

AMENDED IN ASSEMBLY APRIL 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2363**

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**Introduced by Assembly Member ~~Quirk Dahle~~**  
**(Principal coauthor: Assembly Member Alejo)**  
**(Coauthors: Assembly Members Bradford, Jones, and Patterson)**

February 21, 2014

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~~An act to add Section 38575 to the Health and Safety Code, relating to greenhouse gases. An act to amend Sections 399.13, 399.15, and 454.5 of the Public Utilities Code, relating to energy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2363, as amended, ~~Quirk Dahle~~. ~~Greenhouse gases: offsets. Electricity procurement.~~

*(1) Under existing law, the Public Utilities Commission 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. The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission with respect to the purchase of electricity and requires the commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program.*

*The Public Utilities Act requires the Public Utilities Commission to review and adopt an overall procurement plan for each electrical corporation to meet electricity demand for its customers in accordance with specified elements, incentive mechanisms, and objectives. The act requires the Public Utilities Commission to review and accept, modify,*

*or reject each electrical corporation's procurement plan and requires that each approved procurement plan accomplish specified objectives.*

*This bill would require the Public Utilities Commission to direct electrical corporations to include in their proposed procurement plans the use of any nonzero integration cost adders, as specified.*

*(2) The California Renewables Portfolio Standard Program requires a retail seller, 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. The 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 the portfolio content requirements. The program requires the commission to adopt, by rulemaking, a process that provides criteria for the rank ordering and selecting of least-cost and best-fit eligible renewable energy resources to comply with the program obligations on a total cost basis, taking into account specified matter. Existing law authorizes the commission to require a retail seller to procure eligible renewable energy resources in excess of the specified minimum quantities of electricity products of the renewables portfolio standard.*

*This bill additionally would require the commission to adopt, by rulemaking, by October 1, 2015, a nonzero integration cost adder methodology that reflects a reasonable estimate of the costs of procuring capacity and energy required to accommodate the electrical generation of the particular eligible renewable energy resource. The bill would require the commission to consider the nonzero integration cost adder methodology prior to approving any procurement of eligible renewable energy resources by a retail seller that is in excess of the specified minimum quantities of electricity products required to be purchased pursuant to the renewables portfolio standard.*

~~The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum, technologically feasible, and cost-effective greenhouse gas emission reductions. The~~

~~act authorizes the state board to include the use of market-based compliance mechanisms.~~

~~This bill would require the state board to adopt regulations providing for the generation of offset credits that may be used, sold, or traded pursuant to a market-based compliance mechanism that the state board may adopt for forest management activities performed for the purpose of reducing the risk of severe wildfires and activities involving the application of biochar, as defined, to soil.~~

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. *The Legislature finds and declares all of the*  
2 *following:*

3     (a) *California is leading the world in adopting comprehensive*  
4 *programs that reduce emissions of greenhouse gases, including*  
5 *passage of the California Global Warming Solutions Act of 2006*  
6 *(Division 25.5 (commencing with Section 38500) of the Health*  
7 *and Safety Code) and the California Renewables Portfolio*  
8 *Standard Program (Article 16 (commencing with Section 399.11)*  
9 *of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code).*

10    (b) *The state has an abundant supply of renewable energy*  
11 *resources, including geothermal, biomass, biomethane, wind, and*  
12 *solar, that have contributed to the state's ability to reduce its*  
13 *emissions of greenhouse gases and meet its renewables portfolio*  
14 *standard procurement targets.*

15    (c) *It is in the public's interest that the state continue to promote*  
16 *policies to ensure eligible renewable energy resources be procured*  
17 *and contributed to the state's ability to reduce its greenhouse gas*  
18 *emissions and meet the targets of the California Renewables*  
19 *Portfolio Standard Program (Article 16 (commencing with Section*  
20 *399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities*  
21 *Code).*

22    (d) *There are eligible renewable energy resources in the state*  
23 *that, if developed and retained, would not require additional*  
24 *capacity to maintain the reliability of the bulk electrical system*  
25 *and could generate during periods in which electricity is likely to*  
26 *be the most valuable, prospectively.*

1 (e) *Procuring and retaining a diversified portfolio of eligible*  
2 *renewable energy resources may do all of the following:*

3 (1) *Assist electrical corporations in satisfying renewable energy*  
4 *procurement and greenhouse gases emissions reductions goals in*  
5 *a cost-effective manner.*

6 (2) *Partially meet peak load requirements with electricity*  
7 *generated by eligible renewable energy resources, which will have*  
8 *substantial benefits from reduced emissions of greenhouse gases,*  
9 *and cobenefits from reduced emissions of criteria pollutants.*

10 (3) *Maintain the reliability of the electrical grid to meet demand*  
11 *for electricity on a 24-hour basis.*

12 (4) *Contribute to local employment and economic growth*  
13 *throughout the state.*

14 *SEC. 2. Section 399.13 of the Public Utilities Code is amended*  
15 *to read:*

16 399.13. (a) (1) The commission shall direct each electrical  
17 corporation to annually prepare a renewable energy procurement  
18 plan that includes the matter in paragraph (5), to satisfy its  
19 obligations under the renewables portfolio standard. To the extent  
20 feasible, this procurement plan shall be proposed, reviewed, and  
21 adopted by the commission as part of, and pursuant to, a general  
22 procurement plan process. The commission shall require each  
23 electrical corporation to review and update its renewable energy  
24 procurement plan as it determines to be necessary.

25 (2) Every electrical corporation that owns electrical transmission  
26 facilities shall annually prepare, as part of the Federal Energy  
27 Regulatory Commission Order 890 process, and submit to the  
28 commission, a report identifying any electrical transmission  
29 facility, upgrade, or enhancement that is reasonably necessary to  
30 achieve the renewables portfolio standard procurement  
31 requirements of this article. Each report shall look forward at least  
32 five years and, to ensure that adequate investments are made in a  
33 timely manner, shall include a preliminary schedule when an  
34 application for a certificate of public convenience and necessity  
35 will be made, pursuant to Chapter 5 (commencing with Section  
36 1001), for any electrical transmission facility identified as being  
37 reasonably necessary to achieve the renewable energy resources  
38 procurement requirements of this article. Each electrical  
39 corporation that owns electrical transmission facilities shall ensure

1 that project-specific interconnection studies are completed in a  
2 timely manner.

3 (3) The commission shall direct each retail seller to prepare and  
4 submit an annual compliance report that includes all of the  
5 following:

6 (A) The current status and progress made during the prior year  
7 toward procurement of eligible renewable energy resources as a  
8 percentage of retail sales, including, if applicable, the status of any  
9 necessary siting and permitting approvals from federal, state, and  
10 local agencies for those eligible renewable energy resources  
11 procured by the retail seller, and the current status of compliance  
12 with the portfolio content requirements of subdivision (c) of  
13 Section 399.16, including procurement of eligible renewable energy  
14 resources located outside the state and within the WECC and  
15 unbundled renewable energy credits.

16 (B) If the retail seller is an electrical corporation, the current  
17 status and progress made during the prior year toward construction  
18 of, and upgrades to, transmission and distribution facilities and  
19 other electrical system components it owns to interconnect eligible  
20 renewable energy resources and to supply the electricity generated  
21 by those resources to load, including the status of planning, siting,  
22 and permitting transmission facilities by federal, state, and local  
23 agencies.

24 (C) Recommendations to remove impediments to making  
25 progress toward achieving the renewable energy resources  
26 procurement requirements established pursuant to this article.

27 (4) The commission shall adopt, by rulemaking, all of the  
28 following:

29 (A) A process that provides criteria for the rank ordering and  
30 selection of least-cost and best-fit eligible renewable energy  
31 resources to comply with the California Renewables Portfolio  
32 Standard Program obligations on a total cost basis. This process  
33 shall take into account all of the following:

34 (i) Estimates of indirect costs associated with needed  
35 transmission investments and ongoing electrical corporation  
36 expenses resulting from integrating and operating eligible  
37 renewable energy resources.

38 (ii) The cost impact of procuring the eligible renewable energy  
39 resources on the electrical corporation's electricity portfolio.

1 (iii) The viability of the project to construct and reliably operate  
2 the eligible renewable energy resource, including the developer's  
3 experience, the feasibility of the technology used to generate  
4 electricity, and the risk that the facility will not be built, or that  
5 construction will be delayed, with the result that electricity will  
6 not be supplied as required by the contract.

7 (iv) Workforce recruitment, training, and retention efforts,  
8 including the employment growth associated with the construction  
9 and operation of eligible renewable energy resources and goals  
10 for recruitment and training of women, minorities, and disabled  
11 veterans.

12 (v) *A nonzero integration cost adder methodology, to be initially*  
13 *determined by the commission no later than October 1, 2015, that*  
14 *reflects a reasonable estimate of the costs of procuring capacity*  
15 *and energy required to accommodate the electrical generation of*  
16 *the particular eligible renewable energy resource.*

17 (B) Rules permitting retail sellers to accumulate, beginning  
18 January 1, 2011, excess procurement in one compliance period to  
19 be applied to any subsequent compliance period. The rules shall  
20 apply equally to all retail sellers. In determining the quantity of  
21 excess procurement for the applicable compliance period, the  
22 commission shall deduct from actual procurement quantities, the  
23 total amount of procurement associated with contracts of less than  
24 10 years in duration. In no event shall electricity products meeting  
25 the portfolio content of paragraph (3) of subdivision (b) of Section  
26 399.16 be counted as excess procurement.

27 (C) Standard terms and conditions to be used by all electrical  
28 corporations in contracting for eligible renewable energy resources,  
29 including performance requirements for renewable generators. A  
30 contract for the purchase of electricity generated by an eligible  
31 renewable energy resource, at a minimum, shall include the  
32 renewable energy credits associated with all electricity generation  
33 specified under the contract. The standard terms and conditions  
34 shall include the requirement that, no later than six months after  
35 the commission's approval of an electricity purchase agreement  
36 entered into pursuant to this article, the following information  
37 about the agreement shall be disclosed by the commission: party  
38 names, resource type, project location, and project capacity.

39 (D) An appropriate minimum margin of procurement above the  
40 minimum procurement level necessary to comply with the

1 renewables portfolio standard to mitigate the risk that renewable  
2 projects planned or under contract are delayed or canceled. This  
3 paragraph does not preclude an electrical corporation from  
4 voluntarily proposing a margin of procurement above the  
5 appropriate minimum margin established by the commission.

6 (5) Consistent with the goal of increasing California’s reliance  
7 on eligible renewable energy resources, the renewable energy  
8 procurement plan submitted by an electrical corporation shall  
9 include all of the following:

10 (A) An assessment of annual or multiyear portfolio supplies  
11 and demand to determine the optimal mix of eligible renewable  
12 energy resources with deliverability characteristics that may include  
13 peaking, dispatchable, baseload, firm, and as-available capacity.

14 (B) Potential compliance delays related to the conditions  
15 described in paragraph ~~(4)~~ (5) of subdivision (b) of Section 399.15.

16 (C) A bid solicitation setting forth the need for eligible  
17 renewable energy resources of each deliverability characteristic,  
18 required online dates, and locational preferences, if any.

19 (D) A status update on the development schedule of all eligible  
20 renewable energy resources currently under contract.

21 (E) Consideration of mechanisms for price adjustments  
22 associated with the costs of key components for eligible renewable  
23 energy resource projects with online dates more than 24 months  
24 after the date of contract execution.

25 (F) An assessment of the risk that an eligible renewable energy  
26 resource will not be built, or that construction will be delayed,  
27 with the result that electricity will not be delivered as required by  
28 the contract.

29 (6) In soliciting and procuring eligible renewable energy  
30 resources, each electrical corporation shall offer contracts of no  
31 less than 10 years duration, unless the commission approves of a  
32 contract of shorter duration.

33 (7) In soliciting and procuring eligible renewable energy  
34 resources for California-based projects, each electrical corporation  
35 shall give preference to renewable energy projects that provide  
36 environmental and economic benefits to communities afflicted  
37 with poverty or high unemployment, or that suffer from high  
38 emission levels of toxic air contaminants, criteria air pollutants,  
39 and greenhouse gases.

1 (b) A retail seller may enter into a combination of long- and  
2 short-term contracts for electricity and associated renewable energy  
3 credits. The commission may authorize a retail seller to enter into  
4 a contract of less than 10 years' duration with an eligible renewable  
5 energy resource, if the commission has established, for each retail  
6 seller, minimum quantities of eligible renewable energy resources  
7 to be procured through contracts of at least 10 years' duration.

8 (c) The commission shall review and accept, modify, or reject  
9 each electrical corporation's renewable energy resource  
10 procurement plan prior to the commencement of renewable energy  
11 procurement pursuant to this article by an electrical corporation.

12 (d) Unless previously preapproved by the commission, an  
13 electrical corporation shall submit a contract for the generation of  
14 an eligible renewable energy resource to the commission for review  
15 and approval consistent with an approved renewable energy  
16 resource procurement plan. If the commission determines that the  
17 bid prices are elevated due to a lack of effective competition among  
18 the bidders, the commission shall direct the electrical corporation  
19 to renegotiate the contracts or conduct a new solicitation.

20 (e) If an electrical corporation fails to comply with a commission  
21 order adopting a renewable energy resource procurement plan, the  
22 commission shall exercise its authority pursuant to Section 2113  
23 to require compliance. The commission shall enforce comparable  
24 penalties on any retail seller that is not an electrical corporation  
25 that fails to meet the procurement targets established pursuant to  
26 Section 399.15.

27 (f) (1) The commission may authorize a procurement entity to  
28 enter into contracts on behalf of customers of a retail seller for  
29 electricity products from eligible renewable energy resources to  
30 satisfy the retail seller's renewables portfolio standard procurement  
31 requirements. The commission shall not require any person or  
32 corporation to act as a procurement entity or require any party to  
33 purchase eligible renewable energy resources from a procurement  
34 entity.

35 (2) Subject to review and approval by the commission, the  
36 procurement entity shall be permitted to recover reasonable  
37 administrative and procurement costs through the retail rates of  
38 end-use customers that are served by the procurement entity and  
39 are directly benefiting from the procurement of eligible renewable  
40 energy resources.



1 (g) Procurement and administrative costs associated with  
2 contracts entered into by an electrical corporation for eligible  
3 renewable energy resources pursuant to this article and approved  
4 by the commission are reasonable and prudent and shall be  
5 recoverable in rates.

6 (h) Construction, alteration, demolition, installation, and repair  
7 work on an eligible renewable energy resource that receives  
8 production incentives pursuant to Section 25742 of the Public  
9 Resources Code, including work performed to qualify, receive, or  
10 maintain production incentives, are “public works” for the purposes  
11 of Chapter 1 (commencing with Section 1720) of Part 7 of Division  
12 2 of the Labor Code.

13 *SEC. 3. Section 399.15 of the Public Utilities Code is amended*  
14 *to read:*

15 399.15. (a) In order to fulfill unmet long-term resource needs,  
16 the commission shall establish a renewables portfolio standard  
17 requiring all retail sellers to procure a minimum quantity of  
18 electricity products from eligible renewable energy resources as  
19 a specified percentage of total kilowatthours sold to their retail  
20 end-use customers each compliance period to achieve the targets  
21 established under this article. For any retail seller procuring at least  
22 14 percent of retail sales from eligible renewable energy resources  
23 in 2010, the deficits associated with any previous renewables  
24 portfolio standard shall not be added to any procurement  
25 requirement pursuant to this article.

26 (b) The commission shall implement renewables portfolio  
27 standard procurement requirements only as follows:

28 (1) Each retail seller shall procure a minimum quantity of  
29 eligible renewable energy resources for each of the following  
30 compliance periods:

31 (A) January 1, 2011, to December 31, 2013, inclusive.

32 (B) January 1, 2014, to December 31, 2016, inclusive.

33 (C) January 1, 2017, to December 31, 2020, inclusive.

34 (2) (A) No later than January 1, 2012, the commission shall  
35 establish the quantity of electricity products from eligible  
36 renewable energy resources to be procured by the retail seller for  
37 each compliance period. These quantities shall be established in  
38 the same manner for all retail sellers and result in the same  
39 percentages used to establish compliance period quantities for all  
40 retail sellers.

1 (B) In establishing quantities for the compliance period from  
2 January 1, 2011, to December 31, 2013, inclusive, the commission  
3 shall require procurement for each retail seller equal to an average  
4 of 20 percent of retail sales. For the following compliance periods,  
5 the quantities shall reflect reasonable progress in each of the  
6 intervening years sufficient to ensure that the procurement of  
7 electricity products from eligible renewable energy resources  
8 achieves 25 percent of retail sales by December 31, 2016, and 33  
9 percent of retail sales by December 31, 2020. The commission  
10 shall require retail sellers to procure not less than 33 percent of  
11 retail sales of electricity products from eligible renewable energy  
12 resources in all subsequent years.

13 (C) Retail sellers shall be obligated to procure no less than the  
14 quantities associated with all intervening years by the end of each  
15 compliance period. Retail sellers shall not be required to  
16 demonstrate a specific quantity of procurement for any individual  
17 intervening year.

18 (3) The commission may require the procurement of eligible  
19 renewable energy resources in excess of the quantities specified  
20 in paragraph (2). *Prior to approving any procurement of eligible*  
21 *renewable energy resources that would be in excess of the*  
22 *quantities specified in paragraph (2), the commission shall*  
23 *consider the nonzero integrated cost adder methodology*  
24 *determined pursuant to clause (v) of subparagraph (A) of*  
25 *paragraph (4) of subdivision (a) of Section 399.13.*

26 (4) Only for purposes of establishing the renewables portfolio  
27 standard procurement requirements of paragraph (1) and  
28 determining the quantities pursuant to paragraph (2), the  
29 commission shall include all electricity sold to retail customers by  
30 the Department of Water Resources pursuant to Division 27  
31 (commencing with Section 80000) of the Water Code in the  
32 calculation of retail sales by an electrical corporation.

33 (5) The commission shall waive enforcement of this section if  
34 it finds that the retail seller has demonstrated any of the following  
35 conditions are beyond the control of the retail seller and will  
36 prevent compliance:

37 (A) There is inadequate transmission capacity to allow for  
38 sufficient electricity to be delivered from proposed eligible  
39 renewable energy resource projects using the current operational  
40 protocols of the Independent System Operator. In making its

1 findings relative to the existence of this condition with respect to  
2 a retail seller that owns transmission lines, the commission shall  
3 consider both of the following:

4 (i) Whether the retail seller has undertaken, in a timely fashion,  
5 reasonable measures under its control and consistent with its  
6 obligations under local, state, and federal laws and regulations, to  
7 develop and construct new transmission lines or upgrades to  
8 existing lines intended to transmit electricity generated by eligible  
9 renewable energy resources. In determining the reasonableness of  
10 a retail seller's actions, the commission shall consider the retail  
11 seller's expectations for full-cost recovery for these transmission  
12 lines and upgrades.

13 (ii) Whether the retail seller has taken all reasonable operational  
14 measures to maximize cost-effective deliveries of electricity from  
15 eligible renewable energy resources in advance of transmission  
16 availability.

17 (B) Permitting, interconnection, or other circumstances that  
18 delay procured eligible renewable energy resource projects, or  
19 there is an insufficient supply of eligible renewable energy  
20 resources available to the retail seller. In making a finding that this  
21 condition prevents timely compliance, the commission shall  
22 consider whether the retail seller has done all of the following:

23 (i) Prudently managed portfolio risks, including relying on a  
24 sufficient number of viable projects.

25 (ii) Sought to develop one of the following: its own eligible  
26 renewable energy resources, transmission to interconnect to eligible  
27 renewable energy resources, or energy storage used to integrate  
28 eligible renewable energy resources. This clause shall not require  
29 an electrical corporation to pursue development of eligible  
30 renewable energy resources pursuant to Section 399.14.

31 (iii) Procured an appropriate minimum margin of procurement  
32 above the minimum procurement level necessary to comply with  
33 the renewables portfolio standard to compensate for foreseeable  
34 delays or insufficient supply.

35 (iv) Taken reasonable measures, under the control of the retail  
36 seller, to procure cost-effective distributed generation and allowable  
37 unbundled renewable energy credits.

38 (C) Unanticipated curtailment of eligible renewable energy  
39 resources necessary to address the needs of a balancing authority.

1 (6) If the commission waives the compliance requirements of  
2 this section, the commission shall establish additional reporting  
3 requirements on the retail seller to demonstrate that all reasonable  
4 actions under the control of the retail seller are taken in each of  
5 the intervening years sufficient to satisfy future procurement  
6 requirements.

7 (7) The commission shall not waive enforcement pursuant to  
8 this section, unless the retail seller demonstrates that it has taken  
9 all reasonable actions under its control, as set forth in paragraph  
10 (5), to achieve full compliance.

11 (8) If a retail seller fails to procure sufficient eligible renewable  
12 energy resources to comply with a procurement requirement  
13 pursuant to paragraphs (1) and (2) and fails to obtain an order from  
14 the commission waiving enforcement pursuant to paragraph (5),  
15 the commission shall exercise its authority pursuant to Section  
16 2113.

17 (9) Deficits associated with the compliance period shall not be  
18 added to a future compliance period.

19 (c) The commission shall establish a limitation for each electrical  
20 corporation on the procurement expenditures for all eligible  
21 renewable energy resources used to comply with the renewables  
22 portfolio standard. In establishing this limitation, the commission  
23 shall rely on the following:

24 (1) The most recent renewable energy procurement plan.

25 (2) Procurement expenditures that approximate the expected  
26 cost of building, owning, and operating eligible renewable energy  
27 resources.

28 (3) The potential that some planned resource additions may be  
29 delayed or canceled.

30 (d) In developing the limitation pursuant to subdivision (c), the  
31 commission shall ensure all of the following:

32 (1) The limitation is set at a level that prevents disproportionate  
33 rate impacts.

34 (2) The costs of all procurement credited toward achieving the  
35 renewables portfolio standard are counted towards the limitation.

36 (3) Procurement expenditures do not include any indirect  
37 expenses, including imbalance energy charges, sale of excess  
38 energy, decreased generation from existing resources, transmission  
39 upgrades, or the costs associated with relicensing any utility-owned  
40 hydroelectric facilities.

1 (e) (1) No later than January 1, 2016, the commission shall  
2 prepare a report to the Legislature assessing whether each electrical  
3 corporation can achieve a 33-percent renewables portfolio standard  
4 by December 31, 2020, and maintain that level thereafter, within  
5 the adopted cost limitations. If the commission determines that it  
6 is necessary to change the limitation for procurement costs incurred  
7 by any electrical corporation after that date, it may propose a  
8 revised cap consistent with the criteria in subdivisions (c) and (d).  
9 The proposed modifications shall take effect no earlier than January  
10 1, 2017.

11 (2) Notwithstanding Section 10231.5 of the Government Code,  
12 the requirement for submitting a report imposed under paragraph  
13 (1) is inoperative on January 1, 2021.

14 (3) A report to be submitted pursuant to paragraph (1) shall be  
15 submitted in compliance with Section 9795 of the Government  
16 Code.

17 (f) If the cost limitation for an electrical corporation is  
18 insufficient to support the projected costs of meeting the  
19 renewables portfolio standard procurement requirements, the  
20 electrical corporation may refrain from entering into new contracts  
21 or constructing facilities beyond the quantity that can be procured  
22 within the limitation, unless eligible renewable energy resources  
23 can be procured without exceeding a de minimis increase in rates,  
24 consistent with the long-term procurement plan established for the  
25 electrical corporation pursuant to Section 454.5.

26 (g) (1) The commission shall monitor the status of the cost  
27 limitation for each electrical corporation in order to ensure  
28 compliance with this article.

29 (2) If the commission determines that an electrical corporation  
30 may exceed its cost limitation prior to achieving the renewables  
31 portfolio standard procurement requirements, the commission shall  
32 do both of the following within 60 days of making that  
33 determination:

34 (A) Investigate and identify the reasons why the electrical  
35 corporation may exceed its annual cost limitation.

36 (B) Notify the appropriate policy and fiscal committees of the  
37 Legislature that the electrical corporation may exceed its cost  
38 limitation, and include the reasons why the electrical corporation  
39 may exceed its cost limitation.

1 (h) The establishment of a renewables portfolio standard shall  
2 not constitute implementation by the commission of the federal  
3 Public Utility Regulatory Policies Act of 1978 (Public Law  
4 95-617).

5 *SEC. 4. Section 454.5 of the Public Utilities Code is amended*  
6 *to read:*

7 454.5. (a) The commission shall specify the allocation of  
8 electricity, including quantity, characteristics, and duration of  
9 electricity delivery, that the Department of Water Resources shall  
10 provide under its power purchase agreements to the customers of  
11 each electrical corporation, which shall be reflected in the electrical  
12 corporation's proposed procurement plan. Each electrical  
13 corporation shall file a proposed procurement plan with the  
14 commission not later than 60 days after the commission specifies  
15 the allocation of electricity. The proposed procurement plan shall  
16 specify the date that the electrical corporation intends to resume  
17 procurement of electricity for its retail customers, consistent with  
18 its obligation to serve. After the commission's adoption of a  
19 procurement plan, the commission shall allow not less than 60  
20 days before the electrical corporation resumes procurement  
21 pursuant to this section.

22 (b) An electrical corporation's proposed procurement plan shall  
23 include, but not be limited to, all of the following:

24 (1) An assessment of the price risk associated with the electrical  
25 corporation's portfolio, including any utility-retained generation,  
26 existing power purchase and exchange contracts, and proposed  
27 contracts or purchases under which an electrical corporation will  
28 procure electricity, electricity demand reductions, and  
29 electricity-related products and the remaining open position to be  
30 served by spot market transactions.

31 (2) A definition of each electricity product, electricity-related  
32 product, and procurement related financial product, including  
33 support and justification for the product type and amount to be  
34 procured under the plan.

35 (3) The duration of the plan.

36 (4) The duration, timing, and range of quantities of each product  
37 to be procured.

38 (5) A competitive procurement process under which the  
39 electrical corporation may request bids for procurement-related

1 services, including the format and criteria of that procurement  
2 process.

3 (6) An incentive mechanism, if any incentive mechanism is  
4 proposed, including the type of transactions to be covered by that  
5 mechanism, their respective procurement benchmarks, and other  
6 parameters needed to determine the sharing of risks and benefits.

7 (7) The upfront standards and criteria by which the acceptability  
8 and eligibility for rate recovery of a proposed procurement  
9 transaction will be known by the electrical corporation prior to  
10 execution of the transaction. This shall include an expedited  
11 approval process for the commission's review of proposed contracts  
12 and subsequent approval or rejection thereof. The electrical  
13 corporation shall propose alternative procurement choices in the  
14 event a contract is rejected.

15 (8) Procedures for updating the procurement plan.

16 (9) A showing that the procurement plan will achieve the  
17 following:

18 (A) The electrical corporation, in order to fulfill its unmet  
19 resource needs, shall procure resources from eligible renewable  
20 energy resources in an amount sufficient to meet its procurement  
21 requirements pursuant to the California Renewables Portfolio  
22 Standard Program (Article 16 (commencing with Section 399.11)  
23 of Chapter 2.3).

24 (B) The electrical corporation shall create or maintain a  
25 diversified procurement portfolio consisting of both short-term  
26 and long-term electricity and electricity-related and demand  
27 reduction products.

28 (C) The electrical corporation shall first meet its unmet resource  
29 needs through all available energy efficiency and demand reduction  
30 resources that are cost effective, reliable, and feasible.

31 (10) The electrical corporation's risk management policy,  
32 strategy, and practices, including specific measures of price  
33 stability.

34 (11) A plan to achieve appropriate increases in diversity of  
35 ownership and diversity of fuel supply of nonutility electrical  
36 generation.

37 (12) A mechanism for recovery of reasonable administrative  
38 costs related to procurement in the generation component of rates.

39 (c) The commission shall review and accept, modify, or reject  
40 each electrical corporation's procurement plan. The commission's

1 review shall consider each electrical corporation's individual  
2 procurement situation, and shall give strong consideration to that  
3 situation in determining which one or more of the features set forth  
4 in this subdivision shall apply to that electrical corporation. A  
5 procurement plan approved by the commission shall contain one  
6 or more of the following features, provided that the commission  
7 may not approve a feature or mechanism for an electrical  
8 corporation if it finds that the feature or mechanism would impair  
9 the restoration of an electrical corporation's creditworthiness or  
10 would lead to a deterioration of an electrical corporation's  
11 creditworthiness:

12 (1) A competitive procurement process under which the  
13 electrical corporation may request bids for procurement-related  
14 services. The commission shall specify the format of that  
15 procurement process, as well as criteria to ensure that the auction  
16 process is open and adequately subscribed. Any purchases made  
17 in compliance with the commission-authorized process shall be  
18 recovered in the generation component of rates.

19 (2) An incentive mechanism that establishes a procurement  
20 benchmark or benchmarks and authorizes the electrical corporation  
21 to procure from the market, subject to comparing the electrical  
22 corporation's performance to the commission-authorized  
23 benchmark or benchmarks. The incentive mechanism shall be  
24 clear, achievable, and contain quantifiable objectives and standards.  
25 The incentive mechanism shall contain balanced risk and reward  
26 incentives that limit the risk and reward of an electrical corporation.

27 (3) Upfront achievable standards and criteria by which the  
28 acceptability and eligibility for rate recovery of a proposed  
29 procurement transaction will be known by the electrical corporation  
30 prior to the execution of the bilateral contract for the transaction.  
31 The commission shall provide for expedited review and either  
32 approve or reject the individual contracts submitted by the electrical  
33 corporation to ensure compliance with its procurement plan. To  
34 the extent the commission rejects a proposed contract pursuant to  
35 this criteria, the commission shall designate alternative procurement  
36 choices obtained in the procurement plan that will be recoverable  
37 for ratemaking purposes.

38 (d) A procurement plan approved by the commission shall  
39 accomplish each of the following objectives:



1 (1) Enable the electrical corporation to fulfill its obligation to  
2 serve its customers at just and reasonable rates.

3 (2) Eliminate the need for after-the-fact reasonableness reviews  
4 of an electrical corporation's actions in compliance with an  
5 approved procurement plan, including resulting electricity  
6 procurement contracts, practices, and related expenses. However,  
7 the commission may establish a regulatory process to verify and  
8 ensure that each contract was administered in accordance with the  
9 terms of the contract, and contract disputes that may arise are  
10 reasonably resolved.

11 (3) Ensure timely recovery of prospective procurement costs  
12 incurred pursuant to an approved procurement plan. The  
13 commission shall establish rates based on forecasts of procurement  
14 costs adopted by the commission, actual procurement costs  
15 incurred, or combination thereof, as determined by the commission.  
16 The commission shall establish power procurement balancing  
17 accounts to track the differences between recorded revenues and  
18 costs incurred pursuant to an approved procurement plan. The  
19 commission shall review the power procurement balancing  
20 accounts, not less than semiannually, and shall adjust rates or order  
21 refunds, as necessary, to promptly amortize a balancing account,  
22 according to a schedule determined by the commission. Until  
23 January 1, 2006, the commission shall ensure that any  
24 overcollection or undercollection in the power procurement  
25 balancing account does not exceed 5 percent of the electrical  
26 corporation's actual recorded generation revenues for the prior  
27 calendar year excluding revenues collected for the Department of  
28 Water Resources. The commission shall determine the schedule  
29 for amortizing the overcollection or undercollection in the  
30 balancing account to ensure that the 5 percent threshold is not  
31 exceeded. After January 1, 2006, this adjustment shall occur when  
32 deemed appropriate by the commission consistent with the  
33 objectives of this section.

34 (4) Moderate the price risk associated with serving its retail  
35 customers, including the price risk embedded in its long-term  
36 supply contracts, by authorizing an electrical corporation to enter  
37 into financial and other electricity-related product contracts.

38 (5) Provide for just and reasonable rates, with an appropriate  
39 balancing of price stability and price level in the electrical  
40 corporation's procurement plan.

1 (e) The commission shall provide for the periodic review and  
2 prospective modification of an electrical corporation's procurement  
3 plan.

4 (f) The commission may engage an independent consultant or  
5 advisory service to evaluate risk management and strategy. The  
6 reasonable costs of any consultant or advisory service is a  
7 reimbursable expense and eligible for funding pursuant to Section  
8 631.

9 (g) The commission shall adopt appropriate procedures to ensure  
10 the confidentiality of any market sensitive information submitted  
11 in an electrical corporation's proposed procurement plan or  
12 resulting from or related to its approved procurement plan,  
13 including, but not limited to, proposed or executed power purchase  
14 agreements, data request responses, or consultant reports, or any  
15 combination, provided that the Office of Ratepayer Advocates and  
16 other consumer groups that are nonmarket participants shall be  
17 provided access to this information under confidentiality  
18 procedures authorized by the commission.

19 (h) Nothing in this section alters, modifies, or amends the  
20 commission's oversight of affiliate transactions under its rules and  
21 decisions or the commission's existing authority to investigate and  
22 penalize an electrical corporation's alleged fraudulent activities,  
23 or to disallow costs incurred as a result of gross incompetence,  
24 fraud, abuse, or similar grounds. Nothing in this section expands,  
25 modifies, or limits the State Energy Resources Conservation and  
26 Development Commission's existing authority and responsibilities  
27 as set forth in Sections 25216, 25216.5, and 25323 of the Public  
28 Resources Code.

29 (i) An electrical corporation that serves less than 500,000 electric  
30 retail customers within the state may file with the commission a  
31 request for exemption from this section, which the commission  
32 shall grant upon a showing of good cause.

33 (j) (1) Prior to its approval pursuant to Section 851 of any  
34 divestiture of generation assets owned by an electrical corporation  
35 on or after the date of enactment of the act adding this section, the  
36 commission shall determine the impact of the proposed divestiture  
37 on the electrical corporation's procurement rates and shall approve  
38 a divestiture only to the extent it finds, taking into account the  
39 effect of the divestiture on procurement rates, that the divestiture  
40 is in the public interest and will result in net ratepayer benefits.

1 (2) Any electrical corporation’s procurement necessitated as a  
2 result of the divestiture of generation assets on or after the effective  
3 date of the act adding this subdivision shall be subject to the  
4 mechanisms and procedures set forth in this section only if its  
5 actual cost is less than the recent historical cost of the divested  
6 generation assets.

7 (3) Notwithstanding paragraph (2), the commission may deem  
8 proposed procurement eligible to use the procedures in this section  
9 upon its approval of asset divestiture pursuant to Section 851.

10 *(k) The commission shall direct electrical corporations to*  
11 *include in their proposed procurement plans the use of any nonzero*  
12 *integration cost adders determined pursuant to clause (v) of*  
13 *subparagraph (A) of paragraph (4) of subdivision (a) of Section*  
14 *399.13.*

15 ~~SECTION 1. (a) The Legislature finds and declares all of the~~  
16 ~~following:~~

17 ~~(1) Forests are critical elements of the California economy and~~  
18 ~~ecosystems.~~

19 ~~(2) Forest fires have devastated large tracts of California’s~~  
20 ~~forested land, a trend that has exacerbated in recent years. Fourteen~~  
21 ~~of the 20 largest recorded wildfires in California’s history have~~  
22 ~~occurred within the last 20 years.~~

23 ~~(3) Climate change is likely to increase the risk of wildfire by~~  
24 ~~disrupting rain cycles, increasing average temperatures and dry~~  
25 ~~season duration, and forcing changes in species’ habitat range.~~

26 ~~(b) It is the intent of the Legislature to promote the use of~~  
27 ~~biomass generated from activities that reduce the risk of wildfire~~  
28 ~~for the purposes of renewable energy production for activities that~~  
29 ~~do not harm the long-term ecological health and sustainability of~~  
30 ~~the forest.~~

31 ~~SEC. 2. Section 38575 is added to the Health and Safety Code,~~  
32 ~~to read:~~

33 ~~38575. (a) As used in this section, “biochar” means biomass~~  
34 ~~that is a solid carbonaceous byproduct of pyrolysis or gasification~~  
35 ~~that may be used as a feedstock for renewable energy generation.~~

36 ~~(b) The state board shall adopt regulations providing for the~~  
37 ~~generation of offset credits that may be used, sold, or traded~~  
38 ~~pursuant to a market-based compliance mechanism that the state~~  
39 ~~board may adopt pursuant to this part for both of the following:~~

- 1     ~~(1) (A) Forest management activities that are performed for~~  
2 ~~the purpose of reducing the risk of severe wildfire that include,~~  
3 ~~but are not limited to, underbrush removal, dead tree removal, and~~  
4 ~~selective thinning of tree stands.~~  
5     ~~(B) Activities receiving offset credits shall be performed in~~  
6 ~~compliance with all applicable laws and regulations, including the~~  
7 ~~Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8~~  
8 ~~(commencing with Section 4511) of Part 2 of Division 4 of the~~  
9 ~~Public Resources Code).~~  
10    ~~(C) The amount of offset credits generated shall be in proportion~~  
11 ~~to the expected reduction in the emissions of greenhouse gases~~  
12 ~~due to the decreased likelihood of severe wildfires resulting from~~  
13 ~~the activities.~~  
14    ~~(D) The offset credits shall be issued to the entity performing~~  
15 ~~the activities.~~  
16    ~~(2) (A) Application of biochar to soil that is in compliance with~~  
17 ~~all applicable laws and regulations and the best management~~  
18 ~~practices for the management of the soil.~~  
19    ~~(B) The amount of offset credits generated shall equal the~~  
20 ~~expected long-term sequestration of carbon in soils to which the~~  
21 ~~biochar is applied.~~