AMENDED IN SENATE JULY 8, 2009

AMENDED IN ASSEMBLY MAY 28, 2009

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AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 222

Introduced by Assembly Members Adams and Ma
(Coauthors: Assembly Members Blakeslee, Conway, Duvall, Emmerson, Fletcher, Fuentes, Galgiani, Gilmore, Knight, Mendoza, Smyth, and Torrico)
(Coauthors: Senators Benoit and Calderon)

February 4, 2009

An act to amend Sections 25741, 25806, 40194, and 40201 of, to add ~~Section 41786.5~~ *Sections 40103 and 41786.5* to, and to repeal Section 40117 of, the Public Resources Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 222, as amended, Adams. Energy: biofuels.

(1) Existing law establishes the Public Interest Research, Development, and Demonstration Fund in the State Treasury, and provides that the money collected by the public goods charge to support cost-effective energy efficiency and conservation activities and public interest energy research, development, and demonstration projects not adequately provided by competitive and regulated markets, be deposited in the fund for use by the State Energy Resources Conservation and Development Commission (Energy Commission). Existing law requires the Energy Commission to use those funds to develop, implement, and

administer the Public Interest Research, Development, and Demonstration Program to develop technologies to, among other things, improve environmental quality, enhance electrical system reliability, increase efficiency of energy-using technologies, lower electrical system costs, or provide other tangible benefits to electric utility customers. Existing law defines "in-state renewable electricity generation facility" for the purposes of the program to include, among other things, a facility that uses municipal solid waste conversion.

This bill would instead define "in-state renewable electricity generation facility" to include a facility that uses conversion at a biorefinery. The bill would define "biorefinery" to mean a facility that uses a ~~noncombustion~~ *nonincineration* thermal, chemical, biological, or mechanical conservation process, or a combination of those processes, to produce *clean burning fuel for generating* electricity or a renewable fuel from carbonaceous materials *not derived from fossil fuel or solid waste feedstock*.

(2) The California Integrated Waste Management Act of 1989 requires cities and counties, on and after January 1, 2000, to divert 50% of all solid waste through source reduction, recycling, and composting activities.

This bill would authorize *a jurisdiction*, if the act requires a solid waste diversion of more than 50%, ~~a jurisdiction~~ to consider solid waste diverted ~~by~~ *to a* biorefinery as disposal reduction in meeting the solid waste diversion level requirement above 50% if the jurisdiction makes a specified certification to the board.

(3) The act defines various terms, including "gasification," "solid waste facility," and "transformation" for the purposes of the act.

This bill would repeal the term "gasification." The bill would additionally define "solid waste facility" to include a biorefinery that processes solid waste. The bill would revise and recast the definition of "transformation" to exclude from that definition, among other things, *anaerobic digestion, as defined, and* solid waste conversion at a biorefinery.

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

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

SECTION 1. Section 25741 of the Public Resources Code is amended to read:

25741. As used in this chapter, the following terms have the following ~~meaning:~~ *meanings:*

(a) (1) "Biorefinery" means a facility that uses a ~~noncombustion~~ *nonincineration* thermal, chemical, biological, or mechanical conversion process, or a combination of those processes, to produce *a clean burning fuel for the purposes of generating* electricity or a renewable fuel from *either* carbonaceous material, ~~including, but~~ *not derived from fossil fuels or from a solid waste feedstock. Carbonaceous materials include, but are* not limited to, any of the following:

(A) Dedicated energy crops.

(B) Agricultural crop residues.

(C) Bark, lawn, yard, and garden clippings.

(D) Leaves, silvicultural residue, and tree and brush prunings.

(E) Wood, wood chips, and wood waste.

(F) Nonrecyclable pulp or nonrecyclable paper materials.

(G) Waste fat, oils, and greases.

~~(H) Other types of solid waste.~~

(2) A facility utilizing anaerobic digestion is not a biorefinery.

~~(2)~~

(3) A biorefinery shall satisfy all of the following criteria:

(A) Meet or exceed standards set by the State Air Resources Board, local air pollution control districts, or local air quality management districts regarding air contaminants or emissions, including greenhouse gases, as defined in subdivision (g) of Section 38505 of the Health and Safety Code.

(B) Meet or exceed standards set by the State Water Resources Control Board or regional water quality control boards regarding discharges to surface waters or groundwaters of the state.

(C) Routinely test the ash or other residue from the facility at least once quarterly, or on a more frequent basis as determined by the agency responsible for regulating the testing and disposal of ash or residue. Notwithstanding Section 25143.5 of the Health and Safety Code, if hazardous wastes are present, the ash or residue is sent to a class 1 hazardous waste disposal facility.

(D) Preprocess the solid waste feedstock to remove, to the maximum extent feasible, all recyclable materials prior to the conversion process.

(E) Meet all of the requirements of Division 30 (commencing with Section 40000) for solid waste handling prior to the

conversion process~~, and convert the solid waste feedstock into products that have market value~~.

(F) Is in compliance with all applicable laws, regulations, and ordinances.

(G) On an annual basis, submit a report to the commission summarizing the percentage of feedstock processed through the facility that is derived from fossil fuel sources.

(4) Only energy derived from nonfossil biogenic portion of the feedstock processed through a biorefinery shall be considered renewable.

(b) "Delivered" and "delivery" mean the electricity output of an in-state renewable electricity generation facility that is used to serve end-use retail customers located within the state. Subject to verification by the accounting system established by the commission pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code, electricity shall be deemed delivered if it is either generated at a location within the state, or is scheduled for consumption by California end-use retail customers. Subject to criteria adopted by the commission, electricity generated by an eligible renewable energy resource may be considered "delivered" regardless of whether the electricity is generated at a different time from consumption by a California end-use customer.

(c) "In-state renewable electricity generation facility" means a facility that meets all of the following criteria:

(1) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, conversion at a biorefinery, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

(2) The facility satisfies one of the following requirements:

(A) The facility is located in the state or near the border of the state with the first point of connection to the transmission network within this state and electricity produced by the facility is delivered to an in-state location.

(B) The facility has its first point of interconnection to the transmission network outside the state and satisfies all of the following requirements:

(i) It is connected to the transmission network within the Western Electricity Coordinating Council (WECC) service territory.

(ii) It commences initial commercial operation after January 1, 2005.

(iii) Electricity produced by the facility is delivered to an in-state location.

(iv) It will not cause or contribute to any violation of a California environmental quality standard or requirement.

(v) If the facility is outside of the United States, it is developed and operated in a manner that is as protective of the environment as a similar facility located in the state.

(vi) It participates in the accounting system to verify compliance with the renewables portfolio standard by retail sellers, once established by the Energy Commission pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code.

(C) The facility meets the requirements of clauses (i), (iii), (iv), (v), and (vi) in subparagraph (B), but does not meet the requirements of clause (ii) because it commences initial operation prior to January 1, 2005, if the facility satisfies either of the following requirements:

(i) The electricity is from incremental generation resulting from expansion or repowering of the facility.

(ii) The facility has been part of the existing baseline of eligible renewable energy resources of a retail seller established pursuant to paragraph (2) of subdivision (b) of Section 399.15 of the Public Utilities Code or has been part of the existing baseline of eligible renewable energy resources of a local publicly owned electric utility established pursuant to Section 387 of the Public Utilities Code.

(d) "Procurement entity" means any person or corporation that enters into an agreement with a retail seller to procure eligible renewable energy resources pursuant to subdivision (f) of Section 399.14 of the Public Utilities Code.

(e) "Renewable energy public goods charge" means that portion of the nonbypassable system benefits charge authorized to be collected and to be transferred to the Renewable Resource Trust Fund pursuant to the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code).

(f) "Report" means the report entitled "Investing in Renewable Electricity Generation in California" (June 2001, Publication Number P500-00-022) submitted to the Governor and the Legislature by the commission.

(g) "Retail seller" means a "retail seller" as defined in Section 399.12 of the Public Utilities Code.

SEC. 2. Section 25806 of the Public Resources Code is amended to read:

25806. (a) A person who submits to the commission an application for certification for a proposed generating facility shall submit with the application a fee of one hundred thousand dollars ($100,000) plus two hundred fifty dollars ($250) per megawatt of gross generating capacity of the proposed facility. The total fee accompanying an application may not exceed three hundred fifty thousand dollars ($350,000).

(b) A person who receives certification of a proposed generating facility shall pay an annual fee of fifteen thousand dollars ($15,000). The first payment of the annual fee is due on the date this section takes effect. For a facility certified on or after the effective date of this section, the first payment of the annual fee is due on the date the commission adopts the final decision. All subsequent payments are due by July 1 of each year in which the facility retains its certification. The fiscal year for the annual fee is July 1 to June 30, inclusive.

(c) The fees in subdivisions (a) and (b) shall be adjusted annually to reflect the percentage change in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, as published by the United States Department of Commerce.

(d) No fee is required to accompany an application for certification, and no annual fee is required thereafter, for a generating facility that uses a renewable resource as its primary fuel or power source. For purposes of this subdivision, a renewable resource includes, but is not limited to, biomass, solar thermal, geothermal, digester gas, conversion at a biorefinery as defined in ~~Section 25741, landfill gas, ocean thermal, and solid waste converted to a clean burning fuel by using a noncombustion thermal process.~~ *Section 25741, landfill gas, and ocean thermal.*

(e) The Energy Facility License and Compliance Fund is hereby created in the State Treasury. All fees received by the commission pursuant to this section shall be remitted to the Treasurer for

deposit in the fund. The money in the fund shall be expended, upon appropriation by the Legislature, for processing applications for certification and for compliance monitoring.

SEC. 3. Section 40103 is added to the Public Resources Code, to read:

40103. "Anaerobic digestion" means a process using the bacterial breakdown of compostable organic material in the absence of oxygen and meeting other parameters as established by the board.

~~SEC. 3.~~

SEC. 4. Section 40117 of the Public Resources Code is repealed.

~~SEC. 4.~~

SEC. 5. Section 40194 of the Public Resources Code is amended to read:

40194. "Solid waste facility" includes a solid waste transfer or processing station, a composting facility, a transformation facility, a biorefinery, as defined in Section 25741, that processes solid waste, and a disposal facility. For purposes of Part 5 (commencing with Section 45000), "solid waste facility" additionally includes a solid waste operation that may be carried out pursuant to an enforcement agency notification, as provided in regulations adopted by the board.

~~SEC. 5.~~

SEC. 6. Section 40201 of the Public Resources Code is amended to read:

40201. "Transformation" means incineration of solid waste, with or without the recovery of energy. "Transformation" does not include composting, biomass conversion, *anaerobic digestion*, or solid waste conversion at a biorefinery as defined in Section 25741.

~~SEC. 6.~~

SEC. 7. Section 41786.5 is added to the Public Resources Code, to read:

41786.5. (a) For the purposes of meeting a solid waste diversion level of up to 50 percent, a jurisdiction shall not include solid waste diverted to a biorefinery, as defined in Section 25741, as disposal reduction as calculated under Section 41780.05.

(b) For the purposes of meeting a solid waste diversion level above 50 percent, a jurisdiction may include solid waste diverted

to a biorefinery, as defined in Section 25741, that is above the 50-percent diversion level as disposal reduction as calculated under Section 41780.05, if the jurisdiction certifies to the board as a part of the jurisdiction's annual report that the jurisdiction has removed all recyclable materials from the diverted solid waste to the maximum extent feasible. *This subdivision shall become operative if this division requires a solid waste diversion level that is above 50 percent.*

~~(c) This section shall become operative if this division requires a solid waste diversion level of above 50-percent.~~

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