AMENDED IN SENATE JUNE 20, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 723

Introduced by Assembly Member Bradford

February 17, 2011

An act to amend Sections ~~25740.5 and 25742 of the Public Resources Code, and to amend Section~~ *399.4 and* 399.8 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 723, as amended, Bradford. Energy: public goods charge.

(1) Under the Public Utilities Act *(the act)*, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations. The *Reliable Electric Service Investments Act within the* act requires the PUC to require an electrical corporation, until January 1, 2012, to identify a separate electrical rate component, commonly referred to as the "public goods charge," to fund energy efficiency, renewable energy, and research, development, and demonstration programs that enhance system reliability and provide in-state benefits. A violation of the act is a crime.

This bill would extend this requirement to January 1, ~~2016~~ *2020*, and would make other technical and conforming changes. Because a violation of the act is a crime, this bill would impose a state-mandated local program *by extending the application of a crime*.

(2) This bill would constitute a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of ⅔ of the membership of each house of the Legislature.

(3) The Reliable Electric Services Act states that it is the policy of the state to administer cost-effective energy efficiency programs and requires the commission to ensure that local and regional interests, multifamily dwellings, and energy service industry capabilities are incorporated into program portfolio design and that local governments, community-based organizations, and energy efficiency service providers are encouraged to participate in program implementation where appropriate.

This bill would require that the commission implement various elements and principles for the state's investments in cost-effective energy efficiency improvements pursuant to the Reliable Electric Services Act.

~~(3)~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. Section 399.4 of the Public Utilities Code is amended to read:

399.4. (a) (1) In order to ensure that prudent investments in energy efficiency continue to be made that produce cost-effective energy savings, reduce customer demand, and contribute to the safe and reliable operation of the electric distribution grid, it is the policy of this state and the intent of the Legislature that the commission shall continue to administer cost-effective energy efficiency programs authorized pursuant to existing statutory authority.

(2) As used in this section, the term "energy efficiency" includes, but is not limited to, cost-effective activities to achieve peak load reduction that improve end-use efficiency, lower customers' bills, and reduce system needs.

(b) The commission, in evaluating energy efficiency investments under its existing statutory authority, shall also ensure that local and regional interests, multifamily dwellings, and energy service industry capabilities are incorporated into program portfolio design and that local governments, community-based organizations, and energy efficiency service providers are encouraged to participate in program implementation where appropriate.

(c) The commission shall implement the following elements and principles for the state's investments in cost-effective energy efficiency improvements pursuant to this article:

(1) That the state's investments in cost-effective energy efficiency improvements protect ratepayers and promote reliable electric service by doing each of the following:

(A) Ensure that moneys collected through the nonbypassable system benefits charge authorized pursuant to this article prioritize energy efficiency programs for low- and moderate-income customers, customers who have higher energy usage, and customers in more extreme cooling and heating climates, and ensure that opportunities are made available to all ratepayer classes paying the charge.

(B) Establish measurement verification and evaluation criteria prior to program implementation.

(C) If the commission establishes a risk-reward incentive mechanism, align electrical corporation incentives for administering energy efficiency activities with actual utility accomplishments.

(2) That the state's investments in cost-effective energy efficiency improvements are undertaken so that they achieve accountability and transparency by doing each of the following:

(A) Make data publicly available in a manner that provides sufficient information to ascertain the total installed cost of energy efficiency measures, the amount of expected energy savings, the total amount of energy efficiency incentives provided, the location where provided, the type of measures installed in each electrical corporation's service area, the processing time for providing incentives, and any type or cause of failure of energy efficiency measures.

(B) Verify energy demand reductions by region and assess progress toward energy efficiency goals, ensure that consumer information is made publicly available to assist customers in finding reliable contractors and energy efficiency measures, to understand the cost and benefits of energy efficiency measures, to

understand their energy bills, and to understand the costs and benefits of various means of financing energy efficiency measures.

(C) Make all contract bidding opportunities publicly available, including contracts administered by electrical corporations or third-party administrators, and ensure that small businesses and minority-, women-, and disabled veteran-owned businesses are considered during the contract bidding process.

(D) Ensure that all products of all consultant contracts are made available in a timely manner on the commission's Internet Web site.

(3) That the cost-effectiveness of investments in energy efficiency are evaluated consistent with all of the following:

(A) Retain the commission's flexibility when evaluating the cost-effectiveness of measures installed in low-income households.

(B) Allow projects to reasonably exceed cost limitations for measures installed in low-income households.

(C) Ensure that all energy efficiency programs are designed to account for the benefits as well as the costs of the programs.

(4) That all of the following program design elements are incorporated into the state's investments in cost-effective energy efficiency improvements:

(A) Ensure that all program funds collected through the nonbypassable system benefits charge authorized by this article are used only to support deployment of energy efficiency measures, training on California building health and safety codes and regulations to ensure quality of installation, measurement, and evaluation, cost-effectiveness analyses, and program administration.

(B) Require that all energy efficiency measures allowed to participate in the programs maximize the reduction in electricity demand.

(C) Ensure that total expenditures for measurement and evaluation, cost-effectiveness, and program administration, when added together, do not exceed 10 percent of the total funding.

(D) Ensure that third-party entities, including regional government energy management centers, directly administer a reasonable portion of the program.

(E) Include comprehensive approaches to maximize energy efficiency, avoid lost opportunities, and overcome implementation barriers.

(F) Utilize rebates, loans, interest rate reductions, or a combination of those measures, for the installation of energy efficiency measures.

(G) Incorporate integrated demand side management principles to the maximum extent practicable.

(H) Establish dollar-per-kilowatt limits for individual projects and establish maximum energy efficiency project incentives to ensure that incentives do not exceed more than 30 percent of the installed cost of a specific energy efficiency project, with the commission retaining the authority to periodically reduce the total incentives available in response to reduced installation costs or market response that indicates that the then existing amount of available incentives are no longer needed to encourage use of energy efficiency measures.

(I) Ensure that projects that receive incentives funded pursuant to this article are not also receiving incentives through other ratepayer funded programs, including the Public Interest Research, Development, and Demonstration Program (Chapter 7.1 (commencing with Section 25620) of Division 15 of the Public Resources Code), the Renewable Energy Resources Program (Chapter 8.6 (commencing with Section 25740) of the Public Resources Code), and the California Solar Initiative (Article 1 (commencing with Section 2851) of Chapter 9 of Part 2), in a manner that exceeds the maximum dollar-per-kilowatt limit established pursuant to subparagraph (H).

(J) Evaluate whether to administer programs to raise public awareness, generally, or programs targeted to particular customer groups, to encourage implementation of energy efficiency measures, including behavior changes that reduce energy consumption, provided that the commission ensure that any funds expended for those programs do not significantly reduce the funding available for encouraging the adoption of energy efficiency measures or behavioral changes that reduce energy consumption.

(K) Ensure that moneys collected by an electrical corporation are not expended to provide incentives to customers outside of the service territory of the electrical corporation.

(5) That the state's investments in cost-effective energy efficiency improvements coordinate with the state's research, development, and demonstration programs and building code energy efficiency programs by doing both of the following:

(A) Ensure that moneys collected through the nonbypassable system benefits charge to fund energy efficiency not be used to fund research, development, and demonstration or to develop or create amendments to the state building codes.

(B) Coordinate with the Public Interest Research, Development, and Demonstration Program (Chapter 7.1 (commencing with Section 25620) of Division 15 of the Public Resources Code) to identify specific areas of research or to identify work needed to amend building codes that can be addressed through the Public Interest Research, Development, and Demonstration Program.

(6) (A) That program results be reported annually to the Legislature and posted on the commission's Internet Web site for each program administered by an electrical corporation, third-party administrator, or local government, to include verifiable energy use reductions achieved through the program, the number of measures implemented, the demographics where the measures were implemented, and the demographics of any jobs created.

(B) The report submitted to the Legislature pursuant to this paragraph shall be submitted in compliance with Section 9795 of the Government Code.

~~SECTION 1. Section 25740.5 of the Public Resources Code is amended to read:~~

~~25740.5. (a) The commission shall optimize public investment and ensure that the most cost-effective and efficient investments in renewable energy resources are vigorously pursued.~~

~~(b) The commission's long-term goal shall be a fully competitive and self-sustaining supply of electricity generated from renewable sources.~~

~~(c) The program objective shall be to increase, in the near term, the quantity of California's electricity generated by in-state renewable electricity generation facilities, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents.~~

~~(d) An additional objective of the program shall be to identify and support emerging renewable technologies in distributed generation applications that have the greatest near-term commercial promise and that merit targeted assistance.~~

~~(e) The Legislature recommends allocations among all of the following:~~

~~(1) Rebates, buydowns, or equivalent incentives for emerging renewable technologies.~~

~~(2) Customer education.~~

~~(3) Production incentives for reducing fuel costs, that are confirmed to the satisfaction of the commission, at solid fuel biomass energy facilities in order to provide demonstrable environmental and public benefits, including improved air quality.~~

~~(4) Solar thermal generating resources that enhance the environmental value or reliability of the electrical system and that require financial assistance to remain economically viable, as determined by the commission. The commission may require financial disclosure from applicants for purposes of this paragraph.~~

~~(5) Specified fuel cell technologies, if the commission makes all of the following findings:~~

~~(A) The specified technologies have similar or better air pollutant characteristics than renewable technologies in the report made pursuant to Section 25748.~~

~~(B) The specified technologies require financial assistance to become commercially viable by reference to wholesale generation prices.~~

~~(C) The specified technologies could contribute significantly to the infrastructure development or other innovation required to meet the long-term objective of a self-sustaining, competitive supply of electricity generated from renewable sources.~~

~~(6) Existing wind-generating resources, if the commission finds that the existing wind-generating resources are a cost-effective source of reliable energy and environmental benefits compared with other in-state renewable electricity generation facilities, and that the existing wind-generating resources require financial assistance to remain economically viable. The commission may require financial disclosure from applicants for the purposes of this paragraph.~~

~~(f) Notwithstanding any other provision of law, moneys collected for renewable energy pursuant to Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code shall be transferred to the Renewable Resource Trust Fund. Moneys collected between January 1, 2007, and January 1, 2016, shall be used for the purposes specified in this chapter.~~

~~SEC. 2. Section 25742 of the Public Resources Code is amended to read:~~

~~25742. (a) Twenty percent of the funds collected pursuant to the renewable energy public goods charge shall be used for programs that are designed to achieve fully competitive and self-sustaining existing in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide during the 2007–2011 or 2012–2016 investment cycle. Eligibility for production incentives under this section shall be limited to those technologies found eligible for funds by the commission pursuant to paragraphs (3), (4), and (6) of subdivision (e) of Section 25740.5.~~

~~(b) Any funds used to support in-state renewable electricity generation facilities pursuant to this section shall be expended in accordance with the provisions of this chapter.~~

~~(c) Facilities that are eligible to receive funding pursuant to this section shall be registered in accordance with criteria developed by the commission and those facilities shall not receive payments for any electricity produced that has any of the following characteristics:~~

~~(1) Is sold at monthly average rates equal to, or greater than, the applicable target price, as determined by the commission.~~

~~(2) Is used onsite.~~

~~(d) (1) Existing facilities generating electricity from biomass energy shall be eligible for funding and otherwise considered an in-state renewable electricity generation facility only if they report to the commission the types and quantities of biomass fuels used.~~

~~(2) The commission shall report the types and quantities of biomass fuels used by each facility to the Legislature in the reports prepared pursuant to Section 25748.~~

~~(e) Each existing facility seeking an award pursuant to this section shall be evaluated by the commission to determine the amount of the funds being sought, the cumulative amount of funds the facility has received previously from the commission and other state sources, the value of any past and current federal or state tax credits, the facility's contract price for energy and capacity, the prices received by similar facilities, the market value of the facility, and the likelihood that the award will make the facility competitive and self-sustaining within the 2007–2011 or 2012–2016 investment~~

~~cycle. The commission shall use this evaluation to determine the value of an award to the public relative to other renewable energy investment alternatives. The commission shall compile its findings and report them to the Legislature in the reports prepared pursuant to Section 25748.~~

~~SEC. 3.~~

SEC. 2. Section 399.8 of the Public Utilities Code is amended to read:

399.8. (a) In order to ensure that the citizens of this state continue to receive safe, reliable, affordable, and environmentally sustainable electric service, it is the policy of this state and the intent of the Legislature that prudent investments in energy efficiency, renewable energy, and research, development and demonstration shall continue to be made.

(b) (1) Every customer of an electrical corporation shall pay a nonbypassable system benefits charge authorized pursuant to this article. The system benefits charge shall fund energy efficiency, renewable energy, and research, development and demonstration.

(2) Local publicly owned electric utilities shall continue to collect and administer system benefits charges pursuant to Section 385.

(c) (1) The commission shall require each electrical corporation to identify a separate rate component to collect revenues to fund energy efficiency, renewable energy, and research, development and demonstration programs authorized pursuant to this section beginning January 1, 2002, and ending January 1, ~~2016~~ *2020*. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage.

(2) This rate component shall not exceed, for any tariff schedule, the level of the rate component that was used to recover funds authorized pursuant to Section 381 on January 1, 2000. If the amounts specified in paragraph (1) of subdivision (d) are not recovered fully in any year, the commission shall reset the rate component to restore the unrecovered balance, provided that the rate component shall not exceed, for any tariff schedule, the level of the rate component that was used to recover funds authorized pursuant to Section 381 on January 1, 2000. Pending restoration, any annual shortfalls shall be allocated pro rata among the three funding categories in the proportions established in paragraph (1) of subdivision (d).

(d) The commission shall order San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company to collect these funds commencing on January 1, 2002, as follows:

(1) Two hundred twenty-eight million dollars ($228,000,000) per year in total for energy efficiency and conservation activities, sixty-five million five hundred thousand dollars ($65,500,000) in total per year for renewable energy, and sixty-two million five hundred thousand dollars ($62,500,000) in total per year for research, development and demonstration. The funds for energy efficiency and conservation activities shall continue to be allocated in proportions established for the year 2000.

(2) The amounts shall be adjusted annually at a rate equal to the lesser of the annual growth in electric commodity sales or inflation, as defined by the gross domestic product deflator.

(e) The commission shall ensure that each electrical corporation allocates funds transferred by the Energy Commission pursuant to subdivision (b) of Section 25743 in a manner that maximizes the economic benefit to all customer classes that funded the New Renewable Resources Account.

(f) The commission and the Energy Commission shall retain and continue their oversight responsibilities as set forth in Sections 381 and 384, and Chapter 7.1 (commencing with Section 25620) and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code.

(g) An applicant for the Large Nonresidential Standard Performance Contract Program funded pursuant to paragraph (1) of subdivision (b) and an electrical corporation shall promptly attempt to resolve disputes that arise related to the program's guidelines and parameters prior to entering into a program agreement. The applicant shall provide the electrical corporation with written notice of any dispute. Within 10 business days after receipt of the notice, the parties shall meet to resolve the dispute. If the dispute is not resolved within 10 business days after the date of the meeting, the electrical corporation shall notify the applicant of his or her right to file a complaint with the commission, which complaint shall describe the grounds for the complaint, injury, and relief sought. The commission shall issue its findings in response to a filed complaint within 30 business days of the date of receipt of the complaint. Prior to issuance of its findings, the commission shall provide a copy of the complaint to the electrical corporation, which shall provide a response to the complaint to the commission within five business days of the date of receipt. During the dispute period, the amount of estimated financial incentives shall be held in reserve until the dispute is resolved.

~~SEC. 4.~~

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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