

ASSEMBLY BILL

No. 1698

Introduced by Assembly Member Hadley

January 25, 2016

An act to amend Section 39719 of the Health and Safety Code, to amend Sections 25710, 25711, and 25711.5 of, and to amend the heading of Chapter 8.1 (commencing with Section 25710) of Division 15 of, the Public Resources Code, and to amend Section 399.15 of the Public Utilities Code, relating to energy, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1698, as introduced, Hadley. Renewable energy.

Existing decisions of the Public Utilities Commission (PUC) institute an Electric Program Investment Charge (EPIC) that requires electric utility corporations to collect a surcharge on their ratepayers' electricity bills to fund renewable energy research, development, and demonstration projects with the aim of making electricity service cheaper, safer, and more reliable for the corporations' own ratepayers.

Existing law creates in the State Treasury the EPIC Fund to be administered by the State Energy Resources Conservation and Development Commission (Energy Commission) and requires moneys received by the PUC for those programs the PUC has determined should be administered by the Energy Commission to be forwarded by the PUC to the Energy Commission at least quarterly for deposit in the fund.

Existing law requires all moneys, except for fines and penalties, collected by the State Air Resources Board from the auction or sale of allowances as part of a market-based compliance mechanism relative to reduction of greenhouse gas emissions to be deposited in the

Greenhouse Gas Reduction Fund. Existing law continuously appropriates specified portions of the annual proceeds in the Greenhouse Gas Reduction Fund to various programs related to transportation, affordable housing, and sustainable communities.

This bill would discontinue the EPIC surcharge and repeal the EPIC Fund. The bill would create the Green and Renewable Energy Enlisting New Technologies (GREEN) Fund to fund the GREEN program. The bill would transfer previously collected EPIC moneys to a specified account within the GREEN Fund. The bill would convey the Legislature’s intent that the EPIC program’s renewable energy research, development, and demonstration projects continue under the GREEN program. The bill would continuously appropriate \$200,000,000 of the annual proceeds of the Greenhouse Gas Reduction Fund to a specified account within the GREEN Fund to fund the GREEN program.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature that the Public
2 Utilities Commission and public utilities corporations no longer
3 charge or collect the Electric Program Investment Charge instituted
4 by the Public Utilities Commission pursuant to Decision 11-12-035
5 and subsequent decisions. Instead, it is the intent of the Legislature
6 that the Electric Program Investment Charge program’s renewable
7 energy research, development, and demonstration projects continue
8 under the Green and Renewable Energy Enlisting New
9 Technologies program and be funded through a continuous
10 appropriation of cap and trade funds.

11 SEC. 2. Section 39719 of the Health and Safety Code is
12 amended to read:

13 39719. (a) The Legislature shall appropriate the annual
14 proceeds of the fund for the purpose of reducing greenhouse gas
15 emissions in this state in accordance with the requirements of
16 Section 39712.

17 (b) To carry out a portion of the requirements of subdivision
18 (a), annual proceeds are continuously appropriated for the
19 following:

20 (1) Beginning in the 2015–16 fiscal year, and notwithstanding
21 Section 13340 of the Government Code, 35 percent of annual

1 proceeds are continuously appropriated, without regard to fiscal
2 years, for transit, affordable housing, and sustainable communities
3 programs as following:

4 (A) Ten percent of the annual proceeds of the fund is hereby
5 continuously appropriated to the Transportation Agency for the
6 Transit and Intercity Rail Capital Program created by Part 2
7 (commencing with Section 75220) of Division 44 of the Public
8 Resources Code.

9 (B) Five percent of the annual proceeds of the fund is hereby
10 continuously appropriated to the Low Carbon Transit Operations
11 Program created by Part 3 (commencing with Section 75230) of
12 Division 44 of the Public Resources Code. Funds shall be allocated
13 by the Controller, according to requirements of the program, and
14 pursuant to the distribution formula in subdivision (b) or (c) of
15 Section 99312 of, and Sections 99313 and 99314 of, the Public
16 Utilities Code.

17 (C) Twenty percent of the annual proceeds of the fund is hereby
18 continuously appropriated to the Strategic Growth Council for the
19 Affordable Housing and Sustainable Communities Program created
20 by Part 1 (commencing with Section 75200) of Division 44 of the
21 Public Resources Code. Of the amount appropriated in this
22 subparagraph, no less than 10 percent of the annual proceeds, shall
23 be expended for affordable housing, consistent with the provisions
24 of that program.

25 (2) Beginning in the 2015–16 fiscal year, notwithstanding
26 Section 13340 of the Government Code, 25 percent of the annual
27 proceeds of the fund is hereby continuously appropriated to the
28 High-Speed Rail Authority for the following components of the
29 initial operating segment and Phase I Blended System as described
30 in the 2012 business plan adopted pursuant to Section 185033 of
31 the Public Utilities Code:

32 (A) Acquisition and construction costs of the project.

33 (B) Environmental review and design costs of the project.

34 (C) Other capital costs of the project.

35 (D) Repayment of any loans made to the authority to fund the
36 project.

37 (3) *Beginning in the 2017–18 fiscal year, notwithstanding*
38 *Section 13340 of the Government Code, two hundred million*
39 *dollars (\$200,000,000) of the annual proceeds of the fund are*
40 *hereby continuously appropriated to the Green and Renewable*

1 *Energy Enlisting New Technologies Account created by Chapter*
2 *8.1 (commencing with Section 25710) of Division 15 of the Public*
3 *Resources Code.*

4 (c) In determining the amount of annual proceeds of the fund
5 for purposes of the calculation in subdivision (b), the funds subject
6 to Section 39719.1 shall not be included.

7 SEC. 3. The heading of Chapter 8.1 (commencing with Section
8 25710) of Division 15 of the Public Resources Code is amended
9 to read:

10

11 CHAPTER 8.1. ~~ELECTRIC PROGRAM INVESTMENT CHARGE GREEN~~
12 ~~AND RENEWABLE ENERGY ENLISTING NEW TECHNOLOGIES FUND~~

13

14 SEC. 4. Section 25710 of the Public Resources Code is
15 amended to read:

16 25710. ~~For~~ (a) *This chapter shall be known and may be cited*
17 *as the GREEN Act.*

18 (b) ~~For the purposes of this chapter, the following terms have~~
19 ~~the following meanings:~~ “fund” means the *Green and Renewable*
20 *Energy Enlisting New Technologies Fund created by Section*
21 *25711.*

22 (a) ~~“Electric Program Investment Charge” means the surcharge~~
23 ~~instituted by the Public Utilities Commission pursuant to Decision~~
24 ~~11-12-035 or any subsequent decisions to collect funds for~~
25 ~~renewable energy programs and research, development, and~~
26 ~~demonstration programs.~~

27 (b) ~~“Fund” means the portion of the Electric Program Investment~~
28 ~~Charge Fund created by Section 25711.~~

29 SEC. 5. Section 25711 of the Public Resources Code is
30 amended to read:

31 25711. (a) For the purposes of implementing this chapter, the
32 ~~Electric Program Investment Charge Green and Renewable Energy~~
33 ~~Enlisting New Technologies Fund~~ is hereby created in the State
34 Treasury.

35 (a)

36 (1) The commission shall administer the fund.

37 (b) ~~At least quarterly, moneys received by the Public Utilities~~
38 ~~Commission pursuant to the Electric Program Investment Charge~~
39 ~~for those programs the Public Utilities Commission has determined~~
40 ~~should be administered by the Energy Commission shall be~~

1 forwarded by the Public Utilities Commission to the commission
2 for deposit in the fund.

3 (e)

4 (2) The Controller shall, as directed by the commission, disburse
5 moneys in the fund for purposes of this chapter.

6 (f)

7 (3) The commission may use moneys in the fund for the
8 administration of this chapter, as authorized by the Public Utilities
9 Commission and appropriated by the Legislature in the annual
10 Budget Act.

11 (b) *There shall be two accounts within the fund:*

12 (1) *The Green and Renewable Energy Enlisting New
13 Technologies Account.*

14 (2) *The Electric Program Investment Charge Account. Moneys
15 in the Electric Program Investment Charge Account shall be
16 expended consistent with any applicable requirements of Southern
17 California Edison Company v. Public Utilities Commission (2014)
18 227 Cal.App.4th 172.*

19 SEC. 6. Section 25711.5 of the Public Resources Code is
20 amended to read:

21 25711.5. In administering moneys in the fund for research,
22 development, and demonstration programs under this chapter, the
23 commission shall develop and implement the ~~Electric Program
24 Investment Charge (EPIC)~~ *Green and Renewable Energy Enlisting
25 New Technologies (GREEN)* program to do all of the following:

26 (a) Award funds for projects that will benefit electricity
27 ratepayers and lead to technological advancement and
28 breakthroughs to overcome the barriers that prevent the
29 achievement of the state’s statutory energy goals and that result
30 in a portfolio of projects that is strategically focused and
31 sufficiently narrow to make ~~advancement~~ *advancements* on the
32 most significant technological challenges that shall include, but
33 not be limited to, energy storage, renewable energy and its
34 integration into the electrical grid, energy efficiency, integration
35 of electric vehicles into the electrical grid, and accurately
36 forecasting the availability of renewable energy for integration
37 into the grid.

38 (b) In consultation with the Treasurer, establish terms that shall
39 be imposed as a condition to receipt of funding for the state to
40 accrue any intellectual property interest or royalties that may derive

1 from projects funded by the ~~EPIC~~ *GREEN* program. The
 2 commission, when determining if imposition of the proposed terms
 3 is appropriate, shall balance the potential benefit to the state from
 4 those terms and the effect those terms may have on the state
 5 achieving its statutory energy goals. The commission shall require
 6 each reward recipient, as a condition of receiving moneys pursuant
 7 to this chapter, to agree to any terms the commission determines
 8 are appropriate for the state to accrue any intellectual property
 9 interest or royalties that may derive from projects funded by the
 10 ~~EPIC~~ *GREEN* program.

11 (c) Require each applicant to report how the proposed project
 12 may lead to technological advancement and potential breakthroughs
 13 to overcome barriers to achieving the state’s statutory energy goals.

14 (d) Establish a process for tracking the progress and outcomes
 15 of each funded project, including an accounting of the amount of
 16 funds spent by program administrators and individual grant
 17 recipients on administrative and overhead costs and whether the
 18 project resulted in any technological advancement or breakthrough
 19 to overcome barriers to achieving the state’s statutory energy goals.

20 (e) Notwithstanding Section 10231.5 of the Government Code,
 21 prepare and submit to the Legislature no later than April 30 of
 22 each year an annual report in compliance with Section 9795 of the
 23 Government Code that shall include all of the following:

24 (1) A brief description of each project for which funding was
 25 awarded in the immediately prior calendar year, including the
 26 name of the recipient and the amount of the award, a description
 27 of how the project is thought to lead to technological advancement
 28 or breakthroughs to overcome barriers to achieving the state’s
 29 statutory energy goals, and a description of why the project was
 30 selected.

31 (2) A brief description of each project funded by the ~~EPIC~~
 32 *GREEN* program that was completed in the immediately prior
 33 calendar year, including the name of the recipient, the amount of
 34 the award, and the outcomes of the funded project.

35 (3) A brief description of each project funded by the ~~EPIC~~
 36 *GREEN* program for which an award was made in the previous
 37 years but that is not completed, including the name of the recipient
 38 and the amount of the award, and a description of how the project
 39 will lead to technological advancement or breakthroughs to
 40 overcome barriers to achieving the state’s statutory energy goals.

1 (4) Identification of the award recipients that are
2 California-based entities, small businesses, or businesses owned
3 by women, minorities, or disabled veterans.

4 (5) Identification of which awards were made through a
5 competitive bid, interagency agreement, or sole source method,
6 and the action of the Joint Legislative Budget Committee pursuant
7 to paragraph (2) of subdivision (g) for each award made through
8 an interagency agreement or sole source method.

9 (6) Identification of the total amount of administrative and
10 overhead costs incurred for each project.

11 (f) Establish requirements to minimize program administration
12 and overhead costs, including costs incurred by program
13 administrators and individual grant recipients. Each program
14 administrator and grant recipient, including a public entity, shall
15 be required to justify actual administration and overhead costs
16 incurred, even if the total costs incurred do not exceed a cap on
17 those costs that the commission may adopt.

18 (g) (1) The commission shall use a sealed competitive bid as
19 the preferred method to solicit project applications and award funds
20 pursuant to the ~~EPIC GREEN~~ program.

21 (2) (A) The commission may use a sole source or interagency
22 agreement method if the project cannot be described with sufficient
23 specificity so that bids can be evaluated against specifications and
24 criteria set forth in a solicitation for bid and if both of the following
25 conditions are met:

26 (i) The commission, at least 60 days prior to making an award
27 pursuant to this subdivision, notifies the Joint Legislative Budget
28 Committee and the relevant policy committees in both houses of
29 the Legislature, in writing, of its intent to take the proposed action.

30 (ii) The Joint Legislative Budget Committee either approves or
31 does not disapprove the proposed action within 60 days from the
32 date of notification required by clause (i).

33 (B) It is the intent of the Legislature to enact this paragraph to
34 ensure legislative oversight for awards made on a sole source basis,
35 or through an interagency agreement.

36 (3) Notwithstanding any other law, standard terms and
37 conditions that generally apply to contracts between the
38 commission and any entities, including state entities, do not
39 automatically preclude the award of moneys from the fund through
40 the sealed competitive bid method.

1 SEC. 7. Section 399.15 of the Public Utilities Code is amended
2 to read:

3 399.15. (a) In order to fulfill unmet long-term resource needs,
4 the commission shall establish a renewables portfolio standard
5 requiring all retail sellers to procure a minimum quantity of
6 electricity products from eligible renewable energy resources as
7 a specified percentage of total kilowatthours sold to their retail
8 end-use customers each compliance period to achieve the targets
9 established under this article. For any retail seller procuring at least
10 14 percent of retail sales from eligible renewable energy resources
11 in 2010, the deficits associated with any previous renewables
12 portfolio standard shall not be added to any procurement
13 requirement pursuant to this article.

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

16 (1) Each retail seller shall procure a minimum quantity of
17 eligible renewable energy resources for each of the following
18 compliance periods:

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

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

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

22 (D) January 1, 2021, to December 31, 2024, inclusive.

23 (E) January 1, 2025, to December 31, 2027, inclusive.

24 (F) January 1, 2028, to December 31, 2030, inclusive.

25 (2) (A) No later than January 1, 2017, the commission shall
26 establish the quantity of electricity products from eligible
27 renewable energy resources to be procured by the retail seller for
28 each compliance period. These quantities shall be established in
29 the same manner for all retail sellers and result in the same
30 percentages used to establish compliance period quantities for all
31 retail sellers.

32 (B) In establishing quantities for the compliance period from
33 January 1, 2011, to December 31, 2013, inclusive, the commission
34 shall require procurement for each retail seller equal to an average
35 of 20 percent of retail sales. For the following compliance periods,
36 the quantities shall reflect reasonable progress in each of the
37 intervening years sufficient to ensure that the procurement of
38 electricity products from eligible renewable energy resources
39 achieves 25 percent of retail sales by December 31, 2016, 33
40 percent by December 31, 2020, 40 percent by December 31, 2024,

1 45 percent by December 31, 2027, and 50 percent by December
2 31, 2030. The commission shall establish appropriate three-year
3 compliance periods for all subsequent years that require retail
4 sellers to procure not less than 50 percent of retail sales of
5 electricity products from eligible renewable energy resources.

6 (C) Retail sellers shall be obligated to procure no less than the
7 quantities associated with all intervening years by the end of each
8 compliance period. Retail sellers shall not be required to
9 demonstrate a specific quantity of procurement for any individual
10 intervening year.

11 (3) The commission may require the procurement of eligible
12 renewable energy resources in excess of the quantities specified
13 in paragraph (2).

14 (4) Only for purposes of establishing the renewables portfolio
15 standard procurement requirements of paragraph (1) and
16 determining the quantities pursuant to paragraph (2), the
17 commission shall include all electricity sold to retail customers by
18 the Department of Water Resources pursuant to Division 27
19 (commencing with Section 80000) of the Water Code in the
20 calculation of retail sales by an electrical corporation.

21 (5) The commission shall waive enforcement of this section if
22 it finds that the retail seller has demonstrated any of the following
23 conditions are beyond the control of the retail seller and will
24 prevent compliance:

25 (A) There is inadequate transmission capacity to allow for
26 sufficient electricity to be delivered from proposed eligible
27 renewable energy resource projects using the current operational
28 protocols of the Independent System Operator. In making its
29 findings relative to the existence of this condition with respect to
30 a retail seller that owns transmission lines, the commission shall
31 consider both of the following:

32 (i) Whether the retail seller has undertaken, in a timely fashion,
33 reasonable measures under its control and consistent with its
34 obligations under local, state, and federal laws and regulations, to
35 develop and construct new transmission lines or upgrades to
36 existing lines intended to transmit electricity generated by eligible
37 renewable energy resources. In determining the reasonableness of
38 a retail seller's actions, the commission shall consider the retail
39 seller's expectations for full-cost recovery for these transmission
40 lines and upgrades.

1 (ii) Whether the retail seller has taken all reasonable operational
2 measures to maximize cost-effective deliveries of electricity from
3 eligible renewable energy resources in advance of transmission
4 availability.

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

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

13 (ii) Sought to develop one of the following: its own eligible
14 renewable energy resources, transmission to interconnect to eligible
15 renewable energy resources, or energy storage used to integrate
16 eligible renewable energy resources. This clause shall not require
17 an electrical corporation to pursue development of eligible
18 renewable energy resources pursuant to Section 399.14.

19 (iii) Procured an appropriate minimum margin of procurement
20 above the minimum procurement level necessary to comply with
21 the renewables portfolio standard to compensate for foreseeable
22 delays or insufficient supply.

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

26 (C) Unanticipated curtailment of eligible renewable energy
27 resources if the waiver would not result in an increase in
28 greenhouse gas emissions.

29 (D) Unanticipated increase in retail sales due to transportation
30 electrification. In making a finding that this condition prevents
31 timely compliance, the commission shall consider all of the
32 following:

33 (i) Whether transportation electrification significantly exceeded
34 forecasts in that retail seller's service territory based on the best
35 and most recently available information filed with the State Air
36 Resources Board, the Energy Commission, or other state agency.

37 (ii) Whether the retail seller has taken reasonable measures to
38 procure sufficient resources to account for unanticipated increases
39 in retail sales due to transportation electrification.

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 assess penalties for noncompliance. A
16 schedule of penalties shall be adopted by the commission that shall
17 be comparable for electrical corporations and other retail sellers.
18 For electrical corporations, the cost of any penalties shall not be
19 collected in rates. Any penalties collected under this article shall
20 be deposited into the ~~Electric Program Investment Charge~~ *Green*
21 *and Renewable Energy Enlisting New Technologies* Fund and used
22 for the purposes described in Chapter 8.1 (commencing with
23 Section 25710) of Division 15 of the Public Resources Code.

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

26 (c) The commission shall establish a limitation for each electrical
27 corporation on the procurement expenditures for all eligible
28 renewable energy resources used to comply with the renewables
29 portfolio standard. This limitation shall be set at a level that
30 prevents disproportionate rate impacts.

31 (d) If the cost limitation for an electrical corporation is
32 insufficient to support the projected costs of meeting the
33 renewables portfolio standard procurement requirements, the
34 electrical corporation may refrain from entering into new contracts
35 or constructing facilities beyond the quantity that can be procured
36 within the limitation, unless eligible renewable energy resources
37 can be procured without exceeding a de minimis increase in rates,
38 consistent with the long-term procurement plan established for the
39 electrical corporation pursuant to Section 454.5.

1 (e) (1) The commission shall monitor the status of the cost
2 limitation for each electrical corporation in order to ensure
3 compliance with this article.

4 (2) If the commission determines that an electrical corporation
5 may exceed its cost limitation prior to achieving the renewables
6 portfolio standard procurement requirements, the commission shall
7 do both of the following within 60 days of making that
8 determination:

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

11 (B) Notify the appropriate policy and fiscal committees of the
12 Legislature that the electrical corporation may exceed its cost
13 limitation, and include the reasons why the electrical corporation
14 may exceed its cost limitation.

15 (f) The establishment of a renewables portfolio standard shall
16 not constitute implementation by the commission of the federal
17 Public Utility Regulatory Policies Act of 1978 (Public Law
18 95-617).

19 SEC. 8. (a) On and after the effective date of this act, the
20 Public Utilities Commission shall discontinue the surcharge for
21 renewable energy programs imposed by Decision 11-12-035 and
22 subsequent decisions.

23 (b) The funds collected pursuant to the surcharge instituted by
24 the Public Utilities Commission pursuant to Decision 11-12-035
25 and subsequent decisions related to renewable energy programs
26 not already deposited into the Electric Program Investment Charge
27 Fund established pursuant to former Section 25711 of the Public
28 Resources Code by the effective date of this act shall be transferred
29 to the Treasurer for deposit in the Electric Program Investment
30 Charge Account within the Green and Renewable Energy Enlisting
31 New Technologies Fund established pursuant to Section 25711 of
32 the Public Resources Code. Any moneys in the Electrical Program
33 Investment Charge Fund on the effective date of this act shall be
34 transferred to the Electric Program Investment Charge Account.

35 (c) The former Electric Program Investment Charge (EPIC)
36 program developed and implemented pursuant to former Section
37 25711.5 of the Public Utilities Code shall be continued as the Green

- 1 and Renewable Energy Enlisting New Technologies (GREEN)
- 2 program pursuant to Section 25711.5 of the Public Utilities Code.

O