

AMENDED IN ASSEMBLY APRIL 22, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 793**

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**Introduced by Assembly Member Gray**

February 21, 2013

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

### LEGISLATIVE COUNSEL'S DIGEST

AB 793, as amended, Gray. Renewable energy: publicly owned electric utility: hydroelectric generation facility.

The California Renewables Portfolio Standard Program, referred to as the RPS program, requires a retail seller of electricity, as defined, and local publicly owned electric utilities to purchase specified minimum quantities of electricity products from eligible renewable energy resources, as defined, for specified compliance periods, sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 20% of retail sales for the period from January 1, 2011, to December 31, 2013, inclusive, 25% of retail sales by December 31, 2016, and 33% of retail sales by December 31, 2020, and in all subsequent years. The RPS program, consistent with the goals of procuring the least-cost and best-fit eligible renewable energy resources that meet project viability principles, requires that all retail sellers procure a balanced portfolio of electricity products from eligible renewable energy resources, as specified, referred to as portfolio content requirements.

This bill would require a local publicly owned electric utility that receives 50% or greater of its consumption load demand from hydroelectric generation meeting specified requirements and other renewable energy resources to procure eligible renewable energy resources, including renewable energy credits, to meet only the electricity demands unsatisfied by its hydroelectric generation in any given year to satisfy its portfolio content requirements.

Vote: majority. Appropriation: no. Fiscal committee: no.  
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 is  
2 amended to read:  
3 399.30. (a) To fulfill unmet long-term generation resource  
4 needs, each local publicly owned electric utility shall adopt and  
5 implement a renewable energy resources procurement plan that  
6 requires the utility to procure a minimum quantity of electricity  
7 products from eligible renewable energy resources, including  
8 renewable energy credits, as a specified percentage of total  
9 kilowatthours sold to the utility's retail end-use customers, each  
10 compliance period, to achieve the targets of subdivision (c).  
11 (b) The governing board shall implement procurement targets  
12 for a local publicly owned electric utility that require the utility to  
13 procure a minimum quantity of eligible renewable energy resources  
14 for each of the following compliance periods:  
15 (1) January 1, 2011, to December 31, 2013, inclusive.  
16 (2) January 1, 2014, to December 31, 2016, inclusive.  
17 (3) January 1, 2017, to December 31, 2020, inclusive.  
18 (c) The governing board of a local publicly owned electric utility  
19 shall ensure all of the following:  
20 (1) The quantities of eligible renewable energy resources to be  
21 procured for the compliance period from January 1, 2011, to  
22 December 31, 2013, inclusive, are equal to an average of 20 percent  
23 of retail sales.  
24 (2) The quantities of eligible renewable energy resources to be  
25 procured for all other compliance periods reflect reasonable  
26 progress in each of the intervening years sufficient to ensure that  
27 the procurement of electricity products from eligible renewable  
28 energy resources achieves 25 percent of retail sales by December

1 31, 2016, and 33 percent of retail sales by December 31, 2020.  
2 The local governing board shall require the local publicly owned  
3 electric utilities to procure not less than 33 percent of retail sales  
4 of electricity products from eligible renewable energy resources  
5 in all subsequent years.

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

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

10 (1) Rules permitting the utility to apply excess procurement in  
11 one compliance period to subsequent compliance periods in the  
12 same manner as allowed for retail sellers pursuant to Section  
13 399.13.

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

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

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

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

32 (2) Contemporaneous with the posting of the notice of a public  
33 meeting to consider the renewable energy resources procurement  
34 plan, the local publicly owned electric utility shall notify the  
35 Energy Commission of the date, time, and location of the meeting  
36 in order to enable the Energy Commission to post the information  
37 on its Internet Web site. This requirement is satisfied if the local  
38 publicly owned electric utility provides the uniform resource  
39 locator (URL) that links to this information.

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

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

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

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

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

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

(i) Notwithstanding subdivision (a), for a local publicly owned electric utility that is a joint powers authority of districts established pursuant to state law on or before January 1, 2005, that furnish electric services other than to residential customers, and is formed pursuant to the Irrigation District Law (Division 11 (commencing with Section 20500) of the Water Code), the percentage of total

1 kilowatthours sold to the district's retail end-use customers, upon  
2 which the renewables portfolio standard procurement requirements  
3 in subdivision (b) are calculated, shall be based on the authority's  
4 average retail sales over the previous seven years. If the authority  
5 has not furnished electric service for seven years, then the  
6 calculation shall be based on average retail sales over the number  
7 of completed years during which the authority has provided electric  
8 service.

9 (j) A local publicly owned electric utility in a city and county  
10 that only receives greater than 67 percent of its electricity sources  
11 from hydroelectric generation located within the state that it owns  
12 and operates, and that does not meet the definition of a "renewable  
13 electrical generation facility" pursuant to Section 25741 of the  
14 Public Resources Code, shall be required to procure eligible  
15 renewable energy resources, including renewable energy credits,  
16 to meet only the electricity demands unsatisfied by its hydroelectric  
17 generation in any given year, in order to satisfy its renewable  
18 energy procurement requirements.

19 (k) (1) A local publicly owned electric utility that receives 50  
20 percent or greater of its consumption load demand from  
21 hydroelectric generation and other renewable energy resources  
22 shall be required to procure eligible renewable energy resources,  
23 including renewable energy credits, to meet only the electricity  
24 demands unsatisfied by its hydroelectric generation in any given  
25 year to satisfy its renewable energy procurement requirements.

26 (2) For the purposes of this subdivision, "hydroelectric  
27 generation facility" means a hydroelectric facility satisfying all of  
28 the following:

29 (A) Is owned solely and operated by the local publicly owned  
30 electric utility as of 1967.

31 (B) Has a distribution system demand of less than 150  
32 megawatts.

33 (C) Involves a contract in which an electrical corporation  
34 receives the benefit of the electric generation through June of 2014,  
35 at which time the benefit reverts back to the ownership and control  
36 of the local publicly owned electric utility.

37 (D) Has a maximum penstock flow capacity of no more than  
38 3,000 cubic feet per second and includes a regulating reservoir  
39 with a small hydroelectric generation facility producing fewer than

1 20 megawatts with a maximum penstock flow capacity of no more  
2 than 2,700 cubic feet per second.

3 (3) *This subdivision does not reduce or eliminate any renewable*  
4 *procurement requirement for any compliance period ending prior*  
5 *to January 1, 2014.*

6 (l) A local publicly owned electric utility shall retain discretion  
7 over both of the following:

8 (1) The mix of eligible renewable energy resources procured  
9 by the utility and those additional generation resources procured  
10 by the utility for purposes of ensuring resource adequacy and  
11 reliability.

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

14 (m) On or before July 1, 2011, the Energy Commission shall  
15 adopt regulations specifying procedures for enforcement of this  
16 article. The regulations shall include a public process under which  
17 the Energy Commission may issue a notice of violation and  
18 correction against a local publicly owned electric utility for failure  
19 to comply with this article, and for referral of violations to the  
20 State Air Resources Board for penalties pursuant to subdivision  
21 (o).

22 (n) (1) Upon a determination by the Energy Commission that  
23 a local publicly owned electric utility has failed to comply with  
24 this article, the Energy Commission shall refer the failure to comply  
25 with this article to the State Air Resources Board, which may  
26 impose penalties to enforce this article consistent with Part 6  
27 (commencing with Section 38580) of Division 25.5 of the Health  
28 and Safety Code. Any penalties imposed shall be comparable to  
29 those adopted by the commission for noncompliance by retail  
30 sellers.

31 (2) If Division 25.5 (commencing with Section 38500) of the  
32 Health and Safety Code is suspended or repealed, the State Air  
33 Resources Board may take action to enforce this article on local  
34 publicly owned electric utilities consistent with Section 41513 of  
35 the Health and Safety Code, and impose penalties on a local  
36 publicly owned electric utility consistent with Article 3  
37 (commencing with Section 42400) of Chapter 4 of Part 4 of, and  
38 Chapter 1.5 (commencing with Section 43025) of Part 5 of,  
39 Division 26 of the Health and Safety Code.

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

4 (4) If the State Air Resources Board has imposed a penalty upon  
5 a local publicly owned electric utility for the utility's failure to  
6 comply with this article, the State Air Resources Board shall not  
7 impose an additional penalty for the same infraction, or the same  
8 failure to comply, with any renewables procurement requirement  
9 imposed upon the utility pursuant to the California Global Warming  
10 Solutions Act of 2006 (Division 25.5 (commencing with Section  
11 38500) of the Health and Safety Code).

12 (5) Any penalties collected by the State Air Resources Board  
13 pursuant to this article shall be deposited in the Air Pollution  
14 Control Fund and, upon appropriation by the Legislature, shall be  
15 expended for reducing emissions of air pollution or greenhouse  
16 gases within the same geographic area as the local publicly owned  
17 electric utility.

18 (o) 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.