the Federal Energy Regulatory Commission in  
12 implementing Section 210 of the Public Utility Regulatory Policies  
13 Act of 1978 (16 U.S.C. Sec. 824a-3).

14 (5) “Renewable feed-in tariff” means the tariff approved by the  
15 commission for an electrical corporation pursuant to Section  
16 399.20 or a tariff approved by the governing board for a local  
17 publicly owned electric utility pursuant to Section 387.6.

18 ~~(3)~~

19 (6) “Small-scale renewable generation facility” means an  
20 electrical generation facility, located within the service territory  
21 of, and developed to sell electricity to, an electrical corporation or  
22 local publicly owned electric utility, that meets all of the following  
23 requirements:

24 (A) Has a rated capacity of not more than 500 kilowatts.

25 (B) Is interconnected and operates in parallel with the electrical  
26 distribution grid.

27 (C) Is interconnected to the electrical distribution grid in a  
28 manner that optimizes the deliverability of electricity generated  
29 at the facility to load centers.

30 (D) Is an eligible renewable energy resource.

31 ~~(e)~~

32 (d) (1) The commission, in consultation with electrical  
33 corporations and interested stakeholders shall develop program  
34 elements for the small-scale renewable generation program  
35 applicable to electrical corporations, including eligibility criteria  
36 and payment rates for clean energy contracts with small-scale  
37 renewable generation facilities to be located in, and that encourage  
38 the hiring of employees from, the state’s most impacted and  
39 disadvantaged communities.

1 (2) The commission shall allocate procurement targets for each  
2 electrical corporation with the goal of procuring 375 megawatts  
3 of electrical generating capacity from small-scale renewable  
4 generation facilities statewide by December 31, 2020. The targets  
5 shall be allocated in proportion to each electrical corporation's  
6 percentage share of the state's total peak demand, measured in  
7 megawatts, for the calendar year ending December 31, 2012, *but*  
8 *may be adjusted by the commission to account for demographic*  
9 *distribution of populations meeting the screening criteria for most*  
10 *impacted and disadvantaged communities.*

11 (3) (A) The commission shall establish a schedule of standard  
12 tariff rates for electricity that electrical corporations are required  
13 to purchase through clean energy contracts with a small-scale  
14 renewable generation facility owner or operator. The tariff payment  
15 rates shall be sufficient to stimulate ~~the~~ market *demand* for a  
16 diverse portfolio of project sizes and to achieve the targets and  
17 specified benefits of the program, while maintaining ratepayer  
18 indifference for the program as a whole. ~~Tariff~~

19 (B) *Tariff* rates may be adjusted to account for the availability  
20 of tax credits or other subsidies to owners of small-scale renewable  
21 electric generation facilities, to the extent necessary to ensure  
22 achievement of the benefits of this program.

23 (C) *The commission may use the same pricing methodology for*  
24 *the small-scale renewable generation program as adopted for the*  
25 *renewable feed-in tariff program implemented pursuant to Section*  
26 *399.20, if the commission finds that employing that pricing*  
27 *methodology meets the requirements of this section.*

28 (4) The commission shall establish an annual cost limitation for  
29 the small-scale renewable generation program, which shall not  
30 exceed 0.375 percent of the total cost of each electrical  
31 corporation's forecast retail sales in the calendar year ending  
32 December 31, 2020. The commission shall endeavor to design the  
33 program so that the program goals can reasonably be expected to  
34 be met within the cost containment limitation.

35 (5) Clean energy contracts shall be for a period of 20 or more  
36 years, as authorized by the commission. It is the intent of the  
37 Legislature that long-term contracts be used to lower the average  
38 cost per kilowatthour for small-scale renewable electric generation  
39 facilities.

1 (6) The commission may modify or adjust the requirements of  
2 this section for any electrical corporation with less than 100,000  
3 service connections, as individual circumstances merit.

4 (7) Every electrical corporation shall file with the commission  
5 a standard tariff for electricity purchased pursuant to a clean energy  
6 contract with a small-scale renewable generation facility owner  
7 or operator. The tariff shall provide for payment for every  
8 kilowatthour of electricity purchased from a small-scale renewable  
9 generation facility pursuant to the clean energy contract.

10 (8) Not later than January 31, 2013, the commission shall open  
11 a proceeding or expand the scope of an existing proceeding in  
12 order to accomplish the requirements of this subdivision and shall  
13 ensure that electrical corporations begin offering clean energy  
14 contracts pursuant to the program by ~~January~~ August 1, 2014.

15 ~~(d)~~

16 (e) (1) Each local publicly owned electric utility that sells  
17 electricity at retail shall establish a schedule of standard tariff rates  
18 for electricity purchased through clean energy contracts from  
19 small-scale renewable generation facilities pursuant to a small-scale  
20 generation program for the utility. The schedule of tariff rates shall  
21 provide for payment for every kilowatthour of electricity purchased  
22 from a small-scale renewable generation facility.

23 (2) Clean energy contracts shall be for a period of 20 or more  
24 years, as authorized by the local publicly owned electric utility. It  
25 is the intent of the Legislature that long-term contracts be used to  
26 lower the average cost per kilowatthour for small-scale renewable  
27 electric generation facilities. *The local publicly owned electric*  
28 *utility shall endeavor to make the contract short and*  
29 *understandable to program participants, and the terms and*  
30 *conditions of the contract should support efficiency implementation*  
31 *of the program goals.*

32 (3) (A) The tariff payment rates shall be sufficient to stimulate  
33 ~~the~~ market *demand* for a diverse portfolio of project sizes and to  
34 achieve the targets and specified benefits of the program, while  
35 maintaining ratepayer indifference for the program as a whole.

36 ~~Tariff~~

37 (B) *Tariff* rates may be adjusted to account for the availability  
38 of tax credits or other subsidies to owners of small-scale renewable  
39 electric generation facilities, to the extent necessary to ensure  
40 achievement of the benefits of this program.

1 (4) Each local publicly owned electric utility shall establish an  
 2 expedited interconnection procedure for small-scale renewable  
 3 generation facilities.

4 (5) Each local publicly owned electric utility shall begin to offer  
 5 clean energy contracts pursuant to its small-scale renewable  
 6 generation program by January 1, 2014.

7 (6) Each local publicly owned electric utility shall establish a  
 8 procurement target for the utility with the goal of procuring 375  
 9 megawatts of electrical generating capacity from small-scale  
 10 renewable generation facilities statewide by December 31, 2020,  
 11 to be allocated in proportion to each utility’s percentage share of  
 12 the state’s total peak demand measured in megawatts for the  
 13 calendar year ending December 31, 2012.

14 (7) ~~The Notwithstanding any other provision of this section, the~~  
 15 governing board of a publicly owned electric utility with fewer  
 16 than 75,000 service connections may modify or adjust the  
 17 requirements of this section to account for demographic distribution  
 18 of population meeting the environmental justice screening method,  
 19 or as individual circumstances merit. ~~For these purposes,~~  
 20 ~~“environmental justice screening methodology” means the~~  
 21 ~~environmental justice screening method metrics developed by~~  
 22 ~~Professors James L. Sadd, Manuel Pastor, Rachel Morello-Frosch,~~  
 23 ~~Justin Scoggins, and Bill Jesdale (Vol. 8, International Journal of~~  
 24 ~~Environmental Research and Public Health (May 2011), Playing~~  
 25 ~~It Safe: Assessing Cumulative Impact and Social Vulnerability~~  
 26 ~~through an Environmental Justice Screening Method in the South~~  
 27 ~~Coast Air Basin, California, pages 1441 to 1459).~~

28 (8) The governing board of a publicly owned electric utility  
 29 with 75,000 or more service connections shall ensure that the  
 30 requirements of this section are met.

31 (9) *Each local publicly owned electric utility shall establish an*  
 32 *annual cost limitation for the small-scale renewable generation*  
 33 *program, which shall not exceed 0.375 percent of the total cost of*  
 34 *each local publicly owned electric utility’s forecast retail sales in*  
 35 *the calendar year ending December 31, 2020. The local publicly*  
 36 *owned electric utility shall endeavor to design the program so that*  
 37 *the program goals can reasonably be expected to be met within*  
 38 *the cost containment limitation.*

39 (10) *A local publicly owned electric utility that adopts and*  
 40 *implements a renewable feed-in tariff for which small-scale*

1 *renewable generation facilities are eligible, where the total*  
2 *capacity allocation for that tariff exceeds the utility's combined*  
3 *share for the small-scale renewable generation program when*  
4 *added to the utility's proportionate share of the statewide limitation*  
5 *for renewable feed-in tariffs, shall allocate a portion of the utility's*  
6 *renewable feed-in tariff to the small-scale renewable generation*  
7 *program equal to the lesser of either of the following:*

8 (A) *The local publicly owned electric utility's percentage share*  
9 *of the state's peak demand measured in megawatts for the calendar*  
10 *year ending December 31, 2012, multiplied by 375 megawatts.*

11 (B) *The generating capacity that remains available after*  
12 *subtracting the generating capacity of the electric generation*  
13 *facilities receiving service pursuant to the utility's renewable*  
14 *feed-in tariff as of January 31, 2013, from the utility's*  
15 *proportionate share of the statewide limitation of 750 megawatts*  
16 *cumulative rated generating capacity required to be made available*  
17 *for service pursuant to the renewable feed-in tariff program.*

18 ~~(e)~~

19 (f) *The program shall be implemented at a regular annual pace*  
20 *over a period of six years, with goals of providing program stability*  
21 *and minimizing ratepayer impacts.* Each electrical corporation and  
22 local publicly owned electric utility shall make the clean energy  
23 contract tariff available to the owner or operator of a small-scale  
24 renewable generation facility until the utility reaches that portion  
25 of the 375 megawatts of electrical generation capacity allocated  
26 to it by the commission pursuant to paragraph (2) of subdivision  
27 (c).

28 ~~(f)~~

29 (g) *Within 10 days of receipt of a request for a clean energy*  
30 *contract pursuant to this section from an owner or operator of a*  
31 *small-scale renewable generation facility, the electrical corporation*  
32 *or local publicly owned electric utility receiving the request shall*  
33 *post a copy of the request on its Internet Web site. The information*  
34 *posted on the Internet Web site shall include the name of the city*  
35 *in which the facility is located, but information that is proprietary*  
36 *and confidential, including the address information beyond the*  
37 *name of the city in which the facility is located, shall be redacted.*

38 ~~(g)~~

1 (h) (1) An electrical corporation or local publicly owned electric  
2 utility may deny a request for a clean energy contract pursuant to  
3 this section if the utility determines any of the following to be true:

4 ~~(A) The generation facility does not meet the requirements of~~  
5 ~~this section.~~

6 ~~(B)~~

7 (A) The distribution grid that would serve as the point of  
8 interconnection is inadequate.

9 ~~(C)~~

10 (B) The small-scale renewable generation facility does not meet  
11 all applicable state and local laws and building standards, and  
12 utility interconnection requirements.

13 ~~(D)~~

14 (C) The aggregate of all small-scale renewable generating  
15 facilities on a distribution circuit would adversely impact utility  
16 operation and load restoration efforts of the distribution system.

17 (2) (A) *Prior to denying a request for a clean energy contract*  
18 *pursuant to this section, an electrical corporation or local publicly*  
19 *owned electric utility shall make a good faith effort to offer the*  
20 *owner or operator of the electric generation facility an opportunity*  
21 *to avoid denial by recommending specific and reasonable actions*  
22 *or project design modifications that, if performed properly, will*  
23 *lead to approval of the clean energy contract pursuant to this*  
24 *section.*

25 ~~(2) (A)~~

26 (B) Upon receiving a notice of denial from an electrical  
27 corporation, the owner or operator of the electric generation facility  
28 denied a clean energy contract shall have the right to appeal that  
29 decision to the commission.

30 ~~(B)~~

31 (C) Upon receiving a notice of denial from a local publicly  
32 owned electric utility, the owner or operator of the small-scale  
33 renewable generation facility denied a clean energy contract shall  
34 have the right to appeal that decision to the governing board of the  
35 local publicly owned electric utility.

36 (3) In order to ensure the safety and reliability of small-scale  
37 renewable generation facilities, the owner of a facility *larger than*  
38 *100 kilowatts rated generating capacity* receiving a clean energy  
39 contract pursuant to this section shall provide an inspection and  
40 maintenance report to the electrical corporation or local publicly

1 owned electric utility at least once every ~~other year~~ *five years*. The  
2 inspection and maintenance report shall be prepared at the expense  
3 of the owner or operator by a California-licensed contractor who  
4 is not the owner or operator of the small-scale renewable generation  
5 facility. A California-licensed electrician shall perform the  
6 inspection of the electrical portion of the facility.

7 (4) The clean energy contract between the owner or operator of  
8 a small-scale renewable generation facility and the electrical  
9 corporation or local publicly owned electric utility shall contain  
10 provisions that ensure that construction of the facility complies  
11 with all applicable state and local laws and building standards, and  
12 utility interconnection requirements.

13 ~~(h)~~

14 (i) (1) All construction and installation of facilities of the  
15 electrical corporation or local publicly owned electric utility,  
16 including at the point of the output meter or at the transmission or  
17 distribution grid, shall only be performed by that utility.

18 (2) All interconnection facilities installed on the utility's side  
19 of the transfer point for electricity between the electrical  
20 corporation or local publicly owned electric utility and the electrical  
21 conductors of the small-scale renewable generation facility shall  
22 be owned, operated, and maintained only by the utility. The  
23 ownership, installation, operation, reading, and testing of revenue  
24 metering equipment for electric generating facilities shall only be  
25 performed by the utility.

26 ~~(i)~~

27 (j) The commission shall require electrical corporations to ensure  
28 expedited interconnection of small-scale renewable generation  
29 facilities.

30 ~~(j)~~

31 (k) Every kilowatthour of electricity purchased by an electrical  
32 corporation or local publicly owned electric utility from a  
33 small-scale renewable generation facility through a clean energy  
34 contract shall count toward meeting that utility's procurement  
35 requirements for electricity products meeting the first priority  
36 portfolio content category requirements of paragraph (1) of  
37 subdivision (b) of Section 399.16, but shall not count toward the  
38 procurement requirements of subdivision (e) of Section 387.6 or  
39 subdivision (f) of Section 399.20.

40 ~~(k)~~

1 (l) Each electrical corporation and local publicly owned electric  
2 utility shall post updated information on the program on its Internet  
3 Web site, that includes all of the following:

4 (1) Maps *and geographical information systems (GIS) data*  
5 showing where small-scale renewable electric generation facilities  
6 may best be located on the distribution grid.

7 (2) Current tariffs and available capacity in the program.

8 (3) Local employment and economic development opportunities  
9 provided by the program.

10 (4) Annual reports on the program that show capacity of and  
11 energy generated by each renewable energy technology installed,  
12 progress on meeting program targets, and any recommendations  
13 for modifications to the program that would help to meet the  
14 program goals.

15 (5) *Up-to-date information about the locations and status of*  
16 *applications, including project size, ZIP Code, and census tract.*

17 ~~(t)~~

18 (m) The commission and local publicly owned electric utilities  
19 shall evaluate ways to integrate the small-scale renewable  
20 generation program with energy efficiency and other demand-side  
21 programs, and shall implement measures that will optimize the  
22 benefits and reduce the costs of the programs.

23 ~~(m)~~

24 (n) The commission and local publicly owned electric utilities  
25 shall evaluate contract structures, loan guarantees, arrangements  
26 with financial institutions, community bulk purchase agreements,  
27 and other potential program elements, and shall implement  
28 measures that will reduce the cost and ensure the benefits of the  
29 small-scale renewable generation program.

30 SEC. 3. No reimbursement is required by this act pursuant to  
31 Section 6 of Article XIII B of the California Constitution because  
32 a local agency or school district has the authority to levy service  
33 charges, fees, or assessments sufficient to pay for the program or  
34 level of service mandated by this act or because costs that may be  
35 incurred by a local agency or school district will be incurred  
36 because this act creates a new crime or infraction, eliminates a  
37 crime or infraction, or changes the penalty for a crime or infraction,  
38 within the meaning of Section 17556 of the Government Code, or

- 1 changes the definition of a crime within the meaning of Section 6
- 2 of Article XIII B of the California Constitution.

O