

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 10, 2002

To: The Commission
(Meeting of May 16, 2002)

From: Bill Julian
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 532 (Sher)** – This bill establishes a Renewables Portfolio Standard Program for the acquisition of renewable energy by entities serving retail load in California. (Related Bills: SB 530 and SB 1524)

As Amended September 4, 2001

Recommendation: Support with amendments.

Summary: This bill (1) establishes a Renewables Portfolio Standard Program for the acquisition of renewable energy by entities serving retail load in California; (2) addresses the administration of ratepayer-provided public goods charge (PGC) funds by the California Energy Commission (CEC); (3) permits non-utility generators with fixed energy price contracts to extend the fixed price contracts for an additional five (5) years.

The provisions of this bill addressing the administration of PGC programs are also contained in SB 530, which is presently pending in fiscal committee in the Assembly, and in SB 1524, which is pending in Senate fiscal committee. This analysis will address only the issues raised by Sections 1, 12 and 16 of the bill, the Renewables Portfolio Standard (RPS). The bill as it appears in print is the subject of extensive negotiations among stakeholders and is likely to change. The Governor has endorsed the basic objective of the bill to achieve 20 % renewable content by 2010.

Analysis: Section 1 of the bill adds a new chapter to the Public Resources Code, establishing an RPS Program administered by the Energy Commission. The RPS has two components a two-tiered approach). (1) a requirement that retail sellers acquire energy from new renewable projects in accordance with the following schedule:

1 % of total kwh sold to retail customers in 2003
2 % in 2005
5 % in 2007
8 % in 2009
10 % in 2010

(2) a potential increase in the annual purchase from new sources above the scheduled levels in order to achieve the following level of renewable content in all retail sales:

10 % of total statewide retail sales by June 1, 2003
12 % by 2005
15 % by 2007
18 % by 2009
20 % by 2010

The standard applies to all retail sellers, including utilities, municipal entities, ESPs, and irrigation districts. Section 12 of the bill requires a utility subject to the CPUC's jurisdiction to develop and receive approval of a renewable procurement plan from the CPUC as an element of its overall procurement plan.

Under the bill in print, a subject entity may meet the requirement in any of three ways – (1) purchase of output from an eligible facility; (2) purchase of a tradable credit representing output from an eligible facility, as administered by the CEC; (3) payment to the CEC of a “proxy payment” of 1.5 cents per kwh “for each kilowatt hour of eligible new renewable resources required to satisfy annual procurement obligations. The proxy payment is intended to provide a cap on ratepayer exposure for the costs of compliance.

Failure to meet the standard in any year would result in a penalty of “twice the cost of compliance” as determined by the CEC. Proxy payments and penalties are deposited in a Renewable Resources Trust Fund created by the bill, and may be used to “preserve historical output from existing renewable resources,” supplement the PGC funded programs, purchase credits from unmetered renewable sellers, and support renewable auctions.

Concerns have been raised by some retail entities who would be subject to the requirement that the bill creates potentially large scale cost impacts for ratepayers without assuring that new renewable projects will actually be financed and built. An alternative to the tradable credit approach is under discussion among stakeholders that would have the following features:

- A commitment to the “20 % in 2010” goal;
- An annual commitment by utilities to increase acquisition of output from new renewable facilities by 1 % of peak load until the 20 % goal is met;

- An annual auction conducted by the CPUC to identify new renewable facilities which would receive long term contracts (10-20 years), with standard terms, at a benchmark price, supplemented by PGC funds if necessary;
- The auction would be designed to identify “least cost/best fit” projects, by identifying both direct and indirect costs including transmission and ancillary services costs, and possibly operating characteristics and dispatch regimes;
- The criteria would be established in a periodic assessment of renewable need by the CPUC, possibly as part of the procurement proceeding;
- Costs associated with the program would be fully recoverable from ratepayers.

Differences in concept on many of these issues are narrowing through discussions among the stakeholders.

Establishing the benchmark price and integrating a flow of funds from the PGC for the new renewable facility, in order to assure the renewable project developers adequate levels of revenue without exploiting ratepayers, remain contentious issues.

OGA recommends that the Commission support the bill with amendments that embody the alternative concept outlined above.

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Attachment

BILL LANGUAGE

BILL NUMBER: SB 532 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY SEPTEMBER 4, 2001
AMENDED IN ASSEMBLY AUGUST 27, 2001
AMENDED IN ASSEMBLY JULY 23, 2001
AMENDED IN SENATE MAY 15, 2001
AMENDED IN SENATE APRIL 19, 2001

INTRODUCED BY Senator Sher
(*Principal coauthor: Assembly Member Jackson*)

FEBRUARY 22, 2001

An act to amend Sections 25620, 25620.1, 25620.2, 25620.3, 25620.5, 25620.7, 25620.9, 25648, 25648.4, and 25684 of, to add Chapter 5.6 (commencing with Section 25465) to Division 15 of the Public Resources Code, and to amend Sections 381, 383.5, 383.7, 390, 394.25, and 445 of, and to add Section 332.4 to, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 532, as amended, Sher. Electrical services: California Renewables Portfolio Standard Program.

(1) Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to develop, implement, and administer the Public Interest Research, Development, and Demonstration Program. Existing law requires the program to consist of a balanced portfolio that addresses California's energy and environmental needs, technology opportunities, and system reliability. Existing law, until January 1, 2000, required the Energy Commission to adopt regulations to ensure the success of electricity industry restructuring in the transition to a new market structure and to implement the program. Existing law authorizes the Energy Commission to solicit applications for awards, using a sealed competitive bid, competitive negotiation process, multiparty agreement, single source, or sole source method. Existing law required the Energy Commission, by January 1, 1999, to designate a panel of independent experts with special expertise in public interest research, development, and demonstration programs to conduct an evaluation of the program and to submit a preliminary report to the Governor and the Legislature by March 31, 2000, and a final report by March 31, 2001.

This bill would authorize the Energy Commission to additionally use interagency agreements to solicit applications for awards and would specify priority for funding projects under the program and criteria for award recipients. The bill would authorize, rather than require, the Energy Commission to adopt regulations, until January 1, 2007. The bill would require the Energy Commission, by July 1, 2002, to designate a panel of independent experts with special expertise in public interest research, development, and demonstration programs to conduct an evaluation of the program and to submit a preliminary report to the Governor and the Legislature by June 30,

2003, and a final report by June 30, 2004.

The bill would make technical and conforming changes.

(2) The Public Utilities Act requires retail suppliers of electric services to disclose sources of electrical generation, as prescribed, and requires that those retail suppliers report specified information to the Energy Commission.

This bill would create the California Renewables Portfolio Standard Program, which would require the Energy Commission, in consultation with the Public Utilities Commission and the Independent System Operator or any successor entity, to certify eligible renewable energy resources for the generation of electricity by an eligible renewable energy resource and to design and implement a system of tradable renewable energy credits. The bill would establish a portfolio standard of electricity from eligible renewable energy resources that a retail seller would be required to purchase and these purchases would be evidenced by eligible renewable credits.

The bill would require the commission to commence proceedings for implementing the California Renewables Portfolio Standard Program on or before 90 days after the effective date of the bill and to adopt final implementing regulations on or before June 1, 2002.

The bill would require the Public Utilities Commission to direct each electrical corporation to prepare an annual renewable procurement plan to satisfy its obligations under the California Renewables Portfolio Standard Program, as specified.

(3) Existing law requires the Public Utilities Commission (commission) to order specified electrical corporations to collect and spend certain funds for cost-effective energy efficiency and conservation activities, public interest research and development, and development of renewable resources technology. Existing law provides that the commission's authority to collect funds for in-state operation and development of existing and new and emerging renewable resource technologies becomes inoperative on March 31, 2002.

This bill would require the San Diego Gas and Electric Company to spend no less than \$13,900,000 per year, the Southern California Edison Company to spend no less than \$65,300,000 per year, and the Pacific Gas and Electric Company to spend no less than \$55,800,000 per year, for the years 2002 to 2011, inclusive, to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies. The bill would delete the provision making the commission's authority to collect funds for these purposes inoperative on March 31, 2002. The bill would make additional technical, nonsubstantive changes.

(4) Existing law defines "in-state renewable electricity generation technology" for the purposes of these provisions. Existing law defines, for the purposes of these provisions, "report" as the Policy Report on AB 1890 Renewables Funding (March 1997, Publication Number P500-97-002) submitted to the Legislature by the Energy Commission.

This bill would define "in-state renewable electricity generation facility" instead of "in-state renewable electricity generation technology" and would modify the existing definition to no longer only include facilities that were placed in operation after September 26, 1996. The bill would include within the definition of "in-state renewable electricity generation facility" a facility using ocean thermal, tidal current, and wave energy generation technologies, located within the state's territorial boundaries. The bill would provide that on and after January 1, 2002, "report," for the purposes of these provisions, 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 Energy Commission.

(5) Existing law requires 45% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$243,000,000, to be used for programs that are designed to improve the competitiveness of existing in-state renewable electricity generation technology facilities. Existing law requires 30% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$162,000,000, to be used for programs that are designed to foster the development of new in-state renewable electricity generation technology facilities. Existing law requires 10% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$54,000,000, to be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications. Existing law requires 15% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$81,000,000, to be used for programs designed to provide customer credits for purchases of renewable energy produced by certified energy providers, to disseminate information regarding renewable energy technologies, to promote purchases of renewable energy, to help develop a consumer market for renewable energy, and to help develop a consumer market for renewable energy technologies.

This bill would instead require 20% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company and the Pacific Gas and Electric Company, to be used for programs that are designed to improve the competitiveness of existing in-state renewable electricity generation facilities. The bill would instead require 50% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company and the Pacific Gas and Electric Company, to be used for programs that are designed to foster the development of new in-state renewable electricity generation facilities. The bill would instead require ~~15%~~ 17.5% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company and the Pacific Gas and Electric Company, to be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications. The bill would instead require 10% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company and the Pacific Gas and Electric Company, to be used to provide customer credits for purchases of renewable energy produced by certified generating facilities. The bill would require ~~5%~~ 2.5% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company and the Pacific Gas and Electric Company, to be used to promote renewable energy and to disseminate information on renewable energy technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies.

(6) Existing law provides for the Renewable Resource Trust Fund in the State Treasury and establishes certain accounts in the Renewable Resource Trust Fund, including the Customer-Side Renewable Resource

Purchases Account. Existing law provides that the money in the fund and the accounts are continuously appropriated to the Energy Commission. Existing law provides that unallocated funds in any account shall remain in the respective account until December 31, 2001.

This bill would instead establish the Customer-Credit Renewable Resources Account and the Renewable Resources Consumer Education Account. The bill would require that unallocated funds in any account remain in the respective account until the Energy Commission submits a specified report.

(7) Existing law specifies that subject to applicable contractual terms, energy prices paid to nonutility power generators by a public utility electrical corporation based on the commission's "short run avoided cost energy methodology" are required to be determined by specified law.

This bill would authorize any nonutility power generator using renewable fuels that has entered into a contract with an electrical corporation specifying fixed energy prices for output through December 31, 2005, to elect an additional five years of fixed energy payments at a level to be determined by the commission.

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. Chapter 5.6 (commencing with Section 25465) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 5.6. CALIFORNIA RENEWABLES PORTFOLIO STANDARD PROGRAM

25465. For purposes of this chapter, the following terms have the following meanings.

(a) "Eligible renewable energy resource" means an electric generating facility that meets all of the following criteria:

(1) Uses wind, solar, geothermal, or biomass as its primary fuel.

(A) A solar thermal energy system that reduces the consumption of electricity may be considered an eligible renewable energy resource.

(B) Fuel cells using renewable fuels are an eligible renewable energy resource.

(2) Improves the resource diversity in the electricity market that serves the state, and increases the reliability of the state's electricity system. The commission shall deem an electric generating facility or solar thermal energy system to satisfy this requirement if it meets any one of the following criteria:

(A) It is located within the control area of the Independent System Operator, the Los Angeles Department of Water and Power, or the Imperial Irrigation District.

(B) Its power is sold under a direct bilateral contract to a retail seller and its energy is delivered to end-use customers within the state.

(b) "Eligible existing renewable energy resource" means an electric generating facility that satisfies all criteria in subdivision (a) and is in existence before September 26, 1996. Any facility that sells its output to an electrical corporation under a contract entered into prior to 1996 under the federal Public Utilities Regulatory Policies Act of 1978 (P.L. 95-617) shall be considered an eligible existing resource.

(c) "Eligible new renewable energy resource" means output from an electric generating facility that satisfies all criteria in subdivision (a) and meets at least one of the following criteria:

(1) The facility commenced initial operation on or after September 26, 1996.

(2) The output represents incremental production from repowered or refurbished existing facilities and project additions completed on or after September 26, 1996, as measured by the production of kilowatthours above the five-year average of the kilowatthours previously delivered from the project. Incremental output from repowered or refurbished facilities sold to an electrical corporation under a contract entered into prior to January 1, 2001, that specifies fixed capacity payments for the incremental output may not be considered an eligible new renewable energy resource.

(3) The output represents incremental output above levels specified in contracts for facilities defined in subdivision (b).

(4) The output represents incremental output above a five-year historical average for existing facilities not under a contract entered into prior to 1996 under the federal Public Utilities Regulatory Policies Act of 1978 (P.L. 95-617).

(d) "Renewable energy credit" means a tradable certificate of proof, certified by the commission, that one kilowatthour of electricity was generated by an eligible new renewable energy resource. That portion of electricity generated by an eligible new nonrenewable energy resource attributable to the use of nonrenewable fuels is not eligible for renewable energy credits.

(e) "Biomass" means any of the following:

(1) Agricultural crops and agricultural wastes and residues.

(2) Landfill and digester gas.

(3) Solid wood waste materials including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically treated or lead-painted wood wastes), and landscape or right-of-way tree trimmings.

(4) Wood and wood wastes and residues that meet all of the following requirements:

(A) Have been harvested pursuant to an approved timber harvest plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4).

(B) Have been harvested for purposes of forest fire fuel reduction or forest stand improvement.

(C) Do not transport or cause the transportation of species known to harbor insect or disease pests outside zones of infestation or current quarantine zones, as identified by the Department of Food and Agriculture or the State Board of Forestry and Fire Protection.

(f) "Retail seller" means an entity engaged in the retail sale or provision of electricity to end-use customers, including, but not limited to, any of the following:

(1) An electrical corporation, as defined in Section 218 of the Public Utilities Code.

(2) A local publicly owned electric utility, as defined in subdivision (d) of Section 9604 of the Public Utilities Code.

(3) An electric service provider, as defined in Section 218.3 of the Public Utilities Code.

(4) An irrigation district furnishing electric services formed pursuant to Division 11 (commencing with Section 20500) of the Water Code.

(5) The Department of Water Resources is not a retail seller under this section. All eligible new renewable resources procured by the Department of Water Resources shall be allocated, on a pro rata basis, to electrical corporations whose customers receive electricity

from the Department of Water Resources pursuant to Section 80100 of the Water Code.

(g) "Portfolio standard" means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to purchase in any given year, as established by the commission pursuant to Section 25465.5.

(h) "Public utility" means an electrical corporation subject to regulation by the Public Utilities Commission under Section 216 of the Public Utilities Code.

(i) "Commission" means the State Energy Resources Conservation and Development Commission.

25465.3. The commission, in consultation with the Public Utilities Commission and the Independent System Operator or any successor entity, shall do all of the following:

(a) Certify eligible new and existing renewable energy resources that it determines meet the criteria described in subdivisions (a) and (b) of Section 25465.

(b) Establish a single, central, electronic credit-accounting system to verify compliance with the portfolio standard by retail sellers and to ensure that renewable energy output is counted only once for the purpose of meeting the portfolio standard of this state or any other state or for verifying retail product claims in this state or any other state. In establishing the rules governing this system, the commission shall do all of the following:

(1) Impose or authorize a fee on all users of the credit system in an amount equal to the reasonable costs of administering the portfolio standard program.

(2) Upon the request of a retail seller, allow the exchange of renewable energy credits certified under this section to promote flexibility in compliance with the portfolio standard.

(3) Establish banking rules that authorize retail sellers to apply any overcompliance with the portfolio standard within a given year to the following year.

(c) Allocate and administer funds from the Renewable Resource Trust Fund ~~established under paragraph (8) of subdivision (f) of Section 840 of the Public Utilities Code to complement this chapter,~~ to preserve historical output from existing renewable resources, to support a diversity of renewable resources and technologies, and to promote emerging renewable technologies.

25465.5. (a) The commission shall establish a portfolio standard requiring all retail sellers to procure a minimum quantity of output from eligible new renewable energy resources as a specified percentage of total kilowatthours sold to its retail end-use customers each calendar year. The commission shall establish the minimum uniform percentage of eligible new renewable energy resources to be procured by retail sellers according to the following schedule:

(1) At least 1 percent by June 1, 2003.

(2) At least 2 percent by January 1, 2005.

(3) At least 5 percent by January 1, 2007.

(4) At least 8 percent by January 1, 2009.

(5) At least 10 percent beginning on January 1, 2010, and continuing until January 1, 2020.

(6) (A) The commission shall increase the percentage of retail sales required from eligible new resources if an increase is necessary, in combination with the statewide contribution of eligible existing resources, to produce the minimum percentages of total statewide retail sales from all eligible renewable resources according to the following schedule:

(i) Ten percent by June 1, 2003.

(ii) Twelve percent by January 1, 2005.

(iii) Fifteen percent by January 1, 2007.

(iv) Eighteen percent by January 1, 2009.

(v) Twenty percent by January 1, 2010.

(B) The commission shall notify all retail providers at least one year prior to increasing the requirement for procuring eligible new resources.

(b) Notwithstanding any other requirement of this section, the commission may allow retail sellers to comply with the portfolio standard by making a proxy payment to the commission of one and one-half cents (\$.015) in 2001 dollars for each kilowatthour of eligible new renewable resources required to satisfy annual procurement obligations. The commission shall allow retail sellers to make these payments in lieu of actual procurement if it determines that the cost of renewable energy credits needed to demonstrate compliance by retail sellers would otherwise exceed the proxy payment.

(c) Any retail seller that fails to meet its obligations under this chapter shall pay a penalty of at least twice the cost of compliance as determined by the commission. A retail seller making proxy payments to comply with the portfolio standard subject to the terms of ____ is not liable for penalty payments.

(d) All proxy payments and penalties received by the commission shall be deposited into the Renewable Resource Trust Fund and may be used for any of the following purposes:

(1) Conducting auctions for the purchase of renewable energy credits from eligible new renewable resources.

(2) Purchasing renewable energy credits from customers using distributed photovoltaic generation or eligible solar thermal energy systems that are not separately metered.

(3) Supporting program activities defined in Section 383.5 of the Public Utilities Code.

(4) All proxy payments collected from a local publicly owned electric utility as defined in subdivision (d) of Section 9604 of the Public Utilities Code shall be used to support commission programs that benefit their customers.

25465.7. The commission shall commence proceedings for implementing the California Renewables Portfolio Standard Program on or before 90 days after the effective date of the act that enacts this section during the 2001 portion of the 2001-02 Regular Session. The commission shall adopt final implementing regulations on or before June 1, 2002.

25465.9. The Department of Water Resources shall procure sufficient eligible renewable energy resources as necessary to satisfy the portfolio standard of any affected public utility if the public utility is unable to fulfill its obligations under this section for any length of time due to severe financial hardship or insolvency. This section is not intended to alter the schedule for resumption of electric procurement of any public utility whose customers are currently being served by the Department of Water Resources.

SEC. 2. Section 25620 of the Public Resources Code is amended to read:

25620. The Legislature hereby finds and declares all of the following:

(a) It is in the best interests of the people of this state that the quality of life of its citizens be improved by providing environmentally sound, safe, reliable, and affordable energy services and products.

(b) To improve the quality of life of this state's citizens, it is proper and appropriate for the state to undertake public interest energy research, development, and demonstration projects that are not

adequately provided for by competitive and regulated energy markets.

(c) Public interest energy research, demonstration, and development projects should advance energy science or technologies of value to California citizens and should be consistent with the policies of Chapter 854 of the Statutes of 1996.

(d) The commission should use its adopted "Five-Year Investment Plan, 2002 Through 2006 for the Public Interest Energy Research (PIER) Program (Volume 1)" (P600-01-004a, March 1, 2001) to ensure compliance with policies and provisions of Chapter 854 of the Statutes of 1996 in the administration of public interest energy research, demonstration, and development programs.

SEC. 3. Section 25620.1 of the Public Resources Code is amended to read:

25620.1. (a) The commission shall develop, implement, and administer the Public Interest Research, Development, and Demonstration Program, which is hereby created. The program shall include a full range of research, development, and demonstration activities that, as determined by the commission, are not adequately provided for by competitive and regulated markets.

(b) The goal of the program is to provide California and its citizens with a clean, affordable, reliable, and resilient supply of energy, where customers have energy choices that can meet their individual needs, California's industries can grow and prosper, and California is established as the world leader in energy efficiency and clean, advanced energy technologies and systems. To meet this goal, the commission shall adopt a portfolio approach for the program to effectively balance the risks, benefits, and time horizons for various activities and investments that will provide tangible benefits for California electricity ratepayers. The portfolio shall emphasize innovative energy supply and end-use technologies, focusing on their reliability, affordability, and environmental attributes. The priorities for funding projects under the program shall be based upon at least one of the following:

- (1) The potential for exploiting emerging opportunities.
- (2) The potential for mitigating important energy system problems.

(3) The potential for expanding upon the benefits derived from prior projects funded by the program.

(c) The commission shall review the portfolio adopted pursuant to subdivision (b) in accordance with the "Five-Year Investment Plan, 2002 Through 2006 for the Public Interest Energy Research (PIER) Program (Volume 1)" (P600-01-004a, March 1, 2001).

(d) The term "award," as used in this chapter, may include, but is not limited to, contracts, grants, loans, purchase orders, and other financial agreements designed to fund and support public interest research, demonstration, and development projects or programs.

SEC. 4. Section 25620.2 of the Public Resources Code is amended to read:

25620.2. (a) The commission shall administer the program in a manner that is consistent with the purposes of Chapter 854 of the Statutes of 1996, and shall ensure that the program meets all of the following criteria:

(1) Demonstrates a balance of benefits to all sectors that contribute to the funding under Section 381 of the Public Utilities Code.

(2) Addresses key technical and scientific barriers.

(3) Demonstrates a balance between short-term, mid-term, and long-term potential.

(4) Ensures that research currently, previously, or about to be undertaken by research organizations is not unnecessarily duplicated.

(b) To ensure the efficient implementation and administration of the program, the commission shall do both of the following:

(1) Develop procedures for the solicitation of award applications for project or program funding, and to ensure efficient program management.

(2) Evaluate and select programs and projects, based on merit, that will be funded under the program.

(c) To ensure the success of electric industry restructuring in the transition to a new market structure and to implement the program, the commission may adopt regulations, as defined in Section 11342.600 of the Government Code, in accordance with the following procedures:

(1) Prepare a preliminary text of the proposed regulation and provide a copy of the preliminary text to any person requesting a copy.

(2) Provide public notice of the proposed regulation to any person who has requested notice of the regulations prepared by the commission. The notice shall contain all of the following:

(A) A clear overview explaining the proposed regulation.

(B) Instructions on how to obtain a copy of the proposed regulations.

(C) A statement that if a public hearing is not scheduled for the purpose of reviewing a proposed regulation, any person may request, not later than 15 days prior to the close of the written comment period, a public hearing conducted in accordance with the procedures set forth in Section 11346.8 of the Government Code.

(D) A deadline for the submission of written comments.

(3) Accept written public comments for 30 calendar days after providing the notice required in paragraph (2).

(4) Certify that all written comments were read and considered by the commission.

(5) Place all written comments in a record that includes copies of any written factual support used in developing the proposed regulation, including written reports and copies of any transcripts or minutes in connection with any public hearings on the adoption of the regulation. The record shall be open to public inspection and available to the courts.

(6) Provide public notice of any substantial revision of the proposed regulation at least 15 days prior to the expiration of the deadline for public comments and comment period using the procedures provided in paragraph (2).

(7) Conduct public hearings, if a hearing is requested by an interested party, that shall be conducted in accordance with the procedures set forth in Section 11346.8 of the Government Code.

(8) Adopt any proposed regulation at a regularly scheduled and noticed meeting of the commission. The regulation shall become effective immediately unless otherwise provided by the commission.

(9) Publish any adopted regulation in a manner that makes copies of the regulation easily available to the public. Any adopted regulation shall also be made available on the Internet. The commission shall transmit a copy of an adopted regulation to the Office of Administrative Law for publication, or, if the commission determines that printing the regulation is impractical, an appropriate reference as to where a copy of the regulation may be obtained.

(10) Notwithstanding any other provision of law, this subdivision provides an interim exception from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for regulations required to implement Sections 25620.1 and 25620.2 that are adopted under the procedures specified

in this subdivision.

(11) This subdivision shall become inoperative on January 1, 2007, unless a later enacted statute deletes or extends that date. However, after January 1, 2007, the commission is not required to repeat any procedural step in adopting a regulation that has been completed before January 1, 2007, using the procedures specified in this subdivision.

SEC. 5. Section 25620.3 of the Public Resources Code is amended to read:

25620.3. (a) The commission may, consistent with the requirements of Section 25620.2, provide awards to any individual or entity proposing to participate in any or all of the planning, developing, executing, implementing, administering, evaluating, and supporting of public interest research, development, and demonstration.

(b) The commission may provide an award to a project or program that includes a group of related projects, or to a party who aggregates projects that directly benefit from the award. An award does not constitute the rendering of goods or services or a direct benefit to the commission.

(c) The commission may provide an award to develop, implement, or administer a portion of the program, which includes agency delegation of the authority to develop, implement, or administer the program.

SEC. 6. Section 25620.5 of the Public Resources Code is amended to read:

25620.5. (a) The commission may solicit applications for awards, using a sealed competitive bid, competitive negotiation process, multiparty agreement, interagency agreement, single source, or sole source method.

(b) A sealed bid method may be used when goods and services to be acquired can be described with sufficient specificity so that bids can be evaluated against specifications and criteria set forth in the solicitation for bids.

(c) The commission may use a competitive negotiation process in any of the following circumstances:

(1) Whenever the desired award is not for a fixed price.

(2) Whenever the specifications cannot be drafted in sufficient detail so as to be applicable to a sealed competitive bid.

(3) Whenever there is a need to compare the different price, quality, and structural factors of the bids submitted.

(4) Whenever there is a need to afford bidders an opportunity to revise their proposals.

(5) Whenever oral or written discussions with bidders concerning the technical and price aspects of their proposals will provide better results to the state.

(6) Whenever the price of the award is not the determining factor.

(d) The commission may establish multiparty and interagency agreements with other entities for the same program or project, or to provide support to the program. The commission shall be a party to those agreements and shall share in the roles, responsibilities, risks, investments, and results of the agreement.

(e) The commission may provide awards on a single source basis by choosing from among two or more parties or by soliciting multiple applications from parties capable of supplying or providing similar goods or services. The cost to the state may be reasonable and the commission shall only enter into a single source agreement with a particular entity if the commission determines that it is in the state's best interests.

(f) The commission, in accordance with subdivision (g), may provide awards on a sole source basis when the cost to the state is

reasonable and when, in consultation with the Department of General Services, the commission makes any of the following determinations:

(1) The proposal was unsolicited and meets the evaluation criteria of this chapter.

(2) The expertise, service, or product is unique.

(3) The urgency of the need for the information or deliverable is such that a competitive solicitation would frustrate timely performance.

(4) The award funds the next phase of a multiphased proposal and the existing agreement is being satisfactorily performed.

(5) When it is determined by the commission to be in the best interests of the state.

(g) The commission may not use a sole source basis for an award pursuant to subdivision (f), unless both of the following conditions are met:

(1) The commission, at least 30 days prior to taking an action pursuant to subdivision (f), notifies the Joint Legislative Budget Committee, in writing, of its intent to take the proposed action.

(2) The Joint Legislative Budget Committee either approves or does not disapprove the proposed action within 30 days from the date of notification required by paragraph (1).

(h) The commission shall submit semiannual reports to the Legislative Analyst and to the appropriate fiscal and policy committees of the Legislature that review bills relating to energy and public utilities. The reports shall contain an evaluation of the progress and status of the implementation of this section.

(i) The provisions of this section are severable. If any provision of this section or its application is held to be invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 7. Section 25620.7 of the Public Resources Code is amended to read:

25620.7. The commission may contract for, or through interagency agreement obtain, technical, scientific, or administrative services support from one or more entities, to reduce the overhead and administrative costs of implementing the program. If the commission has provided awards to multiple entities bidding on the same solicitation, the commission may select from among the awardees the particular expertise needed to meet the requirements of the tasks described in a work authorization. Funding for this purpose shall be made from money in the Public Interest Research, Development, and Demonstration Fund.

SEC. 8. Section 25620.9 of the Public Resources Code is amended to read:

25620.9. (a) Not later than July 1, 2002, the commission shall designate a panel of independent experts with special expertise in public interest research, development, and demonstration programs. The panel shall conduct a comprehensive evaluation of the program established pursuant to this chapter. The evaluation shall include a review of the public value of programs established pursuant to this chapter, and shall evaluate factors including, but not limited to, the monetary and nonmonetary benefits to public health and the environment of those programs, and the benefits of those programs in providing funds for technology development that would otherwise not be funded.

(b) Not later than June 30, 2003, the panel designated pursuant to subdivision (a) shall submit a preliminary report to the Governor and to the Legislature on its findings and recommendations on the implementation of the program established pursuant to this chapter. The panel, not later than June 30, 2004, shall submit a final report

to the Governor and to the Legislature, including any additional findings and recommendations regarding implementation of the program.

(c) This section shall remain in effect only until July 1, 2005, and as of January 1, 2006, is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 9. Section 25648 of the Public Resources Code is amended to read:

25648. (a) The commission shall make loans, and research contract and grant awards, for purposes of making existing energy technologies more efficient, cost-effective, and environmentally acceptable, and to research, develop, demonstrate, and commercialize new, cost-effective alternative sources of energy, technologies which displace conventional fuels, and energy efficiency and conservation devices.

(b) In selecting projects, the commission shall consider, but is not limited to, the list of opportunity technologies developed in the most current energy development report produced pursuant to Section 25604, or a subset of those opportunity technologies.

(c) The commission shall select the projects through competitive bid procedures, such as invitations for bids, requests for proposals, program opportunity notices, and multistep bids using preapplications, by demonstrating the need for sole source awards, or by evaluating small business grant and loan applications.

(d) The criteria for the selection of projects shall include, but not be limited to, all of the following factors:

(1) The potential of the project to reduce energy consumption or provide an alternative source of energy.

(2) The financial, technical, and management strength of the project applicant.

(3) The near-term and long-term feasibility of the project.

(4) The ability of the project technology to be used throughout California.

(5) The potential of the project for promoting diverse, secure, and resilient energy supplies.

(6) The potential of the project to displace petroleum.

(7) The potential of the project for reducing adverse environmental impacts.

(8) The potential of the project to stimulate economic development, employment, and tax revenues for California.

(9) The potential of the project for reducing short-term and long-term energy costs for the ratepayers of California.

(10) The need of the project for state financing.

(11) The ability of the project to attract private and other public investment.

(12) The investment payback period for the project.

(13) The probability of success in overcoming the risk of the project.

(14) The potential for stimulating small business competition in the field of alternative energy development.

(15) The ability of the project to generate needed community economic development for participating local jurisdictions.

(16) The extent of the applicant's financial participation.

(17) The degree of innovation of the project.

(18) Whether the project is, in general, consistent with the energy policies of California regarding the energy technologies and priorities as set forth in the biennial report of the commission.

(19) The cost of the project.

(e) The commission shall apply the criteria specified in subdivision (d) consistently within each competitive bid

solicitation.

(f) Awards provided pursuant to this chapter are not subject to Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

SEC. 10. Section 25648.4 of the Public Resources Code is amended to read:

25648.4. The commission shall apply this chapter to research, development, demonstration, and commercialization projects that are not subject to Chapter 6 (commencing with Section 3800) of Division 3 and Chapter 7.1 (commencing with Section 25620), and Chapter 7.8 (commencing with Section 25680).

SEC. 11. Section 25684 of the Public Resources Code is amended to read:

25684. (a) The commission shall make loans and repayable research contracts, and may provide primary research contracts funding from the account for the purposes of making energy technologies more efficient and cost-effective, and to develop new cost-effective alternative sources of energy. The commission shall select recipients through a procedure using an invitation for bids or a request for proposals. Each invitation for bids and request for proposals shall specify the criteria to be used in selecting projects for financing. The criteria shall include, but not be limited to, all of the following factors:

(1) The potential of the project to reduce consumption and increase the efficiency of nonrenewable energy sources and systems.

(2) The financial, technical, and management strength of the project applicant.

(3) The near-term and long-term feasibility of the project.

(4) The ability of the project technology to be used on other applications throughout California.

(5) The potential of the project for promoting diverse, secure, and resilient energy supplies.

(6) The potential of the project for reducing adverse environmental impacts.

(7) The potential of the project to stimulate economic development, employment, and tax revenues for California.

(8) The potential of the project for reducing short-term and long-term energy costs for the ratepayers of California.

(9) The need of the project for state financing.

(10) The ability of the project to garner private investment.

(11) The investment payback period for the project.

(12) The probability of success in overcoming the risk of the project.

(13) The potential for stimulating small business competition in the field of alternative energy development.

(14) The ability of the project to generate needed community economic development for participating local jurisdictions.

(15) The extent of the applicant's financial participation.

(16) The degree of innovation of the project.

(17) Whether the project is in general agreement with the energy policies of California regarding the energy technologies and priorities as set forth in the biennial report of the commission.

(b) Awards provided pursuant to this chapter are not subject to Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

SEC. 12. Section 332.4 is added to the Public Utilities Code, to read:

332.4. (a) The commission shall direct each electrical corporation to prepare an annual renewable procurement plan to satisfy its obligations under the California Renewables Portfolio Standard Program, as established in Chapter 5.6 (commencing with

Section 25465) of Division 15 of the Public Resources Code. Consistent with the goal of procuring the least-cost eligible new renewable energy resources, the electrical corporation shall file an initial renewable energy procurement plan with the commission prior to resuming general procurement responsibilities.

(1) The renewable procurement plan shall include, but is not limited to, all of the following:

(A) Criteria for choosing between short-term and long-term purchases.

(B) Provisions for the sale and banking of excess renewable energy credits.

(C) A process and methodology for determining whether proposed procurement would exceed the cost cap under the portfolio standard.

(2) The renewable procurement plan shall be submitted by the electrical corporation and considered by the commission as part of a general procurement plan.

(3) The proposed commencement date for renewable procurement may not precede the date established for resumption of procurement as specified in statute or in any agreement the electrical corporation may have with the Department of Water Resources.

(b) The commission shall review and accept, modify, or reject each electrical corporation's renewable procurement plan within a reasonable time period. The commission shall ensure that, if the electrical corporation submits a procurement plan within the required time period, the electrical corporation will be able to procure sufficient renewable resources to comply with the terms of the California Renewables Portfolio Standard Program without incurring any penalty.

(c) The commission shall allow an electrical corporation to recover in rates reasonable procurement and administrative costs incurred to satisfy the California Renewables Portfolio Standard Program so long as the electrical corporation has incurred the costs consistent with a renewable procurement plan incurred by the commission.

SEC. 13. Section 381 of the Public Utilities Code is amended to read:

381. (a) To ensure that the funding for the programs described in subdivision (b) and Section 382 are not commingled with other revenues, the commission shall require each electrical corporation to identify a separate rate component to collect the revenues used to fund these programs. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage. This rate component shall fall within the rate levels identified in subdivision (a) of Section 368.

(b) The commission shall allocate funds collected pursuant to subdivision (a), and any interest earned on collected funds, to programs that enhance system reliability and provide in-state benefits as follows:

(1) Cost-effective energy efficiency and conservation activities.

(2) Public interest research and development not adequately provided by competitive and regulated markets.

(3) In-state operation and development of existing and new and emerging renewable resource technologies defined as electricity produced from other than a conventional power source within the meaning of Section 2805, provided that a power source utilizing more than 25 percent fossil fuel may not be included.

(c) The Public Utilities Commission shall order the respective electrical corporations to collect and spend these funds, as follows:

(1) Cost-effective energy efficiency and conservation activities

shall be funded at not less than the following levels commencing January 1, 1998, through December 31, 2001: for San Diego Gas and Electric Company a level of thirty-two million dollars (\$32,000,000) per year; for Southern California Edison Company a level of ninety million dollars (\$90,000,000) for each of the years 1998, 1999, and 2000; fifty million dollars (\$50,000,000) for the year 2001; and for Pacific Gas and Electric Company a level of one hundred six million dollars (\$106,000,000) per year.

(2) Research, development, and demonstration programs to advance science or technology that are not adequately provided by competitive and regulated markets shall be funded at not less than the following levels commencing January 1, 1998, through December 31, 2011: for San Diego Gas and Electric Company a level of four million dollars (\$4,000,000) per year; for Southern California Edison Company a level of twenty-eight million five hundred thousand dollars (\$28,500,000) per year; and for Pacific Gas and Electric Company a level of thirty million dollars (\$30,000,000) per year.

(3) In-state operation and development of existing and new and emerging renewable resource technologies shall be funded at not less than the following levels on a statewide basis: one hundred nine million five hundred thousand dollars (\$109,500,000) per year for each of the years 1998, 1999, and 2000, and one hundred thirty-six million five hundred thousand dollars (\$136,500,000) for the year 2001. To accomplish these funding levels over the period described herein the San Diego Gas and Electric Company shall spend twelve million dollars (\$12,000,000) per year, the Southern California Edison Company shall expend no less than forty-nine million five hundred thousand dollars (\$49,500,000) for the years 1998, 1999, and 2000, and no less than seventy-six million five hundred thousand dollars (\$76,500,000) for the year 2001, and the Pacific Gas and Electric Company shall expend no less than forty-eight million dollars (\$48,000,000) per year through the year 2001. Additional funding not to exceed seventy-five million dollars (\$75,000,000) shall be allocated from moneys collected pursuant to subdivision (d) in order to provide a level of funding totaling five hundred forty million dollars (\$540,000,000).

(4) Up to fifty million dollars (\$50,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to implementation of subdivision (a) of Section 374. Moneys remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).

(5) Up to ninety million dollars (\$90,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to contractual arrangements in the Southern California Edison service territory stemming from the Biennial Resource Planning Update auction. Moneys remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).

(6) To accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies in accordance with the intent of Section 399, the San Diego Gas and Electric Company shall spend no less than thirteen million nine hundred thousand dollars (\$13,900,000) per year from January 1, 2002 to December 31, 2011, inclusive, the Southern California Edison Company shall spend no less than sixty-five million three hundred thousand dollars (\$65,300,000) per year from January 1, 2002 to December 31, 2011, inclusive, and the Pacific Gas and Electric Company shall spend no less than fifty-five million eight hundred thousand dollars (\$55,800,000) per year from January 1, 2002 to December 31, 2011, inclusive.

(d) Notwithstanding any other provisions of this chapter, the

commission may allow entities subject to its jurisdiction to extend the period for competition transition charge collection up to three months beyond its otherwise applicable termination of December 31, 2001, or to allow these entities to impose an alternative nonbypassable system benefits charge, so as to ensure that the aggregate portion of the research, environmental, and low-income funds allocated to renewable resources shall equal five hundred forty million dollars (\$540,000,000) and that the costs specified in paragraphs (3), (4), and (5) of subdivision (c) are collected.

(e) Each electrical corporation shall allow customers to make voluntary contributions through their utility bill payments as either a fixed amount or a variable amount to support programs established pursuant to paragraph (3) of subdivision (b). Funds collected by electrical corporations for these purposes shall be forwarded in a timely manner to the appropriate fund as specified by the commission.

(f) For purposes of this article, "emerging renewable technology" means a new renewable technology, including, but not limited to, fuel cells using renewable fuels and photovoltaic technology, that is determined by the State Energy Resources Conservation and Development Commission to be emerging from research and development and that has significant commercial potential.

SEC. 14. Section 383.5 of the Public Utilities Code is amended to read:

383.5. (a) It is the intent of the Legislature in establishing the California Renewables Portfolio Standard Program in Chapter 5.6 (commencing with Section 25465) of Division 15 of the Public Resources Code, to increase the amount of renewable electricity generated per year so that it equals at least 17 percent of the total electricity generated for consumption in California per year by 2006.

(b) As used in this section, the following terms have the following meaning:

(1) "In-state renewable electricity generation facility" means a facility using biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small ~~hydropower~~ *hydroelectric generation facility* of 30 megawatts or less, waste tire, digester gas, landfill gas, and municipal solid waste generation technologies, as described in the report, defined in paragraph (2), including any additions or enhancements thereto, that are located in this state or located near the border of this state and with the first point of connection to the Western States Coordinating Council (WSCC) transmission system located within this state. "In-state renewable electricity generation facility" also includes a facility using ocean thermal, tidal current, and wave energy generation technologies, located within the state's territorial boundaries.

(2) Before January 1, 2002, "report" means the Policy Report on AB 1890 Renewables Funding (March 1997, Publication Number P500-97-002) submitted to the Legislature by the State Energy Resources Conservation and Development Commission. On and after January 1, 2002, "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 State Energy Resources Conservation and Development Commission.

(c) (1) Twenty percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used for programs that are designed to improve the competitiveness of 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.

(2) Any funds used to support in-state renewable electricity generation facilities pursuant to this subdivision shall be expended in accordance with the provisions of the report, subject to all of the following requirements:

(A) Funding for existing renewable electricity generation facilities shall be grouped into two technology tiers, as follows:

(i) Fifteen percent of the money shall be used to fund first tier technologies, including biomass and solar thermal.

(ii) Five percent of the money shall be used to fund second tier wind technologies.

(iii) Sufficient funds may be made available from unallocated program expenditures as necessary to support existing geothermal technologies demonstrating financial need. The State Energy Resources Conservation and Development Commission shall reexamine the tier structure as proposed in the report and adjust the structure to reflect market conditions.

(B) The State Energy Resources Conservation and Development Commission shall establish a cents per kilowatthour production incentive, not to exceed the payment caps per kilowatthour established in the report representing the difference between target prices and the market clearing price for electricity, if sufficient funds are available. If there are insufficient funds in any payment period to pay either the difference between the target and market price or the payment caps, production incentives shall be based on the amount determined by dividing available funds by eligible generation. The market clearing price for electricity shall be determined by the State Energy Resources Conservation and Development Commission based on the energy prices paid to nonutility power generators as provided in Section 390, or on otherwise available measures of market clearing price.

(C) Facilities that are eligible to receive funding pursuant to this subdivision shall be certified in accordance with the requirements set forth in the report and may not receive payments for any electricity produced that has any of the following characteristics:

(i) Is sold at rates equal to or greater than the applicable target price, as determined by the State Energy Resources Conservation and Development Commission.

(ii) Derives from a facility that is receiving fuel-based incentives through the Agricultural Biomass-to-Energy Incentive Grant Program (Part 3 (commencing with Section 1101) of Division 1 of the Food and Agricultural Code.

(iii) Is used onsite.

(d) (1) Fifty percent of the money collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used for programs designed to foster the development of new 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.

(2) Any funds used for new in-state renewable electricity generation facilities pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:

(A) Funds shall be allocated for proposed projects based on a competitive solicitation process whereby production incentives, not to exceed a maximum amount, as specified by the State Energy Resources Conservation and Development Commission, are awarded to the lowest bidders, provided that not more than 25 percent of the funds allocated in any competitive solicitation pursuant to paragraph (1) may be awarded to a single project.

(B) Funds expended for production incentives shall be paid over a five-year period commencing on or after the date that a project begins electricity production, provided that the project shall be operational within four years after the date of the competitive solicitation in which the project was allocated funding. A project that becomes operational later than four years after the date of the competitive solicitation in which the project was allocated funding may not receive payments except upon the extension and reapproval of its award by the State Energy Resources Conservation and Development Commission, and may not receive any payments for energy generated beyond the date nine years after the date of the competitive solicitation. The State Energy Resources Conservation and Development Commission may extend and reapprove a project award if it finds that the project will not be operational within the expected four-year period, due to circumstances specific to the project and beyond the control of the project developer. Upon making this finding, the State Energy Resources Conservation and Development Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond six years after the date of the applicable competitive solicitation.

(C) A facility that does not meet the definition of "in-state renewable generation facility" solely because it is located outside the state is eligible for funding from this subdivision if it satisfies both of the following requirements:

(i) It is located so that it is or will be connected to the WSCC grid.

(ii) It is developed with guaranteed contracts to sell its generation to end-use customers within California, or to marketers that provide this guarantee for resale of the generation, for a period at least equal to the amount of time it receives incentive payments pursuant to this subdivision.

(D) Facilities that are eligible to receive funding pursuant to this subdivision shall be certified as specified in the report and may not receive payments for any electricity produced that has any of the following characteristics:

(i) Is sold under an existing long-term contract with an existing in-state electrical corporation if the contract includes fixed energy or capacity payments, except for that electricity that satisfies the provisions of subparagraph (C) of paragraph (1) of subdivision (c) of Section 399.6.

(ii) Is used onsite or is sold to customers in a manner that does not include independent metering of the electricity generated, upon which production incentives may be based.

(iii) Is produced by a facility that is owned by an electrical corporation or a local publicly owned electric utility as defined in subdivision (d) of Section 9604.

(iv) *Is a hydroelectric generation project that will require a new or increased appropriation of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.*

(E) Eligibility to compete for funds or to receive funds shall not be contingent upon the location or nature of the power purchaser.

(F) The State Energy Resources Conservation and Development Commission may require applicants competing for funding to post a forfeitable bid bond or other financial guaranty as an assurance of the applicant's intent to move forward expeditiously with the project proposed. The amount of any bid bond or financial guaranty may not exceed 10 percent of the total amount of the funding requested by the applicant.

(3) Repowered existing facilities shall be eligible for funding under this subdivision if the capital investment to repower the

existing facility equals at least 80 percent of the value of the repowered facility.

(e) (1) ~~Fifteen~~ *Seventeen and one-half* percent of the money collected pursuant to paragraph (3) of subdivision (c) of Section 381 shall be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications.

(2) Any funds used for emerging technologies pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:

(A) Funding for emerging technologies shall be provided through a competitive, market-based process that shall be in place for a period of not less than five years, and shall be structured so as to allow eligible emerging technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program. Notwithstanding subparagraphs (B), (C), and (D), up to 15 percent of the funds allocated in this subdivision may be used by the State Energy Resources Conservation and Development Commission to establish programs with alternative program structures, as long as the programs have goals consistent with this subparagraph.

(B) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to subparagraph (C), to purchasers, lessees, lessors, or sellers of eligible electricity generating systems. Incentives shall benefit the end-use consumer of renewable generation by directly and exclusively reducing the purchase or lease cost of the eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical capacity of the system measured in watts, or the amount of electricity production of the system, measured in kilowatthours. Incentives shall be limited to a maximum percentage of the system price, as determined by the State Energy Resources Conservation and Development Commission.

(C) Eligible distributed emerging technologies are photovoltaic, solar thermal electric, fuel cell technologies that utilize renewable fuels, and wind turbines of not more than 50 kilowatts rated electrical capacity per customer site, and other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the State Energy Resources Conservation and Development Commission. Eligible electricity generating systems are intended

primarily to offset part or all of the consumer's own electrical energy demand, and shall not be owned by electrical corporations or local publicly owned electric utilities, nor be located at a customer site that is not receiving distribution service from an electrical corporation that is subject to Section 381 and contributing funds to support programs under this section. All eligible electricity generating system components shall be new and unused, and shall not have been previously placed in service in any other location or for any other application. Systems and their fuel resource shall be located on the same premises of the end-use consumer where the consumer's own electricity demand is located, and all eligible electricity generating systems shall be connected to the utility grid in California. The State Energy Resources Conservation and Development Commission may require eligible electricity generating systems to have meters in place to monitor and measure a system's performance and generation.

(D) The State Energy Resources Conservation and Development Commission shall also determine, in collaboration with industry and consumer interests, if a program provision limiting the amount of funds available for any single project is warranted, and determine

how federal, state, or other funds or incentives not related to this section that are already available, or that may become available for eligible electricity generating systems, may impact the availability of funds allocated under this section, if at all.

(f) (1) Ten percent of the money collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used to provide customer credits for purchases of renewable energy produced by certified generating facilities.

(2) Any funds used for customer credits pursuant to this subdivision shall be expended as provided in the report, subject to all of the following requirements:

(A) Customer credits shall be awarded to California retail customers located in the service territory of an electrical corporation that is subject to Section 381 that is contributing funds to support programs under this section, and that is purchasing qualifying renewable electric power through transactions traceable to specific generation sources by any auditable contract trail or equivalent that provides commercial verification that the renewable aspect of the electricity source claimed has been sold once and only once to a retail customer. Credits may be given without regard to whether the power supplier is also receiving funds under any other subdivision of this section.

(B) Credits awarded pursuant to this paragraph may be paid directly to electric service providers, energy marketers, aggregators, or generators if those persons or entities account for the credits on the recipient customer's utility bills. Credits shall not exceed one and one-half cents (\$0.015) per kilowatthour. Credits awarded to members of the combined class of customers, other than residential and small commercial customers, shall not exceed one thousand dollars (\$1,000) per customer per calendar year. In no event shall more than thirteen million five hundred thousand dollars (\$13,500,000) of the total customer incentive funds be awarded to members of the combined class of customers other than residential and small commercial customers.

(C) The State Energy Resources Conservation and Development Commission shall develop interim criteria and procedures for the certification of energy providers and for the identification of energy purchasers who are eligible to receive funds pursuant to this paragraph through a process consistent with this paragraph. These criteria and procedures shall apply only to funding eligibility and shall not extend to other renewable marketing claims.

(D) The Public Utilities Commission shall notify the State Energy Resources Conservation and Development Commission in writing within 10 days of revoking or suspending the registration of any electric service provider pursuant to paragraph (4) of subdivision (b) of Section 394.25.

(g) ~~Five~~ *Two and one-half* percent of the money collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used in accordance with the report to promote renewable energy and to disseminate information on renewable energy technologies, including emerging renewable technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies.

(h) (1) The State Energy Resources Conservation and Development Commission shall adopt guidelines governing the funding programs authorized under this section, at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines shall not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this paragraph shall not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted

pursuant to this section shall be deemed to satisfy the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Funds to further the purposes of this section may be committed for multiple years.

(3) Awards made pursuant to this section are grants, subject to appeal to the State Energy Resources Conservation and Development Commission upon a showing that factors other than those described in the guidelines adopted by the State Energy Resources Conservation and Development Commission were applied in making the awards and payments. Any actions taken by an applicant to apply for, or become or remain eligible and certified to receive, payments or awards, including satisfying conditions specified by the State Energy Resources Conservation and Development Commission, shall not constitute the rendering of goods, services, or a direct benefit to the State Energy Resources Conservation and Development Commission.

(i) The State Energy Resources Conservation and Development Commission shall report to the Legislature on or before May 31, 2000, and on or before May 31 of every second year thereafter, regarding the results of the mechanisms funded pursuant to this section. Reports prepared pursuant to this subdivision shall include a description of the allocation of funds among existing, new and emerging technologies; the allocation of funds among programs, including consumer-side incentives; and the need for the reallocation of money among those technologies. The reports shall also address the allocation of funds from interest on the accounts described in this section, money in the accounts described in subdivision (e) of Section 381, and money included in the accounts pursuant to Section 385. Notwithstanding paragraph (4) of subdivision (b) of Section 383 or subdivisions (c), (d), (e), (f), and (g) of this section, money may be reallocated without further legislative action among existing, new, and emerging technologies and consumer-side programs in a manner consistent with the report and with the latest report provided to the Legislature pursuant to this subdivision.

SEC. 15. Section 383.7 of the Public Utilities Code is amended to read:

383.7. (a) Notwithstanding Provision 1 of Item 3360-001-0465 of Section 2.00 of the Budget Act of 1998 or paragraph (1) of subdivision (f) of Section 383.5, during the period beginning April 1, 1998, and ending September 30, 1998, customer credits offered pursuant to paragraph (1) of subdivision (f) of Section 383.5 shall be available for the purchase and delivery of electrical energy and associated customer credits to eligible end-use customers, in accordance with commission guidelines, where the energy was generated by an in-state investor-owned utility that is not required to sell into the Power Exchange, or a facility that is owned by one or more in-state municipal utilities and is not certified under Section 292.2904 of Title 18 of the Code of Federal Regulations as a qualifying small power production facility. After September 30, 1998, customer credits offered pursuant to paragraph (1) of subdivision (f) of Section 383.5 shall be available only for end user purchase and use of electricity produced by in-state renewable generation technologies, as defined in Section 383.5.

(b) Nothing in this section is intended to limit the commission's authority to revise its customer credit subaccount guidelines to implement the program changes contained herein.

SEC. 16. Section 390 of the Public Utilities Code is amended to read:

390. (a) Subject to applicable contractual terms, energy prices paid to nonutility power generators by a public utility electrical corporation based upon the commission's prescribed "short run avoided

cost energy methodology" shall be determined as set forth in subdivisions (b) and (c).

(b) Until the requirements of subdivision (c) have been satisfied, short run avoided cost energy payments paid to nonutility power generators by an electrical corporation shall be based on a formula that reflects a starting energy price, adjusted monthly to reflect changes in a starting gas index price in relation to an average of current California natural gas border price indices. The starting energy price shall be based on 12-month averages of recent, pre-January 1, 1996, short-run avoided energy prices paid by each public utility electrical corporation to nonutility power generators.

The starting gas index price shall be established as an average of index gas prices for the same annual periods.

(c) The short run avoided cost energy payments paid to nonutility power generators by electrical corporations shall be based on the clearing price paid by the independent Power Exchange if (1) the commission has issued an order determining that the independent Power Exchange is functioning properly for the purposes of determining the short run avoided cost energy payments to be made to nonutility power generators, and either (2) the fossil-fired generation units owned, directly or indirectly, by the public utility electrical corporation are authorized to charge market-based rates and the "going forward" costs of those units are being recovered solely through the clearing prices paid by the independent Power Exchange or from contracts with the Independent System Operator, whether those contracts are market-based or based on operating costs for particular utility-owned powerplant units and at particular times when reactive power/voltage support is not yet procurable at market-based rates at locations where it is needed, and are not being recovered directly or indirectly through any other source, or (3) the public utility electrical corporation has divested 90 percent of its gas-fired generation facilities that were operated to meet load in 1994 and 1995. However, nonutility power generators subject to this section may, upon appropriate notice to the public utility electrical corporation, exercise a one-time option to elect to thereafter receive energy payments based upon the clearing price from the independent Power Exchange.

(d) If a nonutility power generator is being paid short run avoided costs energy payments by an electrical corporation by a firm capacity contract, a forecast as-available capacity contract, or a forecast as-delivered capacity contract on the basis of the clearing price paid by the independent Power Exchange as described in subdivision (c) above, the value of capacity in the clearing price, if any, shall not be paid to the nonutility power generator. The value of capacity in the clearing price, if any, equals the difference between the market clearing customer demand bid at the level of generation dispatched by the independent Power Exchange and the highest supplier bid dispatched.

(e) Short run avoided energy cost payments made pursuant to this section are in addition to contractually specified capacity payments.

Nothing in this section shall be construed to affect, modify or amend the terms and conditions of existing nonutility power generators' contracts with respect to the sale of energy or capacity or otherwise.

(f) Nothing in this section shall be construed to limit the level of transition cost recovery provided to utilities under electric industry restructuring policies established by the commission.

(g) The term "going forward costs" shall include, but not be limited to, all costs associated with fuel transportation and fuel supply, administrative and general, and operation and maintenance; provided that, for purposes of this section, the following shall not

be considered "going forward costs": (1) commission-approved capital costs for capital additions to fossil-fueled powerplants, provided that ~~such~~ the additions are necessary for the continued operation of the powerplants utilized to meet load and ~~such~~ the additions are not undertaken primarily to expand, repower or enhance the efficiency of plant operations; or, (2) commission-approved operating costs for particular utility-owned powerplant units and at particular times when reactive power/voltage support is not yet procurable at market-based rates in locations where it is needed, provided that the recovery shall end on December 31, 2001.

(h) Any nonutility power generator using renewable fuels that has entered into a contract with an electrical corporation specifying fixed energy prices for output through December 31, 2005, may elect an additional five years of fixed energy payments at a level to be determined by the commission.

SEC. 17. Section 394.25 of the Public Utilities Code is amended to read:

394.25. (a) The commission may enforce the provisions of Sections 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against electric service providers as if those electric service providers were public utilities as defined in these code sections. Notwithstanding the above, nothing in this section grants the commission jurisdiction to regulate electric service providers other than as specifically set forth in this part. Electric service providers shall continue to be subject to the provisions of Sections 2111 and 2112. Upon a finding by the commission's executive director that there is evidence to support a finding that the electric service provider has committed an act constituting grounds for suspension or revocation of registration as set forth in subdivision (b) of Section 394.25, the commission shall notify the electric service provider in writing and notice an expedited hearing on the suspension or revocation of the electric service provider's registration to be held within 30 days of the notification to the electric service provider of the executive director's finding of evidence to support suspension or revocation of registration. The commission shall, within 45 days after holding the hearing, issue a decision on the suspension or revocation of registration, which shall be based on findings of fact and conclusions of law based on the evidence presented at the hearing. The decision shall include the findings of fact and the conclusions of law relied upon.

(b) An electric service provider may have its registration suspended or revoked, immediately or prospectively, in whole or in part, for any of the following acts:

(1) Making material misrepresentations in the course of soliciting customers, entering into service agreements with those customers, or administering those service agreements.

(2) Dishonesty, fraud, or deceit with the intent to substantially benefit the electric service provider or its employees, agents, or representatives, or to disadvantage retail electric customers.

(3) Where the commission finds that there is evidence that the electric service provider is not financially or operationally capable of providing the offered electric service.

(4) The misrepresentation of a material fact by an applicant in obtaining a registration pursuant to Section 394.

(c) Pursuant to its authority to revoke or suspend registration, the commission may suspend a registration for a specified period or revoke the registration, or in lieu of suspension or revocation, impose a moratorium on adding or soliciting additional customers. Any suspension or revocation of a registration shall require the electric service provider to cease serving customers within the

boundaries of investor-owned electric corporations, and the affected customers shall be served by the electrical corporation until the time when they may select service from another service provider. Customers shall not be liable for the payment of any early termination fees or other penalties to any electric service provider under the service agreement if the serving electric service provider's registration is suspended or revoked.

(d) The commission shall require any electric service provider whose registration is revoked pursuant to paragraph (4) of subdivision (b) to refund all of the customer credit funds that the electric service provider received from the State Energy Resources Conservation and Development Commission pursuant to paragraph (1) of subdivision (f) of Section 383.5. The repayment of these funds shall be in addition to all other penalties and fines appropriately assessed the electric service provider for committing those acts under other provisions of law. All customer credit funds refunded under this subdivision shall be deposited in the Renewable Resource Trust Fund for redistribution by the State Energy Resources Conservation and Development Commission pursuant to Section 383.5. This subdivision may not be construed to apply retroactively.

SEC. 18. Section 445 of the Public Utilities Code is amended to read:

445. (a) The Renewable Resource Trust Fund is hereby created in the State Treasury.

(b) The following accounts are hereby created within the Renewable Resource Trust Fund:

- (1) Existing Renewable Resources Account.
- (2) New Renewable Resources Account.
- (3) Emerging Renewable Resources Account.
- (4) Customer-Credit Renewable Resources Account.
- (5) Renewable Resources Consumer Education Account.

(c) The money in the fund may be expended for the state's administration of this article only upon appropriation by the Legislature in the annual Budget Act.

(d) Notwithstanding Section 383, that portion of revenues collected by electrical corporations for the benefit of in-state operation and development of existing and new and emerging renewable resource technologies, pursuant to paragraph (3) of subdivision (c) of Section 381, shall be transmitted to the State Energy Resources Conservation and Development Commission at least quarterly for deposit in the Renewable Resource Trust Fund. After setting aside in the fund money that may be needed for expenditures authorized by the annual Budget Act in accordance with subdivision (c), the Treasurer shall immediately deposit money received pursuant to this section into the accounts created pursuant to subdivision (b) in proportions designated by the State Energy Resources Conservation and Development Commission for the current calendar year. Notwithstanding Section 13340 of the Government Code, the money in the fund and the accounts within the fund are hereby continuously appropriated to the State Energy Resources Conservation and Development Commission without regard to fiscal year for the purposes enumerated in Section 383.5.

(e) Upon notification by the State Energy Resources Conservation and Development Commission, the Controller shall pay all awards of the money in the accounts created pursuant to subdivision (b) for purposes of furthering Section 383.5. The eligibility of each award shall be determined solely by the State Energy Resources Conservation and Development Commission based on the procedures it adopts under subdivision (h) of Section 383.5. Based on the eligibility of each award, the State Energy Resources Conservation and Development Commission shall also establish the need for a multiyear commitment to any particular award and so advise the Department of Finance.

Eligible awards submitted by the State Energy Resources Conservation and Development Commission to the Controller shall be accompanied by information specifying the account from which payment should be made and the amount of each payment; a summary description of how payment of the award furthers the purposes of Section 383.5; and an accounting of future costs associated with any award or group of awards known to the State Energy Resources Conservation and Development Commission to represent a portion of a multiyear funding commitment.

(f) The State Energy Resources Conservation and Development Commission may transfer funds between accounts for cash-flow purposes, provided that the balance due each account is restored and the transfer does not adversely affect any of the accounts. The State Energy Resources Conservation and Development Commission shall examine the cash-flow in the respective accounts on an annual basis, and shall annually prepare and submit to the Legislature a report that describes the status of account transfers and repayments. Any other unallocated funds in any account shall remain in the respective account, and be available for the purposes of this section until the State Energy Resources Conservation and Development Commission submits a report pursuant to subdivision (i) of Section 383.5. Money may be reallocated without further legislative action among existing, new, and emerging technologies and consumer-side programs in a manner consistent with the most recent report described in subdivision (i) of Section 383.5 and the report described in paragraph (2) of subdivision (b) of Section 383.5.

(g) The State Energy Resources Conservation and Development Commission shall, on a quarterly basis, report to the Legislature on the implementation of this article. Those quarterly reports shall be submitted to the Legislature not more than 15 days after the close of each quarter and shall include information describing the awards submitted to the Controller pursuant to this article, the cumulative commitment of claims by account, the relative demand for funds by account, a forecast of future awards, and other matters the State Energy Resources Conservation and Development Commission determines may be of importance to the Legislature.

(h) The Department of Finance, commencing March 1, 1999, shall conduct an independent audit of the Renewable Resource Trust Fund and its related accounts annually, and provide an audit report to the Legislature not later than March 1 of each year for which this article is operative. The Department of Finance's report shall include information regarding revenues, payment of awards, reserves held for future commitments, unencumbered cash balances, and other matters that the Department of Finance determines may be of importance to the Legislature.