

# WARREN-ALQUIST ACT

## Warren-Alquist State Energy Resources Conservation and Development Act

Public Resources Code  
Section 25000 et seq.

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# **CALIFORNIA ENERGY COMMISSION**

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**WARREN - ALQUIST ACT  
AND RELATED STATUTES**

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## CHAPTER 1. TITLE AND GENERAL PROVISIONS

### **§ 25000. Short title**

This division shall be known and may be cited as the Warren-Alquist State Energy Resources Conservation and Development Act.

### **§ 25000.1. Legislative finding; energy resources cost effectiveness, value for environmental costs/benefits**

(a) The Legislature further finds and declares that, in addition to their other ratepayer protection objectives, a principal goal of electric and natural gas utilities' resource planning and investment shall be to minimize the cost to society of the reliable energy services that are provided by natural gas and electricity, and to improve the environment and to encourage the diversity of energy sources through improvements in energy efficiency and development of renewable energy resources, such as wind, solar, and geothermal energy.

(b) The Legislature further finds and declares that, in addition to any appropriate investments in energy production, electrical and natural gas utilities should seek to exploit all practicable and cost-effective conservation and improvements in the efficiency of energy use and distribution that offer equivalent or better system reliability, and which are not being exploited by any other entity.

(c) In calculating the cost effectiveness of energy resources, including conservation and load management options, the commission shall include a value for any costs and benefits to the environment, including air quality. The commission shall ensure that any values it develops pursuant to this section are consistent with values developed by the Public Utilities Commission pursuant to Section 701.1 of the Public Utilities Code. However, if the commission determines that a value developed pursuant to this subdivision is not consistent with a value developed by the Public Utilities Commission pursuant to subdivision (c) of Section 701.1 of the Public Utilities Code, the commission may nonetheless use this value if, in the appropriate record of its proceedings, it states its reasons for using the value it has selected.

### **§ 25000.5. Legislative findings; overdependence on petroleum based fuels; evaluation of economic and environmental costs of petroleum use; definition**

(a) The Legislature finds and declares that overdependence on the production, marketing, and consumption of petroleum based fuels as an energy resource in the transportation sector is a threat to the energy security of the state due to continuing market and supply uncertainties. In addition, petroleum use as an energy resource contributes substantially to the following public health and environmental problems: air pollution, acid rain, global warming, and the degradation of California's marine environment and fisheries.

(b) Therefore, it is the policy of this state to fully evaluate the economic and environmental costs of petroleum use, and the economic and environmental costs of other transportation fuels, including the costs and values of environmental impacts, and to establish a state transportation energy policy that results in the least environmental and economic cost to the state. In pursuing the "least environmental and economic cost" strategy, it is the policy of the state to exploit all practicable and cost-effective conservation and improvements in the efficiency of energy use and distribution, and to achieve energy security, diversity of supply

sources, and competitiveness of transportation energy markets based on the least environmental and economic cost.

(c) It is also the policy of this state to minimize the economic and environmental costs due to the use of petroleum-based and other transportation fuels by state agencies. In implementing a least-cost economic and environmental strategy for state fleets, it is the policy of the state to implement practicable and cost-effective measures, including, but not necessarily limited to, the purchase of the cleanest and most efficient automobiles and replacement tires, the use of alternative fuels in its fleets, and other conservation measures.

(d) For the purposes of this section, "petroleum based fuels" means fuels derived from liquid unrefined crude oil, including natural gas liquids, liquified petroleum gas, or the energy fraction of methyltertiarybutylether (MTBE) or other ethers that is not attributed to natural gas.

**§ 25001. Legislative finding; essential nature of electrical energy**

The Legislature hereby finds and declares that electrical energy is essential to the health, safety and welfare of the people of this state and to the state economy, and that it is the responsibility of state government to ensure that a reliable supply of electrical energy is maintained at a level consistent with the need for such energy for protection of public health and safety, for promotion of the general welfare, and for environmental quality protection.

**§ 25002. Legislative finding; growth in demand; uses of power; depletion of irreversible commitment of resources**

The Legislature further finds and declares that the present rapid rate of growth in demand for electric energy is in part due to wasteful, uneconomic, inefficient, and unnecessary uses of power and a continuation of this trend will result in serious depletion or irreversible commitment of energy, land and water resources, and potential threats to the state's environmental quality.

**§ 25003. Legislative finding; consideration of state, regional and local plans**

The Legislature further finds and declares that in planning for future electrical generating and related transmission facilities state, regional, and local plans for land use, urban expansion, transportation systems, environmental protection, and economic development should be considered.

**§ 25004. Legislative finding; research and development**

The Legislature further finds and declares that there is a pressing need to accelerate research and development into alternative sources of energy and into improved technology of design and siting of power facilities.

**§ 25004.2. Legislative finding; cogeneration technology**

The Legislature further finds that cogeneration technology is a potential energy resource and should be an important element of the state's energy supply mix. The Legislature further finds that cogeneration technology can assist meeting the state's energy needs while reducing the long-term use of conventional fuels, is readily available for immediate application,

and reduces negative environmental impacts. The Legislature further finds that cogeneration technology is important with respect to the providing of a reliable and clean source of energy within the state and that cogeneration technology should receive immediate support and commitment from state government.

**§ 25004.3. Legislative finding; advanced transportation technologies**

The Legislature further finds and declares all of the following:

(a) Advanced transportation technologies hold the promise of conserving energy, reducing pollution, lowering traffic congestion, and promoting economic development and jobs in California.

(b) There is a pressing need to provide business assistance to California companies engaged in producing and commercializing advanced transportation technologies.

(c) It is the policy of the state to provide financial assistance to California companies, particularly small businesses, that are engaged in commercial efforts in the field of advanced transportation technologies.

**§ 25005. Legislative finding; expansion in authority and technical capability of state government**

The Legislature further finds and declares that prevention of delays and interruptions in the orderly provision of electrical energy, protection of environmental values, and conservation of energy resources require expanded authority and technical capability within state government.

**§ 25005.5. Legislative policy; future energy problems, information, acquisition, and analysis**

The Legislature further finds and declares that information should be acquired and analyzed by the State Energy Resources Conservation and Development Commission in order to ascertain future energy problems and uncertainties, including, but not limited to:

(a) The state's role in production of oil from domestic reserves, especially within Petroleum Administration for Defense District V.

(b) The production of Alaskan North Slope oil and its projected use in the state.

(c) Plans of the federal government for development of oil in the Outer Continental Shelf adjacent to the state.

(d) Impacts of petroleum price increases and projected conservation measures on the demand for energy and indirect effects on the need for offshore oil development and Alaskan oil delivery into the state.

(e) Potential shipment of Alaskan oil through the state.

(f) Proposals for processing petroleum outside the state to supply the needs within the state.

(g) The impact on the state of national energy policies, including Project Independence.

**§ 25006. State policy; responsibility for energy resources**

It is the policy of the state and the intent of the Legislature to establish and consolidate the state's responsibility for energy resources, for encouraging, developing, and coordinating research and development into energy supply and demand problems, and for regulating electrical generating and related transmission facilities.

**§ 25007. State policy; reduction in certain uses of energy; conservation; statewide goals**

It is further the policy of the state and the intent of the Legislature to employ a range of measures to reduce wasteful, uneconomical, and unnecessary uses of energy, thereby reducing the rate of growth of energy consumption, prudently conserve energy resources, and assure statewide environmental, public safety, and land use goals.

**§ 25008. State policy; energy and water conservation; alternative energy supply sources; energy or water facilities at state-owned sites**

It is further the policy of the state and the intent of the Legislature to promote all feasible means of energy and water conservation and all feasible uses of alternative energy and water supply sources.

The Legislature finds and declares that the State of California has extensive physical and natural resources available to it at state-owned sites and facilities which can be substituted for traditional energy supplies or which lend themselves readily to the production of electricity or water. Due to increases in energy and water costs, the state's expenditures for energy and water have also increased, adding to the burden on California taxpayers and reducing the amount of funds available for other public purposes.

It is in the best interest of the state to use these resources when it can be demonstrated that long-term cost, water, and energy use reduction will result, and where increased independence from other fuel and water sources and development of additional revenues for the state may be obtained.

Therefore, in recognition of recent and projected increases in the cost of energy and water from traditional sources, it is the policy of the state to use available resources at state facilities which can substitute for traditional energy and water supplies or produce electricity or water at its facilities when use or production will reduce long-term energy or water expenditures. Criteria used in analysis of proposed actions shall include lifecycle cost evaluation, benefit to taxpayers, reduced fossil fuel or reduced water consumption depending on the application, and improved efficiency. Energy or water facilities at state-owned sites shall be scaled to produce optimal system efficiency and best economic advantage to the state. Energy or water produced may be reserved by the state to meet state facility needs or may be sold to state or nonstate purchasers.

Resources and processes which may be used to substitute for traditional energy and water supplies and for the purpose of electrical generation at state facilities include, but are not limited to, cogeneration, biomass, wind, geothermal, vapor compression, water reclamation, and solar technologies.

It is the intent of the Legislature that no policy in this section, expressed or implied, be in conflict with existing state and federal regulations regarding the production or sale of electricity or water, and that this policy be just and reasonable to utility ratepayers.

**§ 25008.5. Legislative findings and declarations; energy and water projects at state-owned sites; third party financing and incentives to siting institutions; application of section; reports**

(a) The Legislature hereby finds and declares that in order to maximize public benefit from private sector participation in state operations and to maximize the Legislature's ability to devote limited resources of the state to the responsibilities of state government that are less attractive to private sector investment, it is the policy of the state to encourage third-party financing of energy and water projects, including, but not limited to, cogeneration facilities, at state-owned sites.

(b) The Legislature further finds and declares that the development of energy and water projects at state-owned sites can be accelerated where reasonable incentives are provided to the siting institutions. These incentives are necessary to offset the long-term administrative, operational, and technical complexities of energy and water projects developed under this section. Reasonable incentives for implementing the policy of this section shall include the sharing of benefits derived from energy and water projects between the state and the siting institution. The benefits to the state and siting institutions derived from projects implemented under this section may include, but are not limited to, annual cash revenues, avoided capital costs, reduced energy costs, reduced water costs, site improvements, and additional operations and maintenance resources. The annual cash revenues derived from those projects shall be shared equally between the state and the siting institution, if both of the following conditions are met:

(1) The use of cash and avoided cost benefits by siting institutions is to be limited to improvement of ongoing maintenance, deferred maintenance, cost-effective energy improvements, and other infrastructure improvements. To the extent an institution receives annual cash revenues under this section, the institution shall retain any money it receives, but not to exceed one-half of this amount, in a special deposit fund account, which shall be continuously appropriated to the institution for the purposes of this section. The state's benefit share, and the siting institution's benefit share that exceeds its needs, shall be deposited in the Energy and Resources Fund or, if this fund is not in existence, the General Fund for the purpose of investing in renewable resources programs and energy efficiency improvements at state facilities.

(2) The use of benefits shall be in addition to, and shall not supplant or replace, funding from traditional sources for a siting institution's normal operations and maintenance or capital outlay budgets.

(c) The Legislature further finds and declares that a benefit-sharing incentive is applicable to energy projects reported to, or authorized by, the Legislature pursuant to Section 13304 or 14671.6 of the Government Code. This section shall not apply to energy projects which are constructed on or at facilities or property of the State Water Resources Development System.

(d) Commencing on January 1, 1986, the Department of General Services shall submit annual reports to the Legislature on the cost benefit aspects in carrying out this section.

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

**§ 25009. Modification of need determination**

The Legislature finds and declares that Chapter 854 of the Statutes of 1996 restructured the California electricity industry and created a competitive electricity generation market. In a competitive generation market, the recovery by powerplant owners of their private investment and operating costs is at risk and no longer guaranteed through regulated rates. Before the California electricity industry was restructured, the regulated cost recovery framework for powerplants justified requiring the commission to determine the need for new generation, and site only powerplants for which need was established. Now that powerplant owners are at risk to recover their investments, it is no longer appropriate to make this determination. It is necessary that California both protect environmental quality and site new powerplants to ensure electricity reliability, improve the environmental performance of the current electricity industry and reduce consumer costs. The success of California's restructured electricity industry depends upon the willingness of private capital to invest in new powerplants. Therefore, it is necessary to modify the need for determination requirements of the state's powerplant siting and licensing process to reflect the economics of the restructured electricity industry and ensure the timely construction of new electricity generation capacity.

**CHAPTER 2. DEFINITIONS**

**§ 25100. Construction of division**

Unless the context otherwise requires, the definitions in this chapter govern the construction of this division.

**§ 25101. Applicant**

"Applicant" means any person who submits an application for certification pursuant to the provisions of this division, including, but not limited to, any person who explores for or develops geothermal resources.

**§ 25102. Application; geothermal powerplant and facilities; more than one site in application**

"Application" means any request for certification of any site and related facility filed in accordance with the procedures established pursuant to this division. An applicant for a geothermal powerplant and related facilities may propose more than one site and related geothermal facilities in the same application.

**§ 25103. Coastal zone**

"Coastal zone" means the "coastal zone" as defined in Section 30103.

**§ 25103.3. Suisun Marsh**

"Suisun Marsh" means the Suisun Marsh, as defined in Section 29101.

**§ 25103.7. Jurisdiction of the San Francisco Bay Conservation and Development Commission**

"Jurisdiction of the San Francisco Bay Conservation and Development Commission" means the area defined in Section 66610 of the Government Code.

**§ 25104. Commission**

"Commission" means the State Energy Resources Conservation and Development Commission.

**§ 25105. Construction**

"Construction" means onsite work to install permanent equipment or structure for any facility. "Construction" does not include any of the following:

- (a) The installation of environmental monitoring equipment.
- (b) A soil or geological investigation.
- (c) A topographical survey.
- (d) Any other study or investigation to determine the environmental acceptability or feasibility of the use of the site for any particular facility.
- (e) Any work to provide access to a site for any of the purposes specified in subdivision (a), (b), (c), or (d).

**§ 25106. Adviser**

"Adviser" means the administrative adviser employed by the commission pursuant to Section 25217.

**§ 25107. Electric transmission line**

"Electric transmission line" means any electric powerline carrying electric power from a thermal powerplant located within the state to a point of junction with any interconnected transmission system. "Electric transmission line" does not include any replacement on the existing site of existing electric powerlines with electric powerlines equivalent to such existing electric powerlines or the placement of new or additional conductors, insulators, or accessories related to such electric powerlines on supporting structures in existence on the effective date of this division or certified pursuant to this division.

**§ 25108. Electric utility**

"Electric utility" means any person engaged in, or authorized to engage in, generating, transmitting, or distributing electric power by any facilities, including, but not limited to, any such person who is subject to the regulation of the Public Utilities Commission.

**§ 25109. Energy**

"Energy" means work or heat that is, or may be, produced from any fuel or source whatsoever.

**§ 25110. Facility**

"Facility" means any electric transmission line or thermal powerplant, or both electric transmission line and thermal powerplant, regulated according to the provisions of this division.

**§ 25111. Account**

"Account" means the Energy Resources Programs Account.

**§ 25112. Member; member of the commission**

"Member" or "member of the commission" means a member of the State Energy Resources Conservation and Development Commission appointed pursuant to Section 25200.

**§ 25113. Notice**

"Notice" means the notice of intent, as further defined in Chapter 6 (commencing with Section 25500), which shall state the intention of an applicant to file an application for certification of any site and related facility.

**§ 25114. Interested party**

"Interested party" means any person whom the commission finds and acknowledges as having a real and direct interest in any proceeding or action carried on, under, or as a result of the operation of, this division.

**§ 25115. Equivalent certification program**

"Equivalent certification program" means a program, as further defined in Section 25540.5. administered by a county and approved by the commission, which may substitute for the site and related facility certification procedures established pursuant to this division.

**§ 25116. Person**

"Person" means any person, firm, association, organization, partnership, business trust, corporation, limited liability company or company. "Person" also includes any city, county, public district or agency, the state or any department or agency thereof, and the United States to the extent authorized by federal law.



**§ 25117. Plan**

"Plan" means the Emergency Load Curtailment and Energy Distribution Plan.

**§ 25118. Service area**

"Service area" means any contiguous geographic area serviced by the same electric utility.

**§ 25119. Site**

"Site" means any location on which a facility is constructed or is proposed to be constructed.

**§ 25120. Thermal powerplant**

"Thermal powerplant" means any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto. Exploratory, development, and production wells, resource transmission lines, and other related facilities used in connection with a geothermal exploratory project or a geothermal field development project are not appurtenant facilities for the purposes of this division.

"Thermal powerplant" does not include any wind, hydroelectric, or solar photovoltaic electrical generating facility.

**§ 25121. Fuel**

"Fuel" means petroleum, crude oil, petroleum product, coal, natural gas, or any other substance used primarily for its energy content.

**§ 25122. Gas utility**

"Gas utility" means any person engaged in, or authorized to engage in, distributing or transporting natural gas, including, but not limited to, any such person who is subject to the regulation of the Public Utilities Commission.

**§ 25123. Modification of an existing facility**

"Modification of an existing facility" means any alteration, replacement, or improvement of equipment that results in a 50-megawatt or more increase in the electric generating capacity of an existing thermal powerplant or an increase of 25 percent in the peak operating voltage or peak kilowatt capacity of an existing electric transmission line.

**§ 25124. Major oil producer**

"Major oil producer" means any person who produces oil in amount determined by the commission as having a major effect on energy supplies.

**§ 25125. Major natural gas producer**

"Major natural gas producer" means any person who produces natural gas in amounts determined by the commission as having a major effect on energy supplies.

**§ 25126. Major marketer**

"Major marketer" means any person who sells natural gas or oil in amounts determined by the commission as having a major effect on energy supplies.

**§ 25127. Refiner**

"Refiner" means any person who owns, operates, or controls the operations of one or more refineries.

**§ 25128. Refinery**

"Refinery" means any industrial plant, regardless of capacity, processing crude oil feedstock and manufacturing oil products.

**§ 25129. Foreign**

"Foreign" means any area exclusive of the 50 states and the District of Columbia.

**§ 25130. Nonresidential building**

"Nonresidential" building means any building which is heated or cooled in its interior, and is of an occupancy type other than Type H, I, or J, as defined in the Uniform Building Code, 1973 edition, as adopted by the International Conference of Building Officials.

**§ 25131. Residential building**

"Residential building" means any hotel, motel, apartment house, lodginghouse, single and dwelling, or other residential building which is heated or mechanically cooled.

**§ 25132. Load management**

"Load management" means any utility program or activity that is intended to reshape deliberately a utility's load duration curve.

**§ 25133. Geothermal element**

"Geothermal element" means an element of a county general plan consisting of a statement of geothermal development policies, including a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals, including a discussion of environmental damages and identification of sensitive environmental areas, including unique wildlife habitat, scenic, residential, and recreational areas, adopted pursuant to Section 65303 of the Government Code.

**§ 25134. Cogeneration**

"Cogeneration" means the sequential use of energy for the production of electrical and useful thermal energy. The sequence can be thermal use followed by power production or the reverse, subject to the following standards:

(a) At least 5 percent of the cogeneration project's total annual energy output shall be in the form of useful thermal energy.

(b) Where useful thermal energy follows power production, the useful annual power output plus one-half the useful annual thermal energy output equals not less than 42.5 percent of any natural gas and oil energy input.

**§ 25135. Conversion**

"Conversion" means the processes by which residue is converted to a more usable energy form, including, but not limited to, combustion, anaerobic digestion, and pyrolysis, and is used for heating, process heat applications, and electric power generation.

**§ 25136. Residue**

"Residue" means any organic matter left as residue, such as agricultural and forestry residue, including, but not limited to, conifer thinnings, dead and dying trees, commercial hardwood, noncommercial hardwoods and softwoods, chaparral, burn, mill, agricultural field, and industrial residues, and manure.

**§ 25140. Solar thermal powerplant**

"Solar thermal powerplant" means a thermal powerplant in which 75 percent or more of the total energy output is from solar energy and the use of backup fuels, such as oil, natural gas, and coal, does not, in the aggregate, exceed 25 percent of the total energy input of the facility during any calendar year period.

**§ 25141. Unbranded**

"Unbranded" means gasoline and diesel fuel sold for wholesale or retail distribution to consumers without proprietary additives or marketing under a brand name or trademark owned or controlled by an independent refiner or an integrated refining and marketing company.

**CHAPTER 3. STATE ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT COMMISSION**

**§ 25200. Creation; membership**

There is in the Resources Agency the State Energy Resources Conservation and Development Commission, consisting of five members appointed by the Governor subject to Section 25204.

**§ 25201. Qualifications of members**

One member of the commission shall have a background in the field of engineering or physical science and have knowledge of energy supply or conversion systems; one member shall be an attorney and a member of the State Bar of California with administrative law experience; one member shall have background and experience in the field of environmental protection or the study of ecosystems; one member shall be an economist with background and experience in the field of natural resource management; and one member shall be from the public at large.

**§ 25202. Ex officio members**

The Secretary of the Resources Agency and the President of the Public Utilities Commission shall be ex officio, nonvoting members of the commission, whose presence shall not be counted for a quorum or for vote requirements.

**§ 25203. Representation of state at large; full-time service**

Each member of the commission shall represent the state at large and not any particular area thereof, and shall serve on a full-time basis.

**§ 25204. Appointment by governor; advice and consent of senate**

The Governor shall appoint the members of the commission within 30 days after the effective date of this division. Every appointment made by the Governor to the commission shall be subject to the advice and consent of a majority of the members elected to the Senate.

**§ 25205. Conflicts of interest: public office; offense**

(a) No person shall be a member of the commission who, during the two years prior to appointment on the commission, received any substantial portion of his income directly or indirectly from any electric utility, or who engages in sale or manufacture of any major component of any facility. No member of the commission shall be employed by any electric utility, applicant, or within two years after he ceases to be a member of the commission, by any person who engages in the sale or manufacture of any major component of any facility.

(b) Except as provided in Section 25202, the members of the commission shall not hold any other elected or appointed public office or position.

(c) The members of the commission and all employees of the commission shall comply with all applicable provisions of Section 19251 of the Government Code.

(d) No person who is a member or employee of the commission shall participate personally and substantially as a member or employee of the commission, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, hearing, application, request for a ruling, or other determination, contract, claim, controversy, study, plan, or other particular matter in which, to his knowledge, he, his spouse, minor child, or partner, or any organization, except a governmental agency or educational or research institution qualifying as a nonprofit organization under state or federal income tax law, in which he is serving, or has served as officer, director, trustee, partner,

or employee while serving as a member or employee of the commission or within two years prior to his appointment as a member of the commission, has a direct or indirect financial interest.

(e) No person who is a partner, employer, or employee of a member or employee of the commission shall act as an attorney, agent, or employee for any person other than the state in connection with any judicial or other proceeding, hearing, application, request for a ruling, or other determination, contract, claim, controversy, study, plan, or other particular matter in which the commission is a party or has a direct and substantial interest.

(f) The provisions of this section shall not apply if the Attorney General finds that the interest of the member or employee of the commission is not so substantial as to be deemed likely to affect the integrity of the services which the state may expect from such member or employee.

(g) Any person who violates any provision of this section is guilty of a felony and shall be subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the state prison or both.

(h) The amendment of subdivision (d) of this section enacted by the 1975-76 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law.

**§ 25206. Terms of office; vacancies**

The terms of office of the members of the commission shall be for five years, except that the members first appointed to the commission shall classify themselves by lot so that the term of office of one member shall expire at the end of each one of the five years following the effective date of this division. Any vacancy shall be filled by the Governor within 30 days of the date on which a vacancy occurs for the unexpired portion of the term in which it occurs or for any new term of office.

If the Governor fails to make an appointment for any vacancy within such 30-day period, the Senate Rules Committee may make the appointment to fill the vacancy for the unexpired portion of the term in which the vacancy occurred or for any new term of office, subject to the provisions of Section 25204.

**§ 25207. Compensation; expenses**

The members of the commission shall receive the salary provided for by Chapter 6 (commencing with, Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

Each member of the commission shall receive the necessary traveling and other expenses incurred in the performance of his official duties. When necessary, the members of the commission and its employees may travel within or without the state.

**§ 25209. Vote: quorum**

Each member of the commission shall have one vote. Except as provided in Section 25211, the affirmative votes of at least three members shall be required for the transaction of any business of the commission.

**§ 25210. Hearings and investigations; powers of department heads**

The commission may hold any hearings and conduct any investigations in any part of the state necessary to carry out its powers and duties prescribed by this division and, for those purposes, has the same powers as are conferred upon heads of departments of the state by Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

**§ 25211. Committees; attendance; orders**

The commission may appoint a committee of not less than two members of the commission to carry on investigations, inquiries, or hearings which the commission has power to undertake or to hold. At least one member of the committee shall attend all public hearings or other proceedings held pursuant to Chapter 6 (commencing with Section 25500), and all public hearings in biennial report proceedings and rulemaking proceedings, except that, upon agreement of all parties to a proceeding who are present at the hearing or proceeding, the committee may authorize a hearing officer to continue to take evidence in the temporary absence of a commission member. Every order made by the committee pursuant to the inquiry, investigation, or hearing, when approved or confirmed by the commission and ordered filed in its office, shall be the order of the commission.

**§ 25212. Chairman; vice chairman**

Every two years the Governor shall designate a chairman and vice chairman of the commission from among its members.

**§ 25213. Rules and regulations**

The commission shall adopt rules and regulations, as necessary, to carry out the provisions of this division in conformity with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The commission shall make available to any person upon request copies of proposed regulations, together with summaries of reasons supporting their adoption.

**§ 25214. Headquarters; branch offices; open meetings and hearings**

The commission shall maintain its headquarters in the County of Sacramento and may establish branch offices in such parts of the state as the commission deems necessary. The commission shall hold meetings at such times and at such places as shall be determined by it. All meetings and hearings of the commission shall be open to the public, and opportunity to be heard with respect to the subject of the hearings shall be afforded to any person. Upon request, an interested party may be granted reasonable opportunity to examine any witness testifying at the hearing. The first meeting of the commission shall be held within 30 days after the confirmation of the last member of the commission pursuant to Section 25204. The Governor shall designate the time and place for the first meeting of the commission.

**§ 25215. Removal of member**

Any member of the commission may be removed from office by the Legislature, by concurrent resolution adopted by a majority vote of all members elected to each house, for dereliction of duty or corruption or incompetency.

**§ 25216. Duties; assessment of trends; energy conservation measures; forecasts; research and development**

In addition to other duties specified in this division, the commission shall do all of the following:

(a) Undertake a continuing assessment of trends in the consumption of electrical energy and other forms of energy and analyze the social, economic, and environmental consequences of these trends; carry out directly, or cause to be carried out, energy conservation measures specified in Chapter 5 (commencing with Section 25400) of this division; and recommend to the Governor and the Legislature new and expanded energy conservation measures as required to meet the objectives of this division.

(b) Collect from electric utilities, gas utilities, and fuel producers and wholesalers and other sources forecasts of future supplies and consumption of all forms of energy, including electricity, and of future energy or fuel production and transporting facilities to be constructed; independently analyze such forecasts in relation to statewide estimates of population, economic, and other growth factors and in terms of the availability of energy resources, costs to consumers, and other factors; and formally specify statewide and service area electrical energy demands to be utilized as a basis for planning the siting and design of electric power generating and related facilities.

(c) Carry out, or cause to be carried out, under contract or other arrangements, research and development into alternative sources of energy, improvements in energy generation, transmission, and siting, fuel substitution, and other topics related to energy supply, demand, public safety, ecology, and conservation which are of particular statewide importance.

**§ 25216.3. Design and operational standards; compilation; adoption; compliance**

(a) The commission shall compile relevant local, regional, state, and federal land use, public safety, environmental, and other standards to be met in designing, siting, and operating facilities in the state; except as provided in subdivision (d) of Section 25402, adopt standards, except for air and water quality, to be met in designing or operating facilities to safeguard public health and safety, which may be different from or more stringent than those adopted by local, regional, or other state agencies, or by any federal agency if permitted by federal law; and monitor compliance and ensure that all facilities are operated in accordance with this division.

(b) The local, regional, and other state agencies shall advise the commission as to any change in its standards, ordinances, or laws which are pertinent and relevant to the objective of carrying out the provisions of this division.

**§ 25216.5. Powers and duties; applications; plans; policies; repository of data; dissemination; fees**

The commission shall do all of the following:

(a) Prescribe the form and content of applications for facilities; conduct public hearings and take other actions to secure adequate evaluation of application; and formally act to

approve or disapprove applications, including specifying conditions under which approval and continuing operation of any facility shall be permitted.

(b) Prepare an integrated plan specifying actions to be taken in the event of an impending serious shortage of energy, or a clear threat to public health, safety, or welfare.

(c) Evaluate policies governing the establishment of rates for electric power and other sources of energy as related to energy conservation, environmental protection, and other goals and policies established in this division, and transmit recommendations for changes in power-pricing policies and rate schedules to the Governor, the Legislature, to the Public Utilities Commission, and to publicly owned electric utilities.

(d) Serve as a central repository within the state government for the collection, storage, retrieval, and dissemination of data and information on all forms of energy supply, demand, conservation, public safety, research, and related subjects. The data and information shall be derived from all sources, including, but not be limited to, electric and gas utilities, oil and other energy producing companies, institutions of higher education, private industry, public and private research laboratories, private individuals, and from any other source that the commission determines is necessary to carry out its objectives under this division. The commission may charge and collect a reasonable fee for retrieving and disseminating any such information to cover the cost of such a service. Any funds received by the commission pursuant to this subdivision shall be deposited in the account and are continuously appropriated for expenditure, by the commission, for purposes of retrieving and disseminating any such information pursuant to this section.

**§ 25217. Powers and duties; appointment of staff and legal counsel**

The commission shall do all of the following:

(a) Appoint an executive director with administration and fiscal experience, who shall serve at its pleasure and whose duties and salary shall be prescribed by the commission.

(b) Employ and prescribe the duties of other staff members as necessary to carry out the provisions of this division. Staff members of the commission may participate in all matters before the commission to the limits prescribed by the commission.

(c) Employ legal counsel who shall advise the commission and represent it in connection with legal matters and litigation before any boards and agencies of the state or federal government.

**§ 25217.1. Public adviser; nomination and appointment; duties; removal**

The commission shall nominate and the Governor shall appoint for a term of three years a public adviser to the commission who shall be an attorney admitted to the practice of law in this state and who shall carry out the provisions of Section 25222 as well as other duties prescribed by this division or by the commission. The adviser may be removed from office only upon the joint concurrence of four commissioners and the Governor.



**§ 25217.5. Chairman; duties**

The chairman of the commission shall direct the adviser, the executive director, and other staff in the performance of their duties in conformance with the policies and guidelines established by the commission.

**§ 25218. Powers; finance; contracts for services; actions; use of governmental agencies; rules and regulations**

In addition to other powers specified in this division, the commission may do any of the following:

- (a) Apply for and accept grants, contributions, and appropriations.
- (b) Contract for professional services if such work or services cannot be satisfactorily performed by its employees or by any other state agency.
- (c) Be sued and sue.
- (d) Request and utilize the advice and services of all federal, state, local, and regional agencies.
- (e) Adopt any rule or regulation, or take any action, it deems reasonable and necessary to carry out the provisions of this division.
- (f) Adopt rules and regulations, or take any action, it deems reasonable and necessary to ensure the free and open participation of any member of the staff in proceedings before the commission.

**§ 25218.5. Powers and duties; liberal construction**

The provisions specifying any power or duty of the commission shall be liberally construed, in order to carry out the objectives of this division.

**§ 25219. Matters involving the federal government**

As to any matter involving the federal government, its departments or agencies, which is within the scope of the power and duties of the commission, the commission may represent its interest or the interest of any county, city, state agency, or public district upon its request, and to that end may correspond, confer, and cooperate with the federal government, its departments or agencies.

**§ 25220. Participation in federal and state proceedings**

The commission may participate as a party, to the extent that it shall determine, in any proceeding before any federal or state agency having authority whatsoever to approve or disapprove any aspect of a proposed facility, receive notice from any applicant of all applications and pleadings filed subsequently by such applicants in any of such proceedings, and, by its request, receive copies of any of such subsequently filed applications and pleadings that it shall deem necessary.

**§ 25221. Attorney general; representation of commission; exception**

Upon request of the commission, the Attorney General shall represent the commission and the state in litigation concerning affairs of the commission, unless the Attorney General represents another state agency, in which case the commission shall be authorized to employ other counsel.

**§ 25222. Adviser; duties**

The adviser shall insure that full and adequate participation by all interested groups and the public at large is secured in the planning, site and facility certification, energy conservation, and emergency allocation procedures provided in this division. The adviser shall insure that timely and complete notice of commission meetings and public hearings is disseminated to all interested groups and to the public at large. The adviser shall also advise such groups and the public as to effective ways of participating in the commission's proceedings. The adviser shall recommend to the commission additional measures to assure open consideration and public participation in energy planning, site and facility certification, energy conservation, and emergency allocation proceedings.

**§ 25223. Information filed or submitted; public availability; proprietary information**

The commission shall make available any information filed or submitted pursuant to this division under the provisions of the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7, Title 1 of the Government Code; provided, however, that the commission shall keep confidential any information submitted to the Division of Oil and Gas of the Department of Conservation that the division determines, pursuant to Section 3752, to be proprietary.

**§ 25224. Exchange of information with state agencies**

The commission and other state agencies shall, to the fullest extent possible, exchange records, reports, material, and other information relating to energy resources and conservation and power facilities siting, or any areas of mutual concern, to the end that unnecessary duplication of effort may be avoided.

**§ 25225. Expenditure of funds by commission; prerequisite findings and adoption of plan; application of section**

(a) Prior to expending any funds for any research, development, or demonstration program or project relating to vehicles or vehicle fuels, the commission shall do both of the following, using existing resources:

(1) Adopt a plan describing any proposed expenditure that sets forth the expected costs and qualitative as well as quantitative benefits of the proposed program or project.

(2) Find that the proposed program or project will not duplicate any other past or present publicly funded California program or project. This paragraph is not intended to prevent funding for programs or projects jointly funded with another public agency where there is no duplication.

(b) Within 120 days from the date of the conclusion of a program or project subject to subdivision (a) that is funded by the commission, the commission shall issue a public report that sets forth the actual costs of the program or project, the results achieved and how they compare with expected costs and benefits determined pursuant to paragraph (1) of subdivision (a), and any problems that were encountered by the program or project.

(c)(1) This section does not apply to any funds appropriated for research, development, or demonstration pursuant to a statute that expressly specifies both of the following:

(A) A vehicle technology or vehicle fuel which is the subject of the research, development, or demonstration.

(B) The purpose of, or anticipated products of, the research, development, or demonstration.

(2) This section does not apply to the Katz Safe Schoolbus Clean Fuel Efficiency Demonstration Program (Part 10.7 (commencing with Section 17910) of Division 1 of Title 1 of the Education Code).

#### **CHAPTER 4. INTEGRATED ENERGY POLICY REPORTING**

##### **§ 25300. Legislative findings and declarations**

(a) The Legislature finds and declares that clean and reliable energy is essential to the health of the California economy and of vital importance to the health and welfare of the citizens of the state and to the environment.

(b) The Legislature further finds and declares that government has an essential role to ensure that a reliable supply of energy is provided consistent with protection of public health and safety, promotion of the general welfare, maintenance of a sound economy, conservation of resources, and preservation of environmental quality.

(c) The Legislature further finds and declares that the state government requires at all times a complete and thorough understanding of the operation of energy markets, including electricity, natural gas, petroleum, and alternative energy sources, to enable it to respond to possible shortages, price shocks, oversupplies, or other disruptions.

(d) The Legislature further finds and declares that timely reporting, assessment, forecasting, and data collection activities are essential to serve the information and policy development needs of the Governor, the Legislature, public agencies, market participants, and the public.

(e) The Legislature further finds and declares that one of the objectives of this act is to encourage cooperation among the various state agencies with energy responsibilities.

**§ 25301. Assessments and forecasts; scope; contents**

(a) At least every two years, the commission shall conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery and distribution, demand, and prices. The commission shall use these assessments and forecasts to develop energy policies that conserve resources, protect the environment, ensure energy reliability, enhance the state's economy, and protect public health and safety. To perform these assessments and forecasts, the commission may require submission of demand forecasts, resource plans, market assessments, and related outlooks from electric and natural gas utilities, transportation fuel and technology suppliers, and other market participants. These assessments and forecasts shall be done in consultation with the appropriate state and federal agencies including, but not limited to, the Public Utilities Commission, the Office of Ratepayer Advocates, the Air Resources Board, the Electricity Oversight Board, the Independent System Operator, the Department of Water Resources, the California Consumer Power and Conservation Financing Authority, the Department of Transportation, and the Department of Motor Vehicles.

(b) In developing the assessments and forecasts prepared pursuant to subdivision (a), the commission shall do all of the following:

- (1) Provide information about the performance of energy industries.
- (2) Develop and maintain the analytical capability sufficient to answer inquiries about energy issues from government, market participants, and the public.
- (3) Analyze and develop energy policies.
- (4) Provide an analytical foundation for regulatory and policy decisionmaking.
- (5) Facilitate efficient and reliable energy markets.

**§ 25302. Integrated energy policy report; electricity and natural gas markets; transportation fuels, technologies and infrastructure; public interest energy strategies**

(a) Beginning November 1, 2003, and every two years thereafter, the commission shall adopt an integrated energy policy report. This integrated report shall contain an overview of major energy trends and issues facing the state, including, but not limited to, supply, demand, pricing, reliability, efficiency, and impacts on public health and safety, the economy, resources, and the environment. Energy markets and systems shall be grouped and assessed in three subsidiary volumes:

- (1) Electricity and natural gas markets.
- (2) Transportation fuels, technologies, and infrastructure.
- (3) Public interest energy strategies.

(b) The commission shall compile the integrated energy policy report prepared pursuant to subdivision (a) by consolidating the analyses and findings of the subsidiary volumes in paragraphs (1), (2), and (3) of subdivision (a). The integrated energy

policy report shall present policy recommendations based on an indepth and integrated analysis of the most current and pressing energy issues facing the state. The analyses supporting this integrated energy policy report shall explicitly address interfuel and intermarket effects to provide a more informed evaluation of potential tradeoffs when developing energy policy across different markets and systems.

(c) The integrated energy policy report shall include an assessment and forecast of system reliability and the need for resource additions, efficiency, and conservation that considers all aspects of energy industries and markets that are essential for the state economy, general welfare, public health and safety, energy diversity, and protection of the environment. This assessment shall be based on determinations made pursuant to this chapter.

(d) Beginning November 1, 2004, and every two years thereafter, the commission shall prepare an energy policy review to update analyses from the integrated energy policy report prepared pursuant to subdivisions (a), (b), and (c), or to raise energy issues that have emerged since the release of the integrated energy policy report. The commission may also periodically prepare and release technical analyses and assessments of energy issues and concerns to provide timely and relevant information for the Governor, the Legislature, market participants, and the public.

(e) In preparation of the report, the commission shall consult with the following entities: the Public Utilities Commission, the Office of Ratepayer Advocates, the State Air Resources Board, the Electricity Oversight Board, the Independent System Operator, the Department of Water Resources, the California Consumer Power and Conservation Financing Authority, the Department of Transportation, and the Department of Motor Vehicles, and any federal, state, and local agencies it deems necessary in preparation of the integrated energy policy report. To assure collaborative development of state energy policies, these agencies shall make a good faith effort to provide data, assessment, and proposed recommendations for review by the commission.

(f) The commission shall provide the report to the Public Utilities Commission, the Office of Ratepayer Advocates, the State Air Resources Board, the Electricity Oversight Board, the Independent System Operator, the Department of Water Resources, the California Consumer Power and Conservation Financing Authority, and the Department of Transportation. For the purpose of ensuring consistency in the underlying information that forms the foundation of energy policies and decisions affecting the state, those entities shall carry out their energy-related duties and responsibilities based upon the information and analyses contained in the report. If an entity listed in this subdivision objects to information contained in the report, and has a reasonable basis for that objection, the entity shall not be required to consider that information in carrying out its energy-related duties.

(g) The commission shall make the report accessible to state, local, and federal entities and to the general public.

#### **§ 25302.5. Integrated energy policy report; forecasting by electricity retailers**

(a) As part of each integrated energy policy report required pursuant to Section 25302, each entity that serves or plans to serve electricity to retail customers, including, but not limited to, electrical corporations, nonutility electric service providers, community choice

aggregators, and local publicly owned electric utilities, shall provide the commission with its forecast of both of the following:

following:

- (1) The amount of its forecasted load that may be lost or added by any of the

- (A) A community choice aggregator.
- (B) An existing local publicly owned electric utility.
- (C) A newly formed local publicly owned electric utility.

- (2) Load that will be served by an electric service provider.

- (b) The commission shall perform an assessment in the service territory of each electrical corporation of the loss or addition of load described in this section and submit the results of the assessment to the Public Utilities Commission.

- (c) Notwithstanding subdivision (a), the commission may exempt from the forecasting requirements in that subdivision, a local publicly owned electric utility that is not planning to acquire additional load beyond its existing exclusive service territory within the forecast period provided by the commission pursuant to Section 25303.

- (d) For purposes of this section, the following terms have the following meanings:

- (1) "Community choice aggregator" means any "community choice aggregator" as defined in Section 331.1 of the Public Utilities Code.

- (2) "Electrical corporation" means any "electrical corporation" as defined in Section 218 of the Public Utilities Code.

- (3) "Electric service provider" means any "electric service provider" as defined in Section 218.3 of the Public Utilities Code.

- (4) "Local publicly owned electric utility" means any "local publicly owned electric utility" as defined in Section 224.3 of the Public Utilities Code.

**§ 25303. Electricity and natural gas forecasting and assessment activities; assessment to be included in integrated energy policy report; accumulating waste at state nuclear powerplants**

- (a) The commission shall conduct electricity and natural gas forecasting and assessment activities to meet the requirements of paragraph (1) of subdivision (a) of Section 25302, including, but not limited to, all of the following:

- (1) Assessment of trends in electricity and natural gas supply and demand, and the outlook for wholesale and retail prices for commodity electricity and natural gas under current market structures and expected market conditions.

(2) Forecasts of statewide and regional electricity and natural gas demand including annual, seasonal, and peak demand, and the factors leading to projected demand growth including, but not limited to, projected population growth, urban development, industrial expansion and energy intensity of industries, energy demand for different building types, energy efficiency, and other factors influencing demand for electricity. With respect to long-range forecasts of the demand for natural gas, the report shall include an evaluation of average conditions, as well as best and worst case scenarios, and an evaluation of the impact of the increasing use of renewable resources on natural gas demand.

(3) Evaluation of the adequacy of electricity and natural gas supplies to meet forecasted demand growth. Assessment of the availability, reliability, and efficiency of the electricity and natural gas infrastructure and systems including, but not limited to, natural gas production capability both in and out of state, natural gas interstate and intrastate pipeline capacity, storage and use, and western regional and California electricity and transmission system capacity and use.

(4) Evaluation of potential impacts of electricity and natural gas supply, demand, and infrastructure and resource additions on the electricity and natural gas systems, public health and safety, the economy, resources, and the environment.

(5) Evaluation of the potential impacts of electricity and natural gas load management efforts, including end-user response to market price signals, as a means to ensure reliable operation of electricity and natural gas systems.

(6) Evaluation of whether electricity and natural gas markets are adequately meeting public interest objectives including the provision of all of the following: economic benefits; competitive, low-cost reliable services; customer information and protection; and environmentally sensitive electricity and natural gas supplies. This evaluation may consider the extent to which California is an element within western energy markets, the existence of appropriate incentives for market participants to provide supplies and for consumers to respond to energy prices, appropriate identification of responsibilities of various market participants, and an assessment of long-term versus short-term market performance. To the extent this evaluation identifies market shortcomings, the commission shall propose market structure changes to improve performance.

(7) Identification of impending or potential problems or uncertainties in the electricity and natural gas markets, potential options and solutions, and recommendations.

(8)(A) Compilation and assessment of existing scientific studies that have been performed by persons or entities with expertise and qualifications in the subject of the studies, to determine the potential vulnerability, to a major disruption due to aging or a major seismic event, of large baseload generation facilities, of 1,700 megawatts or greater.

(B) The assessment specified in subparagraph (A) shall include an analysis of the impact of a major disruption on system reliability, public safety, and the economy.

(C) The commission may work with other public entities and public agencies, including, but not limited to, the California Independent System Operator, the Public Utilities Commission, the Department of Conservation, and the Seismic Safety Commission as necessary, to gather and analyze the information required by this paragraph.

(D) Upon completion and publication of the initial review of the information required pursuant to this paragraph, the commission shall perform subsequent updates as new data or new understanding of potential seismic hazards emerge.

(b) Commencing November 1, 2003, and every two years thereafter, to be included in the integrated energy policy report prepared pursuant to Section 25302, the commission shall assess the current status of the following:

(1) The environmental performance of the electric generation facilities of the state, to include all of the following:

(A) Generation facility efficiency.

(B) Air emission control technologies in use in operating plants.

(C) The extent to which recent resource additions have, and expected resource additions are likely to, displace or reduce the operation of existing facilities, including the environmental consequences of these changes.

(2) The geographic distribution of statewide environmental, efficiency, and socioeconomic benefits and drawbacks of existing generation facilities, including, but not limited to, the impacts on natural resources including wildlife habitat, air quality, and water resources, and the relationship to demographic factors. The assessment shall describe the socioeconomic and demographic factors that existed when the facilities were constructed and the current status of these factors. In addition, the report shall include how expected or recent resource additions could change the assessment through displaced or reduced operation of existing facilities.

(c) In the absence of a long-term nuclear waste storage facility, the commission shall assess the potential state and local costs and impacts associated with accumulating waste at California's nuclear powerplants. The commission shall further assess other key policy and planning issues that will affect the future role of nuclear powerplants in the state. The commission's assessment shall be adopted on or before November 1, 2008, and included in the 2008 energy policy review adopted pursuant to subdivision (d) of Section 25302.

**§ 25304. Transportation forecasting and assessment; analytical components; evaluation**

The commission shall conduct transportation forecasting and assessment activities to meet the requirements of paragraph (2) of subdivision (a) of Section 25302 including, but not limited to:

(a) Assessment of trends in transportation fuels, technologies, and infrastructure supply and demand and the outlook for wholesale and retail prices for petroleum, petroleum products, and alternative transportation fuels under current market structures and expected market conditions.

(b) Forecasts of statewide and regional transportation energy demand, both annual and seasonal, and the factors leading to projected demand growth including, but not limited to, projected population growth, urban development, vehicle miles traveled, the type, class, and efficiency of personal vehicles and commercial fleets, and shifts in transportation modes.



(c) Evaluation of the sufficiency of transportation fuel supplies, technologies, and infrastructure to meet projected transportation demand growth. Assessment of crude oil and other transportation fuel feedstock supplies; in-state, national, and worldwide production and refining capacity; product output storage availability; and transportation and distribution systems capacity and use.

(d) Assessments of the risks of supply disruptions, price shocks, or other events and the consequences of these events on the availability and price of transportation fuels and effects on the state's economy.

(e) Evaluation of the potential for needed changes in the state's energy shortage contingency plans to increase production and productivity, improve efficiency of fuel use, increase conservation of resources, and other actions to maintain sufficient, secure, and affordable transportation fuel supplies for the state.

(f) Evaluation of alternative transportation energy scenarios, in the context of least environmental and economic costs, to examine potential effects of alternative fuels usage, vehicle efficiency improvements, and shifts in transportation modes on public health and safety, the economy, resources, the environment, and energy security.

(g) Examination of the success of introduction, prices, and availability of advanced transportation technologies, low- or zero-emission vehicles, and clean-burning transportation fuels, including their potential future contributions to air quality, energy security, and other public interest benefits.

(h) Recommendations to improve the efficiency of transportation energy use, reduce dependence on petroleum fuels, decrease environmental impacts from transportation energy use, and contribute to reducing congestion, promoting economic development, and enhancing energy diversity and security.

**§ 25305. Public interest energy strategies; analytical components; identification of trends**

The commission shall rely upon forecasting and assessments performed in accordance with Sections 25301 to 25304, inclusive, as the basis for analyzing the success of and developing policy recommendations for public interest energy strategies. Public interest energy strategies include, but are not limited to, achieving energy efficiency and energy conservation; implementing load management; pursuing research, development, demonstration, and commercialization of new technologies; promoting renewable generation technologies; reducing statewide greenhouse gas emissions and addressing the impacts of climate change on California; stimulating California's energy-related business activities to contribute to the state's economy; and protecting and enhancing the environment. Additional assessments to address public interest energy strategies shall include, but are not limited to, all of the following:

(a) Identification of emerging trends in energy efficiency in the residential, commercial, industrial, agricultural, and transportation sectors of the state's economy, including, but not limited to, evaluation of additional achievable energy efficiency measures and technologies. Identification of policies that would permit fuller realization of the potential for energy efficiency, either through direct programmatic actions or facilitation of the market.

(b) Identification of emerging trends in the renewable energy industry. In addition, the commission shall evaluate progress in ensuring the operation of existing facilities, and the development of new and emerging, in-state renewable resources.

(c) Identification of emerging trends in energy research, development, and demonstration activities that advance science or technology to produce public benefits.

(d) Identification of progress in reducing statewide greenhouse gas emissions and addressing the effects of climate change on California.

**§ 25305.2. Inoperative**

**§ 25305.5. International energy markets; report on competitiveness and export promotion**

The commission shall include in its report prepared pursuant to Sections 25301 to 25304, inclusive, a description of international energy market prospects and an evaluation of its export promotion activities, as well as an assessment of the state of the California energy technology and energy conservation industry's efforts to enter foreign markets. The report shall also include recommendations for state government initiatives to foster the California energy technology and energy conservation industry's competition in world markets.

**§ 25306. Workshops, hearings and other forums; public and industry perspectives**

The commission shall conduct workshops, hearings, and other forums to gain the perspectives of the public and market participants for purposes of the integrated energy policy report prepared pursuant to Section 25302 and the forecasting and assessments prepared pursuant to Sections 25301, 25303, 25304, and 25305. The commission shall include the comments, as well as responses to those comments, of governmental agencies, industry representatives, market participants, private groups, and any other person concerning the commission's proposals and recommendations in the docket for the integrated energy policy report.

**§ 25307. Governor's review of integrated energy policy report; official statement of energy policy**

(a) The Governor shall review the integrated energy policy report prepared pursuant to Section 25302 and shall, on or before 90 days after receipt of the report, report further to the Legislature the Governor's agreement or disagreement with the policy recommendations contained in that report. The Governor's report to the Legislature shall cover the information required to be included in the integrated energy policy report and may cover any additional item that is necessary or appropriate. If the Governor disagrees with one or more recommendations in the integrated energy policy report, the Governor shall, in each instance, indicate the reason for disagreement and shall specify the alternate policy the Governor finds appropriate.

(b) The Governor's report to the Legislature pursuant to this section is the Governor's official statement of energy policy.

**§ 25310. Statewide estimate of all potentially achievable cost-effective electricity and natural gas efficiency savings; annual targets; comparison of targets and actual savings and reductions**

On or before November 1, 2007, and by November 1 of every third year thereafter, the commission in consultation with the Public Utilities Commission and local publicly owned electric utilities, in a public process that allows input from other stakeholders, shall, develop a statewide estimate of all potentially achievable cost-effective electricity and natural gas efficiency savings and establish targets for statewide annual energy efficiency savings and demand reduction for the next 10-year period. The commission shall base its estimate at least in part on information developed pursuant to Sections 454.55, 454.56, and 9615 of the Public Utilities Code. The commission shall, for each electrical corporation and each gas corporation, include in the integrated energy policy report, a comparison of the public utility's annual targets established pursuant to Sections 454.55 and 454.56, and the public utility's actual energy efficiency savings and demand reductions.

**§ 25320. Data collection system; required information**

(a) The commission shall manage a data collection system for obtaining information necessary to develop the policy reports and analyses required by Sections 25301 to 25307, inclusive, the energy shortage contingency planning efforts in Chapter 8 (commencing with Section 25700), and to support other duties of the commission.

(b) The data collection system, adopted by regulation under Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and managed by the commission shall:

(1) Include a timetable for the submission of this information, so that the integrated energy policy report required by Section 25302 can be completed in an accurate and timely manner.

(2) Require a person to submit only information that is reasonably relevant, and that the person can either be expected to acquire through his or her market activities, or possesses or controls. Information collected pursuant to this section shall relate to the functional role of each category of market participant in that industry and the consumers within that industry.

(3) To the extent it satisfies the information needs of the commission, rely on the use of estimates and proxies, to the maximum extent practicable, for some data elements using survey and research techniques, while for other information it shall obtain data from market participants using submissions consistent with their accounting records. In determining whether to rely upon estimates or participant provided data, the commission shall weigh the burden of compliance upon industry participants and energy consumers against the benefit of participant provided data for the public interest.

(4) To the extent it satisfies the information needs of the commission, rely on data, to the maximum extent practicable, that is reported to other government agencies or is otherwise available to the commission.

(c) Pursuant to the requirements of subdivision (b), the data collection system for electricity and natural gas shall enumerate specific requirements for each category of

market participants, including, but not limited to, private market participants, energy service providers, energy service companies, natural gas marketers, electric utility and natural gas utility companies, independent generators, electric transmission entities, natural gas producers, natural gas pipeline operators, importers and exporters of electricity and natural gas, and specialized electric or natural gas system operators. The commission may also collect information about consumers' natural gas and electricity use from their voluntary participation in surveys and other research techniques.

(d) Pursuant to the requirements of subdivision (b), the data collection system for nonpetroleum fuels and transportation technologies shall enumerate specific requirements for each category of market participant, including, but not limited to, fuel importers and exporters, fuel distributors and retailers, fuel pipeline operators, natural gas liquid producers, and transportation technology providers. The commission may also collect information about consumers' nonpetroleum fuel and transportation technology use from their voluntary participation in surveys and other research techniques.

(e) The commission shall collect data for petroleum fuel pursuant to Chapter 4.5 (commencing with Section 25350). The commission may also collect information about consumers' petroleum fuel use from consumers' participation in surveys and other research techniques.

#### **§ 25321. Compliance with data collection; enforcement measures**

In order to ensure timely and accurate compliance with the data collection system adopted under Section 25320, the commission may use any of the following enforcement measures:

(a) If any person fails to comply with an applicable provision of the data collection system, the commission shall notify the person. If, after five working days from being notified of the violation, the person continues to fail to comply, the person shall be subject to a civil penalty, to be imposed by the commission after a hearing that complies with constitutional requirements.

(1) The civil penalty shall not be less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) for each category of data the person did not provide and for each day the violation has existed and continues to exist.

(2) In the case of a person who willfully makes any false statement, representation, or certification in any record, report, plan, or other document filed with the commission, the civil penalty shall not be less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) per day applied to each day in the interval between the original due date and the date when corrected information is submitted.

(b) For the purposes of this section, "person" means, in addition to the definition contained in Section 25116, any responsible corporate officer.

(c) Enforcement measures for petroleum and other fuels shall be those contained in Section 25362.

**§ 25322. Confidentiality of data collection system information**

(a) The data collection system managed pursuant to Section 25320 shall include the following requirements regarding the confidentiality of the information collected by the commission:

(1) Any person required to present information to the commission pursuant to this section may request that specific information be held in confidence. The commission shall grant the request in any of the following circumstances:

(A) The information is exempt from disclosure under the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(B) The information satisfies the confidentiality requirements of Article 2 (commencing with Section 2501) of Chapter 7 of Division 2 of Title 20 of the California Code of Regulations, as those regulations existed on January 1, 2002.

(C) On the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(2) The commission may, by regulation, designate certain categories of information as confidential, which removes the obligation to request confidentiality for that information.

(3) Any confidential information pertinent to the responsibilities of the commission specified in this chapter that is obtained by another state agency, or the California Independent System Operator or its successor, shall be available to the commission and shall be treated in a confidential manner.

(4) Information presented to or developed by the commission and deemed confidential pursuant to this section shall be held in confidence by the commission. Confidential information shall be aggregated or masked to the extent necessary to assure confidentiality if public disclosure of the specific information would result in an unfair competitive disadvantage to the person supplying the information.

(b) Requests for records of information shall be handled as follows:

(1) If the commission receives a written request to publicly disclose information that is being held in confidence pursuant to paragraph (1) or (2) of subdivision (a), the commission shall provide the person making the request with written justification for the confidential designation and a description of the process to seek disclosure.

(2) If the commission receives a written request to publicly disclose a disaggregated or unmasked record of information designated as confidential under paragraph (1) or (2) of subdivision (a), notice of the request shall be provided to the person that submitted the record. Upon receipt of the notice, the person that submitted the record may, within five working days of receipt of the notice, provide a written justification of the claim of confidentiality.

(3) The commission or its designee shall rule on a request made pursuant to paragraph (2) on or before 20 working days after its receipt. The commission shall deny the request if the disclosure will result in an unfair competitive disadvantage to the person that submitted the information.

(4) If the commission grants the request pursuant to paragraph (3), it shall withhold disclosure for a reasonable amount of time, not to exceed 14 working days, to allow the submitter of the information to seek judicial review.

(c) No information submitted to the commission pursuant to this section is confidential if the person submitting the information has made it public.

(d) The commission shall establish, maintain, and use appropriate security practices and procedures to ensure that the information it has designated as confidential, or received with a confidential designation from another government agency, is protected against disclosure other than that authorized using the procedures in subdivision (b). The commission shall incorporate the following elements into its security practices and procedures:

(1) Commission employees shall sign a confidential data disclosure agreement providing for various remedies, including, but not limited to, fines and termination for wrongful disclosure of confidential information.

(2) Commission employees, or contract employees of the commission, shall only have access to confidential information when it is appropriate to their job assignments and if they have signed a nondisclosure agreement.

(3) Computer data systems that hold confidential information shall include sufficient security measures to protect the data from inadvertent or wrongful access by unauthorized commission employees and the public.

(e) Data collected by the commission on petroleum fuels in Section 25320 shall be subject to the confidentiality provisions of Sections 25364 to 25366, inclusive.

**§ 25323. Supply plans for individual utilities; scope of commission authority**

Nothing in this division shall authorize the commission in the performance of its analytical, planning, siting, or certification responsibilities to mandate a specified supply plan for any utility.

**§ 25324. Adoption of strategic plan for state's electric transmission grid using existing resources**

The commission, in consultation with the Public Utilities Commission, the California Independent System Operator, transmission owners, users, and consumers, shall adopt a strategic plan for the state's electric transmission grid using existing resources. The strategic plan shall identify and recommend actions required to implement investments needed to ensure reliability, relieve congestion, and meet future growth in load and generation, including, but not limited to, renewable resources, energy efficiency, and other demand reduction measures. The plan shall be included in the integrated energy policy report adopted on November 1, 2005, pursuant to subdivision (a) of Section 25302.

## CHAPTER 4.3. DESIGNATION OF TRANSMISSION CORRIDORS

### § 25330. Definitions

For purposes of this chapter, the following terms have the following meanings:

(a) "Feasible" has the same meaning as in Section 21061.1.

(b) "High-voltage electric transmission line" means an electric transmission line with an operating capacity of at least 200 kilovolts, or that is under the operational control of the California Independent System Operator.

(c) "Transmission corridor zone" means the geographic area necessary to accommodate the construction and operation of one or more high-voltage electric transmission lines. A transmission corridor zone shall not be more than 1,500 feet in width unless required to accommodate existing land uses and land uses identified in local general or specific plans, or to avoid environmental constraints or mitigate potential environmental impacts.

### § 25331. Designation of transmission corridor zone

(a) The commission may designate a transmission corridor zone on its own motion or by application of a person who plans to construct a high-voltage electric transmission line within the state. The designation of a transmission corridor zone shall serve to identify a feasible corridor where one or more future high-voltage electric transmission lines can be built that are consistent with the state's needs and objectives as set forth in the strategic plan adopted pursuant to Section 25324.

(b) A person planning to construct a high-voltage electric transmission line may submit to the commission an application to designate a proposed transmission corridor zone as being consistent with the strategic plan adopted pursuant to Section 25324. The application shall be in the form prescribed by the commission and shall be supported by any information that the commission may require.

### § 25332. Compliance with California Environmental Quality Act

The designation of a transmission corridor zone is subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000)). The commission shall be the lead agency, as provided in Section 21165, for all transmission corridor zones proposed for designation pursuant to this chapter.

### § 25333. Development of strategic plan; entities to confer with commission; identification of appropriate areas within jurisdiction of entities; coordination with land use plans; approval of California Native American tribe

(a) In developing a strategic plan pursuant to Section 25324 or considering an application for designation pursuant to this chapter, the commission shall confer with cities and counties, federal agencies, and California Native American tribes to identify appropriate areas within their jurisdictions that may be suitable for a transmission corridor zone. The

commission shall, to the extent feasible, coordinate efforts to identify long-term transmission needs of the state with the land use plans of cities, counties, federal agencies, and California Native American tribes.

(b) The commission shall not designate a transmission corridor zone within the jurisdiction of a California Native American tribe without the approval of the California Native American tribe.

**§ 25334. Publication of summary of application for designation of transmission corridor zone; notice and comment; fee for costs of review**

(a) Upon receipt of an application or upon its own motion for designation of a transmission corridor zone, the commission shall arrange for the publication of a summary of the application in a newspaper of general circulation in each county where the proposed transmission corridor zone would be located, and shall notify all property owners within, or adjacent to, the transmission corridor zone. The commission shall transmit a copy of the application for designation to all cities, counties, and state and federal agencies having an interest in the proposed transmission corridor zone. The commission shall publish the application for designation on its Internet Web site, and notify members of the public that the application is available on the commission's Internet Web site.

(b) As soon as practicable after the receipt of an application or upon its own motion for designation of a transmission corridor zone, the commission shall notify cities, counties, state and federal agencies, and California Native American tribes in whose jurisdictions the proposed transmission corridor zone would be located regarding the proposed transmission corridor zone and the objectives of the most recent strategic plan for the state's electric transmission grid. The commission's notice shall solicit information from, and the commission shall confer with, all interested cities, counties, state and federal agencies, and California Native American tribes regarding their land use plans, existing land uses, and other factors in which they have expertise or interest with respect to the proposed transmission corridor zone. The commission shall provide any interested city, county, state or federal agency, California Native American tribe, or member of the public, including any property owner within the proposed transmission corridor zone, ample opportunity to participate in the commission's review of a proposed transmission corridor zone.

(c) The commission shall request affected cities, counties, state and federal agencies, the Electricity Oversight Board, the Independent System Operator, interested California Native American tribes, and members of the public, including any property owner within the proposed transmission corridor zone, to provide comments on the suitability of the proposed transmission corridor zone with respect to environmental, public health and safety, land use, economic, and transmission-system impacts or other factors on which they may have expertise.

(d) The commission shall require a person who files an application for the designation of a transmission corridor zone to pay a fee sufficient to reimburse the commission for all costs associated with reviewing the application. If the commission initiates the designation of a transmission corridor zone on its own motion, the commission shall fix the surcharge imposed pursuant to subdivision (b) of Section 40016 of the Revenue and Taxation Code, at a level sufficient to cover the commission's added costs.



(e) Upon receiving the commission's request for review of a proposed transmission corridor zone, a city or county may request a fee pursuant to Section 25538 to cover for the actual and added costs of this review and the commission shall pay this amount to the city or county.

**§ 25335. Public informational hearings**

(a) Within 45 days of receipt of the application or motion for designation, the commission shall commence public informational hearings in the county or counties where the proposed transmission corridor zone would be located.

(b) The purpose of the hearings shall be to do all of the following:

(1) Provide information about the proposed transmission corridor zone so that the public and interested agencies have a clear understanding of what is being proposed.

(2) Explain the relationship of the proposed transmission corridor zone to the commission's strategic plan for the state's electric transmission grid, as set forth in the most recent integrated energy policy report adopted pursuant to Chapter 4 (commencing with Section 25300).

(3) Receive initial comments about the proposed transmission corridor zone from the public and interested agencies.

(4) Solicit information on reasonable alternatives to the proposed transmission corridor zone.

**§ 25336. Prehearing conference; hearings**

(a) Within 155 days of the final informational hearing, the commission shall conduct a prehearing conference to determine the issues to be considered in hearings pursuant to this section, to identify the dates for the hearings, and to set forth filing dates for public comments and testimony from the parties and interested agencies. Within 15 days of the prehearing conference, the commission shall issue a hearing order setting forth the issues to be heard, the dates of the hearings, and the filing dates for comments and testimony.

(b) The commission shall conduct hearings pursuant to the hearing order. The purpose of the hearings shall be to receive information upon which the commission can make findings and conclusions pursuant to Section 25337.

**§ 25337. Proposed decision; contents**

After the conclusion of hearings conducted pursuant to Section 25336, and no later than 180 days after the date of certification of the environmental impact report prepared pursuant to Section 25332, the commission shall issue a proposed decision that contains its findings and conclusions regarding all of the following matters:

(a) Conformity of the proposed transmission corridor zone with the strategic plan adopted pursuant to Section 25324.

(b) Suitability of the proposed transmission corridor zone with respect to environmental, public health and safety, land use, economic, and transmission-system impacts.

(c) Mitigation measures and alternatives as may be needed to protect environmental quality, public health and safety, the state's electric transmission grid, or any other relevant matter.

(d) Other factors that the commission considers relevant.

**§ 25338. Posting of decision on Internet Web site; notice to property owners**

As soon as practicable after the commission designates a transmission corridor zone, it shall post a copy of its decision on its Internet Web site, send a copy of its decision, including a description of the transmission corridor zone, to each affected city, county, state agency, and federal agency, and notify property owners within or adjacent to the corridor of the availability of the decision on the commission's Internet Web site.

**§ 25339. Review and revision of designated transmission corridor zones**

After the commission designates a transmission corridor zone, it shall identify that transmission corridor zone in its subsequent strategic plans adopted pursuant to Section 25324. The commission shall regularly review and revise its designated transmission corridor zones as necessary, but not less than once every 10 years. In revising designations of transmission corridor zones, the commission shall follow the procedures of this chapter. If, upon regular review or at any other time, the commission finds that a transmission corridor zone is no longer needed, the commission shall revise or repeal the designation and, as soon as practicable, notify the affected cities, counties, state and federal agencies, and property owners within, or adjacent to, the transmission corridor zone.

**§ 25340. City or county to consider designated transmission corridor zone when making determinations regarding land use changes**

After receiving notice from the commission regarding the designation or revision of a transmission corridor zone within its jurisdiction, each city or county shall consider the designated transmission corridor zone when making a determination regarding a land use change within or adjacent to the transmission corridor zone that could affect its continuing viability to accommodate a transmission line planned within the transmission corridor zone. Nothing in this section shall preclude compatible uses within or adjacent to a designated transmission corridor zone.

**§ 25341. Development projects within designated transmission corridor zone; notice to commission; recommendations and comments of commission**

(a) Within a designated transmission corridor zone, within 10 days of accepting as complete an application pursuant to Section 65943 of the Government Code for a development project that a city or county determines would threaten the potential to construct a high-voltage electric transmission line, the city or county shall notify the commission of the proposed development project. The notice shall include a copy of the application, and set a deadline that is not less than 60 days from the date of the notice for the commission to provide written comments to the city or county regarding the proposed development project.

(b) If the commission finds that the proposed development project would threaten the potential to construct a high-voltage electric transmission line within the designated transmission corridor zone, the commission shall provide written comments to the city or county. The commission may recommend revisions to, redesign of, or mitigation measures for the proposed development project that would eliminate or reduce the threat.

(c) The city or county shall consider the commission's comments, if any, prior to acting on the proposed development project. If the commission objects to the proposed development project, the city or county shall provide a written response that shall address in detail why it did not accept the commission's comments and recommendations.

## **CHAPTER 4.5. PETROLEUM SUPPLY AND PRICING**

### **§ 25350. Legislative finding and declaration**

(a) The Legislature finds and declares that the petroleum industry is an essential element of the California economy and is therefore of vital importance to the health and welfare of all Californians.

(b) The Legislature further finds and declares that a complete and thorough understanding of the operations of the petroleum industry is required by state government at all times to enable it to respond to possible shortages, oversupplies, or other disruptions and to assess whether all consumers, including emergency service agencies, state and local government agencies, and agricultural and business consumers of petroleum products have adequate and economic supplies of fuel.

(c) The Legislature further finds and declares that information and data concerning all aspects of the petroleum industry, including, but not limited to, crude oil production, production and supplies of finished branded and unbranded gasoline, supplies of diesel fuel and other distillates, supplies of blendstocks used to make gasoline and other refined products, refining, product output, exports of finished gasoline, diesel fuel, and blendstocks, prices, distribution, demand, and investment choices and decisions are essential for the state to develop and administer energy policies that are in the interest of the state's economy and the public's well-being.

### **§ 25352. Short title**

This chapter shall be known and may be cited as the Petroleum Industry Information Reporting Act of 1980.

### **§ 25354. Informational reports; duty; time; scope; powers of commission; alternate reports**

(a) Each refiner and major marketer shall submit information each month to the commission in such form and extent as the commission prescribes pursuant to this section. The information shall be submitted within 30 days after the end of each monthly reporting period and shall include the following:

(1) Refiners shall report, for each of their refineries, feedstock inputs, origin of petroleum receipts, imports of finished petroleum products and blendstocks, by type, including the source of those imports, exports of finished petroleum products and blendstocks, by type, including the destination of those exports, refinery outputs, refinery stocks, and finished product supply and distribution, including all gasoline sold unbranded by the refiner, blender, or importer.

(2) Major marketers shall report on petroleum product receipts and the sources of these receipts, inventories of finished petroleum products and blendstocks, by type, distributions through branded and unbranded distribution networks, and exports of finished petroleum products and blendstocks, by type, from the state.

(b) Each major oil producer, refiner, marketer, oil transporter, and oil storer shall annually submit information to the commission in such form and extent as the commission prescribes pursuant to this section. The information shall be submitted within 30 days after the end of each reporting period, and shall include the following:

(1) Major oil transporters shall report on petroleum by reporting the capacities of each major transportation system, the amount transported by each system, and inventories thereof. The commission may prescribe rules and regulations that exclude pipeline and transportation modes operated entirely on property owned by major oil transporters from the reporting requirements of this section if the data or information is not needed to fulfill the purposes of this chapter. The provision of the information shall not be construed to increase or decrease any authority the Public Utilities Commission may otherwise have.

(2) Major oil storers shall report on storage capacity, inventories, receipts and distributions, and methods of transportation of receipts and distributions.

(3) Major oil producers shall, with respect to thermally enhanced oil recovery operations, report annually by designated oil field, the monthly use, as fuel, of crude oil and natural gas.

(4) Refiners shall report on facility capacity, and utilization and method of transportation of refinery receipts and distributions.

(5) Major oil marketers shall report on facility capacity and methods of transportation of receipts and distributions.

(c) Each person required to report pursuant to subdivision (a) shall submit a projection each month of the information to be submitted pursuant to subdivision (a) for the quarter following the month in which the information is submitted to the commission.

(d) In addition to the data required under subdivision (a), each integrated oil refiner (produces, refines, transports, and markets in interstate commerce) who supplies more than 500 branded retail outlets in California shall submit to the commission an annual industry forecast for Petroleum Administration for Defense, District V (covering Arizona, Nevada, Washington, Oregon, California, Alaska, and Hawaii). The forecast shall include the information to be submitted under subdivision (a), and shall be submitted by March 15 of each year. The commission may require California-specific forecasts. However, those forecasts shall be required only if the commission finds them necessary to carry out its responsibilities.

(e) The commission may by order or regulation modify the reporting period as to any individual item of information setting forth in the order or regulation its reason for so doing.

(f) The commission may request additional information as necessary to perform its responsibilities under this chapter.

(g) Any person required to submit information or data under this chapter, in lieu thereof, may submit a report made to any other governmental agency, if:

(1) The alternate report or reports contain all of the information or data required by specific request under this chapter.

(2) The person clearly identifies the specific request to which the alternate report is responsive.

(h) Each refiner shall submit to the commission, within 30 days after the end of each monthly reporting period, all of the following information in such form and extent as the commission prescribes:

(1) Monthly California weighted average prices and sales volumes of finished leaded regular, unleaded regular, and premium motor gasoline sold through company-operated retail outlets, to other end-users, and to wholesale customers.

(2) Monthly California weighted average prices and sales volumes for residential sales, commercial and institutional sales, industrial sales, sales through company-operated retail outlets, sales to other end-users, and wholesale sales of No. 2 diesel fuel and No. 2 fuel oil.

(3) Monthly California weighted average prices and sales volumes for retail sales and wholesale sales of No. 1 distillate, kerosene, finished aviation gasoline, kerosene-type jet fuel, No. 4 fuel oil, residual fuel oil with 1 percent or less sulfur, residual fuel oil with greater than 1 percent sulfur and consumer grade propane.

(i)(1) Beginning the first week after the effective date of the act that added this subdivision, and each week thereafter, an oil refiner, oil producer, petroleum product transporter, petroleum product marketer, petroleum product pipeline operator, and terminal operator, as designated by the commission, shall submit a report in the form and extent as the commission prescribes pursuant to this section. The commission may determine the form and extent necessary by order or by regulation.

(2) A report may include any of the following information:

(A) Receipts and inventory levels of crude oil and petroleum products at each refinery and terminal location.

(B) Amount of gasoline, diesel, jet fuel, blending components, and other petroleum products imported and exported.

(C) Amount of gasoline, diesel, jet fuel, blending components, and other petroleum products transported intrastate by marine vessel.

(D) Amount of crude oil imported, including information identifying the source of the crude oil.

(E) The regional average of invoiced retailer buying price. This subparagraph does not either preclude or augment the current authority of the commission to collect additional data under subdivision (f).

(3) This subdivision is intended to clarify the commission's existing authority under subdivision (f) to collect specific information. This subdivision does not either preclude or augment the existing authority of the commission to collect information.

**§ 25356. Analysis of information**

(a) The commission, utilizing its own staff and other support staff having expertise and experience in, or with, the petroleum industry, shall gather, analyze, and interpret the information submitted to it pursuant to Section 25354 and other information relating to the supply and price of petroleum products, with particular emphasis on motor vehicle fuels, including, but not limited to, all of the following:

(1) The nature, cause, and extent of any petroleum or petroleum products shortage or condition affecting supply.

(2) The economic and environmental impacts of any petroleum and petroleum product shortage or condition affecting supply.

(3) Petroleum or petroleum product demand and supply forecasting methodologies utilized by the petroleum industry in California.

(4) The prices, with particular emphasis on retail motor fuel prices, including sales to unbranded retail markets, and any significant changes in prices charged by the petroleum industry for petroleum or petroleum products sold in California and the reasons for those changes.

(5) The profits, both before and after taxes, of the industry as a whole and of major firms within it, including a comparison with other major industry groups and major firms within them as to profits, return on equity and capital, and price-earnings ratio.

(6) The emerging trends relating to supply, demand, and conservation of petroleum and petroleum products.

(7) The nature and extent of efforts of the petroleum industry to expand refinery capacity and to make acquisitions of additional supplies of petroleum and petroleum products, including activities relative to the exploration, development, and extraction of resources within the state.

(8) The development of a petroleum and petroleum products information system in a manner that will enable the state to take action to meet and mitigate any petroleum or petroleum products shortage or condition affecting supply.

(b) The commission shall analyze the impacts of state and federal policies and regulations upon the supply and pricing of petroleum products.

**§ 25357. Analysis of production reports**

The commission shall obtain and analyze monthly production reports prepared by the State Oil and Gas Supervisor pursuant to Section 3227.

**§ 25358. Summary, analysis and interpretation of information; reports**

(a) Within 70 days after the end of each preceding quarter of each calendar year, the commission shall publish and submit to the Governor and the Legislature a summary, an analysis, and an interpretation of the information submitted to it pursuant to Section 25354 and information reviewed pursuant to Section 25357. This report shall be separate from the report submitted pursuant to Section 25322. Any person may submit comments in writing regarding the accuracy or sufficiency of the information submitted.

(b) The commission shall prepare a biennial assessment of the information provided pursuant to this chapter and shall include its assessment in the biennial fuels report prepared pursuant to Section 25310.

(c) The commission may use reasonable means necessary and available to it to seek and obtain any facts, figures, and other information from any source for the purpose of preparing and providing reports to the Governor and the Legislature. The commission shall specifically include in such reports its analysis of any unsuccessful attempts in obtaining information from potential sources, including the lack of cooperation or refusal to provide information.

(d) Whenever the commission fails to provide any report required pursuant to this section within the specified time, it shall provide to all members of the Legislature, within five days of such specified time, a detailed written explanation of the cause of any such delay.

**§ 25362. Failure to timely provide information; notice; false statements; civil penalties; person**

(a) The commission shall notify those persons who have failed to timely provide the information specified in Section 25354. If, within five days after being notified of the failure to provide the specified information, the person fails to supply the specified information, the person shall be subject to a civil penalty of not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) per day for each day the submission of information is refused or delayed, unless the person has timely filed objections with the commission regarding the information and the commission has not yet held a hearing on the matter, or the commission has held a hearing and the person has properly submitted the issue to a court of competent jurisdiction for review.

(b) Any person who willfully makes any false statement, representation, or certification in any record, report, plan, or other document filed with the commission shall be subject to a civil penalty not to exceed two thousand dollars (\$2,000).

(c) For the purpose of this section, the term "person" shall mean, in addition to the definition contained in Section 25116, any responsible corporate officer.

**§ 25364. Confidential information; disclosure to State Air Resources Board**

(a) Any person required to present information to the commission pursuant to Section 25354 may request that specific information be held in confidence. Information requested to be held in confidence shall be presumed to be confidential.

(b) Information presented to the commission pursuant to Section 25354 shall be held in confidence by the commission or aggregated to the extent necessary to assure confidentiality if public disclosure of the specific information or data would result in unfair competitive disadvantage to the person supplying the information.

(c) (1) Whenever the commission receives a request to publicly disclose unaggregated information, or otherwise proposes to publicly disclose information submitted pursuant to Section 25354, notice of the request or proposal shall be provided to the person submitting the information. The notice shall indicate the form in which the information is to be released. Upon receipt of notice, the person submitting the information shall have 10 working days in which to respond to the notice to justify the claim of confidentiality on each specific item of information covered by the notice on the basis that public disclosure of the specific information would result in unfair competitive disadvantage to the person supplying the information.

(2) The commission shall consider the respondent's submittal in determining whether to publicly disclose the information submitted to it to which a claim of confidentiality is made. The commission shall issue a written decision which sets forth its reasons for making the determination whether each item of information for which a claim of confidentiality is made shall remain confidential or shall be publicly disclosed.

(d) The commission shall not make public disclosure of information submitted to it pursuant to Section 25354 within 10 working days after the commission has issued its written decision required in this section.

(e) No information submitted to the commission pursuant to Section 25354 shall be deemed confidential if the person submitting the information or data has made it public.

(f) With respect to petroleum products and blendstocks reported by type pursuant to paragraph (1) or (2) of subdivision (a) of Section 25354 and information provided pursuant to subdivision (h) of Section 25354, neither the commission nor any employee of the commission may do any of the following:

(1) Use the information furnished under paragraph (1) or (2) of subdivision (a) of Section 25354 or under subdivision (h) of Section 25354 for any purpose other than the statistical purposes for which it is supplied.

(2) Make any publication whereby the information furnished by any particular establishment or individual under paragraph (1) or (2) of subdivision (a) of Section 25354 or under subdivision (h) of Section 25354 can be identified.

(3) Permit anyone other than commission members and employees of the commission to examine the individual reports provided under paragraph (1) or (2) of subdivision (a) of Section 25354 or under subdivision (h) of Section 25354.



(g) Notwithstanding any other provision of law, the commission may disclose confidential information received pursuant to subdivision (a) of Section 25310.4 or Section 25354 to the State Air Resources Board if the state board agrees to keep the information confidential. With respect to the information it receives, the state board shall be subject to all pertinent provisions of this section.

**§ 25366. Confidential information obtained by another state agency**

Any confidential information pertinent to the responsibilities of the commission specified in this division which is obtained by another state agency shall be available to the commission and shall be treated in a confidential manner.

**§ 25368. Repealed**

**CHAPTER 4.7. MOTOR VEHICLE FUEL CONSERVATION [Repealed]**

**§§ 25370 to 25381. Repealed**

**CHAPTER 4.9. LOCAL ENERGY CONSERVATION PROGRAMS SECTION [Repealed]**

**§§ 25390 to 25395. Repealed**

**CHAPTER 5. ENERGY RESOURCES CONSERVATION**

**§ 25400. Assessment of forms of energy; encouragement of balanced use of resources**

The commission shall conduct an ongoing assessment of the opportunities and constraints presented by all forms of energy. The commission shall encourage the balanced use of all sources of energy to meet the state's needs and shall seek to avoid possible undesirable consequences of reliance on a single source of energy.

**§ 25401. Continuous studies, projects; reduction in wasteful and inefficient uses; potential sources**

The commission shall continuously carry out studies, research projects, data collection, and other activities required to assess the nature, extent, and distribution of energy resources to meet the needs of the state, including but not limited to fossil fuels and solar, nuclear, and geothermal energy resources. It shall also carry out studies, technical assessments, research projects, and data collection directed to reducing wasteful, inefficient, unnecessary, or uneconomic uses of energy, including, but not limited to, all of the following:

- (a) Pricing of electricity and other forms of energy.

- (b) Improved building design and insulation.
- (c) Restriction of promotional activities designed to increase the use of electrical energy by consumers.
- (d) Improved appliance efficiency.
- (e) Advances in power generation and transmission technology.
- (f) Comparisons in the efficiencies of alternative methods of energy utilization.

The commission shall survey pursuant to this section all forms of energy on which to base its recommendations to the Governor and Legislature for elimination of waste or increases in efficiency for sources or uses of energy. The commission shall transmit to the Governor and the Legislature, as part of the biennial report specified in Section 25309, recommendations for state policy and actions for the orderly development of all potential sources of energy to meet the state's needs, including, but not limited to, fossil fuels and solar, nuclear, and geothermal energy resources, and to reduce wasteful and inefficient uses of energy.

**§ 25401.2. Biennial report of emerging energy conservation trends; inventory of cost-effective opportunities; advisory group**

(a) As part of the report required by Section 25302, the commission shall develop and update an inventory of current and potential cost-effective opportunities in each utility's service territory, to improve efficiencies and to help utilities manage loads in all sectors of natural gas and electricity use. The report shall include estimates of the overall magnitude of these resources, load shapes, and the projected costs associated with delivering the various types of energy savings that are identified in the inventory. The report shall also estimate the amount and incremental cost per unit of potential energy efficiency and load management activities. Where applicable, the inventory shall include data on variations in savings and costs associated with particular measures. The report shall take into consideration environmental benefits as developed in related commission and public utilities commission proceedings.

(b) The commission shall develop and maintain the inventory in consultation with electric and gas utilities, the Public Utilities Commission, academic institutions, and other interested parties.

(c) The commission shall convene a technical advisory group to develop an analytic framework for the inventory, to discuss the level of detail at which the inventory would operate, and to ensure that the inventory is consistent with other demand-side data bases. Privately owned electric and gas utilities shall provide financial support, gather data, and provide analysis for activities that the technical advisory group recommends. The technical advisory group shall terminate on January 1, 1993.

**§ 25401.5. Energy standards for older residences**

For the purpose of reducing electrical and natural gas energy consumption, the commission may develop and disseminate measures that would enhance energy efficiency for single-family residential dwellings that were built prior to the development of the current energy efficiency standards. The measures, if developed and disseminated, shall provide a homeowner with information to improve the energy efficiency of a single-family residential

welling. The commission may comply with this section by posting the measures on the commission's Internet Web site or by making the measures available to the public, upon request.

**§ 25401.6. Separate rebate for eligible distributed emerging technologies for affordable housing projects**

(a) In its administration of Section 25744, the commission shall establish a separate rebate for eligible distributed emerging technologies for affordable housing projects including, but not limited to, projects undertaken pursuant to Section 50052.5, 50053, or 50199.4 of the Health and Safety Code. In establishing the rebate, where the commission determines that the occupants of the housing shall have individual meters, the commission may adjust the amount of the rebate based on the capacity of the system, provided that a system may receive a rebate only up to 75 percent of the total installed costs. The commission may establish a reasonable limit on the total amount of funds dedicated for purposes of this section.

(b) It is the intent of the Legislature that this section fulfills the purpose of paragraph (5) of subdivision (b) of Section 25744.

**§ 25401.7. Home inspections**

At the time a single-family residential dwelling is sold, a buyer or seller may request a home inspection, as defined in subdivision (a) of Section 7195 of the Business and Professions Code, and a home inspector, as defined in subdivision (d) of Section 7195 of the Business and Professions Code, shall provide, contact information for one or more of the following entities that provide home energy information:

(a) A nonprofit organization.

(b) A provider to the residential dwelling of electrical service, or gas service, or both.

(c) A government agency, including, but not limited to, the commission.

**§ 25401.9. Performance standards and labeling for landscape irrigation equipment**

(a) To the extent that funds are available, the commission, in consultation with the Department of Water Resources, shall adopt by regulation, after holding one or more public hearings, performance standards and labeling requirements for landscape irrigation equipment, including, but not limited to, irrigation controllers, moisture sensors, emission devices, and valves, for the purpose of reducing the wasteful, uneconomic, inefficient, or unnecessary consumption of energy or water.

(b) For the purposes of complying with subdivision (a), the commission shall do all of the following:

(1) Adopt performance standards and labeling requirements for landscape irrigation controllers and moisture sensors on or before January 1, 2010.

(2) Consider the Irrigation Association's Smart Water Application Technology Program testing protocols when adopting performance standards for landscape irrigation

equipment, including, but not limited to, irrigation controllers, moisture sensors, emission devices, and valves.

(3) Prepare and submit a report to the Legislature, on or before January 1, 2010, that sets forth on a proposed schedule for adopting performance standards and labeling requirements for emission devices and valves.

(c) On and after January 1, 2012, an irrigation controller or moisture sensor for landscape irrigation uses may not be sold or installed in the state unless the controller or sensor meets the performance standards and labeling requirements established pursuant to this section.

**§ 25402. Reduction of wasteful, uneconomic, inefficient or unnecessary consumption of energy**

The commission shall, after one or more public hearings, do all of the following, in order to reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy, including the energy associated with the use of water:

(a)(1) Prescribe, by regulation, lighting, insulation climate control system, and other building design and construction standards that increase the efficiency in the use of energy and water for new residential and new nonresidential buildings. The commission shall periodically update the standards and adopt any revision that, in its judgment, it deems necessary. Six months after the commission certifies an energy conservation manual pursuant to subdivision (c) of Section 25402.1, no city, county, city and county, or state agency shall issue a permit for any building unless the building satisfies the standards prescribed by the commission pursuant to this subdivision or subdivision (b) that are in effect on the date an application for a building permit is filed. Water efficiency standards adopted pursuant to this subdivision shall be demonstrated by the commission to be necessary to save energy.

(2) Prior to adopting a water efficiency standard for residential buildings, the Department of Housing and Community Development and the commission shall issue a joint finding whether the standard (A) is equivalent or superior in performance, safety, and for the protection of life, health, and general welfare to standards in Title 24 of the California Code of Regulations and (B) does not unreasonably or unnecessarily impact the ability of Californians to purchase or rent affordable housing, as determined by taking account of the overall benefit derived from water efficiency standards. Nothing in this subdivision in any way reduces the authority of the Department of Housing and Community Development to adopt standards and regulations pursuant to Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code.

(3) Water efficiency standards and water conservation design standards adopted pursuant to this subdivision and subdivision (b) shall be consistent with the legislative findings of this division to ensure and maintain a reliable supply of electrical energy and be equivalent to or superior to the performance, safety, and protection of life, health, and general welfare standards contained in Title 24 of the California Code of Regulations. The commission shall consult with the members of the coordinating council as established in Section 18926 of the Health and Safety Code in the development of these standards.

(b)(1) Prescribe, by regulation, energy and water conservation design standards for new residential and new nonresidential buildings. The standards shall be performance standards and shall be promulgated in terms of energy consumption per gross square foot of

floorspace, but may also include devices, systems, and techniques required to conserve energy and water. The commission shall periodically review the standards and adopt any revision that, in its judgment, it deems necessary. A building that satisfies the standards prescribed pursuant to this subdivision need not comply with the standards prescribed pursuant to subdivision (a). Water conservation design standards adopted pursuant to this subdivision shall be demonstrated by the commission to be necessary to save energy. Prior to adopting a water conservation design standard for residential buildings, the Department of Housing and Community Development and the commission shall issue a joint finding whether the standard (A) is equivalent or superior in performance, safety, and for the protection of life, health, and general welfare to standards in the California Building Standards Code and (B) does not unreasonably or unnecessarily impact the ability of Californians to purchase or rent affordable housing, as determined by taking account of the overall benefit derived from the water conservation design standards. Nothing in this subdivision in any way reduces the authority of the Department of Housing and Community Development to adopt standards and regulations pursuant to Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code.

(2) In order to increase public participation and improve the efficacy of the standards adopted pursuant to subdivisions (a) and (b), the commission shall, prior to publication of the notice of proposed action required by Section 18935 of the Health and Safety Code, involve parties who would be subject to the proposed regulations in public meetings regarding the proposed regulations. All potential affected parties shall be provided advance notice of these meetings and given an opportunity to provide written or oral comments. During these public meetings, the commission shall receive and take into consideration input from all parties concerning the parties' design recommendations, cost considerations, and other factors that would affect consumers and California businesses of the proposed standard. The commission shall take into consideration prior to the start of the notice of proposed action any input provided during these public meetings.

(3) The standards adopted or revised pursuant to subdivisions (a) and (b) shall be cost-effective when taken in their entirety and when amortized over the economic life of the structure compared with historic practice. When determining cost-effectiveness, the commission shall consider the value of the water or energy saved, impact on product efficacy for the consumer, and the life cycle cost of complying with the standard. The commission shall consider other relevant factors, as required by Sections 18930 and 18935 of the Health and Safety Code, including, but not limited to, the impact on housing costs, the total statewide costs and benefits of the standard over its lifetime, economic impact on California businesses, and alternative approaches and their associated costs.

(c)(1) Prescribe, by regulation, standards for minimum levels of operating efficiency, based on a reasonable use pattern, and may prescribe other cost-effective measures, including incentive programs, fleet averaging, energy and water consumption labeling not preempted by federal labeling law, and consumer education programs, to promote the use of energy and water efficient appliances whose use, as determined by the commission, requires a significant amount of energy or water on a statewide basis. The minimum levels of operating efficiency shall be based on feasible and attainable efficiencies or feasible improved efficiencies that will reduce the energy or water consumption growth rates. The standards shall become effective no sooner than one year after the date of adoption or revision. No new appliance manufactured on or after the effective date of the standards may be sold or offered for sale in the state, unless it is certified by the manufacturer thereof to be in compliance with the

standards. The standards shall be drawn so that they do not result in any added total costs for consumers over the designed life of the appliances concerned.

In order to increase public participation and improve the efficacy of the standards adopted pursuant to this subdivision, the commission shall, prior to publication of the notice of proposed action required by Section 18935 of the Health and Safety Code, involve parties who would be subject to the proposed regulations in public meetings regarding the proposed regulations. All potential affected parties shall be provided advance notice of these meetings and given an opportunity to provide written or oral comments. During these public meetings, the commission shall receive and take into consideration input from all parties concerning the parties' design recommendations, cost considerations, and other factors that would affect consumers and California businesses of the proposed standard. The commission shall take into consideration prior to the start of the notice of proposed action any input provided during these public meetings.

The standards adopted or revised pursuant to this subdivision shall not result in any added total costs for consumers over the designed life of the appliances concerned. When determining cost-effectiveness, the commission shall consider the value of the water or energy saved, impact on product efficacy for the consumer, and the life cycle cost to the consumer of complying with the standard. The commission shall consider other relevant factors, as required by Sections 11346.5 and 11357 of the Government Code, including, but not limited to, the impact on housing costs, the total statewide costs and benefits of the standard over its lifetime, economic impact on California businesses, and alternative approaches and their associated costs.

(2) No new appliance, except for any plumbing fitting, regulated under paragraph (1), that is manufactured on or after July 1, 1984, may be sold, or offered for sale, in the state, unless the date of the manufacture is permanently displayed in an accessible place on that appliance.

(3) During the period of five years after the commission has adopted a standard for a particular appliance under paragraph (1), no increase or decrease in the minimum level of operating efficiency required by the standard for that appliance shall become effective, unless the commission adopts other cost-effective measures for that appliance.

(4) Neither the commission nor any other state agency shall take any action to decrease any standard adopted under this subdivision on or before June 30, 1985, prescribing minimum levels of operating efficiency or other energy conservation measures for any appliance, unless the commission finds by a four-fifths vote that a decrease is of benefit to ratepayers, and that there is significant evidence of changed circumstances. Before January 1, 1986, the commission shall not take any action to increase a standard prescribing minimum levels of operating efficiency for any appliance or adopt a new standard under paragraph (1). Before January 1, 1986, any appliance manufacturer doing business in this state shall provide directly, or through an appropriate trade or industry association, information, as specified by the commission after consultation with manufacturers doing business in the state and appropriate trade or industry associations on sales of appliances so that the commission may study the effects of regulations on those sales. These informational requirements shall remain in effect until the information is received. The trade or industry association may submit sales information in an aggregated form in a manner that allows the commission to carry out the purposes of the study. The commission shall treat any sales information of an individual manufacturer as confidential and that information shall not be a public record. The commission shall not request

any information that cannot be reasonably produced in the exercise of due diligence by the manufacturer. At least one year prior to the adoption or amendment of a standard for an appliance, the commission shall notify the Legislature of its intent, and the justification to adopt or amend a standard for the appliance. Notwithstanding paragraph (3) and this paragraph, the commission may do any of the following:

(A) Increase the minimum level of operating efficiency in an existing standard up to the level of the National Voluntary Consensus Standards 90, adopted by the American Society of Heating, Refrigeration, and Air Conditioning Engineers or, for appliances not covered by that standard, up to the level established in a similar nationwide consensus standard.

(B) Change the measure or rating of efficiency of any standard, if the minimum level of operating efficiency remains substantially the same.

(C) Adjust the minimum level of operating efficiency in an existing standard in order to reflect changes in test procedures that the standards require manufacturers to use in certifying compliance, if the minimum level of operating efficiency remains substantially the same.

(D) Readopt a standard preempted, enjoined, or otherwise found legally defective by an administrative agency or a lower court, if final legal action determines that the standard is valid and if the standard that is readopted is not more stringent than the standard that was found to be defective or preempted.

(E) Adopt or amend any existing or new standard at any level of operating efficiency, if the Governor has declared an energy emergency as described in Section 8558 of the Government Code.

(5) Notwithstanding paragraph (4), the commission may adopt standards pursuant to Commission Order No. 84-0111-1, on or before June 30, 1985.

(d) Recommend minimum standards of efficiency for the operation of any new facility at a particular site that are technically and economically feasible. No site and related facility shall be certified pursuant to Chapter 6 (commencing with Section 25500), unless the applicant certifies that standards recommended by the Commission have been considered, which certification shall include a statement specifying the extent to which conformance with the recommended standards will be achieved.

Whenever this section and Chapter 11.5 (commencing with Section 19878) of Part 3 of Division 13 of the Health and Safety Code are in conflict, the commission shall be governed by that chapter of the Health and Safety Code to the extent of the conflict.

(e) The commission shall do all of the following:

(1) Not later than January 1, 2004, amend any regulations in effect on January 1, 2003, pertaining to the energy efficiency standards for residential clothes washers to require that residential clothes washers manufactured on or after January 1, 2007, be at least as water efficient as commercial clothes washers.

(2) Not later than April 1, 2004, petition the federal Department of Energy for an exemption from any relevant federal regulations governing energy efficiency standards that are applicable to residential clothes washers.

(3) Not later than January 1, 2005, report to the Legislature on its progress with respect to the requirements of paragraphs (1) and (2).

**§ 25402.1. Duties of commission; public domain computer program; certification process; manual, sample calculations and model designs; pilot project of field testing; technical assistance program; enforcement and resolutions**

In order to implement the requirements of subdivisions (a) and (b) of Section 25402, the commission shall do all of the following:

(a) Develop a public domain computer program which will enable contractors, builders, architects, engineers, and government officials to estimate the energy consumed by residential and nonresidential buildings. The commission may charge a fee for the use of the program, which fee shall be based upon the actual cost of the program, including any computer costs.

(b) Establish a formal process for certification of compliance options for new products, materials, and calculation methods which provides for adequate technical and public review to ensure accurate, equitable, and timely evaluation of certification applications. Proponents filing applications for new products, materials, and calculation methods shall provide all information needed to evaluate the application that is required by the commission. The commission shall publish annually the results of its certification decisions and instructions to users and local building officials concerning requirements for showing compliance with the building standards for new products, materials, or calculation methods. The commission may charge and collect a reasonable fee from applicants to cover the costs under this subdivision. Any funds received by the commission for purposes of this subdivision shall be deposited in the Energy Resources Programs Account and, notwithstanding Section 13340 of this Government Code, are continuously appropriated to the commission for the purposes of this subdivision. Any unencumbered portion of funds collected as a fee for an application remaining in the Energy Resources Programs Account after completion of the certification process for that application shall be returned to the applicant within a reasonable period of time.

(c) Include a prescriptive method of complying with the standards, including design aids such as a manual, sample calculations, and model structural designs.

(d) Conduct a pilot project of field testing of actual residential buildings to calibrate and identify potential needed changes in the modeling assumptions to increase the accuracy of the public domain computer program specified in subdivision (a) and to evaluate the impacts of the standards, including, but not limited to, the energy savings, cost-effectiveness, and the effects on indoor air quality. The pilot project shall be conducted pursuant to a contract entered into by the commission. The commission shall consult with the participants designated pursuant to Section 9202 of the Public Utilities Code to seek funding and support for field monitoring in each public utility service territory, with the University of California to take advantage of its extensive building monitoring expertise, and with the California Building Industry Association to coordinate the involvement of builders and developers throughout the state. The pilot project shall include periodic public workshops to develop plans and review progress. The commission shall prepare and submit a report to the Legislature on progress and initial findings not later than



December 31, 1988, and a final report on the results of the pilot project on residential buildings not later than June 30, 1990. The report shall include recommendations regarding the need and feasibility of conducting further monitoring of actual residential and nonresidential buildings. The report shall also identify any revisions to the public domain computer program and energy conservation standards if the pilot project determines that revisions are appropriate.

(e) Certify, not later than 180 days after approval of the standards by the State Building Standards Commission, an energy conservation manual for use by designers, builders, and contractors of residential and nonresidential buildings. The manual shall be furnished upon request at a price sufficient to cover the costs of production and shall be distributed at no cost to all affected local agencies. The manual shall contain, but not be limited to, the following:

(1) The standards for energy conservation established by the commission.

(2) Forms, charts, tables, and other data to assist designers and builders in meeting the standards.

(3) Design suggestions for meeting or exceeding the standards.

(4) Any other information which the commission finds will assist persons in conforming to the standards.

(5) Instructions for use of the computer program for calculating energy consumption in residential and nonresidential buildings.

(6) The prescriptive method for use as an alternative to the computer program.

(f) The commission shall establish a continuing program of technical assistance to local building departments in the enforcement of subdivisions (a) and (b) of Section 25402 and this section. The program shall include the training of local officials in building technology and enforcement procedures related to energy conservation, and the development of complementary training programs conducted by local governments, educational institutions, and other public or private entities. The technical assistance program shall include the preparation and publication of forms and procedures for local building departments in performing the review of building plans and specifications. The commission shall provide, on a contract basis, a review of building specifications. The commission shall provide, on a contract basis, a review of building plans and specifications submitted by a local building department, and shall adopt a schedule of fees sufficient to repay the cost of those services.

(g) Subdivision (a) and (b) of Section 25402 and this section, and the rules and regulations of the commission adopted pursuant thereto, shall be enforced by the building department of every city, county, or city and county.

(1) No building permit for any residential or nonresidential building shall be issued by a local building department, unless a review by the building department of the plans for the proposed residential or nonresidential building contains detailed energy system specifications and confirms that the building satisfies the minimum standards established pursuant to subdivision (a) or (b) of Section 25402 and this section applicable to the building.

(2) Where there is no local building department, the commission shall enforce subdivisions (a) and (b) of Section 25402 and this section.

(3) If a local building department fails to enforce subdivisions (a) and (b) of Section 25402 and this section or any other provision of this chapter or standard adopted pursuant thereto, the commission may provide enforcement after furnishing 10 days' written notice to the local building department.

(4) A city, county, or city and county may, by ordinance or resolution, prescribe a schedule of fees sufficient to pay the costs incurred in the enforcement of subdivisions (a) and (b) of Section 25402 and this section. The commission may establish a schedule of fees sufficient to pay the costs incurred by that enforcement.

(5) No construction of any state building shall commence until the Department of General Services or the state agency that otherwise has jurisdiction over the property reviews the plans for the proposed building and certifies that the plans satisfy the minimum standards established pursuant to subdivision (a) or (b) of Chapter 2.8 (commencing with Section 15814.30) of Part 10b of Division 3 of Title 2 of the Government Code, Section 25402, and this section which are applicable to the building.

(h) Subdivisions (a) and (b) of Section 25402 and this section shall apply only to new residential and nonresidential buildings on which actual site preparation and construction have not commenced prior to the effective date of rules and regulations adopted pursuant to those sections that are applicable to those buildings. Nothing in those sections shall prohibit either of the following:

(1) The enforcement of state or local energy conservation or energy insulation standards, adopted prior to the effective date of rules and regulations adopted pursuant to subdivision (a) and (b) of Section 25402 and this section with regard to residential and nonresidential buildings on which actual site preparation and construction have commenced prior to that date.

(2) The enforcement of city or county energy conservation or energy insulation standards, whenever adopted, with regard to residential and nonresidential buildings on which actual site preparation and construction have not commenced prior to the effective date of the rules and regulations adopted pursuant to subdivisions (a) and (b) of Section 25402 and this section, if the city or county files the basis of its determination that the standards are cost effective with the commission and the commission finds that the standards will require the diminution of energy consumption levels permitted by the rules and regulations adopted pursuant to those section. If, after two or more years after the filing with the commission of the determination that those standards are cost effective, there has been a substantial change in the factual circumstances affecting the determination, upon application by any interested party, the city or county shall update and file a new basis of its determination that the standards are cost effective. The determination that the standards are cost effective shall be adopted by the governing body of the city or county at a public meeting. If, at the meeting on the matter, the governing body determines that the standards are no longer cost effective, the standards shall, as of that date, be unenforceable and no building permit or other entitlement shall be denied based on the noncompliance with the standards.

(i) The commission may exempt from the requirements of this section and of any regulations adopted pursuant thereto any proposed building for which compliance would be impossible without substantial delays and increases in cost of construction, if the commission

finds that substantial funds have been expended in good faith on planning, designing, architecture or engineering prior to the date of adoption of the regulations.

(j) If a dispute arise between an applicant for a building permit, or the state pursuant to paragraph (5) of subdivision (g), and the building department regarding interpretation of Section 25402 or the regulations adopted pursuant thereto, either party may submit the dispute to the commission for resolution. The commission's determination of the matter shall be binding on the parties.

(k) Nothing in Section 25130, 25131, or 25402, or in this section prevents enforcement of any regulation adopted pursuant to this chapter, or Chapter 11.5 (commencing with Section 19878) of Part 3 of Division 13 of the Health and Safety Code as they existed prior to September 16, 1977.

### **§ 25402.2. Building standards**

Any standard adopted by the commission pursuant to Sections 25402 and 25402.1, which is a building standard as defined in Section 25488.5, shall be submitted to the State Building Standards Commission for approval pursuant to, and is governed by, the State Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code). Building standards adopted by the commission and published in the State Building Standards Code shall be enforced as provided in Section 25402 and 25402.1.

### **§ 25402.3. Regional training centers for local building officials and enforcement personnel; locations; sessions; workshops for rural areas**

For purposes of subdivision (e) of Section 25402.1, the commission shall contract with California building officials to establish two regional training centers to provide continuing education for local building officials and enforcement personnel as follows:

(a) One site shall be located in northern California and one site shall be located in southern California to serve the needs of the respective regions.

(b) The centers shall provide training on a monthly basis to ensure a uniform understanding and implementation of the energy efficient building standards. Existing resources shall be used as much as possible by utilizing members of the building official community in training activities.

(c) The centers shall provide similar training sessions, in the form of workshops given in designated rural areas, to ensure that adequate training is available throughout the state.

(1) A minimum of two workshops in northern California and two workshop in southern California shall be offered each year.

(2) The sites shall be selected to ensure the greatest number of participants will be served in areas of greatest need to decrease the financial burden on small rural or isolated local government agencies that would not be able to travel to the regional training centers for instruction.

**§ 25402.4. Nonresidential building standards; option using passive or semipassive thermal systems; construction techniques**

The standards for nonresidential buildings prescribed by the commission pursuant to subdivisions (a) and (b) of Section 25402 shall provide at least one option which uses passive or semipassive thermal systems, as defined in Section 25600, for meeting the prescribed energy use requirements. These systems may include but are not limited to, the following construction techniques:

- (a) Use of skylights or other daylighting techniques.
- (b) Use of openable windows or other means of using outside air for space conditioning.
- (c) Use of building orientation, to complement other passive or semipassive thermal systems.
- (d) Use of thermal mass, of structural or nonstructural type, for storage of heat or cold; including, but not limited to, roof ponds and water walls.

**§ 25402.5. Lighting devices; standards; advisory group; report and recommendations**

(a) As used in this section, "lighting device" includes, but is not limited to, a lamp, luminaire, light fixture, lighting control, ballast, or any component of those devices.

(b)(1) The commission shall consider both new and replacement, and both interior and exterior, lighting devices as lighting which is subject to subdivision (a) of Section 25402.

(2) The commission shall include both indoor and outdoor lighting devices as appliances to be considered in prescribing standards pursuant to paragraph (1) of subdivision (c) of Section 25402.

(3) The Legislature hereby finds and declares that paragraphs (1) and (2) are declarative of existing law.

(c) The commission shall adopt efficiency standards for outdoor lighting. The standards shall be technologically feasible and cost-effective. As used in this subdivision, "outdoor lighting" refers to all electrical lighting that is not subject to standards adopted pursuant to Section 25402, and includes, but is not limited to, street lights, traffic lights, parking lot lighting, and billboard lighting. The commission shall consult with the Department of Transportation (CALTRANS) to ensure that outdoor lighting standards that affect CALTRANS are compatible with that department's policies and standards for safety and illumination levels on state highways.

**§ 25402.5.4. General purpose lights; standards; adoption; purchase of lights meeting or exceeding standards**

(a) On or before December 31, 2008, the commission shall adopt minimum energy efficiency standards for all general purpose lights on a schedule specified in the regulations. The regulations, in combination with other programs and activities affecting lighting

use in the state, shall be structured to reduce average statewide electrical energy consumption by not less than 50 percent from the 2007 levels for indoor residential lighting and by not less than 25 percent from the 2007 levels for indoor commercial and outdoor lighting, by 2018.

(b) The commission shall make recommendations to the Governor and the Legislature regarding how to continue reductions in electrical consumption for lighting beyond 2018.

(c) The commission may establish programs to encourage the sale in this state of general purpose lights that meet or exceed the standards set forth in subdivision (a).

(d)(1) Except as provided in paragraph (2), the Department of General Services, and all other state agencies, as defined in Section 12000 of the Public Contract Code, in coordination with the commission, shall cease purchasing general purpose lights that do not meet the standards adopted pursuant to subdivision (a), within two years of those standards being adopted.

(2) The Department of General Services, and all other state agencies, as defined in Section 12000 of the Public Contract Code, in coordination with the commission shall cease purchasing general service lights with an appearance that is historically appropriate for the facilities in which the lights are being used, and that do not meet the standards adopted pursuant to subdivision (a) within four years of those standards being adopted.

(e) It is the intent of the Legislature to encourage the Regents of the University of California, in coordination with the commission, to cease purchasing general purpose lights that do not meet the standards adopted pursuant to subdivision (a), within two years of those standards being adopted.

(f)(1)(A) For purposes of this section, "general purpose lights" means lamps, bulbs, tubes, or other electric devices that provide functional illumination for indoor residential, indoor commercial, and outdoor use.

(B) General purpose lights do not include any of the following specialty lighting: appliance, black light, bug, colored, infrared, left-hand thread, marine, marine signal service, mine service, plant light, reflector, rough service, shatter resistant, sign service, silver bowl, showcase, three-way, traffic signal, and vibration service or vibration resistant.

(2) The commission may, after one or more public workshops, with public notice and an opportunity for all interested parties to comment, provide for inclusion of a particular type of specialty light in its energy efficiency standards applicable to general purpose lighting, if it finds that there has been a significant increase in sales of that particular type of particular specialty light due to the use of that specialty light in general purpose lighting applications.

(3) General purpose lights do not include lights needed to provide special-needs lighting for individuals with exceptional needs.

#### **§ 25402.6. Report on peakload energy consumption in buildings**

The commission shall investigate options and develop a plan to decrease wasteful peakload energy consumption in existing residential and nonresidential buildings. On or before January 1, 2004, the commission shall report its findings to the Legislature, including,

but not limited to, any changes in law necessary to implement the plan to decrease wasteful peakload energy consumption in existing residential and nonresidential buildings.

**§ 25402.7. Utility support for building standards**

(a) In consultation with the commission, electric and gas utilities shall provide support for building standards and other regulations pursuant to Section 25402 and subdivision (b) of Section 25553 including appropriate research, development, and training to implement those standards and other regulations.

(b) The electric and gas utilities shall provide support pursuant to subdivision (a) only to the extent that funds are made available to the utilities for that purpose.

**§ 25402.8. Indoor air pollution; assessment of new building standards**

When assessing new building standards for residential and nonresidential buildings relating to the conservation of energy, the commission shall include in its deliberations the impact that those standards would have on indoor air pollution problems.

**§ 25402.9. Home energy rating program, information booklet; fee**

(a) On or before July 1, 1996, the commission shall develop, adopt, and publish an informational booklet to educate and inform homeowners, rental property owners, renters, sellers, brokers, and the general public about the statewide home energy rating program adopted pursuant to Section 25942.

(b) In the development of the booklet, the commission shall consult with representatives of the Department of Real Estate, the Department of Housing and Community Development, the Public Utilities Commission, investor-owned and municipal utilities, cities and counties, real estate licensees, home builders, mortgage lenders, home appraisers and inspectors, home energy rating organizations, contractors who provide home energy services, consumer groups, and environmental groups.

(c) The commission shall charge a fee for the informational booklet to recover its costs under subdivision (a).

**§ 25402.10. Nonresidential buildings; energy consumption data records; disclosure of 12-month period data to prospective buyer, lessee, or lender**

(a) On and after January 1, 2009, electric and gas utilities shall maintain records of the energy consumption data of all nonresidential buildings to which they provide service. This data shall be maintained, in a format compatible for uploading to the United States Environmental Protection Agency's Energy Star Portfolio Manager, for at least the most recent 12 months.

(b) On and after January 1, 2009, upon the written authorization or secure electronic authorization of a nonresidential building owner or operator, an electric or gas utility shall upload all of the energy consumption data for the account specified for a building to the United States Environmental Protection Agency's Energy Star Portfolio Manager in a manner that preserves the confidentiality of the customer.

(c) In carrying out the requirements of this section, an electric or gas utility may use any method for providing the specified data in order to maximize efficiency and minimize overall program cost, and is encouraged to work with the United States Environmental Protection Agency and customers in developing reasonable reporting options.

(d) On and after January 1, 2010, an owner or operator of a nonresidential building shall disclose the United States Environmental Protection Agency's Energy Star Portfolio Manager benchmarking data and ratings for the most recent 12-month period to a prospective buyer, lessee of the entire building, or lender that would finance the entire building. If the data is delivered to a prospective buyer, lessee, or lender, a property owner, operator, or their agent is not required to provide additional information, and the information shall be deemed to be adequate to inform the prospective buyer, lessee or lender regarding the United States Environmental Protection Agency's Energy Star Portfolio Manager benchmarking data and ratings for the most recent 12-month period for the building that is being sold, leased, financed, or refinanced.

(e) Notwithstanding subdivision (d), nothing in this section increases or decreases the duties, if any, of a property owner, operator, or his or her broker or agent under this chapter or alters the duty of a seller, agent, or broker to disclose the existence of a material fact affecting the real property.

**§ 25403. Recommendations on energy consumption; submission to public agencies; reports**

The commission shall submit to the Public Utilities Commission and to any publicly owned electric utility, recommendations designed to reduce wasteful, unnecessary, or uneconomic energy consumption resulting from practices including, but not limited to, differential rate structures, cost-of-service allocations, the disallowance of a business expense of advertising or promotional activities which encourage the use of electrical power, peakload pricing, and other pricing measures. The Public Utilities Commission or publicly owned electric utility shall review and consider such recommendations and shall, within six months after the date it receives them, as prescribed by this section, report to the Governor and the Legislature its actions and reasons therefor with respect to such recommendations.

**§ 25403.5. Electrical load management; adoption of standards; costs of compliance as rate base factor; exemptions or delays; findings**

The commission shall, by July 1, 1978, adopt standards by regulation for a program of electrical load management for each utility service area. In adopting the standards, the commission shall consider, but need not be limited to, the following load management techniques:

(1) Adjustments in rate structure to encourage use of electrical energy at off-peak hours or to encourage control of daily electrical load. Compliance with such changes in rate structure shall be subject to the approval of the Public Utilities Commission in a proceeding to change rates or service.

(2) End use storage systems which store energy during off-peak periods for use during peak periods.

(3) Mechanical and automatic devices and systems for the control of daily and seasonal peakloads.

The standards shall be cost effective when compared with the costs for new electrical capacity, and the commission shall find them to be technologically feasible. Any expense or any capital investment required of a utility by the standards shall be an allowable expense or an allowable item in the utility rate base and shall be treated by the Public Utilities Commission as such in a rate proceeding.

The commission may determine that one or more of such techniques are infeasible and may delay their adoption. If the commission determines that any techniques are infeasible to implement, it shall make a finding in each instance stating the grounds upon which the determination was made and the actions it intends to take to remove the impediments to implementation. The commission's findings shall be published and forwarded to the Governor and the Legislature.

The commission may also grant, upon application by a utility, an exemption from the standards or a delay in implementation. The grant of an exemption or delay shall be accompanied by a statement of findings by the commission indicating the grounds for the exemption or delay. Exemption or delay shall be granted only upon a showing of extreme hardship, technological infeasibility, lack of cost effectiveness, or reduced system reliability and efficiency.

This section does not apply to proposed sites and related facilities for which a notice of intent or an application requesting certification has been filed with the commission prior to the effective date of the standards.

#### **§ 25403.8. Battery backup power for traffic signals**

(a) The commission shall develop and implement a program to provide battery backup power for those official traffic control signals, operated by a city, county, or city and county, that the commission, in consultation with cities, counties, or cities and counties, determines to be high priority traffic control signals.

(b) Based on traffic factors considered by cities, counties, or cities and counties, including, but not limited to, traffic volume, number of accidents, and presence of children, the commission shall determine a priority schedule for the installation of battery backup power for traffic control systems. The commission shall give priority to a city, county, or city and county that did not receive a grant from the State of California for the installation of light-emitting diode traffic control signals.

(c) The commission shall also develop or adopt the necessary technical criteria as to wiring, circuitry, and recharging units for traffic control signals. Only light-emitting diodes (LED) traffic control signals are eligible for battery backup power for the full operation of the traffic control signal or a flashing red mode. A city, county, or city and county may apply for a matching grant for battery backup power for traffic control signals retrofitted with light-emitting diodes.

(d) Based on the criteria described in subdivision (c), the commission shall provide matching grants to cities, counties, and cities and counties for backup battery systems described in this section in accordance with the priority schedule established by the commission



pursuant to subdivision (b). The commission shall provide 70 percent of the funds for a battery backup system, and the city, county, or city and county shall provide 30 percent.

(e) If a city, county, or city and county has installed a backup battery system for LED traffic control signals between January 1, 2001, and the effective date of the act adding this section, the commission may reimburse the city, county, or city and county for up to 30 percent of the cost incurred for the backup battery system installation. However, the commission may not spend more than one million five hundred thousand dollars (\$1,500,000) for reimbursements pursuant to this subdivision.

**§ 25404. Cooperation with interested parties; environmental impact reports**

The commission shall cooperate with the Office of Planning and Research, the Resources Agency and other interested parties in developing procedures to ensure that mitigation measures to minimize wasteful, inefficient, and unnecessary consumption of energy are included in all environmental impact reports required on local projects as specified in Section 21151.

**§ 25405. Schedule of fees**

A city, county, or city and county may by ordinance or resolution prescribe a schedule of fees sufficient to pay the costs incurred in the enforcement of standards adopted pursuant to this chapter.

**§ 25405.5. Mandatory offer of solar energy system option to customer by production home seller; offset program**

(a) As used in this section, the following terms have the following meanings:

(1) "kW" means kilowatts or 1,000 watts, as measured from the alternating current side of the solar energy system inverter consistent with Section 223 of Title 15 of the United States Code.

(2) "Production home" means a single-family residence constructed as part of a development of at least 50 homes per project that is intended or offered for sale.

(3) "Solar energy system" means a solar energy device that has the primary purpose of providing for the collection and distribution of solar energy for the generation of electricity, that produces at least one kW, and not more than five megawatts, alternating current rated peak electricity, and that meets or exceeds the eligibility criteria established pursuant to Section 25782.

(b) A seller of production homes shall offer a solar energy system option to all customers that enter into negotiations to purchase a new production home constructed on land for which an application for a tentative subdivision map has been deemed complete on or after January 1, 2011, and disclose the following:

(1) The total installed cost of the solar energy system option.

(2) The estimated cost savings associated with the solar energy system option, as determined by the commission pursuant to Chapter 8.8 (commencing with Section 25780) of Division 15.

(c) The State Energy Resources Conservation and Development Commission shall develop an offset program that allows a developer or seller of production homes to forgo the offer requirement of this section on a project, by installing solar energy systems generating specified amounts of electricity on other projects, including, but not limited to, low-income housing, multifamily, commercial, industrial, and institutional developments. The amount of electricity required to be generated from solar energy systems used as an offset pursuant to this subdivision shall be equal to the amount of electricity generated by solar energy systems installed on a similarly sized project within that climate zone, assuming 20 percent of the prospective buyers would have installed solar energy systems.

(d) The requirements of this section shall not operate as a substitute for the implementation of existing energy efficiency measures, and the requirements of this section shall not result in lower energy savings or lower energy efficiency levels than would otherwise be achieved by the full implementation of energy savings and energy efficiency standards established pursuant to Section 25402.

#### **§ 25405.6. Solar energy systems study**

Not later than July 1, 2007, the commission shall initiate a public proceeding to study and make findings whether, and under what conditions, solar energy systems should be required on new residential and new nonresidential buildings, including the establishment of numerical targets. As part of the study, the commission may determine that a solar energy system should not be required for any building unless the commission determines, based upon consideration of all costs associated with the system, that the system is cost effective when amortized over the economic life of the structure. When determining the cost-effectiveness of the solar energy system, the commission shall consider the availability of governmental rebates, tax deductions, net-metering, and other quantifiable factors, if the commission can determine the availability of these financial incentives if a solar energy system is made mandatory and not elective. The commission shall periodically update the study and incorporate any revision that the commission determines is necessary, including revisions that reflect changes in the financial incentives originally considered by the commission when determining cost-effectiveness of the solar energy system. For purposes of this section, "solar energy system" means a photovoltaic solar collector or other photovoltaic solar energy device that has a primary purpose of providing for the collection and distribution of solar energy for the generation of electricity. This section is intended to be for study purposes only and does not authorize the commission to develop and adopt any requirement for solar energy systems on either residential or nonresidential buildings.

### **CHAPTER 5.1 SOLAR AND PHOTOVOLTAIC SYSTEMS**

#### **§ 25406. "Sunny Homes Seal" program**

A local government may develop and administer a program to encourage the construction of buildings that use solar thermal and photovoltaic systems that meet applicable standards and requirements imposed by the state or the local government for an eligible solar energy system pursuant to paragraph (2) of subdivision (g) of Section 25619. The program shall recognize owners and builders who participate in the program by awarding these owners and builders a "Sunny Homes Seal."

## CHAPTER 5.2 ENERGY CONSERVATION ASSISTANCE

### § 25410. Short title

This chapter shall be known and may be cited as the Energy Conservation Assistance Act of 1979.

### § 25410.5. Findings and declarations

The Legislature finds and declares all of the following:

(a) Energy costs are frequently the second largest discretionary expense in a local government's budget. According to the commission, most public institutions could reduce their energy costs by 20 to 30 percent.

(b) A variety of energy conservation measures are available to local governments. These measures are highly cost-effective, often providing a payback on the initial investment in three years or less.

(c) Many local governments lack energy management expertise and are often unaware of their high energy costs or the opportunities to reduce those costs.

(d) Local governments that desire to reduce their energy costs through energy conservation and efficiency measures often lack available funding.

(e) Since 1980, the Energy Conservation Assistance Account has provided \$110 million in loans, through a revolving loan account, to 600 schools, hospitals, and local governments. The energy conservation projects funded by the account save approximately \$35-million annually in energy costs.

(f) Local governments and public institutions need assistance in all aspects of energy efficiency improvements, including but not limited to project identification, project development and implementation, evaluation of project proposals and options operations and maintenance, and troubleshooting of problem projects.

### § 25410.6. Legislative intent; duties of commission

(a) It is the intent of the Legislature that the commission shall administer the State Energy Conservation Assistance Account to provide grants and loans to local governments and public institutions to maximize energy use savings, including, but not limited to, technical assistance, demonstrations, and identification and implementation of cost-effective energy efficiency measures and programs in existing and planned buildings or facilities.

(b) It is further the intent of the Legislature that the commission seek the assistance of utility companies in providing energy audits for local governments and public institutions and in publicizing the availability of State Energy Conservation Assistance Account funds to qualified entities.

**§ 25411. Definitions**

As used in this chapter:

(a) "Allocation" means a loan of funds by the commission pursuant to the procedures specified in this chapter.

(b) "Building" means any existing or planned structure that includes a heating or cooling system, or both. Additions to an original building shall be considered part of that building rather than a separate building.

(c) "Eligible institution" means a school, hospital, public care institution, or a unit of local government.

(d) "Energy audit" means a determination of the energy consumption characteristics of a building or facility that does all of the following:

(1) Identifies the type, size, and energy use level of the building or facility and the major energy using systems of the building or facility.

(2) Determines appropriate energy conservation maintenance and operating procedures.

(3) Indicates the need, if any, for the acquisition and installation of energy conservation measures.

(e) "Energy conservation maintenance and operating procedure" means a modification or modifications in the maintenance and operations of a building or facility, and any installations therein (based on the use time schedule of the building or facility), which are designed to reduce energy consumption in the building or facility and that require no significant expenditure of funds.

(f) "Energy conservation measure" means an installation or modification of an installation in a building or facility that is primarily intended to reduce energy consumption or allow the use of a more desirable energy source.

(g) "Energy conservation project" means an undertaking to acquire and to install one or more energy conservation measures in a building or facility, and technical assistance in connection with that undertaking.

(h) "Facility" means any major energy using system of an eligible institution whether or not housed in a building.

(i) "Hospital" means a public or nonprofit institution that is both of the following:

(1) A general hospital, tuberculosis hospital, or any other type of hospital, other than a hospital furnishing primarily domiciliary care;

(2) Duly authorized to provide hospital services under the laws of this state.

(j) "Hospital building" means a building housing a hospital and related operations, including laboratories, laundries, outpatient departments, nurses' home and training activities, and central service operations in connection with a hospital, and also includes a building housing education or training activities for health professions personnel operated as an integral part of a hospital.

(k) "Local government building" means a building that is primarily occupied by offices or agencies of a unit of local government or by a public care institution.

(l) "Project" means a purpose for which an allocation may be requested and made under this chapter. Those purposes shall include energy audits, energy conservation and operating procedures, and energy conservation measures, in existing and planned buildings and facilities energy conservation projects, and technical assistance programs.

(m) "Public care institution" means a public or nonprofit institution that owns:

(1) A long-term care institution.

(2) A rehabilitation institution.

(3) An institution for the provision of public health services, including related publicly owned services such as laboratories, clinics, and administrative offices operated in connection with the institution.

(4) A residential child care center.

(n) "Public or nonprofit institution" means an institution owned and operated by:

(1) The state, a political subdivision of the state, or an agency or instrumentality of either.

(2) An organization exempt from income tax under Section 501(c)(3) of the Internal Revenue Code of 1954.

(3) In the case of public care institutions, an organization also exempt from income tax under Section 501(c)(4) of the Internal Revenue Code of 1954.

(o) "School" means a public or nonprofit institution, including a local educational agency, which:

(1) Provides, and is legally authorized to provide, elementary education or secondary education, or both, on a day or residential basis.

(2) Provides, and is legally authorized to provide, a program of education beyond secondary education, on a day or residential basis and meets all of the following requirements:

(A) Admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of that certificate.

(B) Is accredited by a nationally recognized accrediting agency or association.

(C) Provides an education program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program that is acceptable for full credit toward the degree at any institution that meets the requirements of subparagraphs (A) and (B) and that provides that program.

(3) Provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of (2).

(p) "School building" means a building housing classrooms, laboratories, dormitories, athletic facilities, or related facilities operated in connection with a school.

(q) "Technical assistance costs" means costs incurred for the use of existing personnel or the temporary employment of other qualified personnel or both necessary for providing technical assistance.

(r) "Technical assistance program" means assistance to schools, hospitals, local government, and public care institutions and includes, but is not limited to:

(1) Conducting specialized studies identifying and specifying energy savings and related cost savings that are likely to be realized as a result of:

(A) Modification of maintenance and operating procedures in a building or facility, in addition to those modifications implemented after the preliminary energy audit, or

(B) Acquisition and installation of one or more specified energy conservation measures in the building or facility, or as a result of both.

(C) New construction activities.

(2) Planning of specific remodeling, renovation, repair, replacement, or insulation projects related to the installation of energy conservation measures in such building or facility.

(3) Developing and evaluating alternative project implementation methods and proposals.

(s) "Unit of local government" means a unit of general purpose government below the state or a special district.

#### **§ 25412. Application for an allocation**

Any eligible institution may submit an application to the commission for an allocation for the purpose of financing all or a portion of the costs incurred in implementing a project. The application shall be in such form and contain such information as the commission shall prescribe.

An application may be for the purpose of financing the eligible institution's share of such costs which are to be jointly funded through a state, local, or federal-local program.

**§ 25413. Approval of application; information on savings in cost of energy; priority**

Applications may be approved by the commission only in those instances where the eligible institution has furnished information satisfactory to the commission that the costs of the project, plus interest on state funds loaned, calculated in accordance with Section 25415, will be recovered through savings in the cost of energy to the institution during the repayment period of the allocation.

The savings shall be calculated in a manner prescribed by the commission.

**§ 25414. Computation of cost of energy saved**

Annually at the conclusion of each fiscal year, but not later than October 31, each eligible institution which has received an allocation pursuant to the provisions of this chapter shall compute the cost of the energy saved as a result of implementing a project funded by such allocation. Such cost shall be calculated in a manner prescribed by the commission.

**§ 25415. Repayment of allocation; interest; budget**

(a) Each eligible institution to which an allocation has been made under this chapter shall repay the principal amount of the allocation, plus interest, in not more than 30 equal semiannual payments, as determined by the commission. The first semiannual payment shall be made on or before December 22 of the fiscal year following the year in which the project is completed. The repayment period may not exceed the life of the equipment, as determined by the commission or the lease term of the building in which the energy conservation measures will be installed.

(b) Notwithstanding any other provision of law, the commission shall, unless it determines that the purposes of this chapter would be better served by establishing an alternative interest rate schedule, periodically set interest rates on the loans based on surveys of existing financial markets and at rates not less than 3 percent per annum.

(c) The governing body of each eligible institution shall annually budget an amount at least sufficient to make the semiannual payments required in this section. The amount shall not be raised by the levy of additional taxes but shall instead be obtained by a savings in energy costs or other sources.

**§ 25416. State energy conservation assistance account; creation; disbursements; contracts for services; grants; fees**

(a) The State Energy Conservation Assistance Account is hereby created in the General Fund. Notwithstanding section 13340 of the Government Code, the account is continuously appropriated to the commission without regard to fiscal year.

(b) The money in the account shall consist of all money authorized or required to be deposited in the account by the Legislature and all money received by the commission pursuant to Sections 25414 and 25415.

(c) The money in the account shall be disbursed by the Controller for the purposes of this chapter as authorized by the by the commission.

(d) The commission may contract and provide grants for services to be performed for eligible institutions. Services may include, but are not limited to, feasibility analysis, project design, field assistance, and operation and training. The amount expended for those services may not exceed 10 percent of the balance of the account as determined by the commission on July 1 of each year.

(e) The commission may make grants for innovative projects and programs. The amount expended for grants may not exceed 5 percent of the annual appropriation from the account.

(f) The commission may charge a fee for the services provided under subdivision (d).

**§ 25417. Use of allocation; return of allocation used for unauthorized purpose**

(a) An allocation made pursuant to this chapter shall be used for the purposes specified in an approved application.

(b) In the event that the commission determines that an allocation has been expended for purposes other than those specified in an approved application, it shall immediately request the return of the full amount of the allocation. The eligible institution shall immediately comply with such request.

**§ 25417.5. Loans, borrowing and lending authority; collateralization; hiring consultants**

(a) In furtherance of the purposes of the commission as set forth in this chapter, the commission has the power and authority to do all of the following:

(1) Borrow money, for the purpose of obtaining funds to make loans pursuant to this chapter, from the California Economic Development Financing Authority, the California Infrastructure and Economic Development Bank and the California Consumer Power and Conservation Financing Authority, from the proceeds of revenue bonds issued by any of those agencies.

(2) Pledge, to provide collateral in connection with the borrowing of money pursuant to paragraph (1), loans made pursuant to this chapter or Chapter 5.4 (commencing with Section 25440), or the principal and interest payments on loans made pursuant to this chapter or Chapter 5.4 commencing with Section 25440).

(3) Sell loans made pursuant to this chapter or Chapter 5.4 (commencing with Section 25440), at prices determined in the sole discretion of the commission, to the California Economic Development Financing Authority, ~~or~~ the California Infrastructure and Economic Development Bank, and the California Consumer Power and Conservation Financing Authority to raise funds to enable the commission to make loans to eligible institutions.

(4) Enter into loan agreements or other contracts necessary or appropriate in connection with the pledge or sale of loans pursuant to paragraph (2) or (3), or the borrowing of money as provided in paragraph (1), containing any provisions that may be required by the California Economic Development Financing Authority, the California Infrastructure and Economic Development Bank, and the California Consumer Power and Conservation Financing Authority as conditions of issuing bonds to fund loans to, or the purchase of loans from, the commission.



(b) In connection with the pledging of loans, or of the principal and interest payment on loans, pursuant to paragraph (2) of subdivision (a), the commission may enter into pledge agreements setting forth the terms and conditions pursuant to which the commission is pledging loans or the principal and interest payment on loans, and may also agree to have the loans held by bond trustees or by independent collateral or escrow agents and to direct that payments received on those loans be paid to those trustee, collateral, or escrow agents.

(c) The commission may employ financial consultants, legal advisers, accountants, and other service providers as may be necessary in its judgment in connection with activities pursuant to this chapter.

(d) Notwithstanding any other provision of law, this chapter provides a complete, separate, additional, and alternative method for implementing the measures authorized by this chapter, including the authority of the eligible institutions or local jurisdictions to have borrowed and to borrow in the future pursuant to loans made pursuant to this chapter or Chapter 5.4 (commencing with Section 25440), and is supplemental and additional to powers conferred by other laws.

**§ 25418. Audit**

The Department of Finance, at its discretion may audit the expenditure of any allocation made pursuant to this chapter or the computation of any payment made pursuant to Section 25415.

**§ 25419. Powers of commission**

In addition to the powers specifically granted to the commission by the other provisions of this chapter, the commission shall have the following powers:

(a) To establish qualifications and priorities, consistent with the objectives of this chapter, for making allocations.

(b) To establish such procedures and policies as may be necessary for the administration of this chapter.

**§ 25420. Administrative costs**

The commission may expend from the State Energy Conservation Assistance Account an amount to pay for the actual administrative costs incurred by the commission pursuant to this chapter. Such amount shall not exceed 5 percent of the total appropriation, to be held in reserve and used to defray costs incurred by the commission for allocations made by the commission pursuant to this chapter.

**§ 25421. Duration of chapter; repayment of outstanding loans; unexpended funds**

(a) Except as provided in subdivision (b), this chapter shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2011, deletes or extends that date.

(b) All loans outstanding as of January 1, 2011, shall continue to be repaid on a semiannual basis, as specified in Section 25415, until paid in full. All unexpended funds in the State Energy Conservation Assistance Account on January 1, 2011, and thereafter, except to the extent those funds are encumbered pursuant to Section 25417.5, shall revert to the General Fund.

## **CHAPTER 5.3. ENERGY CONSERVATION ACT OF 2001**

### **Article 1. General Provisions**

#### **§ 25425. Short Title**

This chapter shall be known, and may be cited, as the Energy Conservation Act of 2001.

#### **§ 25426. Definitions**

As used in this article, the following terms have the following meanings:

(a) "Commercial refrigeration" means a refrigerator that is not a federally regulated consumer product.

(b) "Energy-efficient model" means any appliance that meets the efficiency standards of the United States Department of Energy that are effective on and after July 1, 2001, and, if applicable, products certified as energy efficient zone heating products by the State Energy Resources Conservation and Development Commission.

(c) "Small business" means any small business as defined in paragraph (1) of subdivision (d) of Section 14837 of the Government Code.

### **Article 2. Loans And Grants For Construction And Retrofit Projects**

#### **§ 25433. Legislative Intent**

It is the intent of the Legislature to establish incentives in the form of grants and loans to low-income residents, small businesses, and residential property owners for constructing and retrofitting buildings to be more energy efficient by using design elements, including, but not limited to, energy-efficient siding, insulation, products certified as energy efficient zone heating products by the State Energy Resources Conservation and Development Commission, and double-paned windows.

#### **§ 25433.5. Grant Programs; loan programs; guidelines and criteria for awards**

(a) In consultation with the Public Utilities Commission, the commission shall do both of the following for the purpose of full or partial funding of an eligible construction or retrofit project:

(1) Establish a grant program to provide financial assistance to eligible low-income individuals.

(2) Establish a 2-percent interest per annum loan program to provide financial assistance to a small business owner, residential property owner, or individual who is not eligible for a grant pursuant to paragraph (1). The loans shall be available to a small business owner who has a gross annual income that does not exceed one hundred thousand dollars (\$100,000) or to an individual or residential property owner who has a gross annual household income that does not exceed one hundred thousand dollars (\$100,000).

(b)(1) The commission shall use the design guidelines adopted pursuant to paragraph (2) of subdivision (f) of Section 14 of the act that added this section as standards to determine eligible energy-efficiency projects.

(2) The award of a grant pursuant to this section is subject to appeal to the commission upon a showing that the commission applied factors, other than those adopted by the commission, in making the award.

(3) The grant or loan recipient shall commit to using the grant or loan for the purpose for which the grant or loan was awarded.

(4) Any action taken by an applicant to apply for, or to become or remain eligible to receive, a grant award, including satisfying conditions specified by the commission, does not constitute the rendering of goods, services, or a direct benefit to the commission.

(5) The amount of any grant awarded pursuant to this article to a low-income individual does not constitute income for purposes of calculating the recipient's gross income for the tax year during which the grant is received.

#### **§ 25434. Scope of authority to contract**

The commission may contract with one or more business entities capable of supplying or providing goods or services necessary for the commission to carry out the responsibilities for the programs conducted pursuant to this article, and shall contract with one or more business entities to evaluate the effectiveness of the programs implemented pursuant to subdivision (a) of Section 25433.5. The commission may select an entity on a sole source basis for one or both of those purposes if the cost to the state will be reasonable and the commission determines that it is in the best interest of the state.

#### **§ 25434.5. Definitions**

As used in this article, the following terms have the following meanings:

(a) "Eligible construction or retrofit project" means a project for making improvements to a home or building in existence on the effective date of the act adding this section, through an addition, alteration, or repair, which effectively increases the energy efficiency or reduces the energy consumption of the home or building as specified by the commission's guidelines under paragraph (2) of subdivision (f) of Section 14 of the act that added this section. The improvements shall be deemed to be cost-effective.

(b) "Low income" means an individual with a gross annual income equal to or less than 200 percent of the federal poverty level.

(c) "Small business" means any small business as defined in paragraph (1) of subdivision (d) of Section 14837 of the Government Code.

### **Article 3. Small Business Energy Efficient Refrigeration Loan Program**

#### **§ 25435. Administration of loan program**

The commission shall administer the Small Business Energy Efficient Refrigeration Loan Program, as provided for in Section 25436.

#### **§ 25436. Implementation of loan program**

(a) Within 45 days of the effective date of this chapter, the commission shall implement a Small Business Energy Efficient Refrigeration Loan Program for qualifying small businesses to purchase and install energy efficient refrigeration equipment.

(b) The program shall offer loans at 3 percent interest on terms that will ensure the small business owner will repay the loan over time in accordance with terms established by the Energy Commission, but in no event may the term exceed the useful life of the purchase.

(c) The commission may enter into agreements with lending institutions and qualifying vendors to facilitate making and administering loans. Any loan made by the commission for the purchase of equipment shall be secured against the equipment purchased.

## **CHAPTER 5.4. LOCAL JURISDICTION ENERGY ASSISTANCE**

### **Article 1. General Provisions**

#### **§ 25440. Legislative finding and declaration**

The Legislature finds and declares all of the following:

(a) Energy costs account for a growing and substantial portion of the operating expenses for local governments, and other local jurisdictions in California.

(b) Substantial reductions in local jurisdiction energy costs can be realized through the utilization of energy conservation, management, and development techniques.

(c) Provision of financial assistance to local jurisdictions to reduce energy costs is consistent with the guidelines for using federal petroleum violation escrow funds which provide compensation to energy users who were overcharged by oil companies that violated federal oil price control regulations.

#### **§ 25440.5. Local jurisdiction**

"Local jurisdiction" means any city, county, or regional planning agency, or any combination thereof formed for the joint exercise of any power.

## **Article 2. Training And Management Assistance**

### **§ 25441. Financial assistance to provide staff training and support services**

The commission shall provide financial assistance to local jurisdictions for the purpose of providing staff training and support services, including, but not limited to, planning design, permitting, energy conservation, comprehensive energy management, project evaluation, and development of alternative energy resources.

## **Article 3. Energy Project Assistance**

### **§ 25442. Loans; purposes**

The commission shall provide loans to local jurisdictions for all of the following purposes:

(a) Purchase, maintenance, and evaluation of energy efficient equipment for existing and new facilities, including, but not limited to, equipment related to lights, motors, pumps, water and wastewater systems, boilers, heating, and air conditioning.

(b) Purchase, maintenance, and evaluation of small power production systems, including, but not limited to, wind, cogeneration, photovoltaics, geothermal, and hydroelectric systems.

(c) Improve the operating efficiency of existing local transportation systems.

### **§ 25442.5. Eligible projects; studies and analysis**

The commission may award financial assistance for project audits, feasibility studies, engineering and design, and legal and financial analysis related to the purposes of Section 25442.

### **§ 25442.7. Limitations on amount of loans or financial assistance; loan repayments**

(a) Loans under this article may not exceed five million dollars (\$5,000,000) for any one local jurisdiction, unless the commission determines, by unanimous vote, that the public interest and objectives of this chapter would be better served at a higher loan amount.

(b) Loan repayments shall be made in accordance with a schedule established by the commission. Repayment of loans shall be made in full unless the commission determines, by unanimous vote, that the public interest and objectives of this chapter would be better served by negotiating a reduced loan repayment for a project that fails to meet the technical or financial performance criteria through no fault of the local jurisdiction.

### **§ 25443. Disposition of principal and interest payments**

(a) Principal and interest payments on loans under this article shall be returned to the commission and shall be used to make additional loans to local jurisdictions pursuant to Section 25442 or to provide financial assistance to local jurisdictions pursuant to Section 25441.

(b) Notwithstanding any other provision of law, the commission shall, unless it determines that the purposes of this chapter would be better served by establishing an alternative interest rate schedule, periodically set interest rates on the loans based on surveys of existing financial markets and at rates not less than 3 percent per annum.

**§ 25443.5. Loans; borrowing and lending authority; collateralization; hiring consultants**

(a) In furtherance of the purposes of the commission as set forth in this chapter, the commission has the power and authority to do all of the following:

(1) Borrow money, for the purpose of obtaining funds to make loans pursuant to this chapter, from the California Economic Development Financing Authority, the California Infrastructure and Economic Development Bank, and the California Consumer Power and Conservation Financing Authority from the proceeds of revenue bonds issued by any of those agencies.

(2) Pledge, to provide collateral in connection with the borrowing of money pursuant to paragraph (1), loans made pursuant to this chapter or Chapter 5.2 (commencing with Section 25410), or the principal and interest payments on loans made pursuant to this chapter or Chapter 5.2 (commencing with Section 25410).

(3) Sell loans made pursuant to this chapter or Chapter 5.2 (commencing with Section 25410), at prices determined in the sole discretion of the commission, to the California Economic Development Financing Authority, the California Infrastructure and Economic Development Bank, and the California Consumer Power and Conservation Financing Authority to raise funds to enable the commission to make loans to eligible institutions.

(4) Enter into loan agreements or other contracts necessary or appropriate in connection with the pledge or sale of loans pursuant to paragraph (2) or (3), or the borrowing of money as provided in paragraph (1), containing any provisions that may be required by the California Economic Development Financing Authority, the California Infrastructure and Economic Development Bank, or the California Consumer Power and Conservation Financing Authority as conditions of issuing bonds to fund loans to, or the purchase of loans from, the commission.

(b) In connection with the pledging of loans, or of the principal and interest payment on loans, pursuant to paragraph (2) of subdivision (a), the commission may enter into pledge agreements setting forth the terms and conditions pursuant to which the commission is pledging loans or the principal and interest payment on loans, and may also agree to have the loans held by bond trustees or by independent collateral or escrow agents and to direct that payments received on those loans be paid to those trustee, collateral, or escrow agents.

(c) The commission may employ financial consultants, legal advisers, and accountants, and other service providers, as may be necessary in its judgment in connection with activities pursuant to this chapter.

(d) Notwithstanding any other provision of law, this chapter provides a complete, separate, additional, and alternative method for implementing the measures authorized by this chapter, including the authority of the eligible institutions or local jurisdictions to have borrowed and to borrow in the future pursuant to loans made pursuant to this chapter or Chapter 5.2 (commencing with Section 25410), and is supplemental and additional to powers conferred by other laws.

#### **Article 4. Program Design And Advisory Committee**

##### **§ 25445. Commission to design program; funding**

The commission shall design a local jurisdiction energy assistance program for the purpose of providing financial assistance under Article 2 (commencing with Section 25441) and providing loans under Article 3 (commencing with Section 25442). A local jurisdiction's energy assistance program shall be funded through the commission's existing local government assistance programs, except that if a project is not eligible for funding under an existing program, the commission may fund the project under this chapter.

##### **§ 25446. Loans; evaluation factors**

Loans made pursuant to this program shall, at a minimum, be evaluated on all of the following factors:

- (a) Project feasibility.
- (b) Energy savings or energy production potential sufficient to repay the loan in accordance with Section 25442.

#### **Article 5. Energy Saving Transportation Program**

##### **§ 25448. Financial assistance; technical assistance and equipment**

The Department of Transportation shall award financial assistance to local jurisdictions for the purposes of providing technical assistance and equipment to improve traffic flow efficiency through optimized traffic signal timing and operations.

##### **§ 25448.1. Financial assistance; limitations**

Financial assistance provided under this article may not exceed 75 percent of the cost of carrying out the activity, unless the department determines that the public interest and objectives of this chapter would be better served at a higher level of state funding.

#### **Article 6. Miscellaneous**

##### **§ 25449. Expenditure of petroleum violation escrow funds; agreement to improve energy efficiency at state-supported universities and colleges**

The Commission shall enter into an agreement with the Regents of the University of California, the Trustees of the California State University, and the Board of Governors of the California Community Colleges for the expenditure of petroleum violation escrow funds to supplement, and not supplant, other available funds to improve energy efficiency at state-supported universities and colleges under their respective jurisdictions by funding projects involving any of the following:

- (a) Data collection.
- (b) Establishment of operations and maintenance standards.

- (c) Staff training.
- (d) Ongoing energy equipment maintenance.
- (e) Projects involving heating, ventilation, air conditioning, and lighting equipment.

**§ 25449.1. Expenditures of petroleum violation escrow funds; grants to school districts for planning and management of energy conservation; loans to purchase and maintain energy efficient equipment**

The commission shall enter into an agreement with the State Department of Education to expend petroleum violation escrow funds to supplement, and not supplant, other available funds in order to provide loans to school districts to purchase, maintain, and evaluate energy efficient equipment and small power production systems.

**§ 25449.2. Report; effect of fees on alternative financing for public sector programs**

Not later than three years after the imposition of any fees pursuant to this chapter, the commission shall report to the Legislature in the biennial energy conservation report required by Section 25401.1, on the effect of those fees on alternative public and private financing for public sector programs.

**§ 25449.3. Local Jurisdiction Energy Assistance Account; deposits; fees; contracting for services**

(a) The Local Jurisdiction Energy Assistance Account is hereby created in the General Fund. All money appropriated for purposes of this chapter and all money received from local jurisdictions from loan repayments shall be deposited in the account and disbursed by the Controller as authorized by the commission.

(b) The commission may charge a fee for the services provided under this chapter.

(c) The commission may contract for services to be performed by eligible institutions, as defined in subdivision (c) of Section 25411. Those services shall include, but are not limited to, performance of a feasibility analyses. and providing project design, field evaluation, and operation and training assistance. The amount expended for contract services shall not exceed 10 percent of the annual scheduled loan repayment to the Local Jurisdiction Energy Assistance Account, as determined by the commission not later than July 1 of each fiscal year.

**§ 25449.4. Repeal of chapter; continuing application for loan repayment; unexpended funds**

(a) Except as provided in subdivision (b), this chapter shall remain effective until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2011, deletes or extends that date.

(b) All loans outstanding as of January 1, 2011, shall continue to be repaid in accordance with a schedule established by the commission pursuant to Section 25442.7, until paid in full. All unexpended funds in the Local Jurisdiction Energy Assistance Account on



January 1, 2011, and thereafter, except to the extent that those funds are encumbered pursuant to Section 25443.5, shall be deposited in the Federal Trust Fund and be available for the purposes for which federal oil overcharge funds are available pursuant to court judgment or federal agency order.

## **CHAPTER 5.5 ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANTS**

### **§ 25450. Legislative findings and declarations**

(a) The Legislature finds and declares all of the following:

(1) The cost of energy in California is increasing and creating greater demands on local governments' operating budgets.

(2) The 100th Congress enacted the Energy Independence and Security Act of 2007 (42 U.S.C. Sec. 17001 et seq.) that provides grants to eligible entities, including states, to reduce fossil fuel emissions, improve energy efficiency, and reduce overall energy use.

(3) Section 545(c)(1)(A) of the Energy Independence and Security Act of 2007 (42 U.S.C. Sec. 17155(c)(1)(A)) mandates that states receiving block grants under the act use not less than 60 percent of the grant amount to provide subgrants to local governments that are not eligible entities for the purposes of the act.

(b) It is the intent of the Legislature to fully implement the requirements for energy and conservation block grants provided pursuant to the Energy Independence and Security Act of 2007 and that the funds allocated to the state pursuant to that act be administered by the commission.

(c) It is the intent of the Legislature to strive to maximize the opportunity to allocate funds toward the most cost-effective energy efficiency projects, and when allocating funds toward administration, the commission should use the 5-percent allowable administrative expenses as a ceiling and improve efficiencies to allocate less than the allowable amount.

### **§ 25450.1. Allocating of funds**

Funds allocated to and received by the state pursuant to the Energy Independence and Security Act of 2007 (42 U.S.C. Sec. 17001 et seq.) shall be administered by the commission.

### **§ 25450.2. Percentage of funds used for cost-effective energy efficiency and conservation grants**

(a) Not less than 60 percent of the funds received pursuant to Section 25450.1 shall be used to provide cost-effective energy efficiency and conservation grants to cities with a population of less than 35,000 and counties with a population of less than 200,000, and be prioritized based on cost-effective energy efficiency.

(b) The remaining funds received pursuant to Section 25450.1 shall be used to provide cost-effective energy efficiency and conservation grants to eligible entities consistent

with the Energy Independence and Security Act of 2007 (42 U.S.C. Sec. 17001 et seq.), and be prioritized based on cost-effective energy efficiency.

**§ 25450.3. Percentage of funds expended for administrative expenses and program costs**

Not more than 5 percent of the funds received pursuant to Section 25450.1 shall be expended for administrative expenses, including, but not limited to, the combined administration program costs, indirect costs, overhead, and costs associated with the Statewide Cost Allocation Plan, including those administration program costs, indirect costs, and overhead costs of all other public and private entities associated with the disbursement, the expenditure of funds, or both the disbursement and expenditure.

**CHAPTER 5.7 SMART CORRIDOR TELECOMMUNICATIONS  
DEMONSTRATION PROJECT [Repealed]**

**§§ 25470 to 25473. Repealed**

**CHAPTER 5.8 ENERGY CONSERVATION IN TRANSPORTATION**

**§ 25480. Department**

As used in this chapter, "department" means the Department of Transportation.

**§ 25481. Legislative findings and declaration**

The Legislative hereby finds and declares that:

(a) Due to the projected rapid growth in demand for energy, coupled with the mounting difficulties in providing energy supplies, a continuing energy shortage exists, posing a significant danger to public health and welfare.

(b) The use of the automobile represents the single largest use of energy in this state and, therefore, the growing use of energy by automobiles is a major factor contributing to such shortage.

(c) Heavy automobile traffic in our major cities has resulted in serious problems of air pollution and traffic congestion.

(d) Increased ridesharing by commuters would aid in lowering air pollution levels, conserving energy, and reducing urban traffic congestion.

It is, therefore, the purpose of this chapter to provide incentives for the wider use of ridesharing by commuters in metropolitan areas.

**§ 25482. Assistance to state employees living in metropolitan areas; coordination by department**

All state agencies shall provide assistance to their employees living in metropolitan areas in establishing carpools and locating potential carpool participants. The department shall be responsible for coordinating these efforts.

**§ 25483. Ridesharing programs; metropolitan public and private employees; establishment and maintenance**

In order to perform its new functions of promoting and assisting ridesharing the department is authorized to establish ridesharing programs in metropolitan areas for public and private employees with funds made available for such purpose from any source. The ridesharing programs may be established and maintained entirely by the department or by the department in cooperation with public or private parties pursuant to contract.

**§ 25484. Ridesharing programs; inclusion of matching systems, promotional efforts and preferential treatment on highways**

The ridesharing programs established by the department may include, but are not limited to, computer or manual matching systems, promotional efforts to encourage carpooling, vanpooling, buspooling, and flexible work hours, and preferential treatment on highways.

**§ 25485. Preferential lanes; engineering study; access to bus lanes**

The department shall develop programs and undertake any necessary construction to establish, for the use of carpool vehicles carrying at least three persons, preferential lanes on major freeways in metropolitan areas where the total benefits to the carpool vehicles will bear a reasonable relationship to the total adverse effects on the remaining vehicles, as established on the basis of an engineering study. The department shall also permit such carpool vehicles to have access to preferential bus lanes established on major freeways, unless congestion seriously impeding the travel of buses will result or will present a serious traffic hazard.

**§ 25486. Preferential lanes; state highway route 10; pilot project**

The department is encouraged to establish as soon as possible preferential lanes for the use of buses and three-passenger carpool vehicles in both directions on State Highway Route 10, the Santa Monica Freeway, at least from Centinela Avenue to Vermont Avenue in Los Angeles County. Due to the high-density traffic flow on such a highway, it is necessary that the department establish such preferential lanes as a pilot project so that data can be developed for implementation of similar projects in other areas of the state.

## CHAPTER 5.9. ENERGY SYSTEMS

### Article 1. Definitions

#### § 25487. Construction of chapter

Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

#### § 25488. Title 24 Standards

"Title 24 Standards" refers to the nonresidential building standards developed by the commission.

#### § 25488.5. Building standard

"Building standard" means a building standard as defined in Section 18909 of the Health and Safety Code which is adopted by the commission.

#### § 25489. Lifecycle cost

"Life-cycle cost" means an estimate of the total cost of acquisition, operation, maintenance, and construction of any energy system within or related to a structure over the design life of the structure. "Life-cycle cost" includes, but is not limited to, the cost of fuel, materials, machinery, ancillary devices, labor, service, replacement, and repairs.

#### § 25491. Governmental agency

"Governmental agency" means any public agency, including any agency of the state, each county, city, district, association of governments, and joint power agency.

#### § 25492. Structure

"Structure" means any building which has more than 10,000 square feet of floor area and which has a heating, cooling, water heating, or lighting system which is designed to provide lighting and space conditioning more than 1,000 hours per year.

#### § 25493. New structure; compliance with Title 24 standards

On or after January 1, 1979, no governmental agency shall commence construction on any new structure unless the new structure complies with Title 24 Standards.

#### § 25493.5. New structure; compliance with building standards

On and after January 1, 1980, no governmental agency shall commence construction on any new structure unless the new structure complies with all applicable building standards, as defined in Section 25488.5 and published in the State Building Standards Code.

**§ 25494. Manual for comparison of lifecycle cost alternatives**

Not later than July 13, 1978, the commission shall prepare a manual outlining a methodology by which governmental agencies and the general public may at their option compare the lifecycle costs of various building design alternatives. This manual will provide the information and procedures necessary to evaluate a building's lifecycle costs in the microclimate and utility service area where it is to be built.

**§ 25495. Guidelines for new construction; options**

No later than July 31, 1978, the commission shall develop design guidelines for new construction which include energy conserving options, including, but not limited to, the use of daylighting, heating ventilation and air conditioning economizer cycles, natural ventilation, building envelope solar heat gain control mechanisms, and alternative energy systems such as solar energy for space heating and water heating and load management strategies. These guidelines and the cost analysis done pursuant to Section 25494 may be considered by government agencies at their option for ultimate selection of a building design in the competitive bidding process.

**§ 25496. Lighting standards for existing buildings; advice and recommendations**

No later than July 1, 1978, the commission shall develop and make available to government agencies and the general public to be utilized at their option lighting standards for existing buildings. These standards shall address, but not be limited to, task and general area lighting levels, light switching and control mechanisms, and lighting energy budgets. The commission may provide advice and recommendations to the public or any governmental agency as to the standards.

**§ 25498. Supplementary solar water heating system**

In addition to any other requirements applicable to such structure, no new state-owned structure shall be construed which is not equipped with a supplementary solar water heating system, unless such structure is specifically exempted from this requirement by the State Architect for reasons of economic or physical infeasibility.

**CHAPTER 6. POWER FACILITY AND SITE CERTIFICATION**

**§ 25500. Authority; necessity of certification**

In accordance with the provisions of this division, the commission shall have the exclusive power to certify all sites and related facilities in the state, whether a new site and related facility or a change or addition to an existing facility. The issuance of a certificate by the commission shall be in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law.

After the effective date of this division, no construction of any facility or modification of any existing facility shall be commenced without first obtaining certification for any such site and related facility by the commission, as prescribed in this division.

**§ 25500.5. Certifications sufficient to accommodate projected demand**

The commission shall certify sufficient sites and related facilities which are required to provide a supply of electric power sufficient to accommodate the demand projected in the most recent forecast of statewide and service area electric power demands adopted pursuant to subdivision (b) of Section 25309.

**§ 25501. Inapplicability of chapter to certain sites and facilities**

This chapter does not apply to any site or related facility for which the Public Utilities Commission has issued a certificate of public convenience and necessity or which any municipal utility has approved before January 7, 1975.

**§ 25501.7. Facility or site; proposed construction; waiver of exclusion; application of chapter**

Any person proposing to construct a facility or a site to which Section 25501 applies may waive the exclusion of such site and related facility from the provisions of this chapter by submitting to the commission a notice to that effect on or after July 1, 1976, and any and all of the provisions of this chapter shall apply to the construction of such facility.

**§ 25502. Thermal powerplant or transmission line; proposed construction; notice of intention**

Each person proposing to construct a thermal powerplant or electric transmission line on a site shall submit to the commission a notice of intention to file an application for the certification of the site and related facility or facilities. The notice shall be an attempt primarily to determine the suitability of the proposed sites to accommodate the facilities and to determine the general conformity of the proposed sites and related facilities with standards of the commission and assessments of need adopted pursuant to Sections 25305 to 25308, inclusive. The notice shall be in the form prescribed by the commission and shall be supported by such information as the commission may require.

Any site and related facility once found to be acceptable pursuant to Section 25516 is, and shall continue to be, eligible for consideration in an application for certification without further proceedings required for a notice under this chapter.

**§ 25502.3. Facility; proposed construction; waiver of exclusion; application of chapter**

Except as provided in Section 25501.7, any person proposing to construct a facility excluded from the provisions of this chapter may waive such exclusion by submitting to the commission a notice of intention to file an application for certification, and any and all of the provisions of this chapter shall apply to the construction of such facility.

**§ 25503. Alternative sites and related facilities; notice; contents**

Each notice of intention to file an application shall contain at least three alternative sites and related facilities, at least one of which shall not be located in whole or in part in the coastal zone. In addition, the alternative sites and related electrical facilities may be proposed from an inventory of sites which have previously been approved by the commission in a notice of intent or may be proposed from sites previously examined.

**§ 25504. Statement by applicant; contents**

The notice of intention shall include a statement by the applicant describing the location of the proposed sites by section or sections, range and township, and county; a summary of the proposed design criteria of the facilities; the type or types of fuels to be used; the methods of construction and operation; the proposed location of facilities and structures on each site; a preliminary statement of the relative economic, technological, and environmental advantages and disadvantages of the alternative site and related facility proposals; a statement of need for the facility and information showing the compatibility of the proposals with the most recent electricity report issued pursuant to Section 25308; and any other information that an electric utility deems desirable to submit to the commission.

**§ 25504.5. Proposal for site accommodating excess capacity; notice; contents**

An applicant may, in the notice, propose a site to be approved which will accommodate a potential maximum electric generating capacity in excess of the capacity being proposed for the initial approval of the commission. If such a proposal is made, the notice shall include, but not be limited to, in addition to the information specified in Section 25504, all of the following:

- (a) The number, type, and energy source of electric generating units which the site is proposed ultimately to accommodate and the maximum generating capacity for each unit.
- (b) The projected installation schedule for each unit.
- (c) The impact at the site when fully developed, on the environment and public health and safety.
- (d) The amount and sources of cooling water needed at the fully developed site.
- (e) The location and specifications of auxiliary facilities planned for each state of development including, but not limited to, pipelines, waste storage facilities, fuel storage facilities, switchyards, coolant lines, coolant outfalls, and cooling ponds, lakes, or towers.

**§ 25505. Publication of summary of notice of intention; copies to governmental agencies**

Upon receipt of a notice, the commission shall cause a summary of the notice to be published in a newspaper of general circulation in each county in which the sites and related facilities, or any part thereof, designated in the notice are proposed to be located. The commission shall also transmit a copy of the notice to the Public Utilities Commission, for sites and related facilities requiring a certificate of public convenience and necessity, and to other

federal, state, regional, and local agencies having an interest in matters pertinent to the proposed facilities at any of the alternative sites. A copy of the notice shall also be transmitted to the Attorney General.

**§ 25506. Comments and recommendations; governmental agencies**

The commission shall request the appropriate local, regional, state, and federal agencies to make comments and recommendations regarding the design, operation, and location of the facilities designated in the notice, in relation to environmental quality, public health and safety, and other factors on which they may have expertise.

**§ 25506.5. Comments and recommendations; public utilities commission**

The commission shall request the Public Utilities Commission, for sites and related facilities requiring a certificate of public convenience and necessity, to make comments and recommendations regarding the design, operation, and location of the facilities designated in the notice in relation to the economic, financial, rate, system reliability, and service implications of the proposed facilities.

**§ 25507. Coastal zones, Suisun Marsh or within jurisdiction of San Francisco Bay conservation and development commission; alternative site and related facility; notice; analysis**

(a) If any alternative site and related facility proposed in the notice is proposed to be located, in whole or in part, within the coastal zone, the commission shall transmit a copy of the notice to the California Coastal Commission. The California Coastal Commission shall analyze the notice and prepare the report and findings prescribed by subdivision (d) of Section 30413 prior to commencement of hearings pursuant to Section 25513.

(b) If any alternative site and related facility proposed in the notice is proposed to be located, in whole or in part, within the Suisun Marsh, or within the jurisdiction of the San Francisco Bay Conservation and Development Commission, the commission shall transmit a copy of the notice to the San Francisco Bay Conservation and Development Commission. The San Francisco Bay Conservation and Development Commission shall analyze the notice and prepare the report and findings prescribed by subdivision (d) of Section 66645 of the Government Code prior to commencement of hearings pursuant to Section 25513.

**§ 25508. Coastal zone or Suisun Marsh; cooperation with commission; participation in proceedings**

The commission shall cooperate with, and render advice to, the California Coastal Commission and the San Francisco Bay Conservation and Development Commission in studying applications for any site and related facility proposed to be located, in whole or in part, within the coastal zone, the Suisun Marsh, or the jurisdiction of the San Francisco Bay Conservation and Development Commission if requested by the California Coastal Commission or the San Francisco Bay Conservation and Development Commission, as the case may be. The California Coastal Commission or the San Francisco Bay Conservation and Development Commission, as the case may be, may participate in public hearings on the notice and on the application for site and related facility certification as an interested party in such proceedings.



**§ 25509. Informational presentations; purposes**

Within 45 days of the filing of the notice, the commission shall conduct public informational presentations in the county or counties in which the proposed sites and related facilities are located. The place of such public informational presentations shall be as close as practicable to the proposed sites. Such presentations shall be for the purpose of setting forth the electrical demand basis for the proposed site and related facility and providing and knowledge and understanding of the proposed facilities and sites.

**§ 25509.5. Nonadjudicatory hearings; purposes**

No sooner than 15 days after the conclusion of the presentations pursuant to Section 25509, the commission shall commence nonadjudicatory hearings. Such hearings shall identify issues for adjudication in hearings pursuant to Section 25513, issues which may be eliminated from further consideration in the notice proceedings, and issues which should be deferred to the certification proceeding. Any person may participate to the extent deemed reasonable and relevant by the presiding member of the commission in any such hearing. In scheduling such hearings the presiding member shall confer with the public adviser to provide that the hearing dates and locations are as convenient as possible for interested parties and the public. Such hearings shall be conducted in order to accomplish all of the following purposes:

- (a) To set forth the electrical demand basis for the proposed site and related facility.
- (b) To provide knowledge and understanding of proposed facilities and sites.
- (c) To obtain the views and comments of the public, parties, and concerned governmental agencies on the environmental, public health and safety, economic, social, and land use impacts of the facility at the proposed sites.
- (d) To solicit information regarding reasonable alternative sources of the electric generating capacity or energy to be provided by alternative sites and related facilities, or combinations thereof, which will better carry out the policies and objectives of this division.

**§ 25510. Summary and hearing order on notice of intention to file application**

After the conclusion of such hearings, and no later than 150 days after filing of the notice, the commission shall prepare and make public a summary and hearing order on the notice of intention to file an application. The commission may include within the summary and hearing order any other alternatives proposed by the commission or presented to the commission at a public hearing prior to preparation of the summary and hearing order. The summary and hearing order shall be published and made available to the public and to interested local, regional, state, and federal agencies.

**§ 25511. Safety and reliability factors; information required; analysis; findings**

The commission shall review the factors related to safety and reliability of the facilities at each of the alternative sites designated in the notice. In addition to other information requested of the applicant, the commission shall, in determining the appropriateness of sites and related facilities, require detailed information on proposed emergency systems and safety precautions, plans for transport, handling and storage of wastes and fuels, proposed methods to

prevent illegal diversion of nuclear fuels, special design features to account for seismic and other potential hazards, proposed methods to control density of population in areas surrounding nuclear powerplants, and such other information as the commission may determine to be relevant to the reliability and safety of the facility at the proposed sites. The commission shall analyze the information provided by the applicant, supplementing it, where necessary, by onsite investigations and other studies. The commission shall determine the adequacy of measures proposed by the applicant to protect public health and safety, and shall include its findings in the final report required by Section 25514.

**§ 25512. Summary and hearing order; basis; contents**

The summary and hearing order shall be based upon the record of the proceeding including statements or documents presented during any hearing or informational presentation on the notice, the comments transmitted by the Public Utilities Commission and local, regional, state, and federal agencies and the public to the commission, and the independent studies conducted by the commission's staff.

The summary and hearing order shall:

(a) Identify those issues for consideration in hearings pursuant to Section 25513.

(b) Identify those issues which may be eliminated from further consideration in the notice of intention proceedings.

(c) Identify those issues which should be deferred to the certification proceeding.

(d) Contain proposed findings on matters relevant to the provisions of Section 25514.

(e) Specify dates for the adjudicatory hearings.

**§ 25512.5. Distribution of copies**

Within 15 days of the publication of the summary and hearing order, a copy will be distributed to any person who requests such copy.

**§ 25513. Adjudicatory hearings; commencement**

No earlier than 30 days after distribution of the summary and hearing order, the commission shall commence adjudicatory hearings pursuant to the hearing order.

**§ 25513.3. Disqualification; investigator or advocate in adjudicative proceeding of the commission**

Notwithstanding Sections 11425.30 and 11430.10 of the Government Code, unless a party demonstrates other statutory grounds for disqualification, a person who has served as investigator or advocate in an adjudicative proceeding of the commission under this code may serve as a supervisor of the presiding officer or assist or advise the presiding officer in the same proceeding if the service, assistance, or advice occurs more than one year after the time the

person served as investigator or advocate, provided the content of any advice is disclosed on the record and all parties have an opportunity to comment on the advice.

**§ 25514. Final report; contents**

After conclusion of the hearings held pursuant to Section 25513 and no later than 300 days after the filing of the notice, a final report shall be prepared and distributed. The final report shall include, but not be limited to, all of the following:

(a) The findings and conclusions of the commission regarding the conformity of alternative sites and related facilities designated in the notice or considered in the notice of intention proceeding with both of the following:

(1) The 12-year forecast of statewide and service area electric power demands adopted pursuant to subdivision (e) of Section 25305, except as provided in Section 25514.5.

(2) Applicable local, regional, state, and federal standards, ordinances, and laws, including any long-range land use plans or guidelines adopted by the state or by any local or regional planning agency, which would be applicable but for the exclusive authority of the commission to certify sites and related facilities; and the standards adopted by the commission pursuant to Section 25216.3.

(b) Any findings and comments submitted by the California Coastal Commission pursuant to Section 25507 and subdivision (d) of Section 30413.

(c) Any findings and comments submitted by the San Francisco Bay Conservation and Development Commission pursuant to Section 25507 of this code and subdivision (d) of Section 66645 of the Government Code.

(d) The commission's findings on the acceptability and relative merit of each alternative siting proposal designated in the notice or presented at the hearings and reviewed by the commission. The specific findings of relative merit shall be made pursuant to Sections 25502 to 25516, inclusive. In its findings on any alternative siting proposal, the commission may specify modification in the design, construction, location, or other conditions which will meet the standards, policies, and guidelines established by the commission.

(e) Findings and conclusions with respect to the safety and reliability of the facility or facilities at each of the sites designed in the notice, as determined by the commission pursuant to Section 25511, and any conditions, modifications, or criteria proposed for any site and related facility proposal resulting from such findings and conclusions.

(f) Findings and conclusions as to whether increased property taxes due to the construction of the project are sufficient to support needed local improvements and public services required to serve the project.

**§ 25514.3. Public utilities commission; comments and recommendations**

In specifying any modifications, conditions, or criteria pursuant to Section 25514, for sites and related facilities requiring a certificate of public convenience and necessity, the commission shall request the comments and recommendations of the Public Utilities

Commission on the economic, financial, rate, system reliability, and service implications of such modifications, conditions, or criteria.

**§ 25514.5. Conformity of proposal with forecast; determination**

In considering the acceptability of a site proposed to accommodate ultimately additional power-generating capacity, the commission, in determining pursuant to Sections 25514 and 25512, the conformity of the facilities proposed in the notice with the 12-year forecast of statewide and service area electric power demands adopted pursuant to subdivision (e) of Section 25305, shall base its determination only on such initial facilities as are proposed for operation within the forthcoming 12-year period. Additional facilities projected to be operating at the site at a time beyond the forthcoming 12-year period shall not be considered in the determination of conformity with the electric power demand forecast.

**§ 25515. Final report; hearings**

No later than 30 days after the final report is distributed, a hearing or hearings on the final report shall be commenced. Such hearings shall be concluded within 15 days of their commencement.

**§ 25516. Approval of notice; necessity for alternative site and related facility proposals; exception**

The approval of the notice by the commission shall be based upon findings pursuant to Section 25514. The notice shall not be approved unless the commission finds at least two alternative site and related facility proposals considered in the commission's final report as acceptable. If the commission does not find at least two sites and related facilities acceptable, additional sites and related facilities may be proposed by the applicant which shall be considered in the same manner as those proposed in the original notice.

If the commission finds that a good faith effort has been made by the person submitting the notice to find an acceptable alternative site and related facility and that there is only one acceptable site and related facility among those submitted, the commission may approve the notice based on the one site and related facility. If a notice is approved based on one site and related facility, the commission may require a new notice to be filed to identify acceptable alternative sites and related facilities for the one site and related facility approved unless suitable alternative sites and related facilities have been approved by the commission in previous notice of intention proceedings.

If the commission finds that additional electric generating capacity is needed to accommodate the electric power demand forecast pursuant to subdivision (e) of Section 25305 and, after the commission finds that a good faith effort was made by the person submitting the notice to propose an acceptable site and related facility, it fails to find any proposed site and related facility to be acceptable, the commission shall designate, at the request of and at the expense of the person submitting the notice, a feasible site and related facility for providing the needed electric generating capacity.

**§ 25516.1. Finding of relative merit of available alternative sites**

If a site and related facility found to be acceptable by the commission pursuant to Section 25516 is located in the coastal zone, the Suisun Marsh, or the jurisdiction of the San

Francisco Bay Conservation and Development Commission, no application for certification may be filed pursuant to Section 25519 unless the commission has determined, pursuant to Section 25514, that such site and related facility have greater relative merit than available alternative sites and related facilities for an applicant's service area which have been determined to be acceptable by the commission pursuant to Section 25516.

**§ 25516.5. Approval of notice for initial and expanded ultimate capacity; potential multiple facility site**

On a notice which proposes an expanded ultimate electric generating capacity for a site, the commission may, based upon findings pursuant to Section 25514, either approve the notice only for the initial facility or facilities proposed for operation within the forthcoming 12-year period or may approve the notice for the initial facility or facilities and find the site acceptable for additional generating capacity of the type tentatively proposed. The maximum allowable amount and type of such additional capacity shall be determined by the commission.

If a notice is approved which includes a finding that a particular site is suitable to accommodate a particular additional generating capacity, the site shall be designated a potential multiple facility site. The commission may, in determining the acceptability of a potential multiple facility site, specify conditions or criteria necessary to insure that future additional facilities will not exceed the limitations of the site.

**§ 25516.6. Decision on notice; determination of completeness; determination as to when notice is considered filed**

(a) Except as otherwise expressly provided in this division, the commission shall issue its written decision on the notice not later than 12 months after the notice is filed, or at any later time as is mutually agreed upon by the commission and the applicant.

(b) The commission shall determine, within 45 days after it receives the notice, whether the notice is complete. If the commission determines that the notice is complete, the notice shall be deemed filed for the purpose of this section on the date that this determination is made. If the commission determines that the notice is incomplete, the commission shall specify, in writing, those parts of the notice which are incomplete and shall indicate the manner in which it can be made complete. If the applicant submits additional data to complete the notice, the commission shall determine, within 30 days after receipt of that data, whether the data is sufficient to make the notice complete. The notice shall be deemed filed on the date the commission determines the notice is complete if the commission has adopted regulations specifying the informational requirements for a complete notice, but if the commission has not adopted regulations, the notice shall be deemed filed on the last date the commission receives any additional data that completes the notice.

**§ 25517. Necessity of certification; restoration if certification denied**

Except as provided in Section 25501 no construction of any thermal powerplant or electric transmission line shall be commenced by any electric utility without first obtaining certification as prescribed in this division. Any onsite improvements not qualifying as construction may be required to be restored as determined by the commission as to be necessary to protect the environment, if certification is denied.

**§ 25518. Certification required before issuance of certificate of public convenience and necessity**

The Public Utilities Commission shall issue no certificate of public convenience and necessity for a site or related electrical facilities unless the utility has obtained a certificate from the commission.

**§ 25518.5. Concurrent initiation of application for certificate; conditions**

Nothing in this division shall preclude the concurrent initiation of an application for a certificate of public convenience and necessity from the Public Utilities Commission subject to the condition specified in Section 25518.

**§ 25519. Application for certification of site and related facility; data; impact report; local agencies; copies**

(a) In order to obtain certification for a site and related facility, an application for certification of the site and related facility shall be filed with the commission. The application shall be in a form prescribed by the commission and shall be for a site and related facility that has been found to be acceptable by the commission pursuant to Section 25516, or for an additional facility at a site that has been designated a potential multiple-facility site pursuant to Section 25514.5 and found to be acceptable pursuant to Sections 25516 and 25516.5. An application for an additional facility at a potential multiple-facility site shall be subject to the conditions and review specified in Section 25520.5. An application may not be filed for a site and related facility, if there is no suitable alternative for the site and related facility that was previously found to be acceptable by the commission, unless the commission has approved the notice based on the one site as specified in Section 25516.

(b) The commission, upon its own motion or in response to the request of any party, may require the applicant to submit any information, document, or data, in addition to the attachments required by subdivision (i), that it determines is reasonably necessary to make any decision on the application.

(c) The commission shall be the lead agency as provided in Section 21165 for all projects that require certification pursuant to this chapter and for projects that are exempted from such certification pursuant to Section 25541. Unless the commission's regulatory program governing site and facility certification and related proceedings are certified by the Resources Agency pursuant to Section 21080.5, an environmental impact report shall be completed within one year after receipt of the application. If the commission prepares a document or documents in the place of an environmental impact report or negative declaration under a regulatory program certified pursuant to Section 21080.5, any other public agency that must make a decision that is subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000), on a site or related facility, shall use the document or documents prepared by the commission in the same manner as they would use an environmental impact report or negative declaration prepared by a lead agency.

(d) If the site and related facility specified in the application is proposed to be located in the coastal zone, the commission shall transmit a copy of the application to the California Coastal Commission for its review and comments.

(e) If the site and related facility specified in the application is proposed to be located in the Suisun Marsh or the jurisdiction of the San Francisco Bay Conservation and Development Commission, the commission shall transmit a copy of the application to the San Francisco Bay Conservation and Development Commission for its review and comments.

(f) Upon receipt of an application, the commission shall forward the application to local governmental agencies having land use and related jurisdiction in the area of the proposed site and related facility. Those local agencies shall review the application and submit comments on, among other things, the design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area of the facility, and other appropriate aspects of the design, construction, or operation of the proposed site and related facility.

(g) Upon receipt of an application, the commission shall cause a summary of the application to be published in a newspaper of general circulation in the county in which the site and related facilities, or any part thereof, designated in the application, is proposed to be located. The commission shall transmit a copy of the application to each federal and state agency having jurisdiction or special interest in matters pertinent to the proposed site and related facilities and to the Attorney General.

(h) Local and state agencies having jurisdiction or special interest in matters pertinent to the proposed site and related facilities shall provide their comments and recommendations on the project within 180 days of the date of filing of an application.

(i) The adviser shall require that adequate notice is given to the public and that the procedures specified by this division are complied with.

(j) For any proposed site and related facility requiring a certificate of public convenience and necessity, the commission shall transmit a copy of the application to the Public Utilities Commission and request the comments and recommendations of the Public Utilities Commission on the economic, financial, rate, system reliability, and service implications of the proposed site and related facility. If the commission requires modification of the proposed facility, the commission shall consult with the Public Utilities Commission regarding the economic, financial, rate, system reliability, and service implications of those modifications.

(k) The commission shall transmit a copy of the application to any governmental agency not specifically mentioned in this act, but which it finds has any information or interest in the proposed site and related facilities, and shall invite the comments and recommendations of each agency. The commission shall request any relevant laws, ordinances, or regulations that an agency has promulgated or administered.

(l) An application for certification of any site and related facilities shall contain a listing of every federal agency from which any approval or authorization concerning the proposed site is required, specifying the approvals or authorizations obtained at the time of the application and the schedule for obtaining any approvals or authorizations pending.

**§ 25520. Application; contents**

The application shall contain all of the following information and any other information that the commission by regulation may require:

(a) A detailed description of the design, construction, and operation of the proposed facility.

(b) Safety and reliability information, including, in addition to documentation previously provided pursuant to Section 25511, planned provisions for emergency operations and shutdowns.

(c) Available site information, including maps and descriptions of present and proposed development and, as appropriate, geological, aesthetic, ecological, seismic, water supply, population and load center data, and justification for the particular site proposed.

(d) Any other information relating to the design, operation, and siting of the facility that the commission may specify.

(e) A description of the facility, the cost of the facility, the fuel to be used, the source of fuel, fuel cost, plant service life and capacity factor, and generating cost per kilowatt hour.

(f) A description of any electric transmission lines including the estimated cost of the proposed electric transmission line; a map in suitable scale of the proposed routing showing details of the rights-of-way in the vicinity of settled areas, parks, recreational areas, and scenic areas, and existing transmission lines within one mile of the proposed route; justification for the route, and a preliminary description of the effect of the proposed electric transmission line on the environment, ecology, and scenic, historic and recreational values.

**§ 25520.5. Additional facility at a potential multiple facility site; reconsideration of prior determination**

(a) In reviewing an application for an additional facility at a potential multiple facility site, the commission shall undertake a reconsideration of its prior determinations in the final report on the notice for the site issued pursuant to Section 25514, based on current conditions and other reasonable and feasible alternatives to the proposed facility.

(b) Within 180 days of the filing of the application for an additional facility at a potential multiple facility site and after adequate public hearings, the commission shall issue its decision on the acceptability of the proposed facility based on the reconsideration specified in subdivision (a) of this section. A negative determination shall be the final decision of the commission on the application and subject to judicial review pursuant to Section 25531. An affirmative determination shall not be a final decision of the commission on the application.

(c) The decision of the commission on an application for an additional facility at a potential multiple facility site receiving a favorable determination pursuant to subdivision (b) of this section shall be issued within 24 months after the filing of the application or at such later time as is mutually agreed upon by the commission and the applicant.

**§ 25521. Public hearings**

No earlier than 90 nor later than 240 days after the date of the filing of an application, the commission shall commence a public hearing or hearings thereon in Sacramento, San Francisco, Los Angeles, or San Diego, whichever city is nearest the proposed site. Additionally, the commission may hold a hearing or hearings in the county in which the proposed



site and related facilities are to be located. The commission hearings shall provide a reasonable opportunity for the public and all parties to the proceeding to comment upon the application and the commission staff assessment and shall provide the equivalent opportunity for comment as required pursuant to Division 13 (commencing with Section 21000). Consistent with the requirements of this section, the commission shall have the discretion to determine whether or not a hearing is to be conducted in a manner that requires formal examination of witnesses or that uses other similar adjudicatory procedures.

**§ 25522. Written decision on application for certification of site; time; determination as to when application considered filed**

(a) Except as provided in subdivision (c) of Section 25520.5, within 18 months of the filing of an application for certification, or within 12 months if it is filed within one year of the commission's approval of the notice of intent, or at any later time as is mutually agreed by the commission and the applicant, the commission shall issue a written decision as to the application.

(b) The commission shall determine, within 45 days after it receives the application, whether the application is complete. If the commission determines that the application is complete, the application shall be deemed filed for purposes of this section on the date that this determination is made. If the commission determines that the application is incomplete, the commission shall specify in writing those parts of the application which are incomplete and shall indicate the manner in which it can be made complete. If the applicant submits additional data to complete the application, the commission shall determine, within 30 days after receipt of that data, whether the data is sufficient to make the application complete. The application shall be deemed filed on the date when the commission determines the application is complete if the commission has adopted regulations specifying the informational requirements for a complete application, but if the commission has not adopted regulations, the application shall be deemed filed on the last date the commission receives any additional data that completes the application.

**§ 25523. Written decision; contents**

The commission shall prepare a written decision after the public hearing on an application, which includes all of the following:

(a) Specific provisions relating to the manner in which the proposed facility is to be designed, sited, and operated in order to protect environmental quality and assure public health and safety.

(b) In the case of a site to be located in the coastal zone, specific provisions to meet the objectives of Division 20 (commencing with Section 30000) as may be specified in the report submitted by the California Coastal Commission pursuant to subdivision (d) of Section 30413, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or that the provisions proposed in the report would not be feasible.

(c) In the case of a site to be located in the Suisun Marsh or in the jurisdiction of the San Francisco Bay Conservation and Development Commission, specific provisions to meet the requirements of Division 19 (commencing with Section 29000) of this code or Title 7.2 (commencing with Section 66600) of the Government Code as may be specified in the report

submitted by the San Francisco Bay Conservation and Development Commission pursuant to subdivision (d) of Section 66645 of the Government Code, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or the provisions proposed in the report would not be feasible.

(d)(1) Findings regarding the conformity of the proposed site and related facilities with standards adopted by the commission pursuant to Section 25216.3 and subdivision (d) of Section 25402, with public safety standards and the applicable air and water quality standards, and with other applicable local, regional, state, and federal standards, ordinances, or laws. If the commission finds that there is noncompliance with a state, local, or regional ordinance or regulation in the application, it shall consult and meet with the state, local, or regional governmental agency concerned to attempt to correct or eliminate the noncompliance. If the noncompliance cannot be corrected or eliminated, the commission shall inform the state, local, or regional governmental agency if it makes the findings required by Section 25525.

(2) The commission may not find that the proposed facility conforms with applicable air quality standards pursuant to paragraph (1) unless the applicable air pollution control district or air quality management district certifies, prior to the licensing of the project by the commission, that complete emissions offsets for the proposed facility have been identified and will be obtained by the applicant within the time required by the district's rules or unless the applicable air pollution control district or air quality management district certifies that the applicant requires emissions offsets to be obtained prior to the commencement of operation consistent with Section 42314.3 of the Health and Safety Code and prior to commencement of the operation of the proposed facility. The commission shall require as a condition of certification that the applicant obtain any required emission offsets within the time required by the applicable district rules, consistent with any applicable federal and state laws and regulations, and prior to the commencement of the operation of the proposed facility.

(e) Provision for restoring the site as necessary to protect the environment, if the commission denies approval of the application.

(f) In the case of a site and related facility using resource recovery (waste-to-energy) technology, specific conditions requiring that the facility be monitored to ensure compliance with paragraphs (1), (2), (3), and (6) of subdivision (a) of Section 42315 of the Health and Safety Code.

(g) In the case of a facility, other than a resource recovery facility subject to subdivision (f), specific conditions requiring the facility to be monitored to ensure compliance with toxic air contaminant control measures adopted by an air pollution control district or air quality management district pursuant to subdivision (d) of Section 39666 or Section 41700 of the Health and Safety Code, whether the measures were adopted before or after issuance of a determination of compliance by the district.

(h) A discussion of any public benefits from the project including, but not limited to, economic benefits, environmental benefits, and electricity reliability benefits.

**§ 25524.1. Nuclear fuel rod reprocessing and storage; conditions for plant certification and land use; findings; resolution of disaffirmance**

(a) Except for the existing Diablo Canyon Units 1 and 2 owned by Pacific Gas and Electric Company and San Onofre Units 2 and 3 owned by Southern California Edison Company and San Diego Gas and Electric Company, no nuclear fission thermal powerplant requiring the reprocessing of fuel rods, including any to which this chapter does not otherwise apply, excepting any having a vested right as defined in this section, shall be permitted land use in the state, or where applicable, certified by the commission until both of the following conditions are met:

(1) The commission finds that the United States through its authorized agency has identified and approved, and there exists a technology for the construction and operation of, nuclear fuel rod reprocessing plants.

(2) The commission has reported its findings and the reasons therefore pursuant to paragraph (1) to the Legislature. That report shall be assigned to the appropriate policy committees for review. The commission may proceed to certify nuclear fission thermal powerplants 100 legislative days after reporting its findings unless within those 100 legislative days either house of the Legislature adopts by a majority vote of its members a resolution disaffirming the findings of the commission made pursuant to paragraph (1).

(3) A resolution of disaffirmance shall set forth the reasons for the action and shall provide to the extent possible, guidance to the commission as to an appropriate method of bringing the commission's findings into conformance with paragraph (1).

(4) If a disaffirming resolution is adopted, the commission shall reexamine its original findings consistent with matters raised in the resolution. On conclusion of its reexamination, the commission shall transmit its findings in writing, with the reasons therefore, to the Legislature.

(5) If the findings are that the conditions of paragraph (1) have been met, the commission may proceed to certify nuclear fission thermal powerplants 100 legislative days after reporting its findings to the Legislature unless within those 100 legislative days both houses of the Legislature act by statute to declare the findings null and void and takes appropriate action.

(6) To allow sufficient time for the Legislature to act, the reports of findings of the commission shall be submitted to the Legislature at least six calendar months prior to the adjournment of the Legislature sine die.

(b) The commission shall further find on a case-by-case basis that facilities with adequate capacity to reprocess nuclear fuel rods from a certified nuclear facility or to store that fuel if that storage is approved by an authorized agency of the United States are in actual operation or will be in operation at the time that the nuclear facility requires reprocessing or storage; provided, however, that the storage of fuel is in an offsite location to the extent necessary to provide continuous onsite full core reserve storage capacity.

(c) The commission shall continue to receive and process notices of intention and applications for certification pursuant to this division, but shall not issue a decision pursuant to Section 25523 granting a certificate until the requirements of this section have been met. All other permits, licenses, approvals, or authorizations for the entry or use of the land, including orders of

court, which may be required may be processed and granted by the governmental entity concerned but construction work to install permanent equipment or structures shall not commence until the requirements of this section have been met.

**§ 25524.2. Disposal of high-level nuclear waste; conditions for plant certification and land use; findings; resolution of disaffirmance**

Except for the existing Diablo Canyon Units 1 and 2 owned by Pacific Gas and Electric Company and San Onofre Units 2 and 3 owned by Southern California Edison Company and San Diego Gas and Electric Company, no nuclear fission thermal powerplant, including any to which this chapter does not otherwise apply, but excepting those exempted herein, shall be permitted land use in the state, or where applicable, be certified by the commission until both of the following conditions have been met:

(a) The commission finds that there has been developed and that the United States through its authorized agency has approved and there exists a demonstrated technology or means for the disposal of high-level nuclear waste.

(b)(1) The commission has reported its findings and the reasons therefore pursuant to paragraph (a) to the Legislature. That report shall be assigned to the appropriate policy committees for review. The commission may proceed to certify nuclear fission thermal powerplants 100 legislative days after reporting its findings unless within those 100 legislative days either house of the Legislature adopts by a majority vote of its members a resolution disaffirming the findings of the commission made pursuant to subdivision (a).

(2) A resolution of disaffirmance shall set forth the reasons for the action and shall provide, to the extent possible, guidance to the commission as to an appropriate method of bringing the commission's findings into conformance with subdivision (a).

(3) If a disaffirming resolution is adopted, the commission shall reexamine its original findings consistent with matters raised in the resolution. On conclusion of its reexamination, the commission shall transmit its findings in writing, with the reasons therefor, to the Legislature.

(4) If the findings are that the conditions of subdivision (a) have been met, the commission may proceed to certify nuclear fission thermal powerplants 100 legislative days after reporting its findings to the Legislature unless within those 100 legislative days both houses of the Legislature act by statute to declare the findings null and void and take appropriate action.

(5) To allow sufficient time for the Legislature to act, the reports of findings of the commission shall be submitted to the Legislature at least six calendar months prior to the adjournment of the Legislature sine die.

(c) As used in subdivision (a), "technology or means for the disposal of high-level nuclear waste" means a method for the permanent and terminal disposition of high-level nuclear waste. Nothing in this section requires that facilities for the application of that technology or means be available at the time that the commission makes its findings. That disposition of high-level nuclear waste does not preclude the possibility of an approved process for retrieval of the waste.

(d) The commission shall continue to receive and process notices of intention and applications for certification pursuant to this division but shall not issue a decision pursuant to Section 25523 granting a certificate until the requirements of this section have been met. All other permits, licenses, approvals or authorizations for the entry or use of the land, including orders of court, which may be required may be processed and granted by the governmental entity concerned but construction work to install permanent equipment or structures shall not commence until the requirements of this section have been met.

**§ 25524.5. Generating capacity in excess of maximum allowable capacity; exception; conditions**

The commission shall not certify any facility which adds generating capacity to a potential multiple facility site in excess of the maximum allowable capacity established by the commission pursuant to Section 25516.5, unless the commission finds that exceeding the maximum allowable capacity will not increase adverse environmental impacts or create technological, seismic, or other difficulties beyond those already found acceptable in the commission's findings on the notice for that site pursuant to Sections 25516 and 25516.5.

**§ 25525. Conformance with standards, ordinances and laws; exception**

The commission may not certify a facility contained in the application when it finds, pursuant to subdivision (d) of Section 25523, that the facility does not conform with any applicable state, local, or regional standards, ordinances, or laws, unless the commission determines that the facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving public convenience and necessity. In making the determination, the commission shall consider the entire record of the proceeding, including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability. The commission may not make a finding in conflict with applicable federal law or regulation. The basis for these findings shall be reduced to writing and submitted as part of the record pursuant to Section 25523.

**§ 25526. Findings necessary for site approval**

(a) The commission shall not approve as a site for a facility any location designated by the California Coastal Commission pursuant to subdivision (b) of Section 30413, unless the California Coastal Commission first finds that such use is not inconsistent with the primary uses of such land and that there will be no substantial adverse environmental effects and unless the approval of any public agency having ownership or control of such land is obtained.

(b) The commission shall not approve as a site for a facility any location designated by the San Francisco Bay Conservation and Development Commission pursuant to subdivision (b) of Section 66645 of the Government Code unless the San Francisco Bay Conservation and Development Commission first finds that such use is not inconsistent with the primary uses of such land and that there will be no substantial adverse environmental effects and unless the approval of any public agency having ownership or control of such land is obtained

**§ 25527. Prohibited areas as sites for facilities; exceptions**

The following areas of the state shall not be approved as a site for a facility, unless the commission finds that such use is not inconsistent with the primary uses of such lands and

that there will be no substantial adverse environmental effects and the approval of any public agency having ownership or control of such lands is obtained:

(a) State, regional, county and city parks; wilderness, scenic or natural reserves; areas for wildlife protection, recreation, historic preservation; or natural preservation areas in existence on the effective date of this division.

(b) Estuaries in an essentially natural and undeveloped state.

In considering applications for certification, the commission shall give the greatest consideration to the need for protecting areas of critical environmental concern, including, but not limited to, unique and irreplaceable scientific, scenic, and educational wildlife habitats; unique historical, archaeological, and cultural sites; lands of hazardous concern; and areas under consideration by the state or the United States for wilderness, or wildlife and game reserves.

**§ 25528. Acquisition of development rights by applicant; population densities; eminent domain; nuclear facility; governmental land use restrictions**

(a) The commission shall require as a condition of certification of any site and related facility, that the applicant acquire, by grant or contract, the right to prohibit development of privately owned lands in the area of the proposed site which will result in population densities in excess of the maximum population densities which the commission determines, as to the factors considered by the commission pursuant to Section 25511, are necessary to protect public health and safety.

If the applicant is authorized to exercise the right of eminent domain under Article 7 (commencing with Section 610) of Chapter 3 of Part 1 of Division 1 of the Public Utilities Code, the applicant may exercise the right of eminent domain to acquire such development rights as the commission requires be acquired.

(b) In the case of an application for a nuclear facility, the area and population density necessary to insure the public's health and safety designated by the commission shall be that as determined from time to time by the United States Nuclear Regulatory Commission, if the commission finds that such determination is sufficiently definitive for valid land use planning requirements.

(c) The commission shall waive the requirements of the acquisition of development rights by an applicant to the extent that the commission finds that existing governmental land use restrictions are of a type necessary and sufficient to guarantee the maintenance of population levels and land use development over the lifetime of the facility which will insure the public health and safety requirements set pursuant to this section.

(d) No change in governmental land use restrictions in such areas designated in subdivision (c) of this section by any government agency shall be effective until approved by the commission. Such approval shall certify that the change in land use restrictions is not in conflict with requirements provided for by this section.

(e) It is not the intent of the Legislature by the enactment of this section to take private property for public use without payment of just compensation in violation of the United States Constitution or the Constitution of California.

**§ 25529. Public use area; maintenance by applicant or dedication to local agency or state**

When a facility is proposed to be located in the coastal zone or any other area with recreational, scenic, or historic value, the commission shall require, as a condition of certification of any facility contained in the application, that an area be established for public use, as determined by the commission. Lands within such area shall be acquired and maintained by the applicant and shall be available for public access and use, subject to restrictions required for security and public safety. The applicant may dedicate such public use zone to any local agency agreeing to operate or maintain it for the benefit of the public. If no local agency agrees to operate or maintain the public use zone for the benefit of the public, the applicant may dedicate such zone to the state. The commission shall also require that any facility to be located along the coast or shoreline of any major body of water be set back from the shoreline to permit reasonable public use and to protect scenic and aesthetic values.

**§ 25530. Reconsideration of decision or order; motion; petition**

The commission may order a reconsideration of all or part of a decision or order on its own motion or on petition of any party.

Any such petition shall be filed within 30 days after adoption by the commission of a decision or order. The commission shall not order a reconsideration on its own motion more than 30 days after it has adopted a decision or order. The commission shall order or deny reconsideration on a petition therefor within 30 days after the petition is filed.

A decision or order may be reconsidered by the commission on the basis of all pertinent portions of the record together with such argument as the commission may permit, or the commission may hold a further hearing, after notice to all interested persons. A decision or order of the commission on reconsideration shall have the same force and effect as an original order or decision.

**§ 25531. Judicial review; evidence; scope; jurisdiction; eminent domain proceedings; prohibition of mandate for specific supply plan**

(a) The decisions of the commission on any application for certification of a site and related facility are subject to judicial review by the Supreme Court of California.

(b) No new or additional evidence may be introduced upon review and the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the United States Constitution or the California Constitution. The findings and conclusions of the commission on questions of fact are final and are not subject to review, except as provided in this article. These questions of fact shall include ultimate facts and the findings and conclusions of the commission. A report prepared by, or an approval of, the commission pursuant to Section 25510, 25514, 25516, or 25516.5, or subdivision (b) of Section 25520.5, shall not constitute a decision of the commission subject to judicial review.

(c) Subject to the right of judicial review of decisions of the commission, no court in this state has jurisdiction to hear or determine any case or controversy concerning any matter which was, or could have been, determined in a proceeding before the commission, or to

stop or delay the construction or operation of any thermal powerplant except to enforce compliance with the provisions of a decision of the commission.

(d) Notwithstanding Section 1250.370 of the Code of Civil Procedure:

(1) If the commission requires, pursuant to subdivision (a) of Section 25528, as a condition of certification of any site and related facility, that the applicant acquire development rights, that requirement conclusively establishes the matters referred to in Sections 1240.030 and 1240.220 of the Code of Civil Procedure in any eminent domain proceeding brought by the applicant to acquire the development rights.

(2) If the commission certifies any site and related facility, that certification conclusively establishes the matters referred to in Sections 1240.030 and 1240.220 of the Code of Civil Procedure in any eminent domain proceeding brought to acquire the site and related facility.

(e) No decision of the commission pursuant to Section 25516, 25522, or 25523 shall be found to mandate a specific supply plan for any utility as prohibited by Section 25323.

**§ 25532. Monitoring system**

The commission shall establish a monitoring system to assure that any facility certified under this division is constructed and is operating in compliance with air and water quality, public health and safety, and other applicable regulations, guidelines, and conditions adopted or established by the commission or specified in the written decision on the application. In designing and operating the monitoring system, the commission shall seek the cooperation and assistance of the State Air Resources Board, the State Water Resources Control Board, the Department of Health, and other state, regional, and local agencies which have an interest in environmental control.

**§ 25534. Amendment or revocation of certification; grounds; administrative civil penalty; start-of-construction deadline; failure to meet deadline; notice to California Consumer Power and Conservation Financing Authority**

(a) The commission may, after one or more hearings, amend the conditions of, or revoke the certification for, any facility for any of the following reasons:

(1) Any material false statement set forth in the application, presented in proceedings of the commission, or included in supplemental documentation provided by the applicant.

(2) Any significant failure to comply with the terms or conditions of approval of the application, as specified by the commission in its written decision.

(3) A violation of this division or any regulation or order issued by the commission under this division.

(4) The owner of a project does not start construction of the project within 12 months after the date all permits necessary for the project become final and all administrative and judicial appeals have been resolved provided the California Consumer Power and Conservation Financing Authority notifies the commission that it is willing and able to construct the project pursuant to subdivision (g). The project owner may extend the 12-month period by



24 additional months pursuant to subdivision (f). This paragraph applies only to projects with a project permit application deemed complete by the commission after January 1, 2003.

(b) The commission may also administratively impose a civil penalty for a violation of paragraph (1) or (2) of subdivision (a). Any civil penalty shall be imposed in accordance with Section 25534.1 and may not exceed seventy-five thousand dollars (\$75,000) per violation, except that the civil penalty may be increased by an amount not to exceed one thousand five hundred dollars (\$1,500) per day for each day in which the violation occurs or persists, but the total of the per day penalties may not exceed fifty thousand dollars (\$50,000).

(c) A project owner shall commence construction of a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) within 12 months after the project has been certified by the commission and after all accompanying project permits are final and administrative and judicial appeals have been completed. The project owner shall submit construction and commercial operation milestones to the commission within 30 days after project certification. Construction milestones shall require the start of construction within the 12-month period established by this subdivision. The commission shall approve milestones within 60 days after project certification. If the 30-day deadline to submit construction milestones to the commission is not met, the commission shall establish milestones for the project.

(d) The failure of the owner of a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) to meet construction or commercial operation milestones, without a finding by the commission of good cause, shall be cause for revocation of certification or the imposition of other penalties by the commission.

(e) A finding by the commission that there is good cause for failure to meet the start-of-construction deadline required by paragraph (4) of subdivision (a) or any subsequent milestones of subdivision (c) shall be made if the commission determines that any of the following criteria are met:

(1) The change in any deadline or milestone does not change the established deadline or milestone for the start of commercial operation.

(2) The deadline or milestone is changed due to circumstances beyond the project owner's control, including, but not limited to, administrative and legal appeals.

(3) The deadline or milestone will be missed but the project owner demonstrates a good faith effort to meet the project deadline or milestone.

(4) The deadline or milestone will be missed due to unforeseen natural disasters or acts of God that prevent timely completion of the project deadline or milestone.

(5) The deadline or milestone will be missed for any other reason determined reasonable by the commission.

(f) The commission shall extend the start-of-construction deadline required by paragraph (4) of subdivision (a) by an additional 24 months, if the owner reimburses the commission's actual cost of licensing the project, less the amount paid pursuant to subdivision (a) of Section 25806. For the purposes of this section, the commission's actual cost of licensing the project shall be based on a certified audit report filed by the commission staff within 180

days of the commission's certification of the project. The certified audit shall be filed and served on all parties to the proceeding, is subject to public review and comment, and is subject to at least one public hearing if requested by the project owner. Any reimbursement received by the commission pursuant to this subdivision shall be deposited in the General Fund.

(g) If the owner of a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) fails to commence construction, without good cause, within 12 months after the project has been certified by the commission and has not received an extension pursuant to subdivision (f), the commission shall provide immediate notice to the California Consumer Power and Conservation Financing Authority. The authority shall evaluate whether to pursue the project independently or in conjunction with any other public or private entity, including the original certificate holder. If the authority demonstrates to the commission that it is willing and able to construct the project either independently or in conjunction with any other public or private entity, including the original certificate holder, the commission may revoke the original certification and issue a new certification for the project to the authority, unless the authority's statutory authorization to finance or approve new programs, enterprises, or projects has expired. If the authority declines to pursue the project, the permit shall remain with the current project owner until it expires pursuant to the regulations adopted by the commission.

(h) If the commission issues a new certification for a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) to the authority, the commission shall adopt new milestones for the project that allow the authority up to 24 months to start construction of the project or to start to meet the applicable deadlines or milestones. If the authority fails to begin construction in conformity with the deadlines or milestones adopted by the commission, without good cause, the certification may be revoked.

(i)(1) If the commission issues a new certification for a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) to the authority and the authority pursues the project without participation of the original certificate holder, the authority shall offer to reimburse the original certificate holder for the actual costs the original certificate holder incurred in permitting the project and in procuring assets associated with the license, including, but not limited to, major equipment and the emission offsets. In order to receive reimbursement, the original certificate holder shall provide to the commission documentation of the actual costs incurred in permitting the project. The commission shall validate those costs. The certificate holder may refuse to accept the offer of reimbursement for any asset associated with the license and retain the asset. To the extent the certificate holder chooses to accept the offer for an asset, it shall provide the authority with the asset.

(2) If the authority reimburses the original certificate holder for the costs described in paragraph (1), the original certificate holder shall provide the authority with all of the assets for which the original certificate holder received reimbursement.

(j) This section does not prevent a certificate holder from selling its license to construct and operate a project prior to its revocation by the commission. In the event of a sale to an entity that is not an affiliate of the certificate holder, the commission shall adopt new deadlines or milestones for the project that allow the new certificate holder up to 12 months to start construction of the project or to start to meet the applicable deadlines or milestones.

(k) Paragraph (4) of subdivision (a) and subdivisions (c) to (j), inclusive, do not apply to licenses issued for the modernization, repowering, replacement, or refurbishment of

existing facilities or to a qualifying small power production facility or a qualifying cogeneration facility within the meaning of Sections 201 and 210 of Title II of the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Secs. 796(17), 796(18), and 824a-3), and the regulations adopted pursuant to those sections by the Federal Energy Regulatory Commission (18 C.F.R. Parts 292.101 to 292.602, inclusive), nor shall those provisions apply to any other generation units installed, operated, and maintained at a customer site exclusively to serve that facility's load. For the purposes of this subdivision, "replacement" of an existing facility includes, but is not limited to, a comparable project at a location different than the facility being replaced, provided that the commission certifies that the new project will result in the decommissioning of the existing facility.

(l) Paragraph (4) of subdivision (a) and subdivisions (c) to (j), inclusive, do not apply to licenses issued to "local publicly owned electric utilities," as defined in Section 224.3 of the Public Utilities Code, whose governing bodies certify to the commission that the project is needed to meet the projected native load of the local publicly owned utility.

(m) To implement this section, the commission and the California Consumer Power and Conservation Financing Authority may, in consultation with each other, adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that chapter, including, without limitation, Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, or general welfare.

#### **§ 25534.1. Complaint; hearing; orders; amount of penalty**

(a) The executive director of the commission may issue a complaint to any person or entity on whom an administrative civil penalty may be imposed pursuant to Section 25534. The complaint shall allege the act or failure to act for which the civil penalty is proposed, the provision of law authorizing civil liability, and the proposed civil penalty.

(b) The complaint shall be served by personal notice or certified mail, and shall inform the party so served that a hearing will be conducted within 60 days after the party has been served. The hearing shall be before the commission. The complainant may waive the right to a hearing, in which case the commission shall not conduct a hearing.

(c) After any hearing, the commission may adopt, with or without revision, the proposed decision and order of the executive director.

(d) Orders setting an administrative civil penalty shall become effective and final upon issuance thereof, and any payment shall be made within 30 days. Copies of these orders shall be served by personal service or by registered mail upon the party served with the complaint and upon other persons who appeared at the hearing and requested a copy.

(e) In determining the amount of the administrative civil penalty, the commission shall take into consideration and nature, circumstance, extent, and gravity of the violation or violations, whether the violation is susceptible to removal or resolution, the cost to the state in pursuing the enforcement action, and with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary removal or resolution efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require.

**§ 25534.2. Review; collection of penalties; deposit of moneys recovered**

(a) Within 30 days after service of an order issued under Section 25534.1, any aggrieved party may file with the superior court a petition for writ of mandate for review thereof pursuant to Section 1094.5 of the Code of Civil Procedure. If no aggrieved party petition for a writ of mandate is filed within the time provided by this section, an order of the commission is not subject to review by any court or agency, except that the commission may grant review on its own motion of an order issued under Section 25534.1 after the expiration of the time limits set by this section.

(b) Upon request of the commission, the Attorney General shall institute an action in the appropriate superior court to collect and recover any administrative civil penalties imposed pursuant to Section 25534.1. The court shall accord priority on its calendar to any action under this subdivision.

(c) Any moneys recovered by the commission pursuant to this section shall be deposited in the General Fund.

**§ 25535. Costs allowable for ratemaking purposes**

Such reasonable and direct costs as the applicant incurs to comply with the provisions of this chapter shall be allowed for ratemaking purposes.

**§ 25537. Approval of application; submission of information to federal agencies**

Upon approval of an application, the commission shall forward to the United States Nuclear Regulatory Commission, the Environmental Protection Agency, and to other appropriate federal agencies, the results of its studies including the environmental impact report on the facility, the written decision on the facility contained in the application, and the commission's determination of facility safety and reliability as provided in Section 25511.

**§ 25538. Review by local agencies; fees; lost permit fees; reimbursement**

Upon receiving the commission's request for review under subdivision (f) of Section 25519 and Section 25506, the local agency may request a fee from the commission to reimburse the local agency for the actual and added costs of this review by the local agency. The commission shall reimburse the local agency for the added costs that shall be actually incurred by the local agency in complying with the commission's request. The local agency may also request reimbursement for permit fees that the local agency would receive but for the operation of Section 25500, provided, however, that such fees may only be requested in accordance with actual services performed by the local agency. The commission shall either request a fee from the person proposing the project or devote a special fund in its budget, for the reimbursement of such costs incurred by local agencies.

**§ 25539. Rules and regulations**

In reviewing notices and applications for certification or modifications of existing facilities, the commission shall adopt rules and regulations as necessary to insure that relevant duties pursuant to this division are carried out.

**§ 25540. Geothermal powerplant and related facilities; alternative sites and related facilities; notice; findings; final decision**

If a person proposes to construct a geothermal powerplant and related facility or facilities on a site, the commission shall not require three alternative sites and related facilities to be proposed in the notice. Except as otherwise provided, the commission shall issue its findings on the notice, as specified in Section 25514, within nine months from the date of filing of such notice, and shall issue its final decision on the application, as specified in Section 25523, within nine months from the date of the filing of the application for certification, or at such later time as is mutually agreed to by the commission and the applicant or person submitting the notice or application.

**§ 25540.1. Geothermal powerplant; determination of completeness of notice or application; determination as to when notice or application deemed filed**

The commission shall determine, within 30 days after the receipt of a notice or application for a geothermal powerplant, whether the notice or application is complete. If the notice or application is determined not to be complete, the commission's determination shall specify, in writing, those parts of the notice or application which are incomplete and shall indicate the manner in which it can be made complete. Within 30 days after receipt of the applicant's filing with the commission the additional information requested by the commission to make the notice or application complete, the commission shall determine whether the subsequent filing is sufficient to complete the notice or application. A notice or application shall be deemed filed for purposes of Section 25540 on the date the commission determines the notice or application is completed if the commission has adopted regulations specifying the informational requirements for a complete notice or application, but if the commission has not adopted regulations, the notice or application shall be deemed filed on the last date the commission receives any additional data that completes the notice or application.

**§ 25540.2. Geothermal powerplant and related facilities; proposed construction; notice of intention; final decision; copies of application for certification**

Notwithstanding any other provision of law:

(a) If an applicant proposes to construct a geothermal powerplant at a site which, at the outset of the proceeding, the applicant can reasonably demonstrate to be capable of providing geothermal resources in commercial quantities, no notice of intention pursuant to Section 25502 shall be required, and the commission shall issue the final decision on the application, as specified in Section 25523, within 12 months after acceptance of the application for certification of a geothermal powerplant and related facilities, or at such later time as is mutually agreed by the commission and the applicant.

(b) Upon receipt of an application for certification of a geothermal powerplant and related facilities, the commission shall transmit a copy of the application to every state and local agency having jurisdiction over land use in the area involved.

**§ 25540.3. Geothermal powerplant and related facilities; application; contents; electric generating potential in excess of capacity proposed for initial construction; potential multiple facility site**

(a) An applicant for a geothermal powerplant may propose a site to be approved that will accommodate a potential maximum electric generating capacity in excess of the capacity being proposed for initial construction. In addition to the information concerning the initial powerplant and related facilities proposed for construction required pursuant to Section 25520, such application shall include all of the following, to the extent known:

(1) The number, type, and energy source of electric generating units which the site is proposed ultimately to accommodate and the maximum generating capacity for each unit.

(2) The projected installation schedule for each unit.

(3) The impact of the site, when fully developed, on the environment and public health and safety.

(4) The amount and sources of cooling water needed at the fully developed site.

(5) The general location and design of auxiliary facilities planned for each stage of development, including, but not limited to pipelines, transmission lines, waste storage and disposal facilities, switchyards, and cooling ponds, lakes, or towers.

(6) Such other information relating to the design, operation, and siting of the facility as the commission may by regulation require.

(b) If an application is filed pursuant to subdivision (a) which proposes a site to be approved which will accommodate a potential maximum electric generating capacity in excess of the capacity being proposed for initial construction, the commission may, in its decision pursuant to subdivision (a) of Section 25540.3, either certify only the initial facility or facilities proposed for initial construction or may certify the initial facility or facilities and find the site acceptable for additional generating capacity of the type tentatively proposed. The maximum allowable amount and type of such additional capacity shall be determined by the commission.

If the decision includes a finding that a particular site is suitable to accommodate a particular additional generating capacity, the site shall be designated a potential multiple facility site. The commission may, in determining the acceptability of a potential multiple facility site, specify conditions or criteria necessary to ensure that future additional facilities will not exceed the limitations of the site.

**§ 25540.4. Potential multiple facility site; decision on application for additional facility; reconsideration of prior determination; environmental impact report; time**

Notwithstanding any other provision of law:

(a) The decision of the commission on an application for an additional facility at a potential multiple facility site shall be issued within three months after the acceptance of the application or at such later time as is mutually agreed upon by the commission and the applicant.

(b) In reviewing an application for an additional facility at a potential multiple facility site, the commission may, upon a showing of good cause, undertake a reconsideration of its prior determinations in the final report for the site pursuant to Section 25514 or its decision pursuant to Section 25523 based on current conditions and other reasonable alternatives to the proposed facility. Such reconsideration must be completed within seven months after acceptance of such application for an additional facility.

(c) The commission shall, pursuant to Section 21100.2, provide by resolution or order for completing and certifying the environmental impact report within the time limits established by subdivisions (a) and (b).

**§ 25540.5. Geothermal powerplant and related facilities; certification; delegation to county; revocation**

The commission may, at the petition of a county which has adopted a geothermal element for its general plan, approve an equivalent certification program which delegates to that county full authority for the certification of all geothermal powerplants within such county. Once approved by the commission, the equivalent certification program shall replace and supersede the procedures for certification of all geothermal powerplants and related facilities, pursuant to Sections 25540 to 25540.4, inclusive, to be located within such county. The commission may, after public hearings, revoke the approved equivalent certification program of such county if the commission finds that the program does not comply with current commission certification requirements. The equivalent certification program shall include, but not be limited to, provisions for all of the following:

(a) Certification of geothermal areas as potential multiple facility sites, if so applied for.

(b) Processing of applications in less than 12 months.

(c) Periodic review and updating of the program by the county as may be required by law and the commission.

(d) Appeal procedures, including appeals to the commission on substantive issues. In any such appeal on a substantive issue, the commission shall determine whether the act or decision is supported by substantial evidence in the light of the whole record. The commission shall determine, within 15 days of receipt of an appeal, whether the appeal has merit and whether action should be taken.

(e) Input and review by other relevant public agencies and members of the public.

(f) Public hearing procedures equivalent to those specified in Article 6 (commencing with Section 65350) of Chapter 3 of Title 7 of the Government Code.

**§ 25540.6. Thermal powerplants on which commission must issue final decision on application within 12 months; site selection application discussion where project exempt from notice of intention requirement**

(a) Notwithstanding any other provision of law, no notice of intention is required, and the commission shall issue its final decision on the application, as specified in

Section 25523, within 12 months after the filing of the application for certification of the powerplant and related facility or facilities, or at any later time as is mutually agreed by the commission and the applicant, for any of the following:

- (1) A thermal powerplant which will employ cogeneration technology, a thermal powerplant that will employ natural gas-fired technology, or a solar thermal powerplant.
- (2) A modification of an existing facility.
- (3) A thermal powerplant which it is only technologically or economically feasible to site at or near the energy source.
- (4) A thermal powerplant with a generating capacity of up to 100 megawatts.
- (5) A thermal powerplant designed to develop or demonstrate technologies which have not previously been built or operated on a commercial scale. Such a research, development, or commercial demonstration project may include, but is not limited to, the use of renewable or alternative fuels, improvements in energy conversion efficiency, or the use of advanced pollution control systems. Such a facility may not exceed 300 megawatts unless the commission, by regulation, authorizes a greater capacity. Section 25524 does not apply to such a powerplant and related facility or facilities.

(b) Projects exempted from the notice of intention requirement pursuant to paragraph (1), (4), or (5) of subdivision (a) shall include, in the application for certification, a discussion of the applicant's site selection criteria, any alternative sites that the applicant considered for the project, and the reasons why the applicant chose the proposed site. That discussion shall not be required for cogeneration projects at existing industrial sites. The commission may also accept an application for a noncogeneration project at an existing industrial site without requiring a discussion of site alternatives if the commission finds that the project has a strong relationship to the existing industrial site and that it is therefore reasonable not to analyze alternative sites for the project.

**§ 25541. Thermal-powerplants; exemption from provisions of chapter; conditions**

The commission may exempt from this chapter thermal powerplants with a generating capacity of up to 100 megawatts and modifications to existing generating facilities that do not add capacity in excess of 100 megawatts, if the commission finds that no substantial adverse impact on the environment or energy resources will result from the construction or operation of the proposed facility or from the modifications.

**§ 25541.1. Thermal powerplants using resource recovery technology; legislative encouragement**

It is the intent of the Legislature to encourage the development of thermal powerplants using resource recovery (waste-to-energy) technology. Previously enacted incentives for the production of electrical energy from nonfossil fuels in commercially scaled projects have failed to produce the desired results. At the same time, the state faces a growing problem in the environmentally safe disposal of its solid waste. The creation of electricity by a thermal powerplant using resource recovery technology addresses both problems by doing all of the following:



- (a) Generating electricity from a nonfossil fuel of an ample growing supply.
- (b) Conserving landfill space, thus reducing waste disposal costs.
- (c) Avoiding the health hazards of burying garbage.

Furthermore, development of resource recovery facilities creates new construction jobs, as well as ongoing operating jobs, in the communities in which they are located.

**§ 25541.5. Regulatory program; certification**

(a) On or before January 1, 2001, the Secretary of the Resources Agency shall review the regulatory program conducted pursuant to this chapter that was certified pursuant to subdivision (k) of Section 15251 of Title 14 of the California Code of Regulations, to determine whether the regulatory program meets the criteria specified in Section 21080.5. If the Secretary of the Resources Agency determines that the regulatory program meets those criteria, the secretary shall continue the certification of the regulatory program.

(b) If the Secretary of the Resources Agency continues the certification of the regulatory program, the commission shall amend the regulatory program from time to time, as necessary to permit the secretary to continue to certify the program.

(c) This section does not invalidate the certification of the regulatory program, as it existed on January 1, 2000, pending the review required by subdivision (a).

**§ 25542. Inapplicability of division to certain sites and facilities; power of commission ineffective**

In the case of any site and related facility or facilities for which the provisions of this division do not apply, the exclusive power given to the commission pursuant to Section 25500 to certify sites and related facilities shall not be in effect.

**§ 25543. Improvements to the siting process**

(a) It is the intent of the Legislature to improve the process of siting and licensing new thermal electric powerplants to ensure that these facilities can be sited in a timely manner, while protecting environmental quality and public participation in the siting process.

(b) Notwithstanding Section 7550.5 of the Government Code, the commission shall prepare a report to the Governor and the Legislature on or before March 31, 2000, that identifies administrative and statutory measures that, preserving environmental protections and public participation, would improve the commission's siting and licensing process for thermal powerplants of 50 megawatts and larger. The report shall include, but is not limited to, all of the following:

(1) An examination of potential process efficiencies associated with required hearings, site visits, and documents.

(2) A review of the impacts on both process efficiency and public participation of restrictions on communications between applicants, the public, and staff or decisionmakers.

(3) An assessment of means for improving coordination with the licensing activities of local jurisdictions and participation by other state agencies.

(4) An assessment of organizational structure issues including the adequacy of the amounts and organization of current technical and legal resources.

(5) Recommendations for administrative and statutory measures to improve the siting and licensing process.

(c) The commission may immediately implement any administrative recommendations. Regulations, as identified in paragraph (5), adopted within 180 days of the effective date of this section may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of the Government Code. For purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

## **CHAPTER 6.5 EXPEDITED SITING OF ELECTRICAL GENERATION**

### **§ 25550. Six month process**

(a) Notwithstanding subdivision (a) of Section 25522, and Section 25540.6 the commission shall establish a process to issue its final certification for any thermal powerplant and related facilities within six months after the filing of the application for certification that, on the basis of an initial review, shows that there is substantial evidence that the project will not cause a significant adverse impact on the environment or electrical system and will comply with all applicable standards, ordinances, or laws. For purposes of this section, filing has the same meaning as in Section 25522.

(b) Thermal powerplants and related facilities reviewed under this process shall satisfy the requirements of Section 25520 and other necessary information required by the commission, by regulation, including the information required for permitting by each local, state, and regional agency that would have jurisdiction over the proposed thermal powerplant and related facilities but for the exclusive jurisdiction of the commission and the information required for permitting by each federal agency that has jurisdiction over the proposed thermal powerplant and related facilities.

(c) After acceptance of an application under this section, the commission shall not be required to issue a six-month final decision on the application if it determines there is substantial evidence in the record that the thermal powerplant and related facilities may result in a significant adverse impact on the environment or electrical system or does not comply with an applicable standard, ordinance, or law. Under this circumstance, the commission shall make its decision in accordance with subdivision (a) of Section 25522 and Section 25540.6, and a new application shall not be required.

(d) For an application that the commission accepts under this section, all local, regional, and state agencies that would have had jurisdiction over the proposed thermal powerplant and related facilities, but for the exclusive jurisdiction of the commission, shall provide their final comments, determinations, or opinions within 100 days after the filing of the

application. The regional water quality control boards, as established pursuant to Chapter 4 (commencing with Section 13200) of Division 7 of the Water Code, shall retain jurisdiction over any applicable water quality standard that is incorporated into any final certification issued pursuant to this chapter.

(e) Thermal powerplants and related facilities that demonstrate superior environmental or efficiency performance shall receive priority in review.

(f) With respect to a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown that the applicant has a contract with a general contractor and has contracted for an adequate supply of skilled labor to construct, operate, and maintain the plant.

(g) With respect to a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown that the thermal powerplant and related facilities complies with all regulations adopted by the commission that ensure that an application addresses disproportionate impacts in a manner consistent with Section 65040.12 of the Government Code.

(h) This section shall not apply to an application filed with the commission on or before August 1, 1999.

(i) To implement this section, the commission may adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 2 of Division 3 of Title 2 of the Government Code. For purposes of that chapter, including without limitation, Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(j) This section shall remain in effect until January 1, 2007, and as of that date is repealed unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

#### **§ 25550.5. Required findings; repowering**

(a) Notwithstanding subdivision (a) of Section 25522 and Section 25540.6, the commission shall establish a process to issue its final decision on an application for certification for the repowering of a thermal powerplant and related facilities within 180 days after the filing of the application for certification that, on the basis of an initial review, shows that there is substantial evidence that the project will not cause a significant adverse impact on the environment or electrical system and that the project will comply with all applicable standards, ordinances, regulations, and statutes. For purposes of this section, filing has the same meaning as in Section 25522.

(b) The repowering of a thermal powerplant and related facilities reviewed under this process shall satisfy the requirements of Section 25520 and other necessary information required by the commission by regulation, including the information required for permitting by each local, state, and regional agency that would have jurisdiction over the proposed repowering of a thermal powerplant and related facilities but for the exclusive jurisdiction of the commission and the information required for permitting by each federal

agency that has jurisdiction over the proposed repowering of a thermal powerplant and related facilities.

(c) After an application is filed under this section, the commission shall not be required to issue a final decision on the application within 180 days if it determines there is substantial evidence in the record that the thermal powerplant and related facilities may result in a significant adverse impact on the environment or electrical system or does not comply with an applicable standard, ordinance, regulation, or statute. Under this circumstance, the commission shall make its decision in accordance with subdivision (a) of Section 25522 and Section 25540.6, and a new application shall not be required.

(d) For an application that the commission accepts under this section, any local, regional, or state agency that would have had jurisdiction over the proposed thermal powerplant and related facilities, but for the exclusive jurisdiction of the commission, shall provide its final comments, determinations, or opinions within 100 days after the filing of the application. The regional water quality control board, as established pursuant to Chapter 4 (commencing with Section 13200) of Division 7 of the Water Code, shall retain jurisdiction over any applicable water quality standard that is incorporated into any final certification issued pursuant to this chapter.

(e) The repowering of a thermal powerplant and related facilities that demonstrate superior environmental or efficiency performance improvement shall receive first priority in review by the commission.

(f) With respect to the repowering of a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown that the applicant has contracted with a general contractor and has contracted for an adequate supply of skilled labor to construct, operate, and maintain the plant.

(g) With respect to a repowering of a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown that the thermal powerplant and related facilities complies with all regulations adopted by the commission that ensure that an application addresses disproportionate impacts in a manner consistent with Section 65040.12 of the Government Code.

(h) To implement this section, the commission may adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that chapter, including, without limitation, Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(i) For purposes of this section, "repowering" means a project for the modification of an existing generation unit of a thermal powerplant that meets all of the following criteria:

(1) The project complies with all applicable requirements of federal, state, and local laws.

(2) The project is located on the site of, and within the existing boundaries of, an existing thermal facility.

(3) The project will not require significant additional rights-of-way for electrical or fuel-related transmission facilities.

(4) The project will result in significant and substantial increases in the efficiency of the production of electricity, including, but not limited to, reducing the heat rate, reducing the use of natural gas, reducing the use and discharge of water, and reducing air pollutants emitted by the project, as measured on a per kilowatthour basis.

(j) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

## **CHAPTER 7. RESEARCH AND DEVELOPMENT**

### **§ 25600. Definitions**

As used in this chapter:

(a) "Passive thermal system" means a system which utilizes the structural elements of a building and is not augmented by mechanical components to provide for collection, storage and distribution of solar energy or coolness.

(b) "Semipassive thermal system" means a system which utilizes the structural elements of a building and is augmented by mechanical components to provide for collection, storage, and distribution of solar energy or coolness.

(c) "Solar device" means the equipment associated with the collection, transfer, distribution, storage, and control of solar energy.

(d) "Solar system" means the integrated use of solar devices for the functions of collection, transfer, storage, and distribution of solar energy.

(e) "Standard" means a specification of design, performance, and procedure, or of the instrumentation, equipment, surrounding conditions, and skills required during the conduct of a procedure.

### **§ 25601. Development and coordination of program; priorities**

The commission shall develop and coordinate a program of research and development in energy supply, consumption, and conservation and the technology of siting facilities and shall give priority to those forms of research and development which are of particular importance to the state, including, but not limited to, all of the following:

(a) Methods of energy conservation specified in Chapter 5 (commencing with Section 25400).

(b) Increased energy use efficiencies of existing thermal electric and hydroelectric powerplants and increased energy efficiencies in designs of thermal electric and hydroelectric powerplants.

(c) Expansion and accelerated development of alternative sources of energy, including geothermal and solar resources, including, but not limited to, participation in large-scale demonstrations of alternative energy systems sited in California in cooperation with federal agencies, regional compacts, other state governments and other participants. For purposes of this subdivision, "participation" shall be defined as any of the following: (1) direct interest in a project, (2) research and development to insure acceptable resolution of environment and other impacts of alternative energy systems, (3) research and development to improve siting and permitting methodology for alternative energy systems; (4) experiments utilizing the alternative energy systems, and (5) research and development of appropriate methods to insure the widespread utilization of economically useful alternative energy systems. Large-scale demonstrations of alternative energy systems are exemplified by the 100 KWe to 100 MWe range demonstrations of solar, wind, and geothermal systems contemplated by federal agencies, regional compacts, other state governments, and other participants.

(d) Improved methods of construction, design, and operation of facilities to protect against seismic hazards.

(e) Improved methods of energy-demand forecasting.

(f) To accomplish the purposes of subdivision (c), an amount not more than one-half of the total state funds appropriated for the solar energy research and development program as proposed in the budget prepared pursuant to Section 25604 shall be allocated for large-scale demonstration of alternative energy systems.

#### **§ 25602. Technical assessment studies**

The commission shall carry out technical assessment studies on all forms of energy and energy-related problems, in order to influence federal research and development priorities and to be informed on future energy options and their impacts, including, in addition to those problems specified in Section 25601, but not limited to, the following:

(a) Advanced nuclear powerplant concepts, fusion, and fuel cells.

(b) Total energy concepts.

(c) New technology related to coastal and offshore siting of facilities.

(d) Expanded use of wastewater as cooling water and other advances in powerplant cooling.

(e) Improved methods of power transmission to permit interstate and interregional transfer and exchange of bulk electric power.

(f) Measures to reduce wasteful and inefficient uses of energy.

(g) Shifts in transportation modes and changes in transportation technology in relation to implications for energy consumption.

(h) Methods of recycling, extraction, processing, fabricating, handling, or disposing of materials, especially materials which require large commitments of energy.

- (i) Expanding recycling of materials and its effect on energy consumption.
- (j) Implications of government subsidies and taxation and ratesetting policies.
- (k) Utilization of waste heat.
- (l) Use of hydrogen as an energy form.
- (m) Use of agricultural products, municipal wastes, and organic refuse as an energy source.

Such assessments may also be conducted in order to determine which energy systems among competing technologies are most compatible with standards established pursuant to this division.

### **§ 25603. Energy-conserving buildings**

For research purposes, the commission shall, in cooperation with other state agencies, participate in the design, construction, and operation of energy-conserving buildings using data developed pursuant to Section 25401, in order to demonstrate the economic and technical feasibility of such designs.

#### **§ 25603.5. State solar medallion passive design competition**

(a) Pursuant to the duties of the commission described in subdivision (a) of Section 25401 and Section 25603, the commission shall conduct a statewide architectural design competition to select outstanding designs for new single-family and multifamily residential units which incorporate passive solar and other energy-conserving design features.

The purpose of the competition, to be known as the "State Solar Medallion Passive Design Competition", is to demonstrate the technical and economic feasibility of passive solar design for residential construction, to speed its commercialization, and to promote its use by developers in housing for moderate-income families in the state. The competition shall be carried out with the assistance and cooperation of the office of the State Architect.

(b) The competition shall be conducted for each of the state's six regional climate zones. Each climate zone shall have the following four categories of competition:

(1) Single-family dwellings. The construction costs of these dwellings shall not exceed thirty-five thousand dollars (\$35,000) and the market price, inclusive of land, construction, permits, fees, overhead and profit shall not exceed fifty-five thousand dollars (\$55,000); provided that, if the commission determines that, as of the date construction is completed, the cost of housing construction in this state has increased due to economic inflation since January 1, 1979, the commission may increase these sums by the amount of such inflation as indicated by the construction cost index.

(2) Single-family dwellings. The construction costs of these dwellings shall not exceed fifty-five thousand dollars (\$55,000) and the market price, inclusive of land, construction, permits, fees, overhead and profit shall not exceed eighty-five thousand dollars (\$85,000); provided that, if the commission determines that, as of the date construction is completed, the

cost of housing construction in this state has increased due to economic inflation since January 1, 1979, the commission may increase these sums by the amount of such inflation as indicated by the construction cost index.

(3) Multifamily housing units with a market price or rental value comparable to paragraph (1) of this subdivision.

(4) Multifamily housing units with a market price or rental value comparable to paragraph (2) of this subdivision.

(c) In order to qualify for the competition, entrants shall be a team composed of at least one member from each of the following categories:

(1) A building designer or architect.

(2) A builder, developer, or contractor.

(d) With submission of designs to the competition, all entrants shall agree to comply with the following provisions, if awarded the Solar Medallion or the first place prize in any category:

(1) To build five models of the winning design for single-family home categories if the builder, developer, or contractor member of the winning team constructed more than 30 single-family detached units during the one-year period ending on the date of the award, or

(2) To build three models of the winning design for single-family home categories if the builder, developer, or contractor member of the winning team constructed 30 or fewer single-family detached units during the one-year period ending on the date of the award, or

(3) To build one model of the winning design for all multifamily categories.

(4) To commence construction within 18 months of the announcement of awards.

(5) To permit the commission to install monitoring equipment for measuring energy conservation performance of the structure on all models constructed in compliance with paragraphs (1), (2), and (3) of this subdivision.

(6) To permit the commission to document, exhibit, and publicize the constructed designs.

All models of winning designs shall be built on the site or sites described in the submission or on an alternate site or sites with comparable features.

Cash awards to authors of the winning designs may be made prior to commencement of the agreed upon construction.

All winning designs in the competition shall become the property of the state and may be published and exhibited by the state after completion of competition.



- jurors:
- (e) The judging panel for the competition shall consist of the following five
    - (1) One representative of the Office of the State Architect.
    - (2) One representative of the commission.
    - (3) One certificated architect.
    - (4) One representative of the state's lending institutions.
    - (5) One developer, builder, or contractor.

The nonagency members shall be appointed by the State Architect.

In recognition of the wide variation in construction costs statewide, and in order to ensure fair and equitable competition in all areas of the state, a cost index shall be used to determine different construction cost and market price requirements for each category of competition in the major metropolitan areas of the state.

The construction cost and market price figures specified in paragraphs (1) and (2) of subdivision (b) shall be used as the upper limit values on which the index shall be based. Construction cost and market price figures reflecting the diversity in costs in different areas of the state shall be determined in relation to upper limit values specified in this section.

The cost index shall be prepared by the Office of the State Architect and shall be published in the competition program.

The evaluation shall take place in two stages, with an initial technical review by the commission staff. The staff shall submit to the judging panel a rigorous technical assessment of the anticipated energy conservation performance of all submissions. Final selections shall be made by the judging panel.

Designs submitted to the competition shall be judged on the extent to which they satisfy the following criteria:

- (1) Use of passive solar and other energy conserving design features.
- (2) Amount of energy savings achieved by the design.
- (3) Adaptability of the design to widespread use.

(f) The commission shall be responsible for developing rules and procedures for the conduct of the competition and for the judging, which rules shall ensure anonymity of designs submitted prior to final awarding of prizes, shall ensure impartiality of the judging panel, and shall ensure uniform treatment of competitors.

In administering the competition, the commission shall accomplish the following tasks:

- (1) Preparation of a competition program, including climatological data for each of the six regional climate zones.
- (2) Distribution of competition information and ongoing publicity.
- (3) Development of rules and procedures for competitors and judges.
- (4) Preparation of a summary document for the competition, including a portfolio of winning designs and follow-up publicity.
- (5) Instrumentation of winning dwellings constructed in accordance with requirements of this section; instrumentation for measurement of energy conservation performance of the units and ongoing data collection shall be provided by the commission pursuant to Section 25607.

For purposes of administering the competition, the commission shall contract with the Office of the State Architect for materials and services that cannot be performed by its staff.

(g) Cash awards to authors of the winning designs shall be made on the following basis:

Using the criteria in subdivision (e) of this section, the judging panel shall select, as follows:

- (1) The most outstanding design statewide selected from among the first place winners in either of two single-family categories in any of the six climate zones which shall receive the State Solar Medallion Award and five thousand dollars (\$5,000) in addition to the cash award specified in paragraph (3) of this subdivision.
- (2) The most outstanding design statewide selected from among the first place winners in either of the two multifamily categories in any of the six climate zones which shall receive the State Solar Medallion Award and five thousand dollars (\$5,000) in addition to the cash award specified in paragraph (3) of this subdivision.
- (3) The first place designs in each of the four competition categories within each of the six climate zones, which shall each receive a cash award of five thousand dollars (\$5,000).
- (4) The second place designs in each of the four competition categories within each of the six climate zones, which shall each receive a cash award of two thousand dollars (\$2,000).

**§ 25605. Regulations governing solar devices**

On or before November 1, 1978, the commission shall develop and adopt, in cooperation with affected industry and consumer representatives, and after one or more public hearings, regulations governing solar devices. The regulations shall be designed to encourage the development and use of solar energy and to provide maximum information to the public concerning solar devices. The regulations may include, but need not be limited to, any or all of the following:

(a) Standards for testing, inspection, certification, sizing, and installation of solar devices.

(b) Provisions for the enforcement of the standards. Such provisions may include any or all of the following:

(1) Procedures for the accreditation by the commission of laboratories to test and certify solar devices.

(2) Requirements for onsite inspection of solar devices, including specifying methods for inspection, to determine compliance or noncompliance with the standards.

(3) Requirements for submission to the commission of any data resulting from the testing and inspection of solar devices.

(4) Prohibitions on the sale of solar devices which do not meet minimum requirements for safety and durability as established by the commission.

(5) Dissemination of the results of the testing, inspection, and certification program to the public.

(c) In adopting the regulations, the commission shall give due consideration to their effect on the cost of purchasing, installing, operating and maintaining solar devices. The commission shall reassess the regulations as often as it deems necessary, based upon the value of the regulations in terms of benefits and disadvantages to the widespread adoption of solar energy systems and the need to encourage creativity and innovative adaptations of solar energy. The commission may amend or repeal these regulations based on such reassessment.

(d) Under no circumstances may the commission preclude any person from developing, installing, or operating a solar device on his or her own property.

(e) Any violation of any regulation adopted by the commission pursuant to this section may be enjoined in the same manner as is prescribed in Chapter 10 (commencing with Section 25900) of this division for enjoining a violation of this division.

**§ 25605.5. Building standards; adoption approval; enforcement**

Standards adopted by the commission pursuant to Section 25605, which are building standards as defined in Section 25488.5, shall be submitted to the State Building Standards Commission for approval pursuant to, and are governed by, the State Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code). Building standards adopted by the commission and published in the State Building Standards Code shall comply with, and be enforced as provided in, Section 25605.

**§ 25608. Conferences to coordinate adoption of regulations**

The commission shall confer with officials of federal agencies, including the National Aeronautics and Space Administration, the National Institute of Standards and Technology, the Department of Energy, and the Department of Housing and Urban Development, to coordinate the adoption of regulations pursuant to Sections 25603, and 25605.

**§ 25609. Effective date of regulations**

The commission may, in adopting regulations pursuant to this chapter, specify the date when the regulations shall take effect. The commission may specify different dates for different regulations.

**§ 25609.5. Building standards; approval of effective dates**

The effective dates of building standards adopted by the commission pursuant to Section 25609 are subject to approval pursuant to the provisions of the State Building Standards Law, Part 2.5 (commencing with Section 18901) of Part 13 of the Health and Safety Code.

**§ 25610. Contracts for materials and services**

For purposes of carrying out the provisions of this chapter, the commission may contract with any person for materials and services that cannot be performed by its staff or other state agencies, and may apply for federal grants or any other funding.

**§ 25616. Legislative intent; energy projects**

(a) It is the intent of the Legislature to encourage local agencies to expeditiously review permit applications to site energy projects, and to encourage energy project developers to consider all cost-effective and environmentally superior alternatives that achieve their project objectives.

(b) Subject to the availability of funds appropriated therefor, the commission shall provide technical assistance and grants-in-aid to assist local agencies to do either or both of the following:

(1) Site energy production or transmission projects which are not otherwise subject to the provisions of Chapter 6 (commencing with Section 25500).

(2) Integrate into their planning processes, and incorporate into their general plans, methods to achieve cost-effective energy efficiency.

(c) The commission shall provide assistance at the request of local agencies and shall coordinate that assistance with the assistance provided by the Department of Permit Assistance, created pursuant to Section 15399.50 of the Government Code.

(d) As used in this section, an energy project is any project designed to produce, convert, or transmit energy as one of its primary functions.

**§ 25617. Legislative intent; diverse energy resources; development of diesel fuels**

(a) It is the intent of the Legislature to preserve diversity of energy resources, including diversity of resources used in electric generation facilities, industrial and commercial applications, and transportation.

(b) The commission shall, within the limits of available funds, provide technical assistance and support for the development of petroleum diesel fuels which are as clean or

cleaner than alternative clean fuels and clean diesel engines. That technical assistance and support may include the creation of research, development, and demonstration programs.

**§ 25618. Facilitating development and commercialization of ultra low- and zero-emission electric vehicles**

(a) The commission shall facilitate development and commercialization of ultra low- and zero-emission electric vehicles and advanced battery technologies, as well as development of an infrastructure to support maintenance and fueling of those vehicles in California. Facilitating commercialization of ultra low- and zero-emission electric vehicles in California shall include, but not be limited to, the following:

(1) The commission may, in cooperation with county, regional, and city governments, the state's public and private utilities, and the private business sector, develop plans for accelerating the introduction and use of ultra low- and zero-emission electric vehicles throughout California's air quality nonattainment areas, and for accelerating the development and implementation of the necessary infrastructure to support the planned use of those vehicles in California. These plans shall be consistent with, but not limited to, the criteria for similar efforts contained in federal loan, grant, or matching fund projects.

(2) In coordination with other state agencies, the commission shall seek to maximize the state's use of federal programs, loans, and matching funds available to states for ultra low- and zero-emission electric vehicle development and demonstration programs, and infrastructure development projects.

(b) Priority for implementing demonstration projects under this section shall be directed toward those areas of the state currently in a nonattainment status with federal and state air quality regulations.

**§ 25619. Solar energy system**

(a) The commission shall develop a grant program to offset a portion of the cost of eligible solar energy systems. The goals of the program are all of the following:

(1) To make solar energy systems cost competitive with alternate forms of energy.

(2) To provide support for electricity storage capabilities in solar electric applications to facilitate enhanced reliability in the event of a power outage.

(3) To encourage the purchase by California residents of California-made solar systems.

(b)(1) The grant for an eligible solar energy system shall be based on either the performance of, or the type of, the solar energy system, as the commission determines, and the amount of the grant shall not exceed seven hundred fifty dollars (\$750). Except as provided in paragraph (2), if a grant is awarded pursuant to this section for an eligible solar energy system that produces electricity, no grant shall be made for that system from any other grant program administered by the commission.

(2) An applicant who receives a grant for a photovoltaic solar energy system from another program administered by the commission, may also receive a grant for that system pursuant to this section, if all of the following conditions are met:

(A) The system will accomplish the purpose specified in paragraph (3) of subdivision (a).

(B) The system is an eligible solar energy system.

(C) The system includes adequate battery storage, as determined by the commission.

(c) Purchasers, sellers, owner-builders, or owner-developers of the solar energy system may apply for a grant under this section. An owner-builder or owner-developer of a new single-family dwelling on which a system is installed may elect not to apply for a grant on a solar energy system installed on a new single-family dwelling. If an owner-builder or owner-developer of a new single-family dwelling on which a system is installed elects not to apply for the grant for a solar energy system, the purchaser of the dwelling may apply for the grant. The seller, owner-builder, or owner-developer shall reflect the amount of the grant received on the purchaser's bill of sale.

(d) The commission shall develop and adopt guidelines to provide appropriate consumer protection under the grant program and to govern other aspects of the grant program. The guidelines shall be adopted at a publicly noticed meeting and all interested parties shall be provided an opportunity to comment either orally or in writing. Not less than 30 days notice shall be provided for the public meeting. Subsequent substantive changes to adopted guidelines shall be adopted by the commission at a public meeting upon written notice to the public of not less than 10 days. The guidelines adopted pursuant to this subdivision are not subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

(e) The commission shall require installers of solar energy systems funded through grants under this section to be properly licensed to do so by the Contractors' State License Board. This requirement does not apply to the owner of a single-family dwelling who installs a solar energy system on his or her single-family dwelling.

(f) The award of a grant pursuant to this section is subject to appeal to the commission upon a showing that factors other than those described in the guidelines adopted by the commission were applied in making the award. Any action taken by an applicant to apply for, or become or remain eligible to receive an award, including satisfying conditions specified by the commission, does not constitute the rendering of goods, services, or a direct benefit to the commission. Awards made pursuant to this section are not subject to any repayment requirements of Chapter 7.4 (commencing with Section 25645).

(g) For the purposes of this section, the following terms have the following meanings:

(1) "Cost" includes equipment, installation charges, and all components necessary to carry out the intended use of the system if those components are an integral part of the system. In the case of a system that is leased, "cost" means the principal recovery portion of all lease payments scheduled to be made during the full term of the lease, which is

the cost incurred by the taxpayer in acquiring the solar energy system, excluding interest charges and maintenance expenses.

(2)(A) "Eligible solar energy system" means any new, previously unused solar energy device whose primary purpose is to provide for the collection, conversion, transfer, distribution, storage, or control of solar energy for water heating or electricity generation, and that meets applicable standards and requirements imposed by state and local permitting authorities, including, but not limited to, the National Electric Code. Eligible solar energy systems for water heating purposes shall be certified by the Solar Rating and Certification Corporation (SRCC) or any other nationally recognized certification agency that certifies complete systems. Major components of eligible solar energy systems for electricity generation shall be listed by a certified testing agency, such as the Underwriters Laboratory. In the absence of certification, major components of eligible solar energy systems for electricity generation shall comply with specifications adopted by the commission.

(B) "Eligible solar energy system" does not include any of the following:

(i) Wind energy devices that produce electricity or provide mechanical work.

(ii) Additions to or augmentation of existing solar energy systems.

(iii) A device that produces electricity for a structure unless the device is interconnected and operates in parallel with the electric grid.

(C) Eligible solar energy systems shall have a warranty of not less than three years.

(3) "Installed" means placed in a functionally operative state.

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

## **CHAPTER 7.1. PUBLIC INTEREST ENERGY RESEARCH, DEMONSTRATION, AND DEVELOPMENT PROGRAM**

### **§ 25620. Legislative findings and declarations**

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 this chapter.

(d) It is in the best interest of the people of California for the commission to positively contribute to the overall economic climate of the state within the roles and responsibilities of the commission as defined by statute, regulation, and other official government authority, including, but not limited to, providing economic benefits to California-based entities.

**§ 25620.1. Development, implementation, and administration of program; contents; goals; portfolio approach; award**

(a) The commission shall develop, implement, and administer the Public Interest Research, Development, and Demonstration Program that 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. The commission shall administer the program consistent with the policies of this chapter.

(b) The general goal of the program is to develop, and help bring to market, energy technologies that provide increased environmental benefits, greater system reliability, and lower system costs, and that provide tangible benefits to electric utility customers through the following investments:

(1) Advanced transportation technologies that reduce air pollution and greenhouse gas emissions beyond applicable standards, and that benefit electricity and natural gas ratepayers.

(2) Increased energy efficiency in buildings, appliances, lighting, and other applications beyond applicable standards, and that benefit electric utility customers.

(3) Advanced electricity generation technologies that exceed applicable standards to increase reductions in greenhouse gas emissions from electricity generation, and that benefit electric utility customers.

(4) Advanced electricity technologies that reduce or eliminate consumption of water or other finite resources, increase use of renewable energy resources, or improve transmission or distribution of electricity generated from renewable energy resources.

(c) To achieve the goals established in subdivision (b), the commission shall adopt a portfolio approach for the program that does all of the following:

(1) Effectively balances the risks, benefits, and time horizons for various activities and investments that will provide tangible energy or environmental benefits for California electricity customers.

(2) Emphasizes innovative energy supply and end use technologies, focusing on their reliability, affordability, and environmental attributes.



(3) Includes projects that have the potential to enhance transmission and distribution capabilities.

(4) Includes projects that have the potential to enhance the reliability, peaking power, and storage capabilities of renewable energy.

(5) Demonstrates a balance of benefits to all sectors that contribute to the funding under Section 399.8 of the Public Utilities Code.

(6) Addresses key technical and scientific barriers.

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

(8) Ensures that prior, current, and future research not be unnecessarily duplicated.

(9) Provides for the future market utilization of projects funded through the program.

(10) Ensures an open project selection process and encourages the awarding of research funding for a diverse type of research as well as a diverse award recipient base and equally considers research proposals from the public and private sectors.

(11) Coordinates with other related research programs.

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

## **§ 25620.2. Program criteria; administration; regulations**

(a) To ensure the efficient implementation and administration of the Public Interest Research, Development, and Demonstration 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.

(b) The commission shall adopt regulations to implement the program, 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 commission procedures.

(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 commission procedures.

(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, 2012, unless a later enacted statute deletes or extends that date. However, after January 1, 2012, the commission is not required to repeat any procedural step in adopting a regulation that has been completed before January 1, 2012, using the procedures specified in this subdivision.

**§ 25620.3. Commission awards**

(a) The commission may, consistent with the requirements of this chapter, provide awards to any individual or entity for planning, implementation, and administration of projects or programs selected pursuant to Section 25620.5.

(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.

(c) The commission may establish multiparty agreements. In a multiparty agreement, the commission may be a signatory to a common agreement among two or more parties. These agreements include, but are not limited to, cofunding, leveraged research, collaborations, and membership arrangements. If the commission enters into these agreements, it shall be a party to these agreements and may share in the roles, responsibilities, risks, investments, and results.

(d) The commission may issue awards that include the ability to make advance payments to prime contractors, to enable them to make advance payments to a subcontractor that is a federal agency, national laboratory, or state entity, on the condition that the subcontract is binding and enforceable and includes specific performance milestones.

(e) The commission may issue awards that include the ability to assign tasks on a work authorization basis.

(f) Prior to making any award pursuant to this chapter for a research, development, or demonstration program or project, the commission shall identify the expected costs and any qualitative or quantitative benefits of the proposed program or project.

#### **§ 25620.4. Intellectual property; benefits accruing to state**

(a) To the extent that intellectual property is developed under this chapter, an equitable share of rights in the intellectual property or in the benefits derived therefrom shall accrue to the State of California.

(b) The commission may determine what share, if any, of the intellectual property, or the benefits derived therefrom, shall accrue to the state. The commission may negotiate sharing mechanisms for intellectual property or benefits with award recipients.

#### **§ 25620.5. Application for awards; process; agreements**

(a) The commission may solicit applications for awards, using a sealed competitive bid, competitive negotiation process, commission-issued intradepartmental master agreement, the methods for selection of professional services firms set forth in Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, interagency agreement, single source, or sole source method. When scoring teams are convened to review and score proposals, the scoring teams may include persons not employed by the commission, as long as employees of the state constitute no less than 50 percent of the membership of the scoring team. A person participating on a scoring team may not have any conflict of interest with respect to the proposal before the scoring team.

(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 project 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 interagency agreements.

(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 shall be reasonable and the commission may only enter into a single source agreement with a particular party if the commission determines that it is in the state's best interests.

(f) The commission, in accordance with subdivision (g) and in consultation with the Department of General Services, may provide awards on a sole source basis when the cost to the state is reasonable and 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) A competitive solicitation would frustrate obtaining necessary information, goods, or services in a timely manner.

(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 60 days prior to taking an action pursuant to subdivision (f), notifies the Joint Legislative Budget Committee and the relevant policy committees in both houses of the Legislature, 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 60 days from the date of notification required by paragraph (1).

(h) The commission shall give priority to California-based entities in making awards pursuant to this chapter.

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

For purposes of this Section and Section 25620, "California-based entity" means either of the following:

A corporation or other business form organized for the transaction of business that has its headquarters in California and manufactures in California the product that qualifies for the incentive or award, or a corporation or other business form organized for the transaction of business that has an office for the transaction of business in California and substantially manufactures in California the product that qualifies for the incentive or award, or substantially develops within California the research that qualifies for the incentive or award, as determined by the agency issuing the incentive or award.

#### **§ 25620.6. Insurance coverage**

The commission, in consultation with the Department of General Services, may purchase insurance coverage necessary to implement an award. Funding for the purchase of insurance may be made from money in the Public Interest Research, Development, and Demonstration Fund created pursuant to Section 384 of the Public Utilities Code.

#### **§ 25620.7. Technical and administrative services support**

(a) The commission may contract for, or through interagency agreement obtain, technical, scientific, or administrative services or expertise from one or more entities, to support the program. Funding for this purpose shall be made from money in the Public Interest Research, Development, and Demonstration Fund.

(b) The commission may select the services or expertise described in subdivision (a), pursuant to Section 25620.5. In the event that contracts or interagency agreements have been made to multiple entities and their subcontractors for similar purposes, the commission may select from among those entities the particular expertise needed for a specified type of work. Selection of the particular expertise may be based solely on a review of qualifications, including the specific expertise required, availability of the expertise, or access to a resource of special relevance to the work, including, but not limited to, a database, model, technical facility, or a collaborative or institutional affiliation that will expedite the quality and performance of the work.

#### **§ 25620.8. Annual reports on awards**

The commission shall prepare and submit to the Legislature an annual report, not later than March 31 of each year, on awards made pursuant to this chapter and progress toward achieving the goals set forth in Section 25620.1. The report shall include information on the names of award recipients, the amount of awards, and the types of projects funded, an evaluation of the success of funded projects, and recommendations for improvements in the program. The report shall set forth the actual costs of programs or projects funded by the commission, the results achieved, and how the actual costs and results compare to the expected costs and benefits. The commission shall establish procedures for protecting confidential or proprietary information and shall consult with all interested parties in the preparation of the annual report.

**§ 25620.10. Eligible distributed generation system**

(a) The commission shall develop and implement a grant program to offset a portion of the costs of eligible distributed generation systems.

(b) A grant for an eligible distributed generation system shall be based on either the performance or type of distributed generation system, as determined by the commission. The amount of the grant shall not exceed the lesser of 10 percent of the costs of the eligible distributed generation system or two thousand dollars (\$2,000).

(c) An applicant who receives a grant for an eligible distributed generation system from another program administered by the commission may also receive a grant for that system pursuant to this section if the system possesses adequate black-start capability, as determined by the commission.

(d) Purchasers, sellers, owner-builders, or owner-developers of the eligible distributed generation system may apply for a grant under this section. If the owner-developer or owner-builder of the property on which a system is installed elects to not apply for a grant under this section, the purchaser of the property may apply for the grant. The seller, owner-builder, or owner-developer shall reflect the amount of the grant received on the purchaser's bill of sale.

(e) The commission shall develop and adopt guidelines to provide appropriate consumer protection under the grant program and to govern other aspects of the grant program, which shall be made available to the public. Not less than 30 days' notice shall be provided for a public meeting to adopt the guidelines. Public meetings to adopt subsequent substantive guideline changes require written public notice of not less than 10 days. The guidelines adopted pursuant to this subdivision are not subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) The commission shall require installers of eligible distributed generation systems funded through grants under this section to be properly licensed to do so by the Contractors' State License Board.

(g) The award of a grant pursuant to this section is subject to appeal to the commission upon a showing that factors other than those adopted by the commission were applied in making the award. Any action taken by an applicant to apply for, or become or remain eligible to receive a grant award, including satisfying conditions specified by the commission, does not constitute the rendering of goods, services, or a direct benefit to the

commission. Awards made pursuant to this section are not subject to any repayment requirements of Chapter 7.4 (commencing with Section 25645).

(h) Eligible distributed generation systems shall have a warranty of not less than three years.

(i) For purposes of this section, the following terms have the following meanings:

(1) "Black-start capability" means the capability to provide electricity to the customer in the event of an outage.

(2) "Cost" includes equipment, installation charges and all components necessary to carry out the intended use of the system if those components are an integral part of the system. In the case of a system that is leased, "cost" means the principal recovery portion of all lease payments scheduled to be made during the full term of the lease, which is the costs incurred by the customer in acquiring the distributed generation system, excluding interest charges and maintenance expenses.

(3) "Distributed generation" means any onsite generation, interconnected and operating in parallel with the electricity grid, that is used solely to meet onsite electric load.

(4) "Eligible distributed generation system" means any new, previously unused distributed generation system, interconnected and operating in parallel with the electricity grid, certified by the commission to provide environmental and system reliability benefits equal to or greater than the following specifications:

(A) Forty percent total fuel-to-energy conversion efficiency for any nonrenewable fuel system.

(B) Thirty-five percent total fuel-to-energy conversion efficiency for any renewable fuel system.

(C) Emission of oxides of nitrogen and any other applicable criteria pollutants that equal or exceed Best Achievable Control Technology (BACT) for natural gas fired central station powerplants. The State Air Resources Board shall, in consultation with the commission, prepare and update specifications for those emissions and other applicable criteria pollutants.

(D) Ninety percent total system reliability.

(5) Potentially certifiable technologies include all of the following:

(A) Microcogeneration.

(B) Gas turbines.

(C) Fuel cells.

(D) Electricity storage technologies in systems not eligible for grants under Section 25619.

(E) Reciprocating internal combustion engines.

(6) "Installed" means placed in a functionally operative state.

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

**§ 25620.11 Advisory board; recommendations regarding programs and projects selected for funding**

(a) The commission shall regularly convene an advisory board that shall make recommendations to guide the commission's selection of programs and projects to be funded under this chapter. The advisory board shall include as appropriate, but not be limited to, representatives from the Public Utilities Commission, consumer organizations, environmental organizations, and electrical corporations subject to the funding requirements of Section 381 of the Public Utilities Code.

(b) Three members of the Senate, appointed by the Senate President Pro Tempore, and three members of the Assembly, appointed by the Speaker of the Assembly, may meet with the advisory board and participate in its activities to the extent that such participation is not incompatible with their respective positions as Members of the Legislature.

**§ 25620.15. Policy and intent regarding use of public funds for energy related public interest research, development, and demonstration programs; transfer of moneys collected for these purposes to Public Interest Research, Development, and Demonstration Fund; award of funds to electrical corporations**

(a) In order to ensure that prudent investments in research, development, and demonstration of energy efficient technologies continue to produce substantial economic, environmental, public health, and reliability benefits, it is the policy of the state and the intent of the Legislature that funds made available, upon appropriation, for energy related public interest research, development, and demonstration programs shall be used to advance science or technology that is not adequately provided by competitive and regulated markets.

(b) Notwithstanding any other provision of law, money collected for public interest research, development, and demonstration pursuant to Section 399.8 of the Public Utilities Code shall be transferred to the Public Interest Research, Development, and Demonstration Fund. Money collected between January 1, 2007, and January 1, 2012, shall be used for the purposes specified in this chapter.

(c) In lieu of the Public Utilities Commission retaining funds authorized pursuant to Section 381 of the Public Utilities Code for investments made by electrical corporations in public interest research, development, and demonstration projects for transmission and distribution functions, up to 10 percent of the funds transferred to the commission pursuant to subdivision (b) shall be awarded to electrical corporations for public interest research, development, and demonstration projects for transmission and distribution functions consistent with the policies and subject to the requirements of this chapter.



## **CHAPTER 7.3. SMALL BUSINESS ENERGY TECHNOLOGY LOAN PROGRAM**

### **§ 25630. Alternative technology energy projects for small businesses; funding; royalty agreements; loan repayment**

(a) The commission shall establish a small business energy assistance low-interest revolving loan program to fund the purchase of equipment for alternative technology energy projects for California's small businesses.

(b) The loan program may use royalty agreements, as provided in Chapter 7.4 (commencing with Section 25645), to replenish program funds beyond the amount of loan repayment. Loan repayments, interest, and royalties shall be deposited in the Energy Technologies Research, Development, and Demonstration Account. The interest rate shall be determined as provided in subdivision (g) of Section 25647.

## **CHAPTER 7.4. ENERGY RESEARCH, DEVELOPMENT, DEMONSTRATION, AND COMMERCIALIZATION PROGRAMS**

### **§ 25645. Short title**

This chapter shall be known as, and may be cited as, the Energy Research, Development, Demonstration, and Commercialization Act of 1993.

### **§ 25646. Legislative findings and declarations**

The Legislature hereby finds and declares all of the following:

(a) The state's growing population creates an increasing need to strengthen its infrastructure to achieve adequate economically and environmentally acceptable energy services systems.

(b) The condition of the state's economy makes it necessary to stretch the effective use of funds provided by state and federal government for energy research, development, demonstration, and commercialization projects by substituting loans for contract funding where possible, by requiring at least 50 percent cofunding of contract and grant-funded projects, and by requiring repayment of contract and grant funds when the cofunded work has become financially rewarding for the recipient.

(c) The placement of provisions relating to the administration of energy research, development, demonstration, and commercialization projects not otherwise provided for by statute in one comprehensive chapter enhances the ability of the commission to use the funds available for those projects with the greatest effectiveness, administrative efficiency, and likelihood of repayment.

(d) California's continued leadership in new energy technology research, development, and demonstration projects is a business and employment asset to the state, and is encouraged through effective partnership between the public and private sectors. New energy

technologies have inherent financial and technical risks which limit necessary and important progress without state involvement.

(e) Energy sources and efficiency devices can be developed and offered on the market which provide energy services at lower competitive cost to the energy user, increase energy independence and reliability, make sustainable use of California's indigenous resources, provide a healthier environment, and rebuild the state's economy through employment opportunities in new technology businesses.

(f) Loans are an efficient use of funds, allowing the state to recoup the loan funds, thus promoting continuity of the state's commitment to energy research, development, demonstration, and commercialization programs.

(g) Research contracts and grants to small businesses, with repayment features, allows the state to recoup and replenish funds from financially successful energy projects and inventions, thus providing for the recycling of funds for energy technology advancement.

(h) Grants and loans provide small businesses with access to energy research, development, demonstration, and commercialization cofunding, while providing the state with a mechanism to cofund and administer small business projects with efficiency.

#### **§ 25647. Definitions**

For purposes of this chapter:

(a) "Alternative source of energy" includes, but is not limited to, geothermal power, hydroelectric power equal to or less than 5 megawatts, photovoltaics, wind, biomass, cogeneration, solar thermal energy, fuel cells, alternative fuels, electric vehicles, low-emission vehicles, advanced energy storage, and energy efficiency and conservation measures.

(b)(1) "Award repayment or program reimbursement agreement," including a "royalty agreement," as specified in paragraph (1) of subdivision (c), means a method used at the discretion of the commission to determine and establish the terms of replenishment of program funds, including, at a minimum, repayment of the award to provide for further awards under this chapter. The award repayment or program reimbursement agreement may provide that payments be made to the commission when the award recipient, affiliate of the award recipient, or third party receives, through any kind of transaction, an economic benefit from the project, invention, or product developed, made possible, or derived, in whole or in part, as a result of the award.

(2) An award repayment or program reimbursement agreement shall specify the method to be used by the commission to determine and establish the terms of repayment and reimbursement of the award.

(3) The commission may require due diligence of the award recipient and may take any action that is necessary to bring the project, invention, or product to market.

(4) Subject to the confidentiality requirements of Section 2505 of Title 20 of the California Code of Regulations, the commission may require access to financial, sales, and production information, and to other agreements involving transactions of the award recipient,

affiliates of the award recipient, and third parties, as necessary, to ascertain the royalties or other payments due the commission.

(c)(1) A "royalty agreement" is an award repayment or program reimbursement agreement and is subject to all of the following conditions:

(A) The royalty rate shall be determined by the commission and shall not exceed 5 percent of the gross revenue derived from the project, invention, or product.

(B) The royalty agreement shall specify the method to be used by the commission to determine and establish the terms of payment of the royalty rate.

(C) The commission shall determine the duration of the royalty agreement and may negotiate a collection schedule.

(D) The commission, for separate consideration, may negotiate and receive payments to provide for an early termination of the royalty agreement.

(2)(A) The commission may require that the intellectual property developed, made possible, or derived, in whole or in part, as a result of the award repayment or program reimbursement agreement, revert to the state upon a default in the terms of the award repayment or program reimbursement agreement or royalty agreement.

(B) The commission may require advance notice of any transaction involving intellectual property rights.

(d) "Loan" means the contractual financing of a qualifying project under a program in which all of the following occur:

(1) The recipient of the loan repays the loan amount, plus accrued interest.

(2) The loan applicant is required to demonstrate the financial capability to repay the loan regardless of the commercial success of the project.

(3) The loan is required to be secured by appropriate collateral regardless of the commercial success of the project.

(4) Loans are generally provided to those projects using energy technologies that are relatively close to full commercialization, include demonstration or commercialization of the technologies, and have a high probability of generating revenue or other economic benefit sufficient to repay the loan and the accrued interest within 10 years from the performance determination date of the contract. A royalty agreement may be used to replenish program funds beyond the amount of the loan repayment.

(e) "Research contract" means a contractual award made to a qualifying project under a program in which all of the following occur:

(1) The award includes an award repayment or program reimbursement agreement.

(2) The award repayment or program reimbursement agreement specifies the method to be used by the commission in determining and establishing the terms of repayment and reimbursement of the award.

(3) Research contracts are provided for those projects that have a moderate to low probability of generating revenue or other economic benefit within 15 years from the performance determination date of the contract.

(f) "Grant" means a grant award made to a small business certified by the Office of Small and Minority Business of the Department of General Services, or which meets the requirements of Part 121.601 of Title 13 of the Code of Federal Regulations, to cofund a qualifying project under a program in which all of the following occur:

(1) The award includes an award repayment or program reimbursement agreement.

(2) The award repayment or program reimbursement agreement specifies the method to be used by the commission in determining and establishing the terms of repayment and reimbursement.

(g) "Accrued interest" means the cumulative interest on the outstanding balance of a loan, research contract, or grant. The commission shall specify in the terms of the award the manner in which the commission will compute the interest. Notwithstanding any other provision of law, the commission shall, unless it determines that the purposes of this chapter would be better served by establishing an alternative interest rate schedule, periodically set interest rates on the loans, research contracts, and grants based on surveys of existing financial markets and at rates not lower than the Pooled Money Investment Account. Interest shall begin accruing upon the date of first drawdown of funds.

(h) "Performance determination date" means the date at which the commission renders a written decision on the success of the project in meeting the goals and objectives established in the loan, research contract, or grant.

#### **§ 25648. Loans; research contract and grant awards; selection procedure**

(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, including, but not limited to 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.

**§ 25648.1. Recommendations; solicitation**

In selecting projects and types of technologies for funding, the commission shall actively solicit recommendations from interested parties, including, but not limited to, representatives of private industry, small businesses, research organizations, public utilities, independent energy producers, local governments, and the federal government.

**§ 25648.2. Loans and research contract or grant funding; limits**

(a) Any loan that is made shall not be greater than 80 percent of the total project cost. The commission may provide a loan which exceeds that limit if it determines, through a four-fifths vote of the commission, that a major state contribution is essential to ensure project success.

(b) The commission's contribution to any research contract or grant funding shall not be greater than 50 percent of the total project cost.

**§ 25648.4. Chapter application**

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, chapter 7.1 (commencing with section 25620), and Chapter 7.8 (commencing with Section 25680).

**§ 25648.5. Biennial report; project summary**

The commission shall include a summary of projects financed under this chapter in its biennial report, or one of the subsidiary documents to the biennial report

**§ 25648.6. Chapter duration**

The chapter shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2005, deletes or extends that date.

**CHAPTER 7.5. AGRICULTURAL INDUSTRY ENERGY PROGRAM**

**§ 25650. Energy technologies research, development, and demonstration account**

(a) All funds from loan repayments and interest that become due and payable for loans made by the commission pursuant to an agriculture energy assistance program shall be deposited in the Energy Technologies Research, Development, and Demonstration Account, and shall be available for loans and technical assistance pursuant to this section, upon appropriation in the Budget Act. Up to 20 percent of the annual appropriation may be available for technical assistance.

(b) Loans made pursuant to this section shall be for the purchase of equipment and services for agriculture energy efficiency and development demonstration projects, including, but not limited to, production of methane or ethanol, use of wind, photovoltaics, and other sources of energy for irrigation pumping, application of load management conservation techniques, improvements in water pumping and pressurization techniques, and conservation tillage techniques.

(c) The loans shall contain terms that provide for a repayment period of not more than seven years and for interest at a rate that is not less than 2 percent below the rate earned by moneys in the Pooled Money Investment Account.

## **CHAPTER 7.6. THE CLEAN COAL ACCOUNT [Repealed]**

**§§ 25675 to 25677. Repealed**

## **CHAPTER 7.7. CLEAN FUELS ACT**

**§ 25678. Grant program providing incentive for liquid fuels fermented in state from biomass and biomass-derived resources**

The commission shall establish a grant program which provides a forty cent (\$0.40) per gallon production incentive for liquid fuels fermented in this state from biomass and biomass-derived resources produced in this state. Eligible liquid fuels include, but are not limited to, ethanol, methanol, and vegetable oils. Eligible biomass resources include, but are not limited to, agricultural products and byproducts, forestry products and byproducts, and industrial wastes. The commission shall adopt rules and regulations necessary to implement the program. Prior to determining an applicant eligible for participation in the production incentive program, the commission shall find, among other things, that the production techniques employed will lead to a net increase in the amount of energy available for consumption.

**§ 25679. Application for grant**

Applicants for a grant under this chapter shall submit an application on a form prescribed by the commission which is responsible for administration of the program.

## **CHAPTER 7.8. ENERGY TECHNOLOGIES RESEARCH, DEVELOPMENT, AND DEMONSTRATION**

### **§ 25680. Short title**

This chapter shall be known and may be cited as the Rosenthal-Naylor Act of 1984.

### **§ 25681. Legislative findings and declarations**

The Legislature hereby finds and declares all of the following:

(a) Additional energy supplies will be needed in the near future, in order to serve an increasing number of citizens.

(b) Energy sources should be developed which provide power at the lowest competitive cost to the ratepayer, which increase energy independence and system reliability through use of California's indigenous resources, which provide environmental benefits, and which build the state's economy.

(c) California's continued leadership in new energy technology research, development, and demonstration projects requires an active partnership between the public and private sectors, as well as flexible public financing tools which are responsive to changing technological events and commercialization impediments.

(d) The use of California's indigenous energy resources and alternative energy technologies can be made more efficient and cost-effective through increased research, development, and demonstration and can contribute to stabilizing and potentially reducing near-term energy costs for industry, agriculture, local governments, and individual citizens.

(e) Renewable energy sources can help lower the cost of energy if research, development, and demonstration efforts emphasize shortrun and longrun cost effectiveness.

(f) Advanced energy technologies have inherent financial and technical risks which limit necessary and important research, development, and demonstration in those areas without state involvement.

(g) State government can accelerate widespread market acceptance of new energy technologies by providing assistance to a limited number of projects with the intent of overcoming impediments, demonstrating technologies, and offering successful models for the private sectors to duplicate on its own.

(h) Increasing the efficiency and cost-effectiveness of existing and new energy sources will provide benefits to California citizens beyond energy costs. It will contribute to reduction of the state's dependence on foreign energy sources, stimulate the state economy, make our energy system more resilient and reliable, and continue to provide a healthier environment for our citizens.



(i) Loans offer an efficient, effective means of providing an economic incentive with distinct limits to stimulate energy project development for a broader range of market (end-use) applications, since the funds can be used more than once.

(j) Loans present a more efficient use of funds, allowing the state to achieve more from the original budget allocation, and to meet goals and objectives established in long-term energy policies approved in each fiscal year budget.

(k) Loans offer the state a mechanism to benefit from cofunding an energy project that encounters initial high capital costs followed by considerable net revenues use once the project is in operation.

(l) Loans strengthen the continuity of the state government's commitment from year to year and maintain the ability to share the costs of project development.

**§ 25682. Definitions**

For purposes of this chapter:

(a) "Account" means the Energy Technologies Research, Development, and Demonstration Account.

(b) "Alternative sources of energy" includes, but is not limited to, geothermal, hydroelectric power equal to or less than 5 megawatts, photovoltaics, wind, biomass, cogeneration, solar thermal, fuel cells, and energy efficiency measures.

(c)(1) "Award repayment or program reimbursement agreement," including a "royalty agreement," as specified in paragraph (1) of subdivision (d), means a method used at the discretion of the commission to determine and establish the terms of replenishment of program funds, including, at a minimum, repayment of the award to provide for further awards under this chapter. The award repayment or program reimbursement agreement may provide that payments be made to the commission when the award recipient, affiliate of the award recipient, or third party receives, through any kind of transaction, an economic benefit from the project, invention, or product developed, made possible, or derived, in whole or in part, as a result of the award.

(2) An award repayment or program reimbursement agreement shall specify the method to be used by the commission to determine and establish the terms of repayment and reimbursement of the award.

(3) The commission may require due diligence of the award recipient and may take any action that is necessary to bring the project, invention, or product to market.

(4) Subject to the confidentiality requirements of Section 2505 of Title 20 of the California Code of Regulations, the commission may require access to financial, sales, and production information, and to other agreements involving transactions of the award recipient, affiliates of the award recipient, and third parties, as necessary, to ascertain the royalties or other payments due the commission.

(d)(1) A "royalty agreement" is an award repayment or program reimbursement agreement and is subject to all of the following conditions:

(A) The royalty rate shall be determined by the commission and shall not exceed 5 percent of the gross revenue derived from the project, invention, or product.

(B) The royalty agreement shall specify the method to be used by the commission to determine and establish the terms of payment of the royalty rate.

(C) The commission shall determine the duration of the royalty agreement and may negotiate a collection schedule.

(D) The commission, for separate consideration, may negotiate and receive payments to provide for an early termination of the royalty agreement.

(2)(A) The commission may require that the intellectual property developed, made possible, or derived, in whole or in part, as a result of the award repayment or program reimbursement agreement, revert to the state upon a default in the terms of the award repayment or program reimbursement agreement or royalty agreement.

(B) The commission may require advance notice of any transaction involving intellectual property rights.

(e) "Loan" means the contractual financing of a qualifying project under the program, and in which the recipient of the loan repays the loan amount, plus accrued interest regardless of the commercial success of the project. Loans are generally to be provided to those projects that include energy technology systems that are relatively close to full commercialization, represent demonstrations of the technology, and have high probability of generating revenue or other economic benefit sufficient to repay the loan and the accrued interest within 10 years from the performance determination date of the contract. A royalty agreement may be used to replenish program funds beyond the amount of the loan repayment.

(f)(1) "Repayable research contract" means the contractual award made to a qualifying project under the program, and which is provided to those projects that are in the latter stages of technology development and have a moderate probability of generating revenue or other economic benefit within 15 years from the performance determination date of the contract.

(2) The repayable research contract shall include an award repayment or program reimbursement agreement.

(3) The repayable research contract shall specify the method to be used by the commission in determining and establishing the terms of repayment and reimbursement of the award.

(g)(1) "Primary research contract" means the contractual award made to a qualifying project under the program, and which is provided to those projects that are in the early stages of technology development and have a low probability of generating revenue or other economic benefit within 15 years from the performance determination date of the contract.

(2) The primary research contract shall include an award repayment or program reimbursement agreement.

(3) The primary research contract shall specify the method to be used by the commission in determining and establishing the terms of repayment and reimbursement of the award.

(h) "Performance determination date" means the date at which the commission renders a written decision on the success of the project in meeting the goals and objectives established in the contract for the project.

**§ 25683. Energy technologies research, development, and demonstration account**

(a) There is hereby created in the General Fund, to be administered by the commission, the Energy Technologies Research, Development, and Demonstration Account for the purpose of carrying out this chapter.

(b) The Controller shall deposit in the account all money appropriated to the account by the Legislature, plus accumulated interest on that money, and money from loan, research contract, and grant repayments and royalties, and loan, research contract, and grant interest repayments for use by the commission for financing energy research, demonstration, development, and commercialization projects funded under this chapter, Chapter 7.3 (commencing with Section 25630), and Chapter 7.4 (commencing with Section 25645). Funds shall be identified in accordance with the programmatic source of the funds.

**§ 25684. Loans; research contracts; selection procedure**

(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.

**§ 25685. Energy technology projects**

The energy technology projects to be considered for funding under this chapter shall include, but are not limited to, all of the following:

(a) Low and medium temperature geothermal systems.

(b) Advance cogeneration systems.

(c) Fuel cells.

(d) Coal combustion systems.

(e) Advanced oil or gas combustion systems.

(f) Methanol overfiring and coproduction.

(g) Transmission system efficiency and reliability.

(h) Photovoltaics.

(i) Biomass gasification system.

- (j) Low and medium BTU gas technologies for electric generation.
- (k) Other alternative energy technologies.

**§ 25686. Recommendations; solicitation**

The commission shall actively solicit recommendations from interested parties, including, but not limited to, representatives of private industry, small businesses, research organizations, public utilities, independent energy producers, local governments, and the federal government in selecting the kinds of technologies for funding.

**§ 25686.5. Allocation of funds**

At the commencement of each fiscal year, at least 70 percent of the money in the account shall be made available for loans or repayable research contracts for projects and the remainder shall be made available for primary research contracts funding under this chapter for that fiscal year. The commission may make less than 70 percent of the money in the account at the commencement of each fiscal year available for loans, or repayable research contracts, if it determines, through a four-fifths vote of the commission, that the public interest and objectives of this chapter will be better served through increased primary research contracts funding. In no instance, however, shall the amount of funds available for loans or repayable research contracts be less than 50 percent of the money in the account at the commencement of each fiscal year.

**§ 25686.8. Limits on loans and contract research funding**

Any loan made from the account shall not be greater than 80 percent of the total project cost. Any repayable research contract or primary research contracts funding shall not be greater than 50 percent of the total project cost. The commission may provide a loan which exceeds that limit if it determines, through a four-fifths vote of the commission, that a major state contribution is essential to ensure project success.

**§ 25687. Interest rates; loan repayment**

Notwithstanding any other provision of law, the commission shall unless it determines that the purposes of this chapter would be better served by establishing an alternative interest rate schedule, periodically set interest rates on the loans based on surveys of existing financial markets and at rates not lower than the Pooled Money Investment Account. Loans shall be repaid within 20 years from receipt of the funds, as determined by the commission.

**§ 25687.5. Funds available to local jurisdictions**

The commission shall make at least 10 percent of the funds in the account at the commencement of each fiscal year available to local jurisdictions. The commission may make less than 10 percent of the funds available for local jurisdictions, if it determines, through a four-fifths vote, that the public interest and the objectives of this chapter will be better served at a lower level.

**§ 25687.6. Individual projects funding limit**

Not more than 25 percent of the funds in the account at the commencement of each fiscal year shall be available for any individual project. However, the commission may make

more than 25 percent of the funds available for an individual project, if it determines, through a four-fifths vote, that the public interest and the objectives of this chapter will be better served at the higher level.

**§ 25687.7. Ineligible projects**

No projects that are eligible for funding under Chapter 6 (commencing with Section 3800) of Division 3 shall be eligible for funding under this chapter.

**§ 25688. Commission's report; inclusion of summary of projects**

The commission shall include a summary of projects financed under this chapter in its biennial report, or one of the subsidiary documents to the biennial report.

**§ 25690. Appropriations**

The sum of six million dollars (\$6,000,000) is hereby appropriated and transferred to the account, of which one million dollars (\$1,000,000), for the 1984-85 fiscal year, and five million dollars (\$5,000,000), for the 1985-86 fiscal year, shall be from the Energy Resources Programs Account in the General Fund, for use by the commission to carry out this chapter. In the event that all or part of the one million dollars (\$1,000,000) appropriation from the Energy Resources Programs Account for the 1984-85 fiscal year is unavailable, the balance of the appropriation shall be made from the General Fund, not to exceed one million dollars (\$1,000,000) from both sources during the 1984-85 fiscal year.

**§ 25690.5. Technical assistance, review and quality control of funded projects**

The commission shall provide technical assistance, review and quality control of projects funded under this chapter. Beginning July 1, 1985, and each fiscal year thereafter, funds for administering this chapter shall be appropriated in the Budget Act from the State Energy Resources Programs Account.

**§ 25692. Repayments; deposit**

(a) Notwithstanding any other provision of law, the commission shall deposit in the account any repayments, including equipment sales, interest, royalties, and loans, and contract funds appropriated to the commission for research, development, demonstration or commercialization of energy technologies. However, if repayments from equipment sales or contract funds were generated from a loan, research contract, or grant account which is still in existence, those repayments shall return to that specific loan, research contract, or grant account.

(b) The account shall be a revolving account with funds annually appropriated by the Legislature to the commission for disbursement over a three-year period. Additional funds, if necessary to carry out the purposes of this chapter, may be appropriated in the Budget Act.

**§ 25693. Duration of chapter**

This chapter shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2005, deletes or extends that date.

## CHAPTER 7.9. ENERGY TECHNOLOGY AND ENERGY CONSERVATION

### **§ 25695. Legislative findings and declaration**

In enacting this chapter, the Legislature hereby finds and declares all of the following:

(a) The development and commercialization of energy technologies and energy conservation is a vital element in meeting the state's energy needs.

(b) The continuing vitality of California's energy technology and energy conservation industry, as well as the maintenance of California's technological leadership in these energy systems, depends on the industry's ability to expand into new markets, including those in other countries. The expansion of California's energy technology and energy conservation industry into foreign markets will result in lower domestic prices, more stable growth, increased employment opportunities, and additional tax revenues.

(c) California's energy technology and energy conservation industry's entry into export markets is being inhibited by foreign-based competitors benefiting from extensive financial and technical support from their governments. Furthermore, small- to medium-sized energy firms are handicapped by high information costs and financial constraints.

(d) California-based energy technology and energy conservation firms seeking to expand into foreign markets can be substantially assisted by state efforts to disseminate international market data, foreign government regulatory information, and other material, and to provide technical assistance to facilitate export efforts.

(e) It is in the best interest of the state to increase the export of goods and services provided by California-based energy technology and energy conservation firms, particularly small- and medium-sized businesses, in a manner which coordinates with and augments existing private, state, and federal programs.

### **§ 25696. Export of technologies, products, and services to international markets; powers of commission to assist**

The commission, in cooperation with the California State World Trade Commission and the Trade and Commerce Agency, may assist California-based energy technology and energy conservation firms to export their technologies, products, and services to international markets.

The commission may, in coordination with the California State World Trade Commission, do all of the following:

(a) Conduct a technical assistance program to help California energy companies improve export opportunities and enhance foreign buyers' awareness of and access to energy technologies and services offered by California-based companies. Technical assistance activities may include, but are not limited to, an energy technology export information clearinghouse, a referral service, a trade lead service consulting services for financing, market evaluation, and legal counseling, and information seminars.

(b) Perform research studies and solicit technical advice to identify international market opportunities.

(c) Assist California energy companies to evaluate project or site-specific energy needs of international markets.

(d) Assist California energy companies to identify and address international trade barriers restricting energy technology exports, including unfair trade practices and discriminatory trade laws.

(e) Develop promotional materials in conjunction with California energy companies to expand energy technology exports.

(f) Establish technical exchange programs to increase foreign buyers' awareness of suitable energy technology uses.

(g) Prepare equipment performance information to enhance potential export opportunities.

(h) Coordinate activities with state, federal, and international donor agencies to take advantage of trade promotion and financial assistance efforts offered.

**§ 25696.5. Reimbursement of financial assistance; conditions; deposit**

(a) Every California-based energy technology and energy conservation firm awarded direct financial assistance pursuant to Section 25696 shall reimburse the commission for that assistance, when both of the following conditions have been met:

(1) The assistance was substantial and essential for the completion of a specific identifiable project.

(2) The resulting project is producing revenues.

(b) All moneys appropriated for purposes of this chapter and all moneys received by the commission as reimbursement under this section shall be deposited in the Energy Resources Programs Account and shall be available, when appropriated by the Legislature, for the purposes of this chapter.

**§ 25697. Conducting overseas trade missions, shows, and exhibits; consultation**

The commission shall consult with the California State World Trade Commission with respect to conducting overseas trade missions, trade shows, and trade exhibits. Consultation may include interagency agreements, cosponsorship, and memoranda of understanding for joint overseas trade activities.



## CHAPTER 8. ENERGY SHORTAGE CONTINGENCY PLANNING

### **§ 25700. Development of plans**

The commission shall, in accordance with the provisions of this chapter, develop contingency plans to deal with possible shortages of electrical energy or fuel supplies to protect public health, safety, and welfare.

### **§ 25701. Emergency load curtailment and energy distribution plans; preparation and submission by utilities, fuel wholesalers and manufacturers; governmental agencies**

(a) Within six months after the effective date of this division, each electric utility, gas utility, and fuel wholesaler or manufacturer in the state shall prepare and submit to the commission a proposed emergency load curtailment plan or emergency energy supply distribution plan setting forth proposals for identifying priority loads or users in the event of a sudden and serious shortage of fuels or interruption in the generation of electricity.

(b) The commission shall encourage electric utilities to cooperate in joint preparation of an emergency load curtailment plan or emergency energy distribution plan. If such a cooperative plan is developed between two or more electric utilities, such utilities may submit such joint plans to the commission in place of individual plans required by subdivision (a) of this section.

(c) The commission shall collect from all relevant governmental agencies, including, but not limited to, the Public Utilities Commission and the Office of Emergency Services, any existing contingency plans for dealing with sudden energy shortages or information related thereto.

### **§ 25702. Public hearings; review; submission of emergency plans to governor and legislature**

The commission shall, after one or more public hearings, review the emergency load curtailment program plans or emergency energy supply distribution plans submitted pursuant to Section 25701, and, within one year after the effective date of this division, the commission shall approve and recommend to the Governor and the Legislature plans for emergency load curtailment and energy supply distribution in the event of a sudden energy shortage. Such plans shall be based upon the plans presented by the electric utilities, gas utilities, and fuel wholesalers or manufacturers, information provided by other governmental agencies, independent analysis and study by the commission, and information provided at the hearing or hearings. Such plans shall provide for the provision of essential services, the protection of public health, safety, and welfare, and the maintenance of a sound basic state economy. Provision shall be made in such plans to eliminate wasteful, uneconomic, and unnecessary uses of energy in times of shortages and to differentiate curtailment of energy consumption by users on the basis of ability to accommodate such curtailments. Such plans shall also specify the authority of and recommend the appropriate actions of state and local governmental agencies in dealing with energy shortages.

**§ 25703. Certification of new facilities; review and revision of emergency plans**

Within four months after the date of certification of any new facility, the commission shall review and revise the recommended plans based on additional new capacity attributed to any such facility. The commission shall, after one or more public hearings, review the plans at least every five years from the approval of the initial plan as specified in Section 25702.

**§ 25704. Studies relating to potential energy shortages; recommendations**

The commission shall carry out studies to determine if potential serious shortages of electrical, natural gas, or other sources of energy are likely to occur and shall make recommendations to the Governor and the Legislature concerning administrative and legislative actions required to avert possible energy supply emergencies or serious fuel shortages, including, but not limited to, energy conservation and energy development measures, to grant authority to specific governmental agencies or officers to take actions in the event of a sudden energy shortage, and to clarify and coordinate existing responsibilities for energy emergency actions.

**§ 25705. Construction and use of emergency generating facilities; report**

If the commission determines that all reasonable conservation, allocation, and service restriction measures may not alleviate an energy supply emergency, and upon a declaration by the Governor or by an act of the Legislature that a threat to public health, safety, and welfare exists and requires immediate action, the commission shall authorize the construction and use of generating facilities under such terms and conditions as specified by the commission to protect the public interest.

Within 60 days after the authorization of construction and use of such generating facilities, the commission shall issue a report detailing the full nature, extent, and estimated duration of the emergency situation and making recommendations to the Governor and the Legislature for further energy conservation and energy supply measures to alleviate the emergency situation as alternatives to use of such generating facilities.

**CHAPTER 8.2. STRATEGIC FUEL RESERVE**

**§ 25720. Operation of a strategic fuel reserve; examination of feasibility**

(a) By January 31, 2002, the commission shall examine the feasibility, including possible costs and benefits to consumers and impacts on fuel prices for the general public, of operating a strategic fuel reserve to insulate California consumers and businesses from substantial short-term price increases arising from refinery outages and other similar supply interruptions. In evaluating the potential operation of a strategic fuel reserve, the commission shall consult with other state agencies, including, but not limited to, the State Air Resources Board.

(b) The commission shall examine and recommend an appropriate level of reserves of fuel, but in no event may the reserve be less than the amount of refined fuel that the commission estimates could be produced by the largest California refiner over a two week

period. In making this examination and recommendation, the commission shall take into account all of the following:

(1) Inventories of California-quality fuels or fuel components reasonably available to the California market.

(7) Current and historic levels of inventory of fuels.

(3) The availability and cost of storage of fuels.

(4) The potential for future supply interruptions, price spikes, and the costs thereof to California consumers and businesses.

(c) The commission shall evaluate a mechanism to release fuel from the reserve that permits any customer to contract at any time for the delivery of fuel from the reserve in exchange for an equal amount of fuel that meets California specifications and is produced from a source outside of California that the customer agrees to deliver back to the reserve within a time period to be established by the commission, but not longer than six weeks.

(d) The commission shall evaluate reserve storage space from existing facilities.

(e) The commission shall evaluate a reserve operated by an independent operator that specializes in purchasing and storing fuel, and is selected through competitive bidding.

(f)(1) Not later than January 31, 2002, the commission and the State Air Resources Board, in consultation with the other state and local agencies the commission deems necessary, shall develop and adopt recommendations for the Governor and Legislature on a California Strategy to Reduce Petroleum Dependence.

(2) The strategy shall include a base case forecast by the commission of gasoline, diesel, and petroleum consumption in years 2010 and 2020 based on current best estimates of economic and population growth, petroleum base fuel supply and availability, vehicle efficiency, and utilization of alternative fuels and advanced transportation technologies.

(3) The strategy shall include recommended statewide goals for reductions in the rate of growth of gasoline and diesel fuel consumption and increased transportation energy efficiency and utilization of nonpetroleum based fuels and advanced transportation technologies, including alternative fueled vehicles, hybrid vehicles, and high fuel efficiency vehicles.

(g) The studies required by this section shall be conducted in conjunction with any other studies required by acts enacted during the 2000 portion of the 1999-2000 Regular Session dealing with gasoline prices.

#### **§ 25721. Reports on findings and recommendations**

The commission shall report its findings and recommendations to the Governor, the Legislature, and the Attorney General by January 31, 2002. If the commission finds that it would be feasible to operate a strategic gas reserve to insulate California consumers and

businesses from substantial, short-term price increases arising from refinery outages or other similar supply interruptions, the commission shall request specific statutory authority and funding for establishment of a reserve.

### CHAPTER 8.3. STATE VEHICLE FLEET

**§ 25722. Development and adoption of fuel-efficiency specifications governing purchase of state motor vehicles and replacement tires; reduction of petroleum consumption; examination of state vehicle purchasing patterns and analysis of costs and benefits of reducing energy consumption; air pollution emission specifications governing state purchase state of passenger cars and light duty trucks; waiver from federal requirements**

(a) On or before January 31, 2003, the commission, the Department of General Services, and the State Air Resources Board, in consultation with any other state agency that the commission, the department, and the state board deem necessary, shall develop and adopt fuel-efficiency specifications governing the purchase by the state of motor vehicles and replacement tires that, on an annual basis, will reduce petroleum consumption of the state vehicle fleet to the maximum extent practicable and cost-effective.

(b) In developing the specifications, the commission and the department shall jointly conduct a study to examine state vehicle purchasing patterns, including the purchase of after market tires, and to analyze the costs and benefits of reducing the energy consumption of the state vehicle fleet by no less than 10 percent on or before January 1, 2005.

(c) The study shall include an analysis of all of the following topics:

- (1) Use of alternative fuels.
- (2) Use of fuel-efficient vehicles.
- (3) Costs and benefits of decreasing the size of the state vehicle fleet.
- (4) Reduction in vehicle trips and increase in use of alternative means of transportation.
- (5) Improved vehicle maintenance.

(6) Costs and benefits of using fuel-efficient tires relative to using retreaded tires, as described in the Retreaded Tire Program (Chapter 7 (commencing with Section 42400) of Part 3 of Division 30 of the Public Resources Code).

(7) The costs and benefits of purchasing high fuel efficiency gasoline vehicles, including hybrid electric vehicles, instead of flexible fuel vehicles.

(d) On or before January 31, 2003, and annually thereafter, the commission, the Department of General Services, and the State Air Resources Board, in consultation with any other state agency that the commission, the department, and the state board deem necessary, shall develop and adopt air pollution emission specifications governing the purchase

by the state of passenger cars and light-duty trucks that meet or exceed California's Ultra-Low Emission Vehicle (ULEV) standards for exhaust emissions (13 Cal. Code Regs. 1960.1).

(e) If the study described in subdivision (b) determines that lower cost measures exist that deliver petroleum reductions equivalent to applicable federal requirements governing the state purchase of passenger cars and light-duty trucks, the state shall pursue a waiver from those federal requirements.

**§ 25722.5. Development and adoption of standards for passenger cars and light-duty trucks; emergency vehicles; specifications and standards; review of vehicle fleet by state offices, agencies, and departments; use of alternative fuels; compilation and maintenance of information regarding nature of vehicles owned or leased; report to Legislature; applicability of section to University of California**

(a) In order to achieve the policy objectives set forth in Sections 25000.5 and 25722, the Department of General Services, in consultation with the commission and the State Air Resources Board, shall develop and adopt specifications and standards for all passenger cars and light-duty trucks that are purchased or leased on behalf of, or by, state offices, agencies, and departments. An authorized emergency vehicle, as defined in Section 165 of the Vehicle Code, that is equipped with emergency lamps or lights described in Section 25252 of the Vehicle Code is exempt from the requirements of this section. The specifications and standards shall include the following:

(1) Minimum air pollution emission specifications that meet or exceed California's Ultra-Low Emission Vehicle II (ULEV II) standards for exhaust emissions (13 Cal. Code Regs. 1961). These specifications shall apply on January 1, 2006, for passenger cars and on January 1, 2010, for light-duty trucks.

(2) Notwithstanding any other provision of law, the utilization of procurement policies that enable the Department of General Services to do all of the following:

(A) Evaluate and score emissions, fuel costs, and fuel economy in addition to capital cost to enable the Department of General Services to choose the vehicle with the lowest life-cycle cost when awarding a state vehicle procurement contract.

(B) Maximize the purchase or lease of hybrid or "Best in Class" vehicles that are substantially more fuel efficient than the class average.

(C) Maximize the purchase or lease of available vehicles that meet or exceed California's Super Ultra-Low Emission Vehicle (SULEV) passenger car standards for exhaust emissions.

(D) Maximize the purchase or lease of alternative fuel vehicles.

(3) In order to discourage the unnecessary purchase or leasing of a sport utility vehicle and a four-wheel drive truck, a requirement that each state office, agency, or department seeking to purchase or lease that vehicle, demonstrate to the satisfaction of the Director of General Services or to the entity that purchases or leases vehicles for that office, agency, or department, that the vehicle is required to perform an essential function of the office, agency, or department. If it is so demonstrated, priority consideration shall be given to the

purchase or lease of an alternative fuel or hybrid sports utility vehicle or four-wheel drive vehicle.

(b) The specifications and standards developed and adopted pursuant to subdivision (a) do not apply upon the development and implementation of the method, criteria, and procedure described in Section 25722.6.

(c) Each state office, agency, and department shall review its vehicle fleet and, upon finding that it is fiscally prudent, cost effective, or otherwise in the public interest to do so, shall dispose of nonessential sport utility vehicles and four-wheel drive trucks in its fleet and replace these vehicles with more fuel-efficient passenger cars and trucks.

(d) To the maximum extent practicable, each state office, agency, and department that has bifuel natural gas, bifuel propane, and flex fuel vehicles in its vehicle fleet shall use the respective alternative fuel in those vehicles.

(e) The Director of General Services shall compile annually and maintain information on the nature of vehicles that are owned or leased by the state, including, but not limited to, all of the following:

(1) The number of passenger-type motor vehicles purchased or leased during the year, and the number owned or leased as of December 31 of each year.

(2) The number of sport utility vehicles and four-wheel drive trucks purchased or leased by the state during the year, and the number owned or leased as of December 31 of each year.

(3) The number of alternatively fueled vehicles and hybrid vehicles purchased or leased by the state during the year, and the total number owned or leased as of December 31 of each year and their location.

(4) The locations of the alternative fuel pumps available for those vehicles.

(5) The justification provided for all sport utility vehicles and four-wheel drive trucks purchased or leased by the state and the specific office, department, or agency responsible for the purchase or lease.

(6) The number of sport utility vehicles and four-wheel drive trucks purchased or leased by the state during the year, and the number owned or leased as of December 31 of each year that are alternative fuel or hybrid vehicles.

(7) The number of light-duty trucks disposed of under subdivision (c).

(8) The total dollars spent by the state on passenger-type vehicle purchases and leases, categorized by sport utility vehicle and nonsport utility vehicle, and within each of those categories, by alternative fuel, hybrid and other.

(9) The total annual consumption of gasoline and diesel fuel used by the state fleet.

(10) The total annual consumption of alternative fuels.

(11) On December 31, 2009, and annually thereafter, the Director of General Services shall also compile the total annual vehicle miles traveled by vehicles in the state fleet.

(f) Each state office, agency, and department shall cooperate with the Department of General Services' data requests in order that the department may compile and maintain the information required in subdivision (e).

(g) As soon as practicable, but no later than 12 months after receiving the data, the information compiled and maintained under subdivision (e) and a list of those state offices, agencies, and departments that are not in compliance with subdivision (f) shall be made available to the public on the Department of General Services' Internet Web site.

(h) Beginning July 1, 2009, and every three years thereafter, the Director of General Services shall report to the Legislature and the Governor the information compiled and maintained pursuant to subdivision (e).

(i) Pursuant to Article IX of the California Constitution, this section shall not apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, make this section applicable.

**§ 25722.6. Amendment of Enhanced Efficiency Costing Methodology for Passenger Cars and Light-Duty Vehicles; ranking of vehicles for procurement; revision of procurement procedures; annual vehicle evaluation; use of alternative fuels; emergency vehicles exempt; sport utility or four-wheel drive vehicles; applicability to University of California**

(a) On or before December 31, 2008, the Department of General Services, in conjunction with the State Air Resources Board and the commission, shall amend the existing "Enhanced Efficiency Costing Methodology for Passenger Cars and Light-Duty Vehicles" to rank the environmental and energy benefits, and costs of motor vehicles for potential procurement by state and local governments. The vehicle rankings shall include both of the following criteria:

(1) The reduction in greenhouse gas emissions, air pollutant emissions, and petroleum use on a full fuel-cycle basis, to the extent possible, based on existing data available to the State Air Resources Board, the commission, or other reliable sources, including the California Strategy to Reduce Petroleum Dependence developed pursuant to subdivision (f) of Section 25720 and the state plan to increase the use of alternative transportation fuels developed pursuant to Section 43866 of the Health and Safety Code.

(2) The life-cycle costs of the vehicle and fuel, including maintenance.

(b) On or before December 31, 2008, the Department of General Services shall revise its procedures for the procurement of state and local government vehicles based upon the necessary performance specifications of the vehicles to perform the required work or tasks of the vehicles in the fleet. The Department of General Services shall establish vehicle "classes" depending upon the required work or tasks and the necessary performance specifications.

(c) On or before July 1, 2009, for the purpose of state fleet procurement, both of the following shall apply:

(1) Available vehicles in individual classes shall be ranked for purchase or lease using the method and criteria developed in subdivision (a).

(2)(A) Vehicles shall be procured for use in the state fleet that meet all requirements established by the federal government, including, but not limited to, the federal Energy Policy Act of 1992, Public Law 102-486, if applicable, and that have been ranked best in their class as determined by the evaluation in subdivision (a).

(B) If fueling infrastructure, for the fuel used to rank a vehicle best in class, is not available, or planned to be available within two years, the Department of General Services shall procure the vehicle ranked next best in class for which fueling infrastructure is or will be available.

(d) The Department of General Services shall evaluate vehicles for potential addition to the state and local fleets, as described in this section, on an annual basis, reflecting annual new vehicle availability.

(e) A vehicle capable of using alternative fuels shall be operated on those fuels to the maximum extent practicable unless alternative fuels are not readily available or other factors exist that may prevent the use of those fuels in the area in which the vehicle is used.

(f) The Department of General Services shall do both of the following:

(1) During the normal course of coordination and contracting with nearby fueling stations, provide information related to the alternative fuel vehicles in the state fleet and request the stations to provide a fuel supply to meet that demand.

(2) When replacing, retrofitting, or installing a fueling tank or infrastructure at a facility that fuels state vehicles, the Department of General Services shall consider requesting competitive bids for alternative fuel infrastructure that would meet the needs of vehicles used, or planned to be used, in that facility.

(g) Authorized emergency vehicles as defined in Section 165 of the Vehicle Code, that are equipped with emergency lamps or lights described in Section 25252 of the Vehicle Code, are exempt from the requirements of this section.

(h) Each state office, agency, or department seeking to purchase or lease a sport utility vehicle or four-wheel drive vehicle shall demonstrate to the satisfaction of the Director of General Services or the entity that purchases or leases vehicles that the vehicle is required to perform an essential function of the office, agency, or department. If it is so demonstrated, priority consideration shall be given to the purchase or lease of an alternative fuel or hybrid sports utility vehicle or four-wheel drive vehicle.

(i) Pursuant to Article IX of the California Constitution, this section shall not apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, make this section applicable.



**§ 25722.7. Minimum fuel economy standard for purchase of passenger vehicles and light duty trucks for state fleet powered solely by internal combustion engines utilizing fossil fuels**

(a) In order to further achieve the policy objectives set forth in Sections 25000.5, 25722, and 25722.5, on or before June 1, 2007, the Department of General Services in consultation with the State Energy Resources Conservation and Development Commission shall establish a minimum fuel economy standard that is above the standard, as it exists on January 1, 2007, established pursuant to Section 3620.1 of the State Administrative Manual, for the purchase of passenger vehicles and light duty trucks for the state fleet that are powered solely by internal combustion engines utilizing fossil fuels.

(b) On or after January 1, 2008, all new state fleet purchases of passenger vehicles and light duty trucks powered solely by internal combustion engines utilizing fossil fuels, by the Department of General Services and any other state entities shall meet the fuel economy standard established under subdivision (a).

(c) Authorized emergency vehicles, as defined in Section 165 of the Vehicle Code, and vehicles identified in paragraph (3) of subdivision (a) of Section 25722.5 are exempt from this section.

(d) Vehicles purchased, that are modified for the following purposes, are exempt from this section.

(1) To provide services by a state entity to an individual with a disability or a developmental disability, as defined under the statutes or regulations governing that state entity.

(2) As a reasonable accommodation for the known physical or mental disability, as defined in Section 12926 of the Government Code, of an employee.

(e) For purposes of this section, "state entities" includes all state departments, boards, commissions, programs, and other organizational units of the executive, legislative, and judicial branches of state government, the California Community Colleges, the California State University, and the University of California.

(f) No provision of this section shall apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, make that provision applicable.

**§ 25722.8. Plan to improve use of alternative fuels, synthetic lubricants, and fuel-efficient vehicles; development, implementation and submittal to Legislature; progress report**

(a) On or before July 1, 2009, the Secretary of State and Consumer Services, in consultation with the Department of General Services and other appropriate state agencies that maintain or purchase vehicles for the state fleet, including the campuses of the California State University, shall develop and implement, and submit to the Legislature and the Governor, a plan to improve the overall state fleet's use of alternative fuels, synthetic lubricants, and fuel-efficient vehicles by reducing or displacing the consumption of petroleum products by the state fleet when compared to the 2003 consumption level based on the following schedule:

(1) By January 1, 2012, a 10-percent reduction or displacement.

(2) By January 1, 2020, a 20-percent reduction or displacement.

(b) Beginning April 1, 2010, and annually thereafter, the Department of General Services shall provide to the Department of Finance and the appropriate legislative committees of the Legislature a progress report on meeting the goals specified in subdivision (a). The Department of General Services shall also make the progress report available on its Internet Website.

**§ 25723. Development and adoption of recommendations for California State Fuel-Efficient Tire Program**

On or before January 31, 2003, the commission, in consultation with any other state agency that the commission deems necessary, shall develop and adopt recommendations for consideration by the Governor and the Legislature of a California State Fuel-Efficient Tire Program. The commission shall make recommendations on all of the following items:

(a) Establishing a test procedure for measuring tire fuel efficiency.

(b) Development of a data base of fuel efficiency of existing tires in order to establish an accurate baseline of tire efficiency.

(c) A rating system for tires that provides consumers with information on the fuel efficiency of individual tire models.

(d) A consumer-friendly system to disseminate tire fuel-efficiency information as broadly as possible. The commission shall consider labeling, Web site listing, printed fuel economy guide booklets, and mandatory requirements for tire retailers to provide fuel-efficiency information.

(e) A study to determine the safety implications, if any, of different policies to promote fuel efficient replacement tires in the consumer market.

(f) A mandatory fuel-efficiency standard for all after market tires sold in California.

(g) Consumer incentive programs that would offer a rebate to purchasers of replacement tires that are more fuel efficient than the average replacement tire.

**CHAPTER 8.4. LOCAL VEHICLE FLEET**

**§ 25725. Fuel economy as a selection criteria**

When awarding a vehicle procurement contract, every city, county, city and county, and special district, including a school district and a community college district may evaluate and score fuel economy, in addition to other life-cycle factors, in choosing passenger cars or light-duty trucks, or both, with the lowest life-cycle costs.

**§ 25726. Energy-efficiency vehicles as a percentage of the vehicles to be acquired**

(a) When awarding a vehicle procurement contract, every city, county, city and county, and special district, including a school district and a community college district may require that 75 percent of the passenger cars or light-duty trucks, or both, to be acquired be energy-efficient vehicles.

(b) “Energy-efficient vehicle” means either of the following:

(1) A vehicle that meets California’s Super Ultra-Low Emission Vehicle (SULEV) standard for exhaust emissions and the federal inherently low-emission vehicle (ILEV) evaporative emission standard, as defined in Part 88 (commencing with Section 88.101-94) of Title 40 of the Code of Federal Regulations.

(2) A hybrid vehicle or an alternative fuel vehicle that meets California’s advanced technology partial zero-emission vehicle (AT PZEV) standard for criteria pollutant emissions.

**CHAPTER 8.5. CLIMATE CHANGE INVENTORY AND INFORMATION [Repealed]**

**§§ 25730 to 25731. Repealed**

**CHAPTER 8.6. RENEWABLE ENERGY RESOURCES PROGRAM**

**§ 25740. Legislative intent**

It is the intent of the Legislature in establishing this program, to increase the amount of electricity generated from eligible renewable energy resources per year, so that it equals at least 20 percent of total retail sales of electricity in California per year by December 31, 2010.

**§ 25740.5. Public investment optimization; pursuit of cost effective and efficient investment in renewable resources; long-term goal; program objectives; recommended allocations; transfer of specified funds to Renewable Resource Trust Fund**

*Text of section as added by Stats. 2006, c. 512  
(S.B. 1250), § 9, eff. Sept. 27, 2006.*

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

(b) The commission's long-term goal shall be a fully competitive and self-sustaining California renewable energy supply.

(c) The program objective shall be to increase, in the near term, the quantity of California's electricity generated by in-state renewable energy resources, while protecting

system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents.

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

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

(1)(A) Except as provided in subparagraph (B), production incentives for new renewable energy, including repowered or refurbished renewable energy.

(B) Allocations shall not be made for renewable energy that is generated by a project that remains under a power purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter.

(C) Notwithstanding subparagraph (B), production incentives for incremental new, repowered, or refurbished renewable energy from existing projects under a power purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter, may be allowed in any month, if all of the following occur:

(i) The project's power purchase contract provides that all energy delivered and sold under the contract is paid at a price that does not exceed the Public Utilities Commission approved short-run avoided cost of energy.

(ii) Either of the following:

(I) The power purchase contract is amended to provide that the kilowatthours used to determine the capacity payment in any time-of-delivery period in any month under the contract shall be equal to the actual kilowatthour production, but no greater than the five-year average of the kilowatthours delivered for the corresponding time-of-delivery period and month, in the years 1994 to 1998, inclusive.

(II) If a project's installed capacity as of December 31, 1998, is less than 75 percent of the nameplate capacity as stated in the power purchase contract, the power purchase contract is amended to provide that the kilowatthours used to determine the capacity payment in any time-of-delivery period in any month under the contract shall be equal to the actual kilowatthour production, but no greater than the product of the five-year average of the kilowatthours delivered for the corresponding time-of-delivery period and month, in the years 1994 to 1998, inclusive, and the ratio of installed capacity as of December 31 of the previous year, but not to exceed contract nameplate capacity, to the installed capacity as of December 31, 1998.

(iii) The production incentive is payable only with respect to the kilowatthours delivered in a particular month that exceeds the corresponding five-year average calculated pursuant to clause (ii).

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

(3) Customer education.

(4) Incentives for reducing fuel costs that are confirmed to the satisfaction of the commission at solid fuel biomass energy facilities in order to provide demonstrable environmental and public benefits, including, but not limited to, air quality.

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

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

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

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

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

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

(f) Notwithstanding any other provision of law, moneys collected for renewable energy pursuant to Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code shall be transferred to the Renewable Resource Trust Fund. Moneys collected between January 1, 2007, and January 1, 2012, shall be used for the purposes specified in this chapter.

**§ 25740.5. Investments in renewable energy resources; allocations**

*Text of section as added by Stats. 2006, c. 464 (S.B. 107), § 4.*

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

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

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

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

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

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

(2) Customer education.

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

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

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

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

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

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

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

(f) Notwithstanding any other provision of law, moneys collected for renewable energy pursuant to Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code shall be transferred to the Renewable Resource Trust Fund. Moneys collected between January 1, 2007, and January 1, 2012, shall be used for the purposes specified in this chapter.

## § 25741. Definitions

As used in this chapter, the following terms have the following meaning:

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

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

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

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

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

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

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

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

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

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

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

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

(C) The facility meets the requirements of clauses (i), (iii), (iv), (v), and (vi) in subparagraph (B), but does not meet the requirements of clause (ii) because it commences

initial operation prior to January 1, 2005, if the facility satisfies either of the following requirements:

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

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

(3) For the purposes of this subdivision, "solid waste conversion" means a technology that uses a noncombustion thermal process to convert solid waste to a clean-burning fuel for the purpose of generating electricity, and that meets all of the following criteria:

(A) The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.

(B) The technology produces no discharges of air contaminants or emissions, including greenhouse gases as defined in Section 38505 of the Health and Safety Code.

(C) The technology produces no discharges to surface or groundwaters of the state.

(D) The technology produces no hazardous wastes.

(E) To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream prior to the conversion process and the owner or operator of the facility certifies that those materials will be recycled or composted.

(F) The facility at which the technology is used is in compliance with all applicable laws, regulations, and ordinances.

(G) The technology meets any other conditions established by the commission.

(H) The facility certifies that any local agency sending solid waste to the facility diverted at least 30 percent of all solid waste it collects through solid waste reduction, recycling, and composting. For purposes of this paragraph, "local agency" means any city, county, or special district, or subdivision thereof, which is authorized to provide solid waste handling services.

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

(d) "Renewable energy public goods charge" means that portion of the nonbypassable system benefits charge authorized to be collected and to be transferred to the Renewable Resource Trust Fund pursuant to the Reliable Electric Service Investments Act



(Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code).

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

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

**§ 25742. Use of funds for programs designed to achieve fully competitive and self-sustaining existing in-state renewable electricity generation facilities; provisions governing funds expenditure; eligibility; evaluation of funding requests**

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

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

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

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

(2) Is used onsite.

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

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

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

commission shall compile its findings and report them to the Legislature in the reports prepared pursuant to Section 25748.

**§ 25743. Production incentives terminated; transfer of funds; allocation**

(a) The commission shall terminate all production incentives awarded from the New Renewable Resources Account prior to January 1, 2002, unless the project began generating electricity by January 1, 2007.

(b)(1) The commission shall, by March 1, 2008, transfer to electrical corporations serving customers subject to the renewable energy public goods charge the remaining unencumbered funds in the New Renewable Resources Account.

(2) The Public Utilities Commission shall ensure that each electrical corporation allocates funds received from the commission pursuant to paragraph (1) in a manner that maximizes the economic benefit to all customer classes that funded the New Renewable Resources Account.

**§ 25744. Development of emerging renewable technologies**

(a) Seventy-nine percent of the money collected pursuant to the renewable energy public goods charge shall be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications.

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

(1) Funding for emerging technologies shall be provided through a competitive, market-based process that is in place for a period of not less than five years, and is structured to allow eligible emerging technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program.

(2) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to paragraph (3), 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 generating 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 commission. The commission may establish different incentive levels for systems based on technology type and system size, and may provide different incentive levels for systems used in conjunction with energy-efficiency measures.

(3) Eligible distributed emerging technologies are fuel cell technologies that utilize renewable fuels, including fuel cell technologies with an emission profile equivalent or better than the State Air Resources Board 2007 standard, and that serve as backup generation for emergency, safety, or telecommunications systems. Eligible renewable fuels may include wind turbines of not more than 50 kilowatts rated electrical generating capacity per customer site and other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the commission and are not eligible for rebates, buydowns, or

similar incentives from any other commission or Public Utilities Commission program. Eligible electricity generating systems are intended primarily to offset part or all of the consumer's own electricity demand, including systems that are used as backup power for emergency, safety, or telecommunications, and shall not be owned by 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 the renewable energy public goods charge and contributing funds to support programs under this chapter. All eligible electricity generating system components shall be new and unused, shall not have been previously placed in service in any other location or for any other application, and shall have a warranty of not less than five years to protect against defects and undue degradation of electrical generation output. Systems and their fuel resources 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, unless the system purpose is for backup generation used in emergency, safety, or telecommunications in California. The commission may require eligible electricity generating systems to have meters in place to monitor and measure a system's performance and generation. Only systems that will be operated in compliance with applicable law and the rules of the Public Utilities Commission shall be eligible for funding.

(4) The commission shall limit the amount of funds available for a system or project of multiple systems and reduce the level of funding for a system or project of multiple systems that has received, or may be eligible to receive, any government or utility funds, incentives, or credit.

(5) In awarding funding, the commission may provide preference to systems that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(6) In awarding funding, the commission shall develop and implement eligibility criteria and a system that provides preference to systems based upon system performance, taking into account factors, including shading, insulation levels, and installation orientation.

(7) At least once annually, the commission shall publish and make available to the public the balance of funds available for emerging renewable energy resources for rebates, buydowns, and other incentives for the purchase of these resources.

(c) Notwithstanding Section 27540.5, the commission may expend, until December 31, 2008, up to sixty million dollars (\$60,000,000) of the funding allocated to the Renewable Resources Trust Fund for the program established in this section, subject to the repayment requirements of subdivision (f) of Section 25751.

(d) Any funds for photovoltaic or solar thermal electric technologies shall be awarded in compliance with Chapter 8.8 (commencing with Section 25780), and not with this section.

#### **§ 25744.5. Funding of photovoltaic and solar thermal electric technologies**

The commission shall allocate and use funding available for emerging renewable technologies pursuant to Section 25744 and Section 25751 to fund photovoltaic and solar thermal electric technologies in accordance with eligibility criteria and conditions established pursuant to Chapter 8.8 (commencing with Section 25780).

**§ 25746. Promotion of renewable energy**

(a) One percent of the money collected pursuant to the renewable energy public goods charge shall be used in accordance with this chapter to promote renewable energy and 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.

(b) If the commission provides funding for a regional accounting system to verify compliance with the renewable portfolio standard by retail sellers, pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code, the commission shall recover all costs from user fees.

**§ 25747. Guidelines for funding**

(a) The commission shall adopt guidelines governing the funding programs authorized under this chapter, at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines may not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this subdivision may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this chapter or Section 399.13 of the Public Utilities Code, shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Legislature declares that the changes made to this subdivision by the act amending this section during the 2002 portion of the 2001-02 Regular Session are declaratory of, and not a change in existing law.

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

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

(d) An award made pursuant to this chapter, the amount of the award, and the terms and conditions of the grant are public information.

**§ 25748. Report to Legislature; contents; reallocation**

(a) The commission shall report to the Legislature on or before November 1, 2007, and annually thereafter, regarding the results of the mechanisms funded pursuant to this chapter. The report shall contain all of the following:

(1) 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.

(2) The status of account transfers and repayments.

(3) A description of the cumulative commitment of claims by account, the relative demand for funds by account, and a forecast of future awards.

(4) A list identifying the types and quantities of biomass fuels used by facilities receiving funds pursuant to Section 25742 and their impacts on improving air quality.

(5) A discussion of the progress being made toward achieving the targets established under Section 25740 by each funding category authorized pursuant to this chapter.

(6) A description of the allocation of funds from interest on the accounts described in this chapter, and money in the accounts described in subdivision (b) of Section 25751.

(7) An itemized list, including project descriptions, award amounts, and outcomes for projects awarded funding in the prior year.

(8) Other matters the commission determines may be of importance to the Legislature.

(b) 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 section, except that reallocations shall not increase the allocation established in Section 25742.

**§ 25751. Renewable Resource Trust Fund**

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

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

(1) Existing Renewable Resources Account.

(2) Emerging Renewable Resources Account.

(3) Renewable Resources Consumer Education Account.

(c) The money in the fund may be expended, only upon appropriation by the Legislature in the annual Budget Act, for the following purposes:

(1) The administration of this article by the state.

(2) The state's expenditures associated with the accounting system established by the commission pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code.

(d) 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 Section 399.8 of the Public Utilities Code, shall be

transmitted to the commission at least quarterly for deposit in the Renewable Resource Trust Fund pursuant to Section 25740.5. 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 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 commission without regard to fiscal year for the purposes enumerated in this chapter.

(e) Upon notification by the commission, the Controller shall pay all awards of the money in the accounts created pursuant to subdivision (b) for purposes enumerated in this chapter. The eligibility of each award shall be determined solely by the commission based on the procedures it adopts under this chapter. Based on the eligibility of each award, the 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 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 enumerated in this chapter; and an accounting of future costs associated with any award or group of awards known to the commission to represent a portion of a multiyear funding commitment.

(f) The commission may transfer funds between accounts for cashflow purposes, provided that the balance due each account is restored and the transfer does not adversely affect any of the accounts.

(g) The Department of Finance 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 Director of Finance determines may be of importance to the Legislature.

## **CHAPTER 8.7. REPLACEMENT TIRE EFFICIENCY PROGRAM**

### **§ 25770. Definitions**

For the purposes of this chapter, the following terms have the following meanings:

(a) "Board" means the California Integrated Waste Management Board established pursuant to Division 30 (commencing with Section 40000).

(b) "Consumer information requirement" means point-of-sale information or signs that are conspicuously displayed, readily accessible, and written in a manner that can be easily understood by the consumer. "Consumer information requirement" does not include mandatory labeling, imprinting, or other marking, on an individual tire by the tire manufacturer or the tire retailer.

(c) "Cost effective" means the cost savings to the consumer resulting from a replacement tire subject to an energy efficiency standard that equals or exceeds the additional cost to the consumer resulting from the standard, taking into account the expected fuel cost savings over the expected life of the replacement tire.

(d) "Replacement tire" means a tire sold in the state that is designed to replace a tire sold with a new passenger car or light-duty truck. "Replacement tire" does not include any of the following tires:

(1) A tire or group of tires with the same SKU, plant, and year, for which the volume of tires produced or imported is less than 15,000 annually.

(2) A deep tread, winter-type snow tire, a space-saver tire, or a temporary use spare tire.

(3) A tire with a nominal rim diameter of 12 inches or less.

(4) A motorcycle tire.

(5) A tire manufactured specifically for use in an off-road motorized recreational vehicle.

**§ 25771. Development and adoption of database of replacement tire energy efficiency, energy efficiency rating system for replacement tires, and energy efficiency reporting requirements for tire manufacturers**

On or before July 1, 2006, the commission shall develop and adopt all of the following:

(a) A database of the energy efficiency of a representative sample of replacement tires sold in the state, based on test procedures adopted by the commission.

(b) Based on the data collected pursuant to subdivision (a), a rating system for the energy efficiency of replacement tires sold in the state, that will enable consumers to make more informed decisions when purchasing tires for their vehicles.

(c) Based on the test procedures adopted pursuant to subdivision (a) and the rating system established pursuant to subdivision (b), requirements for tire manufacturers to report to the commission the energy efficiency of replacement tires sold in the state.

**§ 25772. Adoption and implementation of tire energy efficiency program of statewide applicability for replacement tires**

On or before July 1, 2007, the commission, in consultation with the board, shall, after appropriate notice and workshops, adopt and, on or before July 1, 2008, implement, a tire energy efficiency program of statewide applicability for replacement tires, designed to ensure that replacement tires sold in the state are at least as energy efficient, on average, as tires sold in the state as original equipment on new passenger cars and light-duty trucks.

**§ 25773. Contents of tire energy efficiency program**

(a) The program described in Section 25772 shall include all of the following:

(1) The development and adoption of minimum energy efficiency standards for replacement tires, except to the extent that the commission determines that it is unable to do so in a manner that complies with subparagraphs (A) to (E), inclusive. Energy efficiency standards adopted pursuant to this paragraph shall meet all of the following conditions:

(A) Be technically feasible and cost effective.

(B) Not adversely affect tire safety.

(C) Not adversely affect the average tire life of replacement tires.

(D) Not adversely affect state efforts to manage scrap tires pursuant to Chapter 17 (commencing with Section 42860) of Part 3 of Division 30.

(2) The development and adoption of consumer information requirements for replacement tires for which standards have been adopted pursuant to paragraph (1).

(b) The energy efficiency standards established pursuant to paragraph (1) of subdivision (a) shall be based on the results of laboratory testing and, to the extent it is available and deemed appropriate by the commission, an onroad fleet testing program developed by tire manufacturers in consultation with the commission and the board, conducted by tire manufacturers, and submitted to the commission on or before January 1, 2006.

(c) If the commission finds that tires used to equip an authorized emergency vehicle, as defined in Section 165 of the Vehicle Code, are unable to meet the standards established pursuant to paragraph (1) of subdivision (a), the commission shall authorize an operator of an authorized emergency vehicle fleet to purchase for those vehicles tires that do not meet those standards.

(d) The commission, in consultation with the board, shall review and revise the program, including any standards adopted pursuant to the program, as necessary, but not less than once every three years. The commission may not revise the program or standards in a way that reduces the average efficiency of replacement tires.

**CHAPTER 8.8. CALIFORNIA SOLAR INITIATIVE**

**§ 25780. Legislative findings and declarations**

The Legislature finds and declares both of the following:

(a) It is the goal of the state to install solar energy systems with a generation capacity equivalent of 3,000 megawatts, to establish a self-sufficient solar industry in which solar energy systems are a viable mainstream option for both homes and businesses in 10 years, and to place solar energy systems on 50 percent of new homes in 13 years.



(b) A solar initiative should be a cost-effective investment by ratepayers in peak electricity generation capacity where ratepayers recoup the cost of their investment through lower rates as a result of avoiding purchases of electricity at peak rates, with additional system reliability and pollution reduction benefits.

**§ 25781. Definitions**

As used in this chapter, the following terms have the following meanings:

(a) "California Solar Initiative" means the program providing ratepayer funded incentives for eligible solar energy systems adopted by the Public Utilities Commission in Decision 06-01-024.

(b) "kW" means kilowatts or 1,000 watts, as measured from the alternating current side of the solar energy system inverter consistent with Section 223 of Title 15 of the United States Code.

(c) "kWh" means kilowatthours, as measured by the number of kilowatts generated in an hour.

(d) "MW" means megawatts or 1,000,000 watts.

(e) "Solar energy system" means a solar energy device that has the primary purpose of providing for the collection and distribution of solar energy for the generation of electricity, that produces at least one kW, and not more than five MW, alternating current rated peak electricity, and that meets or exceeds the eligibility criteria established pursuant to Section 25782.

**§ 25782. Establishment of eligibility criteria for solar energy systems**

(a) The commission shall, by January 1, 2008, in consultation with the Public Utilities Commission, local publicly owned electric utilities, and interested members of the public, establish eligibility criteria for solar energy systems receiving ratepayer funded incentives that include all of the following:

(1) Design, installation, and electrical output standards or incentives.

(2) The solar energy system is intended primarily to offset part or all of the consumer's own electricity demand.

(3) All components in the solar energy system are new and unused, and have not previously been placed in service in any other location or for any other application.

(4) The solar energy system has a warranty of not less than 10 years to protect against defects and undue degradation of electrical generation output.

(5) The solar energy system is located on the same premises of the end-use consumer where the consumer's own electricity demand is located.

(6) The solar energy system is connected to the electrical corporation's electrical distribution system within the state.

(7) The solar energy system has meters or other devices in place to monitor and measure the system's performance and the quantity of electricity generated by the system.

(8) The solar energy system is installed in conformance with the manufacturer's specifications and in compliance with all applicable electrical and building code standards.

(b) The commission shall establish conditions on ratepayer funded incentives that require all of the following:

(1) Appropriate siting and high quality installation of the solar energy system by developing installation guidelines that maximize the performance of the system and prevent qualified systems from being inefficiently or inappropriately installed. The conditions established by the commission shall not impact housing designs or densities presently authorized by a city, county, or city and county. The goal of this paragraph is to achieve efficient installation of solar energy systems to promote the greatest energy production per ratepayer dollar.

(2) Optimal solar energy system performance during periods of peak electricity demand.

(3) Appropriate energy efficiency improvements in the new or existing home or commercial structure where the solar energy system is installed.

(c) The commission shall set rating standards for equipment, components, and systems to assure reasonable performance and shall develop standards that provide for compliance with the minimum ratings.

(d) Upon establishment of eligibility criteria pursuant to subdivision (a), no ratepayer funded incentives shall be made for a solar energy system that does not meet the eligibility criteria.

**§ 25783. Duties of the commission**

The commission shall do all the following:

(a) Publish educational materials designed to demonstrate how builders may incorporate solar energy systems during construction as well as energy efficiency measures that best complement solar energy systems.

(b) Develop and publish the estimated annual electrical generation and savings for solar energy systems. The estimates shall vary by climate zone, type of system, size, life cycle costs, electricity prices, and other factors the commission determines to be relevant to a consumer when making a purchasing decision.

(c) Provide assistance to builders and contractors. The assistance may include technical workshops, training, educational materials, and related research.

(d) The commission shall annually conduct random audits of solar energy systems to evaluate their operational performance.

**§ 25784. Guidelines for solar energy systems receiving ratepayer funded incentives; public notice**

The commission shall adopt guidelines for solar energy systems receiving ratepayer funded incentives at a publicly noticed meeting offering all interested parties an opportunity to comment. Not less than 30 days' public notice shall be given of the meeting required by this section, before the commission initially adopts guidelines. Substantive changes to the guidelines shall not be adopted without at least 10 days' written notice to the public. Notwithstanding any other provision of law, any guidelines adopted pursuant to this chapter shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

**CHAPTER 9. STATE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT ACCOUNTS**

**§ 25800. Renumbered**

**§ 25801. Energy resources programs account**

There is in the General Fund in the State Treasury the Energy Resources Programs Account.

**§ 25802. Notice of intent for proposed facilities; fees**

Each person who submits to the commission a notice of intent for any proposed generating facility shall accompany the notice with a fee of one cent (\$0.01) per kilowatt of net electric capacity of the proposed generation facility. Such fee shall only be paid on one of the alternate proposed facility sites which has the highest electrical designed capacity. In no event shall such fee be less than one thousand dollars (\$1,000) nor more than twenty-five thousand dollars (\$25,000).

For any other facility, the notice shall be accompanied by a fee of five thousand dollars (\$5,000). Such fee shall only be paid on one of the alternate proposed facility sites.

**§ 25803. Deposit of funds; expenditures**

All funds received by the commission pursuant to Section 25802, shall be remitted to the State Treasurer for deposit in the account. All funds in the account shall be expended for purposes of carrying out the provisions of this division, when appropriated by the Legislature in the Budget Act.

**§ 25804. State energy resources conservation and development special account; references**

All references in this division or any other provision of law to the State Energy Resources Conservation and Development Special Account shall be deemed references to the Energy Resources Programs Account.

**§ 25805. Transfer to energy resources programs account**

On July 1, 1983, all funds in the State Energy Resources Conservation and Development Reserve Account shall be transferred to the Energy Resources Programs Account.

**§ 25806. Fees; energy facility license and compliance fund**

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

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

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

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

(e) The Energy Facility License and Compliance Fund is hereby created in the State Treasury. All fees received by the commission pursuant to this section shall be remitted to the Treasurer for deposit in the fund. The money in the fund shall be expended, upon appropriation by the Legislature, for processing applications for certification and for compliance monitoring.

**CHAPTER 10. ENFORCEMENT AND JUDICIAL REVIEW**

**§ 25900. Injunction**

Except as provided in Section 25531, whenever the commission finds that any provision of this division is violated or a violation is threatening to take place which constitutes an emergency requiring immediate action to protect the public health, welfare, or safety, the Attorney General, upon request of the commission, shall petition a court to enjoin such violation. The court shall have jurisdiction to grant such prohibitory or mandatory injunctive relief as may be warranted by way of temporary restraining order, preliminary injunction, and permanent injunction.

**§ 25901. Writ of mandate for review**

(a) Within 30 days after the commission issues its determination on any matter specified in this division, except as provided in Section 25531, any aggrieved person may file with the superior court a petition for a writ of mandate for review thereof. Failure to file such an action shall not preclude a person from challenging the reasonableness and validity of a decision in any judicial proceedings brought to enforce the decision or to obtain other civil remedies.

(b) The decision of the commission shall be sustained by the court unless the court finds (1) that the commission proceeded without, or in excess of its jurisdiction, (2) that, based exclusively upon a review of the record before the commission, the decision is not supported by substantial evidence in light of the whole record, or (3) that the commission failed to proceed in the manner required by law.

(c) Except as otherwise provided in this section, subdivisions (f) and (g) of Section 1094.5 of the Code of Civil Procedure shall govern proceedings pursuant to this section.

(d) The amendment of this section made at the 1989-90 Regular Session of the Legislature does not constitute a change in, but is declaratory of, existing law.

**§ 25902. Evaluations, findings and determinations pursuant to specified sections; finality; reviewability**

Any evaluations in the reports required by Section 25309 and any findings and determinations on the notice of intent pursuant to Chapter 6 (commencing with Section 25500) shall not be construed as a final evaluation, finding, or determination by the commission and a court action may not be brought to review any such evaluation, finding, or determination.

**§ 25903. Site and facility certification provisions; decisions on validity; review**

If any provision of subdivision (a) of Section 25531, with respect to judicial review of the decision on certification of a site and related facility, is held invalid, judicial review of such decisions shall be conducted in the superior court subject to the conditions of subdivision (b) of Section 25531. The superior court shall grant priority in setting such matters for review, and the appeals from any such review shall be given preference in hearings in the Supreme Court and courts of appeal.

**CHAPTER 10.5. INSULATION MATERIAL STANDARDS**

**§ 25910. Minimum standards for additional insulation in existing buildings**

The commission shall, by regulation adopted no later than July 1, 1978, establish minimum standards for the amount of additional insulation (expressed in terms of R-value) installed in existing buildings. One year after the adoption of those standards, no insulation shall be installed in any existing building by a contractor unless the contractor certifies to the customer in writing that the amount of insulation (expressed in terms of R-value) meets or exceeds the minimum amount established by the standards. The minimum standards may vary for different types of buildings or building occupancies and different climate zones in the state. The minimum standards shall be economically feasible in that the resultant savings in energy procurement costs

shall be greater than the cost of the insulation to the customer amortized over the useful life of the insulation.

**§ 25911. Urea formaldehyde foam insulation regulations**

The State Energy Resources Conservation and Development Commission may adopt regulations pertaining to urea formaldehyde foam insulation materials as are reasonably necessary to protect the public health and safety. These regulations may include, but are not limited to, prohibition of the manufacture, sale, or installation of urea formaldehyde foam insulation, requirements for safety notices to consumers, certification of installers, and specification of installation practices. Regulations adopted pursuant to this section shall be promulgated after public hearings in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Any regulation adopted by the commission to prohibit the sale and installation of urea formaldehyde foam insulation shall be based upon a record of scientific evidence which demonstrates the need for the prohibition in order to protect the public health and safety.

**§ 25912. Urea formaldehyde foam insulation; regulations prohibiting; consultations and solicitation of comments**

Prior to adopting any regulation which causes a prohibition on the sale and installation of urea formaldehyde foam insulation, the commission shall consult with, and solicit written comments from, all of the following:

(a) Federal and state agencies with appropriate scientific staffs, including, but not limited to, the State Department of Health Services, the National Academy of Sciences, the United States Department of Housing and Urban Development, the United States Department of Energy, and the United States Consumer Product Safety Commission.

(b) Universities and public and private scientific organizations.

**CHAPTER 10.8. HOME ENERGY AND LABELING PROGRAM**

**§ 25942. Home energy rating program; criteria; public information program; report**

(a) On or before July 1, 1995, the commission shall establish criteria for adopting a statewide home energy rating program for residential dwellings. The program criteria shall include, but are not limited to, all of the following elements:

(1) Consistent, accurate, and uniform ratings based on a single statewide rating scale.

(2) Reasonable estimates of potential utility bill savings, and reliable recommendations on cost-effective measures to improve energy efficiency.

(3) Training and certification procedures for home raters and quality assurance procedures to promote accurate ratings and to protect consumers.

(4) In coordination with home energy rating service organization data bases, procedures to establish a centralized, publicly accessible, data base that includes a uniform reporting system for information on residential dwellings, excluding proprietary information, needed to facilitate the program. There shall be no public access to information in the data base concerning specific dwellings without the owner's or occupant's permission.

(5) Labeling procedures that will meet the needs of home buyers, homeowners, renters, the real estate industry, and mortgage lenders with an interest in home energy ratings.

(b) The commission shall adopt the program pursuant to subdivision (a) in consultation with representatives of the Department of Real Estate, the Department of Housing and Community Development, the Public Utilities Commission, investor-owned and municipal utilities, cities and counties, real estate licensees, home builders, mortgage lenders, home appraisers and inspectors, home energy rating organizations, contractors who provide home energy services, consumer groups, and environmental groups.

(c) On and after January 1, 1996, no home energy rating services may be performed in this state unless the services have been certified, if such a certification program is available, by the commission to be in compliance with the program criteria specified in subdivision (a) and, in addition, are in conformity with any other applicable element of the program.

(d) On or before July 1, 1996, the commission shall consult with the agencies and organizations described in subdivision (b), to facilitate a public information program to inform homeowners, rental property owners, renters, sellers, and others of the existence of the statewide home energy rating program adopted by the commission.

(e) Beginning with the 1998 biennial energy conservation report required by Section 25401.1, the commission shall, as part of that biennial report, report on the progress made to implement a statewide home energy rating program. The report shall include an evaluation of the energy savings attributable to the program, and a recommendation concerning which means and methods will be most efficient and cost-effective to induce home energy ratings for residential dwellings.

## **CHAPTER 11. GAS APPLIANCES**

### **Article 1. Definitions**

#### **§ 25950. Gas appliance**

"Gas appliance" means any new residential-type furnace, air conditioner, heater, refrigerator, stove, range, dishwasher, dryer, decorative fireplace log, or other similar device, except a water heater, which uses a gaseous fuel for operation and is automatically ignited.

#### **§ 25951. Pilot light**

"Pilot light" means any gas operated device that remains continually operated or lighted in order to ignite a gas appliance to begin normal operation.

**§ 25952. Intermittent ignition device**

"Intermittent ignition device" means an ignition device which is actuated only when the gas appliance is in operation.

**§ 25953. Additional definitions**

As used in this chapter, the following terms have the following meanings:

(a) "Person" means any individual, partnership, corporation, limited liability company association, manufacturer, distributor, retailer, contractor or builder as defined in Section 7026 of the Business and Professions Code, or other groups, however organized, who sell or cause to be distributed or installed, any new gas appliance as defined in Section 25950.

(b) "Manufacturer" means any individual, partnership, corporation, association, or other legal relationship which manufactures, assembles, produces, or gathers consumer goods.

(c) "Distributor" means any individual, partnership, corporation, association or other legal relationship which stands between the manufacturer and the retail seller in purchases, consignments or contracts for sale of consumer goods.

(d) "Retail seller," "retail outlets," "seller," or "retailer" means any individual, partnership, corporation, association, or other legal relationship which engages in the business of selling new goods to retail buyers.

(e) "Contractor" for the purpose of this chapter is synonymous with the term "builder" and, within the meaning of this chapter, a contractor is any person who undertakes to or offers to undertake to or purports to have the capacity to undertake to or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, moved, wreck or demolish any building, highway, road, parking facility, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith. The term "contractor" includes subcontractor and specialty contractor.

**Article 2. General Provisions**

**§ 25960. Appliances with pilot lights; sales after certification of alternative means**

No new residential-type gas appliance that is equipped with a pilot light shall be sold in the state after an alternate means has been certified by the commission. This prohibition shall become operative 24 months after an intermittent ignition device has been demonstrated and certified by the commission as an alternate means. The commission may determine, after demonstration, that there is no feasible alternative means to the use of pilot light or that the use of a pilot light is necessary for public health and safety.



**§ 25960.5. Swimming pool heaters; equipped with pilot light or intermittent ignition device or designed to burn liquefied petroleum gases**

Notwithstanding the prohibition contained in Section 25960, any swimming pool heater with a pilot light which was manufactured prior to February 24, 1984, and in stock or on order as of that date, may be sold in this state prior to December 1, 1984. On or after December 1, 1984, no swimming pool heater may be sold or offered for sale, unless it is equipped with an intermittent ignition device or is designed to burn only liquefied petroleum gases.

**§ 25961. Specifications for certification of intermittent ignition devices**

The commission shall, on or before January 1, 1976, develop in cooperation with affected industry and consumer representatives, who will be designated as such representatives by the commission, the specifications for certification of intermittent ignition devices which shall not significantly affect the price of gas appliances in competition with similar electrical appliances. The specifications shall be developed so as to result in the conservation of primary energy resources, shall include provisions necessary for public health and safety, and shall give due consideration to the initial costs, including installation and maintenance costs imposed upon the consumer.

**§ 25962. Notice of pilot light prohibition**

Within 90 days after an intermittent ignition device has been certified by the commission, the commission shall notify all gas appliance manufacturers doing business in the state, as to the prohibition of affected pilot lights and shall inform the manufacturers of the devices available to comply with this article.

**§ 25963. Seal of certification**

The commission shall create a seal of certification and shall distribute the seal to every manufacturer that complies with this article. The seal shall be affixed to every new appliance sold in the state.

**§ 25964. Sales after certification of intermittent ignition device; seal of certification; building permits**

After 24 months after an intermittent ignition device has been certified by the commission, no person shall sell or offer for sale in this state any new gas appliances, as defined in Section 25950, without obtaining the proper seal of certification from the commission, unless the commission otherwise permits such action. Beginning 24 months after an intermittent ignition device has been certified by the commission, no city or county, city and county, or state agency shall issue a permit for any building to be equipped with any new gas appliance, as defined in Section 25950, unless such building permit shows that the gas appliance complies with this chapter. However, any new gas appliance which does not comply with this chapter may be installed if the appliance was purchased pursuant to a contract executed prior to June 17, 1978, and if the building permit was approved prior to July 8, 1978.

**§ 25965. Inspection of manufacturers, distributors, and retail outlets for compliance with article**

After 24 months after an intermittent ignition device has been certified by the commission, the commission shall make periodic inspections of manufacturers and distributors of gas appliances and may inspect retail outlets, including gas appliances that have been or are to be installed by contractors or builders at building sites in order to determine their compliance with this article.

**§ 25966. Violations; injunctions**

Any person who violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice which violates any provision of this chapter.

Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney, county counsel, city attorney, or city prosecutor in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

**§ 25967. Civil penalties; disposition**

(a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city.

(c) If the action is brought at the request of the commission, the court shall determine the reasonable expenses incurred by the commission in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the commission shall be paid to the State Treasurer.

**§ 25968. Inspector's access to premises and records**

Any inspector appointed or authorized by the commission shall have access to the premises, equipment, materials, partly finished and finished articles, and records of any person subject to the provisions of this chapter.

## CHAPTER 12. SOLAR SHADE CONTROL

### § 25980. Short title; public policy

This chapter shall be known and may be cited as the Solar Shade Control Act. It is the policy of the state to promote all feasible means of energy conservation and all feasible uses of alternative energy supply sources. In particular, the state encourages the planting and maintenance of trees and shrubs to create shading, moderate outdoor temperatures, and provide various economic and aesthetic benefits. However, there are certain situations in which the need for widespread use of alternative energy devices, such as solar collectors, requires specific and limited controls on trees and shrubs.

### § 25981. Solar collector

(a) As used in this chapter, "solar collector" means a fixed device, structure, or part of a device or structure, on the roof of a building, that is used primarily to transform solar energy into thermal, chemical, or electrical energy. The solar collector shall be used as part of a system that makes use of solar energy for any or all of the following purposes:

- (1) Water heating.
- (2) Space heating or cooling.
- (3) Power generation.

(b) Notwithstanding subdivision (a), for the purpose of this chapter, "solar collector" includes a fixed device, structure, or part of a device or structure that is used primarily to transform solar energy into thermal, chemical, or electrical energy and that is installed on the ground because a solar collector cannot be installed on the roof of the building receiving the energy due to inappropriate roofing material, slope of the roof, structural shading, or orientation of the building.

(c) For the purposes of this chapter, "solar collector" does not include a solar collector that is designed and intended to offset more than the building's electricity demand.

(d) For purposes of this chapter, the location of a solar collector is required to comply with the local building and setback regulations, and to be set back not less than five feet from the property line, and not less than 10 feet above the ground. A solar collector may be less than 10 feet in height only if, in addition to the five-foot setback, the solar collector is set back three times the amount lowered.

### § 25982. Placement or growth of tree or shrub subsequent to installation of solar collector on property of another

After the installation of a solar collector, a person owning or in control of another property shall not allow a tree or shrub to be placed or, if placed, to grow on that property so as to cast a shadow greater than 10 percent of the collector absorption area upon that solar collector surface at any one time between the hours of 10 a.m. and 2 p.m., local standard time.

**§ 25982.1. Solar shade control notice; requirements**

(a) An owner of a building where a solar collector is proposed to be installed may provide written notice by certified mail to a person owning property that may be affected by the requirements of this chapter prior to the installation of the solar collector. If a notice is mailed, the notice shall be mailed no more than 60 days prior to installation of the solar collector and shall read as follows:

**SOLAR SHADE CONTROL NOTICE**

Under the Solar Shade Control Act (California Public Resources Code Sec. 25980 et seq.) a tree or shrub cannot cast a shadow greater than 10 percent of a solar collector absorption area upon that solar collector surface at any one time between the hours of 10 a.m. and 2 p.m. local standard time if the tree or shrub is placed after installation of a solar collector. The owner of the building where a solar collector is proposed to be installed is providing this written notice to persons owning property that may be affected by the requirements of the act no more than 60 days prior to the installation of a solar collector. The building owner is providing the following information:

Name and address of building owner:

Telephone number of building owner:

Address of building and specific location where a solar collector will be installed (including street number and name, city/county, ZIP Code, and assessor's book, page, and parcel number):

Installation date of solar collector:

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Building Owner, Date

(b) If the owner of the building where a solar collector is proposed to be installed provided the notice pursuant to subdivision (a), and the installation date is later than the date specified in that notice, the later date shall be specified in a subsequent notice to persons receiving the initial notice.

(c)(1) A transferor of the building where the solar collector is installed may provide a record of persons receiving the notice pursuant to subdivision (a) to a transferee of the building.

(2) A transferor receiving a notice pursuant to subdivision (a) may provide the notice to a transferee of the property.

**§ 25983. Violations; private nuisance; written notice from owner of solar collector**

A tree or shrub that is maintained in violation of Section 25982 is a private nuisance, as defined in Section 3481 of the Civil Code, if the person who maintains or permits the tree or shrub to be maintained fails to remove or alter the tree or shrub after receiving a written notice from the owner or agent of the affected solar collector requesting compliance with the requirements of Section 25982.

**§ 25984. Application of chapter; exemptions**

This chapter does not apply to any of the following:

- (a) A tree or shrub planted prior to the installation of a solar collector.
- (b) A tree planted, grown, or harvested on timberland as defined in Section 4526 or on land devoted to the production of commercial agricultural crops.
- (c) The replacement of a tree or shrub that had been growing prior to the installation of a solar collector and that, subsequent to the installation of the solar collector, dies, or is removed for the protection of public health, safety, or the environment.
- (d) A tree or shrub that is subject to a city or county ordinance.

**§ 25985. Ordinance to exempt city or unincorporated areas from provisions of chapter; requirements**

(a) A city, or for unincorporated areas, a county, may adopt, by majority vote of the governing body, an ordinance exempting their jurisdiction from the provisions of this chapter. The adoption of the ordinance shall not be subject to the California Environmental Quality Act (commencing with Section 21000).

(b) Notwithstanding the requirements of this chapter, a city or a county ordinance specifying requirements for tree preservation or solar shade control shall govern within the jurisdiction of the city or county that adopted the ordinance.

**§ 25986. Passive or natural solar system which impacts on adjacent active solar system; action to exempt from provisions of chapter**

Any person who plans a passive or natural solar heating system or cooling system or heating and cooling system which would impact on an adjacent active solar system may seek equitable relief in a court of competent jurisdiction to exempt such system from the provisions of this chapter. The court may grant such an exemption based on a finding that the passive or natural system would provide a demonstrably greater net energy savings than the active system which would be impacted.

## **OTHER RELATED STATUTES**

## **OTHER RELATED STATUTES**

### **BUSINESS AND PROFESSIONAL CODE - DIVISION 5**

Chapter 14, Petroleum and Hydrogen Fuels – Section 13630

#### **Article 19. Fuel Delivery Temperature Study**

**§ 13630. Survey and cost-benefit analysis; evaluation of application to alternative fuels and low-carbon fuel standards; advisory group; public hearings.**

(a) The California Energy Commission in partnership with the Department of Food and Agriculture and the State Air Resources Board shall conduct a comprehensive survey and cost-benefit analysis, as follows:

(1) The department shall conduct a survey on the effect of temperatures on fuel deliveries. The survey shall be conducted during routine dispenser inspections by determining the accuracy of fuel delivery, and recording fuel temperature, air temperature, and storage tank temperature at fuel stations and other fuel facilities subject to inspection. It is the intent of the Legislature that the department use data collected by the survey that the department started on April 1, 2007, and will complete on March 31, 2008.

(2) The department shall transmit the results of the survey to the California Energy Commission, which shall conduct a cost-benefit analysis and comparison of various options relative to temperature-corrected gallonage temperatures for the following:

- (A) Retaining the current reference temperature of 60 degrees Fahrenheit.
- (B) Establishing a different statewide reference temperature.
- (C) Establishing different regional reference temperatures for the state.
- (D) Requiring the installation of temperature correction or compensation equipment at the pump.

(b) The commission shall evaluate how different reference temperatures or temperature correction devices apply to alternative fuels and low-carbon fuel standards.

(c) The California Energy Commission shall convene an advisory group no later than January 25, 2008, including, but not limited to, equipment manufacturers, consumer groups, fuel industry representatives, agricultural commissioners, appropriate government agencies, and other interested parties to provide guidance on the study pursuant to this section and provide guidance on the analysis and recommendations.

(d) The California Energy Commission, in partnership with the Department of Food and Agriculture and the State Air Resources Board, shall conduct public hearings on the results of the cost-benefit analysis and report to the Legislature regarding recommended legislation and regulations based on the results of the study not later than December 31, 2008.

## EDUCATION CODE - DIVISION 1

Part 10.7, Katz Safe Schoolbus Clean Fuel Efficiency Demonstration Program - Sections 17910 et seq.

### CHAPTER 1. General Provisions

#### § 17910. Short title

This part shall be known and may be cited as the Katz Safe Schoolbus Clean Fuel Efficiency Demonstration Program.

#### § 17910.1. Definitions

As used in this part, the following terms have the following meanings:

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

(b) "Superintendent" means the Superintendent of Public Instruction.

(c) "Fund" means the Katz Schoolbus Fund created pursuant to Section 17911.

(d) "Department" means the Department of the California Highway Patrol.

(e) "Program" means the Katz Safe Schoolbus Clean Fuel Efficiency Demonstration Program.

(f) "Schoolbus" means a schoolbus, as defined in Section 545 of the Vehicle Code, which is Type 1 and publicly owned.

(g) "Local educational agency" means any of the following:

(1) A school district.

(2) A county office of education.

(3) A regional occupational program or center.

(4) A joint powers agency which operated publicly owned schoolbuses.

#### § 17910.2. Purchase of new schoolbuses; specifications; distribution

The Legislature finds and declares that there are many schoolbuses operating in this state which are not fuel efficient and do not meet current federal standards of safety, and that ensuring the safety of schoolbus transportation is a matter of the highest importance. It is, therefore, the intent of the Legislature, in enacting this part, to create a program for the purchase of new schoolbuses which meet federal safety standards and operate with greater efficiency and produce fewer adverse air emissions than the vehicles being replaced.



It is further the intent of the Legislature that the replacement schoolbuses provided under this program be distributed to as diverse a selection of districts as is consistent with safety and energy considerations.

## **CHAPTER 2. Fiscal Provisions And Authorized Use Of Funds**

### **§ 17911. Katz Schoolbus Fund; creation**

There is hereby created in the State Treasury the Katz Schoolbus Fund.

### **§ 17911.2. Determination of participating local agencies**

The commission shall determine the local educational agencies that are to receive replacement schoolbuses for participation in the program.

### **§ 17911.3. Determination of candidate schoolbuses; criteria**

In determining which candidate schoolbuses will be selected for replacement, the commission shall first, in coordination with the department and the superintendent, determine which local educational agencies meet the demonstration project criteria.

### **§ 17911.4. Candidate schoolbuses; inspection; criteria**

All candidate schoolbuses selected by the commission for replacement shall be inspected by the department to determine all of the following criteria:

(a) The dates of manufacture of the schoolbuses. The schoolbuses shall have been manufactured prior to April 1, 1977, and shall have been certified during the prior school year pursuant to Section 2807 of the Vehicle Code.

(b) The total accumulated mileage of each candidate schoolbus, as supported by the owner's records and records of the department. Any records maintained by the superintendent may also be considered in determining the true accumulated mileage of a candidate schoolbus. Only mileage accumulated on the candidate school bus during usage by the applicant district may be considered by the commission as mileage under this subdivision.

(c) The average number of miles per day each candidate schoolbus traveled during the prior school year and to date during the current school year, as evidenced by the owner's records. Any records maintained by the department or by the superintendent may also be considered in determining the true average daily miles of a candidate schoolbus.

(d) The dates of each of the last three annual certifications and the odometer reading for each of those dates.

### **§ 17911.5. Purchase of schoolbuses; specifications; title; safety standards; capacity; design**

(a) Schoolbuses shall be purchased by the Department of General Services pursuant to specifications developed by the commission. Title to any schoolbus purchased by the Department of General Services pursuant to this section shall be in the name of the local educational agency for which the schoolbus was purchased.

(b) Any schoolbus purchased with these funds shall meet all applicable federal motor vehicle safety standards, operate with greater energy efficiency, and produce fewer adverse air emissions than the schoolbus being replaced.

(c) Except as provided in this subdivision, no replacement schoolbus shall exceed the capacity of the schoolbus being replaced, as estimated by the department. A local educational agency may use funds from any available source, other than grants received pursuant to this part, to pay that part of the cost of a schoolbus that exceeds the cost of a replacement schoolbus of the same capacity and with the same features as the schoolbus being replaced, as estimated by the Department of General Services.

(d) A replacement schoolbus may be of the same design, configuration, and nonpower-train specifications as the retired schoolbus.

**§ 17911.6. Application for replacement; statement of special circumstances**

Local educational agencies may submit a statement describing special circumstances which are applicable to a qualified candidate schoolbus, such as the unavailability of repair or replacement parts, or any necessary chassis modifications requiring the approval of the manufacturer of the chassis, as required by regulations of the department, with its application for a replacement schoolbus. The commission may consider those special circumstances in determining the local educational agencies that are to receive replacement schoolbuses.

**§ 17911.7. Schoolbuses; prohibited uses**

Schoolbuses replaced under this part shall not be used as schoolbuses, youth buses, school pupil activity buses, general public paratransit vehicles, or farm labor vehicles in this state.

**CHAPTER 3. Demonstration Program**

**§ 17912. Design and administration; duties of commission**

The demonstration program established by this chapter shall be designed and administered by the commission, with the advice and consultation of the department and the superintendent. The commission shall insure that fuel economy and exhaust emissions are monitored as a part of the demonstration, and shall ensure that at least 35 percent of the vehicles are powered by methanol or other low-emission, clean-burning fuels, unless the commission determines, within 18 months of the effective date of this act, that the use of these funds for clean burning fuel projects is infeasible. The commission shall, within 30 days of making that determination, submit a report to the Legislature explaining its determination with respect to the feasibility or infeasibility of the project. The field demonstration shall be in accordance with State Energy Conservation Program guidelines.

**§ 17912.2. Local agency participation; regulation**

When a local educational agency accepts a replacement schoolbus, it shall also agree to participate in the demonstration program. That participation shall include maintaining records of mileage and fuel consumption, and reporting that information to the commission in a timely manner. The commission shall, establish a procedure and requirement for participation in the demonstration program. All vehicles acquired under the demonstration program, at a minimum, shall meet all applicable laws and regulations, including those related to their acquisition by school districts, operation, fuel efficiency, air emissions, and safety.

**§ 17912.3. Purchase of schoolbuses; restrictions; federal standards**

No school district which receives one or more replacement buses pursuant to this part shall purchase for use as a schoolbus, as defined in section 545 of the Vehicle Code, any schoolbus which does not meet federal Motor Vehicle Safety Standards 220, 221 and 222 (49 CFR §§ 571.220, 571.221 and 571.222) applicable to schoolbuses commencing April 1, 1977.

**EDUCATION CODE - DIVISION 1**

Part 10.8. Schoolbus Emissions Reduction Funds – Section 17920 et seq.

**§ 17920. Establishment and administration**

Any school district or county office of education may establish and administer a schoolbus emissions reduction fund to receive revenue from public and private sources for the purpose of purchasing low- or zero-emission schoolbuses to replace, or increase the number of, schoolbuses in the existing school district or county fleet or retrofitting existing schoolbuses to achieve reductions in emissions.

**§ 17921. Revenue sources**

A school district or county office of education that establishes a schoolbus emissions reduction fund may receive revenues from air pollution control district and air quality anagement district grants, revenues from a city that are granted pursuant to paragraph (1) of subdivision (b) of Section 44243 of the Health and Safety Code, or from any other source. The school district or county office of education shall contribute a majority of the money deposited in its schoolbus emissions reduction fund.

**§ 17922. State funds**

State funds may, upon appropriation by the Legislature, be distributed to the Superintendent of Public Instruction for distribution to districts and county offices of education for the purchase of low- or zero-emission schoolbuses that replace, or increase the number of, schoolbuses in the existing schoolbus fleet or for retrofitting existing schoolbuses to achieve reductions in emissions. State funds that are provided pursuant to this part shall not exceed the amount of funds provided from other sources.

**§ 17923. Private sector contributors**

A school district or county office of education may enter into contracts, including multiple year contracts, with private sector individuals, businesses, and other entities for the purpose of receiving revenues to supplement its schoolbus emissions reduction fund in exchange for the issuance to the private sector contributor of emission reduction credits resulting from the purchase by the school district or county office of education of low- or zero-emission schoolbuses or the retrofit of existing schoolbuses. If there are multiple private sector contributors, each of those contributors shall receive a share of the credits allocated in proportion to their contribution, as specified by the school district or county office of education at the time that the parties enter into the agreement.

**§ 17924. State guidelines; funding; credits**

The Chairperson of the State Air Resources Board and the Superintendent of Public Instruction shall jointly develop guidelines for school district or county office of education use that describe all of the following:

(a) The manner in which school districts or county offices of education may obtain funding from private and public entities for deposit into a school district or county office of education schoolbus emissions reduction fund.

(b) The methods for determining the quantity and allocation of emission reduction credits generated from a new bus that replaces an existing bus or from a new or retrofitted bus that represents an expansion of fleet capacity.

(c) The methods by which school districts or county offices of education located in the South Coast Air Quality Management District may obtain funds from cities pursuant to paragraph (1) of subdivision (b) of Section 44243 of the Health and Safety Code.

**§ 17925. Appropriations**

Prior to distributing any state funds pursuant to this part, the Superintendent of Public Instruction shall consult with the State Energy Resources Conservation and Development Commission to avoid duplication or overlap with appropriations from the Katz Schoolbus Fund, created pursuant to Section 17911.

**§ 17926. Sale of replaced schoolbuses**

Any schoolbus replaced pursuant to this part that meets the federal safety standards established in 1977 shall be offered for sale to school districts to replace schoolbuses that do not meet the federal safety standards, at a purchase price not to exceed the amount of the school district or county office of education's contribution specified in Section 17921, plus appropriate administrative costs. This section shall not apply if the school district or county office of education certifies a continued need for the schoolbus being replaced.

## GOVERNMENT CODE – TITLE 2 - DIVISION 3

Chapter 2 – Powers and Duties, Generally – Sections 14684 et seq.

### Article 2. State Property

#### § 14684. Solar energy equipment installation on state buildings and state parking facilities; feasibility

(a) The department, in consultation with the State Energy Resources Conservation and Development Commission, shall ensure that solar energy equipment is installed, no later than January 1, 2007, on all state buildings and state parking facilities, where feasible. The department shall establish a schedule designating when solar energy equipment will be installed on each building and facility, with priority given to buildings and facilities where installation is most feasible, both for state building and facility use and consumption and local publicly owned electric utility use, where feasible.

(b) Solar energy equipment shall be installed where feasible as part of the construction of all state buildings and state parking facilities that commences after December 31, 2002.

(c) For purposes of this section, it is feasible to install solar energy equipment if adequate space on a building is available, and if the solar energy equipment is cost-effective.

(d) No part of this section shall be construed to exempt the state from any applicable fee or requirement imposed by the Public Utilities Commission.

(e) The department may adopt regulations for the purposes of this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1. For purposes of Chapter 3.5 (commencing with Section 11340) of Part 1, including, but not limited to, Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding the 120-day limit specified in subdivision (e) of Section 11346.1, the regulations shall be repealed 180 days after their effective date, unless the department complies with Chapter 3.5 (commencing with Section 11340) of Part 1 as provided in subdivision (e) of Section 11346.1.

(f) For purposes of this section, the following terms have the following meanings:

(1) "Cost-effective" means that the present value of the savings generated over the life of the solar energy system, including consideration of the value of the energy produced during peak and off-peak demand periods and the value of a reliable energy supply not subject to price volatility, shall exceed the present value cost of the solar energy equipment by not less than 10 percent. The present value cost of the solar energy equipment does not include the cost of unrelated building components. The department, in making the present value assessment, shall obtain interest rates, discount rates, and consumer price index figures from the Treasurer, and shall take into consideration air emission reduction benefits.

(2) "Local publicly owned electric utility" means a local publicly owned electric utility as defined in Section 9604 of the Public Utilities Code.

(3) "Solar energy equipment" means equipment whose primary purpose is to provide for the collection, conversion, storage, or control of solar energy for electricity generation.

**§ 14684.1. Installation of solar energy equipment on state buildings, parking facilities and swimming pools; schedule of installation; feasibility; standards and requirements to be met; adoption of regulations; defined terms**

(a) The department, in consultation with the State Energy Resources Conservation and Development Commission, shall ensure that solar energy equipment is installed, no later than January 1, 2009, on all state buildings, state parking facilities, and state-owned swimming pools that are heated with fossil fuels or electricity, where feasible. The department shall establish a schedule designating when solar energy equipment will be installed on each building and facility, with priority given to buildings and facilities where installation is most feasible.

(b) Solar energy equipment shall be installed, where feasible, as part of the construction of all state buildings and state parking facilities for which construction commences on or after January 1, 2008.

(c) For purposes of this section, it is feasible to install solar energy equipment if adequate space on or adjacent to a building is available, if the solar energy equipment is cost-effective, and if funding is available from the state or another source.

(d) Any solar energy equipment installed pursuant to this section shall meet applicable standards and requirements imposed by state and local permitting authorities, including, but not limited to, all of the following:

(1) Certification by the Solar Rating Certification Corporation, which is a nonprofit third party supported by the Department of Energy, or any other nationally recognized certification agency.

(2) All applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories, such as the Underwriters Laboratories.

(3) Where applicable, the regulations adopted by the Public Utilities Commission regarding safety and reliability.

(e) This section does not exempt the state from the payment of any applicable fee or requirement imposed by the Public Utilities Commission.

(f) The department may adopt regulations for the purposes of this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1. For purposes of that chapter, including, but not limited to, Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding the 120-day limit specified in subdivision (e) of Section 11346.1, the regulations

shall be repealed 180 days after their effective date, unless the department complies with Chapter 3.5 (commencing with Section 11340) of Part 1 as provided in subdivision (e) of Section 11346.1.

(g) Any solar energy equipment installed pursuant to this section shall be subject to the provisions of the California Solar Rights Act of 1978 (Chapter 1154 of the Statutes of 1978), as amended.

(h) For purposes of this section, the following terms have the following meanings:

(1) "Cost-effective" means that the present value of the savings generated over the life of the solar energy system, including consideration of the value of the energy produced during peak and off-peak demand periods and the value of a reliable energy supply not subject to price volatility, shall exceed the present value cost of the solar energy equipment by not less than 10 percent. The present value cost of the solar energy equipment does not include the cost of unrelated building components. The department, in making the present value assessment, shall obtain interest rates, discount rates, and consumer price index figures from the Treasurer, and shall take into consideration air emission reduction benefits and the value of stable energy costs.

(2) "Local publicly owned electric utility" means a local publicly owned electric utility as defined in subdivision (d) of Section 9604 of the Public Utilities Code.

(3) "Solar energy equipment" means equipment whose primary purpose is to provide for the collection, conversion, storage, or control of solar energy for the purpose of heat production, electricity production, or simultaneous heat and electricity production.

### **GOVERNMENT CODE – DIVISION 3**

Part 10b, Chapter 2.8 – Energy Efficiency in Public Buildings

#### **§ 15814.40. Use of life cycle cost analysis model in evaluating cost-effectiveness of state building design and construction decisions and impact over a facility's life cycle; financing and project delivery mechanisms**

(a) The Department of General Services shall define a life cycle cost analysis model that shall be used to evaluate the cost-effectiveness of state building design and construction decisions and their impact over a facility's life cycle, no later than July 1, 2007.

(b)(1) The State Energy Resources Conservation and Development Commission, in consultation with the Department of General Services and the Treasurer's office, shall identify and develop appropriate financing and project delivery mechanisms to facilitate state building energy and resource efficient projects. These mechanisms shall include the use of the life cycle cost analysis model as described in subdivision (a), and shall maximize the use of outside financing, including, but not limited to, loan programs, revenue bonds, municipal tax-exempt leases, and other financial instruments supported by project savings, and minimize the use of General Fund moneys for these purposes. In addition, the commission, in consultation with these entities and with representatives from the commercial building construction industry, shall do both of the following:

(A) Identify obstacles to private sector commercial building energy and resource efficient projects.

(B) Identify and recommend financial or other incentives to facilitate private sector commercial building energy and resource efficient projects.

(2) The commission shall report its findings and recommendations made pursuant to paragraph (1) to the Green Action Team by January 1, 2008.

(c) For purposes of this section, the "Green Action Team" means the interagency team established to further the goals of Executive Order S-20-04.

## HEALTH AND SAFETY CODE - DIVISION 26

Part 4, Chapter 2 – Basinwide Mitigation for Cogeneration and Resource Recovery Projects – Sections 41606 et seq.

**§ 41606. Biomass facilities; incentives to increase use of agricultural waste; legislative intent to reduce open field burning; qualified agricultural biomass; amount of incentive payments; award of grants; eligibility for emission reduction credits**

(a)(1) It is the intent of the Legislature to reduce air pollution from open field burning in the state and to improve air quality and protect the public health through new incentives for biomass facilities to increase their use of agricultural waste that would otherwise be burned in open fields in the state.

(2) It is the further intent of the Legislature that the initial incentives paid pursuant to this section provide an effective incentive for the use of qualified agricultural biomass purchased from July 1, 2003, through December 31, 2003, inclusive, in order to maximize air quality benefits during the 2003-04 fiscal year.

(b) For purposes of this section:

(1) "Qualified agricultural biomass" means agricultural residues that are purchased after July 1, 2003, that historically have been open-field burned in the jurisdiction of the air district from which the agricultural residues are derived, as determined by the air district, excluding urban and forest wood products, that include either of the following:

(A) Field and seed crop residues, including, but not limited to, straws from rice and wheat.

(B) Fruit and nut crop residues, including, but not limited to, orchard and vineyard pruning and removals.

(2) "Facility" means any facility located in California that meets all of the following criteria:



(A) As of July 1, 2003, converted and continues to convert qualified agricultural biomass to energy.

(B) Is permitted with best available control technology to reduce emissions, has emissions control equipment in good working order, and is in compliance with its operating permit, as determined by the air pollution control district or air quality management district in which the facility operates.

(C) Demonstrates a significant net increase in utilization of qualified agricultural biomass as compared to usage without grant moneys pursuant to this section. A "significant net increase" means an increase of at least 10 percent in purchases of qualified agricultural biomass above the average annual tonnage purchased by the facility in the previous five years of operation prior to the implementation of the Agricultural Biomass-to-Energy Incentive Grant Program pursuant to former Part 3 (commencing with Section 1101) of Division 1 of the Food and Agricultural Code, as repealed by the act adding this section.

(c)(1) The State Energy Resources Conservation and Development Commission shall, upon determining that a facility is eligible for funding, provide incentives to the facility, consistent with this section.

(2) The State Energy Resources Conservation and Development Commission shall complete the issuance of incentive payments for qualified agricultural biomass purchased from July 1, 2003, through December 31, 2003, inclusive, within 90 days of the effective date of this section.

(3) In providing incentives pursuant to this section, the State Energy Resources Conservation and Development Commission shall provide incentive payments in the amount of ten dollars (\$10) for each ton of qualified agricultural biomass received by a facility and converted into energy. The State Energy Resources Conservation and Development Commission may increase the incentive payment for types or sources of qualified agricultural biomass that require greater incentives to achieve meaningful increases in usage by facilities, as determined by the State Energy Resources Conservation and Development Commission.

(4) Notwithstanding any other provision of law, the receipt of incentives pursuant to this section does not make a facility ineligible for any other production subsidy, rebate, buydown, or other incentive funded through electricity surcharges, except that receipt of incentives funded through electricity surcharges shall preclude receipt of biomass-to-energy incentives financed by the General Fund.

(5) The State Energy Resources Conservation and Development Commission, in consultation with the California Environmental Protection Agency, may adopt guidelines governing the incentives authorized under this section at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines may not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this paragraph may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this section shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code. Adoption of guidelines shall not delay the timing of the payment of incentives that are required by paragraph (2).

(6) 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 contained in this section, and any guidelines adopted pursuant to this section, were a substantial factor in making the award. Any actions taken by an applicant to apply for, become, or remain eligible for an award, shall not be the rendering of goods, services, or a direct benefit to the State Energy Resources Conservation and Development Commission.

(d) Facilities receiving incentive payments pursuant to this section are not eligible to receive emission reduction credits for any qualified agricultural biomass for which a facility has received an incentive payment. Generators or suppliers of qualified agricultural biomass may not receive emission reduction credits for any qualified agricultural biomass for which a facility has received an incentive payment. For purposes of this section, "emission reduction credits" means a credit for a reduction in the emission of an air contaminant that is banked and is available to offset increases in emissions pursuant to Section 40709, and the regulations adopted pursuant to that section.

## HEALTH AND SAFETY CODE - DIVISION 26

Part 5 – Vehicular Air Pollution Control – Section 43000 et seq.

### § 43013.1. Timetable for removal of MTBE from gasoline

(a) The State Energy Resources Conservation and Development Commission, in consultation with, and the state board, shall develop a timetable for the removal of MTBE from gasoline at the earliest possible date. In developing the timetable, the commission and the state board shall consider studies conducted by the commission and should ensure adequate supply and availability of gasoline.

(b) The state board shall ensure that regulations for California Phase 3 Reformulated Gasoline (CaRFG3) adopted pursuant to Executive Order D-5-99 meet all of the following conditions:

(1) Maintain or improve upon emissions and air quality benefits achieved by California Phase 2 Reformulated Gasoline in California as of January 1, 1999, including emission reductions for all pollutants, including precursors, identified in the State Implementation Plan for ozone, and emission reductions in potency-weighted air toxics compounds.

(2) Provide additional flexibility to reduce or remove oxygen from motor vehicle fuel in compliance with the regulations adopted pursuant to subdivision (a).

(3) Are subject to a multimedia evaluation pursuant to Section 43830.8.

(c) On or before April 1, 2000, the State Water Resources Control Board, in consultation with the Department of Water Resources and the State Department of Health Services, shall identify areas of the state that are most vulnerable to groundwater contamination by MTBE or other ether-based oxygenates. The State Water Resources Control Board shall direct resources to those areas for protection and cleanup on a prioritized basis. Loans for upgrading, replacing, or removing tanks shall be made available pursuant to Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government

Code. In identifying areas vulnerable to groundwater contamination, the State Water Resources Control Board shall consider criteria including, but not limited to, any one, or any combination of, the following:

- (1) Hydrogeology.
- (2) Soil composition.
- (3) Density of underground storage tanks in relation to drinking water wells.
- (4) Degree of dependence on groundwater for drinking water supplies.

## **HEALTH AND SAFETY CODE – DIVISION 26**

Part 5, Chapter 8.6 – Zero-Emission Vehicle Grants - Sections 44260 et seq.

### **§ 44260. Grants; encourage purchase or lease of zero-emission vehicle**

The state board, in conjunction with the State Energy Resources Conservation and Development Commission, shall develop and administer a program to provide grants to individuals, local governments, state agencies, nonprofit organizations, and private businesses, to encourage the purchase or lease of a new zero-emission vehicle.

### **§ 44261. Maximum grant; definitions**

(a) The maximum available grant for any qualified recipient, as determined by the state board, shall be an amount equal to 90 percent of the incremental cost above one thousand dollars (\$1,000) of a new zero-emission light-duty car or truck eligible for the program.

(b) For the purposes of this chapter:

(1) "Incremental cost" means the amount determined by the State Energy Resources Conservation and Development Commission as the reasonable difference between the cost of the zero-emission vehicle and the cost of a comparable gasoline or diesel fueled vehicle.

(2) "New zero-emission vehicle" shall include previously leased vehicles that have been substantially upgraded, as determined by the state board, with new technologies, including, but not necessarily limited to, advanced batteries or power electronics.

### **§ 44262. Distribution of grants**

Grants made pursuant to this chapter shall be distributed in the following manner, in amounts as determined by the state board:

(a) Up to three thousand dollars (\$3,000) of the available grant funds may be provided for the first 12-month period of the lease or purchase of the vehicle.

(b) Up to three thousand dollars (\$3,000) of the remaining available grant funds may be provided for the second 12-month period of the lease or purchase of the vehicle.

(c) Up to three thousand dollars (\$3,000) of the remaining available grant funds may be provided for the third 12-month period of the lease or purchase of the vehicle.

(d) No grant funds shall be provided following the third 12-month period of the lease or purchase of the vehicle.

**§ 44263. Grant eligibility; criteria**

In order to be eligible to receive a grant under this chapter, a zero-emission vehicle shall meet all of the following criteria:

(a) Be purchased on or leased on or after October 1, 2000, and on or before December 31, 2002. For purposes of this subdivision, a vehicle shall be deemed to be leased on the date upon which the lease of the vehicle commences.

(b) Be registered with the Department of Motor Vehicles for use in this state.

(c) Meet all applicable federal and state safety standards, or, if the vehicle is to be utilized solely for a demonstration program, have received the applicable waivers from the National Highway Traffic Safety Administration.

(d) Be capable of operation on a freeway, as determined by the state board in conjunction with the State Energy Resources Conservation and Development Commission.

(e) Any other criteria established by the state board.

**§ 44265. Administration of grant program**

(a) The grant program described in this chapter may be administered by a local air management district or air pollution control district on a voluntary basis, provided that the district administers the program based upon the guidelines developed by the state board in conjunction with the State Energy Resources Conservation and Development Commission pursuant to subdivision (b) of Section 44264.

(b) Any district that voluntarily administers this grant program is authorized to provide grants from its own funding sources in an amount of five hundred dollars (\$500) to one thousand dollars (\$1,000) or more per year for each qualified zero-emission vehicle registered within the boundaries of its territorial jurisdiction.

## HEALTH AND SAFETY CODE - DIVISION 26

Part 5, Chapter 8.9 - California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007 – Sections 44270 et seq.

### § 44270. Short title

This chapter shall be known, and may be cited, as the California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007.

### Article 1. General Provisions

#### § 44270.3. Definitions

For the purposes of this chapter, the following terms have the following meanings:

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

(b) "Full fuel-cycle assessment" or "life-cycle assessment" means evaluating and comparing the full environmental and health impacts of each step in the life cycle of a fuel, including, but not limited to, all of the following:

(1) Feedstock production, extraction, cultivation, transport, and storage, and the transportation and use of water and changes in land use and land cover therein.

(2) Fuel production, manufacture, distribution, marketing, transport, and storage, and the transportation and use of water therein.

(3) Vehicle operation, including refueling, combustion, conversion, permeation, and evaporation.

(c) "Vehicle technology" means any vehicle, boat, off-road equipment, or locomotive, or component thereof, including its engine, propulsion system, transmission, or construction materials.

#### § 44271. Administration of programs; guidelines

(a) This chapter creates the Alternative and Renewable Fuel and Vehicle Technology Program, pursuant to Section 44272, to be administered by the commission, and the Air Quality Improvement Program, pursuant to Section 44274, to be administered by the state board. The commission and the state board shall do all of the following in fulfilling their responsibilities pursuant to their respective programs:

(1) Establish sustainability goals to ensure that alternative and renewable fuel and vehicle deployment projects, on a full fuel-cycle assessment basis, will not adversely impact natural resources, especially state and federal lands.

(2) Establish a competitive process for the allocation of funds for projects funded pursuant to this chapter.

(3) Identify additional federal and private funding opportunities to augment or complement the programs created pursuant to this chapter.

(4) Ensure that the results of the reductions in emissions or benefits can be measured and quantified.

(b) The state board shall develop and adopt guidelines for both the Alternative and Renewable Fuel and Vehicle Technology Program and the Air Quality Improvement Program to ensure that programs meet both of the following requirements:

(1) Activities undertaken pursuant to the programs complement, and do not interfere with, efforts to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant emissions.

(2) Activities undertaken pursuant to the programs maintain or improve upon emission reductions and air quality benefits in the State Implementation Plan for Ozone, California Phase 2 Reformulated Gasoline standards, and diesel fuel regulations.

(c) For the purposes of both of the programs created by this chapter, eligible projects do not include those required to be undertaken pursuant to state or federal law, district rules or regulations, memoranda of understanding with a governmental entity, or legally binding agreements or documents. For the purposes of the Alternative and Renewable Fuel and Vehicle Technology Program, the state board shall advise the commission to ensure the requirements of this subdivision are met.

## **Article 2. Alternative and Renewable Fuel and Vehicle Technology Program**

### **§ 44272. Alternative and Renewable Fuel and Vehicle Technology Program created; preference criteria; funding eligibility**

(a) The Alternative and Renewable Fuel and Vehicle Technology Program is hereby created. The program shall be administered by the commission. The commission shall implement the program by regulation pursuant to the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code. The program shall provide, upon appropriation by the Legislature, competitive grants, revolving loans, loan guarantees, loans, or other appropriate funding measures, to public agencies, vehicle and technology entities, businesses and projects, public-private partnerships, workforce training partnerships and collaboratives, fleet owners, consumers, recreational boaters, and academic institutions to develop and deploy innovative technologies that transform California's fuel and vehicle types to help attain the state's climate change policies. The emphasis of this program shall be to develop and deploy technology and alternative and renewable fuels in the marketplace, without adopting any one preferred fuel or technology.

(b) A project funded by the commission shall be approved at a noticed public hearing of the commission and shall be consistent with the priorities established by the investment plan adopted pursuant to Section 44272.5.

(c) The commission shall provide preferences to those projects that maximize the goals of the Alternative and Renewable Fuel and Vehicle Technology Program, based on the following criteria, as applicable:

(1) The project's ability to provide a measurable transition from the nearly exclusive use of petroleum fuels to a diverse portfolio of viable alternative fuels that meet petroleum reduction and alternative fuel use goals.

(2) The project's consistency with existing and future state climate change policy and low-carbon fuel standards.

(3) The project's ability to reduce criteria air pollutants and air toxics and reduce or avoid multimedia environmental impacts.

(4) The project's ability to decrease, on a life-cycle basis, the discharge of water pollutants or any other substances known to damage human health or the environment, in comparison to the production and use of California Phase 2 Reformulated Gasoline or diesel fuel produced and sold pursuant to California diesel fuel regulations set forth in Article 2 (commencing with Section 2280) of Chapter 5 of Division 3 of Title 13 of the California Code of Regulations.

(5) The project does not adversely impact the sustainability of the state's natural resources, especially state and federal lands.

(6) The project provides nonstate matching funds.

(7) The project provides economic benefits for California by promoting California-based technology firms, jobs, and businesses.

(8) The project uses existing or proposed fueling infrastructure to maximize the outcome of the project.

(9) The project's ability to reduce on a life-cycle assessment greenhouse gas emissions by at least 10 percent, and higher percentages in the future, from current reformulated gasoline and diesel fuel standards established by the state board.

(10) The project's use of alternative fuel blends of at least 20 percent, and higher blend ratios in the future, with a preference for projects with higher blends.

(11) The project drives new technology advancement for vehicles, vessels, engines, and other equipment, and promotes the deployment of that technology in the marketplace.

(d) Only the following shall be eligible for funding:

(1) Alternative and renewable fuel projects to develop and improve alternative and renewable low-carbon fuels, including electricity, ethanol, dimethyl ether, renewable diesel, natural gas, hydrogen, and biomethane, among others, and their feedstocks that have high potential for long-term or short-term commercialization, including projects that lead to sustainable feedstocks.

(2) Demonstration and deployment projects that optimize alternative and renewable fuels for existing and developing engine technologies.

(3) Projects to produce alternative and renewable low-carbon fuels in California.

(4) Projects to decrease the overall impact of an alternative and renewable fuel's life cycle carbon footprint and increase sustainability.

(5) Alternative and renewable fuel infrastructure, fueling stations, and equipment. The preference in paragraph (10) of subdivision (c) shall not apply to renewable diesel or biodiesel infrastructure, fueling stations, and equipment used solely for renewable diesel or biodiesel fuel.

(6) Projects to develop and improve light-, medium-, and heavy-duty vehicle technologies that provide for better fuel efficiency and lower greenhouse gas emissions, alternative fuel usage and storage, or emission reductions, including propulsion systems, advanced internal combustion engines with a 40 percent or better efficiency level over the current market standard, light-weight materials, energy storage, control systems and system integration, physical measurement and metering systems and software, development of design standards and testing and certification protocols, battery recycling and reuse, engine and fuel optimization electronic and electrified components, hybrid technology, plug-in hybrid technology, battery electric vehicle technology, fuel cell technology, and conversions of hybrid technology to plug-in technology through the installation of safety certified supplemental battery modules.

(7) Programs and projects that accelerate the commercialization of vehicles and alternative and renewable fuels including buy-down programs through near-market and market-path deployments, advanced technology warranty or replacement insurance, development of market niches, supply-chain development, and research related to the pedestrian safety impacts of vehicle technologies and alternative and renewable fuels.

(8) Programs and projects to retrofit medium- and heavy-duty on-road and nonroad vehicle fleets with technologies that create higher fuel efficiencies, including alternative and renewable fuel vehicles and technologies, idle management technology, and aerodynamic retrofits that decrease fuel consumption.

(9) Infrastructure projects that promote alternative and renewable fuel infrastructure development connected with existing fleets, public transit, and existing transportation corridors, including physical measurement or metering equipment and truck stop electrification.

(10) Workforce training programs related to alternative and renewable fuel feedstock production and extraction, renewable fuel production, distribution, transport, and storage, high-performance and low-emission vehicle technology and high tower electronics, automotive computer systems, mass transit fleet conversion, servicing, and maintenance, and other sectors or occupations related to the purposes of this chapter.

(11) Block grants administered by not-for-profit technology entities for multiple projects, education and program promotion within California, and development of alternative and renewable fuel and vehicle technology centers.

(12) Life-cycle and multimedia analyses, sustainability and environmental impact evaluations, and market, financial, and technology assessments performed by a state agency to determine the impacts of increasing the use of low-carbon transportation fuels and



technologies, and to assist in the preparation of the investment plan and program implementation.

(e) The commission may make a single source or sole source award pursuant to this section for applied research. The same requirements set forth in Section 25620.5 of the Public Resources Code shall apply to awards made on a single source basis or a sole source basis. This subdivision does not authorize the commission to make a single source or sole source award for a project or activity other than for applied research. The commission may pursuant to this subdivision make a single source or sole source award for the applied research to be conducted by the Quiet Motorized Road Vehicle and Safe Mobility Committee created pursuant to Section 25227 of the Public Resources Code, if Senate Bill 1174 of the 2007-08 Regular Session, which would add that section, is enacted.

(f) Until January 1, 2012, the commission may contract with the Treasurer to expend funds through programs implemented by the Treasurer, if that expenditure is consistent with all of the requirements of this chapter.

**§ 44272.5. Investment plan; advisory body; membership**

(a) The commission shall develop and adopt an investment plan to determine priorities and opportunities for the Alternative and Renewable Fuel and Vehicle Technology Program created pursuant to this chapter. The investment plan shall establish priorities for investment of funds and technologies to achieve the goals of this chapter and describe how funding will complement existing public and private investments, including existing state programs that further the goals of this chapter. The commission shall create and consult with an advisory body as it develops the investment plan. The advisory body is subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code). The commission shall, at a minimum, hold one public hearing on the advisory body's recommendations prior to approving the investment plan.

(b) Membership of the advisory body created pursuant to subdivision (a) shall include, but is not limited to, representatives of fuel and vehicle technology entities, labor organizations, environmental organizations, community-based justice and public health organizations, recreational boaters, consumer advocates, academic institutions, workforce training groups, and private industry. The advisory body shall also include representatives from the Resources Agency, the Business, Transportation and Housing Agency, the Labor and Workforce Development Agency, and the California Environmental Protection Agency.

(c) The commission shall hold at least three public workshops in different regions of the state and one public hearing prior to approving the investment plan. The commission shall annually update and approve the plan. The commission shall reconvene and consult with the advisory body created pursuant to subdivision (a) prior to annually updating and approving the plan.

**§ 44273. Alternative and Renewable Fuel and Vehicle Technology Fund created; administration of funds; project evaluation**

(a) The Alternative and Renewable Fuel and Vehicle Technology Fund is hereby created in the State Treasury, to be administered by the commission. The moneys in the fund, upon appropriation by the Legislature, shall be expended by the commission to implement

the Alternative and Renewable Fuel and Vehicle Technology Program in accordance with this chapter.

(b) Notwithstanding any other provision of law, the sum of ten million dollars (\$10,000,000) shall be transferred annually from the Public Interest Research, Development, and Demonstration Fund created by Section 384 of the Public Utilities Code to the Alternative and Renewable Fuel and Vehicle Technology Fund. Prior to the award of any funds from this source, the commission shall make a determination that the proposed project will provide benefits to electric or natural gas ratepayers based upon the commission's adopted criteria.

(c) Beginning with the integrated energy policy report adopted in 2011, and in the subsequent reports adopted thereafter, pursuant to Section 25302 of the Public Resources Code, the commission shall include an evaluation of research, development, and deployment efforts funded by this chapter. The evaluation shall include all of the following:

(1) A list of projects funded by the Alternative and Renewable Fuel and Vehicle Technology Fund.

(2) The expected benefits of the projects in terms of air quality, petroleum use reduction, greenhouse gas emissions reduction, technology advancement, and progress towards achieving these benefits.

(3) The overall contribution of the funded projects toward promoting a transition to a diverse portfolio of clean, alternative transportation fuels and reduced petroleum dependency in California.

(4) Key obstacles and challenges to meeting these goals identified through funded projects.

(5) Recommendations for future actions.

### **Article 3. The Air Quality Improvement Program**

#### **§ 44274. Air Quality Improvement Program created; guidelines; evaluation of projects; eligible projects**

(a) The Air Quality Improvement Program is hereby created. The program shall be administered by the state board, in consultation with the districts. The state board shall develop guidelines to implement the program. Prior to the adoption of the guidelines, the state board shall hold at least one public hearing. In addition, the state board shall hold at least three public workshops with at least one workshop in northern California, one in the central valley, and one in southern California. The purpose of the program shall be to fund, upon appropriation by the Legislature, air quality improvement projects relating to fuel and vehicle technologies. The primary purpose of the program shall be to fund projects to reduce criteria air pollutants, improve air quality, and provide funding for research to determine and improve the air quality impacts of alternative transportation fuels and vehicles, vessels, and equipment technologies.

(b) Projects proposed for funding pursuant to subdivision (a) shall be evaluated based on their proposed or potential reduction of criteria or toxic air pollutants, cost-effectiveness, contribution to regional air quality improvement, and ability to promote the use of

clean alternative fuels and vehicle technologies as determined by the state board, in coordination with the commission.

(c) The program shall be limited to competitive grants, revolving loans, loan guarantees, loans, and other appropriate funding measures that further the purposes of the program. Projects to be funded shall include only the following:

(1) On- and off-road equipment projects that are cost effective.

(2) Projects that provide mitigation for off-road gasoline exhaust and evaporative emissions.

(3) Projects that provide research to determine the air quality impacts of alternative fuels and projects that study the life-cycle impacts of alternative fuels and conventional fuels, the emissions of biofuel and advanced reformulated gasoline blends, and air pollution improvements and control technologies for use with alternative fuels and vehicles.

(4) Projects that augment the University of California's agricultural experiment station and cooperative extension programs for research to increase sustainable biofuels production and improve the collection of biomass feedstock.

(5) Incentives for small off-road equipment replacement to encourage consumers to replace internal combustion engine lawn and garden equipment.

(6) Incentives for medium- and heavy-duty vehicles and equipment mitigation, including all of the following:

(A) Lower emission schoolbus programs.

(B) Electric, hybrid, and plug-in hybrid on- and off-road medium- and heavy-duty equipment.

(C) Regional air quality improvement and attainment programs implemented by the state or districts in the most impacted regions of the state.

(7) Workforce training initiatives related to advanced energy technology designed to reduce air pollution, including state-of-the-art equipment and goods, and new processes and systems. Workforce training initiatives funded shall be broad-based partnerships that leverage other public and private job training programs and resources. These partnerships may include, though are not limited to, employers, labor unions, labor-management partnerships, community organizations, workforce investment boards, postsecondary education providers including community colleges, and economic development agencies.

(8) Incentives to identify and reduce emissions from high emitting light-duty vehicles.

(d)(1) Beginning January 1, 2011, the state board shall submit to the Legislature a biennial report to evaluate the implementation of the Air Quality Improvement Program established pursuant to this chapter.

(2) The report shall include all of the following:

- (A) A list of projects funded by the Air Quality Improvement Account.
  - (B) The expected benefits of the projects in promoting clean, alternative fuels and vehicle technologies.
  - (C) Improvement in air quality and public health, greenhouse gas emissions reductions, and the progress made toward achieving these benefits.
  - (D) The impact of the projects in making progress toward attainment of state and federal air quality standards.
  - (E) Recommendations for future actions.
- (3) The state board may include the information required to be reported pursuant to paragraph (1) in an existing report to the Legislature as the state board deems appropriate.

**§ 44274.5. Air Quality Improvement Fund created; administration of funds**

The Air Quality Improvement Fund is hereby created in the State Treasury, to be administered by the state board. The moneys in the Air Quality Improvement Fund, upon appropriation by the Legislature, shall be expended by the state board in accordance with this chapter to implement the Air Quality Improvement Program. The Legislature may transfer moneys from the fund to the Carl Moyer Memorial Air Quality Standards Attainment Trust Fund.

**HEALTH AND SAFETY CODE - DIVISION 26**

Part 5, Chapter 9 – Carol Moyer Memorial Air Quality Standards Attainment Program – Section 44275 et seq.

**Article 1. Definitions**

**§ 44275. Definitions**

As used in this chapter, the following terms have the following meaning:

- (a) "Advisory board" means the Carl Moyer Program Advisory Board created by Section 44297.
- (b) "Btu" means British thermal unit.
- (c) "Commission" means the State Energy Resources Conservation and Development Commission.
- (d) "Cost-effectiveness" means dollars provided to a project pursuant to subdivision (d) of Section 44283 for each ton of NOx emission reduction attributed to a project or to the program as a whole. In calculating cost-effectiveness, one-time grants of funds made at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project by the state board, taking into account the interest rate on

bonds, interest earned by state funds, and other factors as determined appropriate by the state board. Cost-effectiveness shall be calculated by dividing annualized costs by average annual emissions reduction of NO<sub>x</sub> in this state.

(e) "Covered engine" includes any internal combustion engine or electric motor and drive powering a covered source.

(f) "Covered source" includes onroad vehicles of 14,000 pounds GVWR or greater, offroad nonrecreational equipment and vehicles, locomotives, diesel marine vessels, stationary agricultural engines, and, as determined by the state board, other high-emitting diesel engine categories.

(g) "Covered vehicle" includes any vehicle or piece of equipment powered by a covered engine.

(h) "District" means a county air pollution control district or an air quality management district.

(i) "Fund" means the Carl Moyer Memorial Air Quality Standards Attainment Trust Fund created by Section 44299.

(j) "Mobile Source Air Pollution Reduction Review Committee" means the Mobile Source Air Pollution Reduction Review Committee created by Section 44244.

(k) "Incremental cost" means the cost of the project less a baseline cost that would otherwise be incurred by the applicant in the normal course of business. Incremental costs may include added lease or fuel costs pursuant to Section 44283 as well as incremental capital costs.

(l) "New very low emission vehicle" means a vehicle that qualifies as a very low emission vehicle when it is a new vehicle, where new vehicle has the same meaning as defined in Section 430 of the Vehicle Code, or that is modified with the approval and warranty of the original equipment manufacturer to qualify as a very low emission vehicle within 12 months of delivery to an owner for private or commercial use.

(m) "NO<sub>x</sub>" means oxides of nitrogen.

(n) "Program" means the Carl Moyer Memorial Air Quality Standards Attainment Program created by subdivision (a) of Section 44280.

(o) "Repower" means replacing an engine with a different engine. The term repower, as used in this chapter, generally refers to replacing an older, uncontrolled engine with a new, emissions-certified engine, although replacing an older emissions-certified engine with a newer engine certified to lower emissions standards may be eligible for funding under this program.

(p) "Retrofit" means making modifications to the engine and fuel system such that the retrofitted engine does not have the same specifications as the original engine.

(q) "Very low emission vehicle" means a vehicle with emissions significantly lower than otherwise applicable baseline emission standards or uncontrolled emission levels pursuant to Section 44282.

## **Article 2. Program Introduction**

### **§ 44280. Administration; grants; infrastructure demonstration and technology development**

(a) There is hereby created the Carl Moyer Memorial Air Quality Standards Attainment Program. The program shall be administered by the state board in accordance with this chapter. The administration of the program may be delegated to the districts.

(b) The program shall provide grants to offset the incremental cost of projects that reduce emissions of NO<sub>x</sub> from covered sources in California. Eligibility for grant awards shall be determined by the state board, in consultation with the districts, in accordance with this chapter.

(c) The program shall also provide funding for a fueling infrastructure demonstration program and for technology development efforts that are expected to result in commercially available technologies in the near-term that would improve the ability of the program to achieve its goals. The infrastructure demonstration and technology development portions of the program shall be managed by the commission, in consultation with the state board.

## **Article 3. Eligible Projects and Applicants**

### **§ 44281. Eligible projects; ineligible projects; fueling or electrification infrastructure; eligible applicants; legislative intent**

(a) Eligible projects are any of the following:

(1) Purchase of new very low or zero-emission covered vehicles or covered engines.

(2) Emission-reducing retrofit of covered engines, or replacement of old engines powering covered sources with newer engines certified to more stringent emissions standards than the engine being replaced, or with electric motors or drives.

(3) Purchase and use of emission-reducing add-on equipment for covered vehicles.

(4) Development and demonstration of practical, low-emission retrofit technologies, repower options, and advanced technologies for covered engines and vehicles with very low emissions of oxides of nitrogen.

(b) No new purchase, retrofit, repower, or add-on equipment shall be funded under this chapter if it is required by any local, state, or federal statute, rule, regulation, memoranda of agreement or understanding, or other legally binding document, except that an otherwise qualified project may be funded even if the State Implementation Plan assumes that the change in equipment, vehicles, or operations will occur, if the change is not required by a

statute, regulation, or other legally binding document in effect as of the date the grant is awarded. No project funded by the program shall be used for credit under any state or federal emissions averaging, banking, or trading program. No emission reduction generated by the program shall be used as marketable emission reduction credits or to offset any emission reduction obligation of any entity. Projects involving new engines that would otherwise generate marketable credits under state or federal averaging, banking, and trading programs shall include transfer of credits to the engine end user and retirement of those credits toward reducing air emissions in order to qualify for funding under the program. A purchase of a low-emission vehicle or of equipment pursuant to a corporate or a controlling board's policy, but not otherwise required by law, shall generate surplus emissions reductions and may be funded by the program.

(c) The program may also provide funding toward installation of fueling or electrification infrastructure as provided in Section 44284.

(d) Eligible applicants may be any individual, company, or public agency that owns one or more covered vehicles that operate primarily within California or otherwise contribute substantially to the NOx emissions inventory in California.

(e) It is the intent of the Legislature that all emission reductions generated by this chapter shall contribute to public health by reducing, for the life of the vehicle being funded, the total amount of emissions in California.

#### **Article 4. General Eligibility Criteria**

##### **§ 44282. General eligibility criteria**

The following criteria apply to all projects to be funded through the program except for projects funded through the Advanced Technology Account and the Infrastructure Demonstration Program:

(a) Except for projects involving marine vessels, 75 percent or more of vehicle miles traveled or hours of operation shall be projected to be in California for at least five years following the grant award. Projects involving marine vessels and engines shall be limited to those that spend enough time operating in California air basins over the lifetime of the project to meet the cost-effectiveness criteria based on NOx reductions in California, as provided in Section 44283.

(b) To be eligible, projects shall meet cost-effectiveness per ton of NOx reduced requirements of Section 44283.

(c) To be eligible, retrofits, repowers, and installation of add-on equipment for covered vehicles shall be performed, or new covered vehicles delivered to the end user, on or after the date the program is implemented.

(d) Retrofit technologies, new engines, and new vehicles shall be certified for sale or under experimental permit for operation in California.

(e) Repower projects that replace older, uncontrolled engines with new, emissions-certified engines or that replace emissions-certified engines with new engines certified to a more stringent NOx emissions standard are approvable subject to the other

applicable selection criteria. The state board shall determine appropriate baseline emission levels for the uncontrolled engines being replaced.

(f) Retrofit and add-on equipment projects shall document a NOx emission reduction of at least 25 percent and no increase in particulate emissions compared to the applicable baseline emissions accepted by the state board for that engine year and application. The state board shall determine appropriate baseline emission levels. Acceptable documentation shall be defined by the state board. After study of available emission reduction technologies and after public notice and comment, the state board may revise the minimum percentage NOx reduction criterion for retrofits and add-on equipment provided for in this section to improve the ability of the program to achieve its goals.

(g)(1) For projects involving the purchase of new very low or zero-emission vehicles, engines shall be certified to an optional low NOx emissions standard established by the state board, except as provided for in paragraph (2).

(2) For projects involving the purchase of new very low or zero-emission covered vehicles for which no optional low-NOx emission standards are available, documentation shall be provided showing that the low or zero-emission engine emits not more than 70 percent of the NOx or NOx plus hydrocarbon emissions of a new engine certified to the applicable baseline NOx or NOx plus hydrocarbon emission standard for that engine and meets applicable particulate standards. The state board shall specify the documentation required. If no baseline emission standard exists for new vehicles in a particular category, the state board shall determine an appropriate baseline emission level for comparison.

## **Article 5. Cost-Effectiveness Criteria**

### **§ 44283. Cost-effectiveness criteria**

(a) Grants shall not be made for projects with a cost-effectiveness, calculated in accordance with this section, of more than twelve thousand dollars (\$12,000) per ton of NOx reduced in California.

(b) Only NOx reductions occurring in this state shall be included in the cost-effectiveness determination. The extent to which emissions generated at sea contribute to air quality in California nonattainment areas shall be incorporated into these methodologies based on a reasonable assessment of currently available information and modeling assumptions.

(c) The state board shall develop protocols for calculating the surplus NOx reductions in California from representative project types over the life of the project.

(d) The cost of the NOx reduction is the amount of the grant from the program, including matching funds provided pursuant to subdivision (e) of Section 44287, plus any other state funds, or funds under the district's budget authority or fiduciary control, provided toward the project. The state board shall establish reasonable methodologies for evaluating project cost-effectiveness, consistent with the definition contained in subdivision (c) of Section 44275, and with accepted methods, taking into account a fair and reasonable discount rate or time value of public funds.

(e) A grant shall not be made that, net of taxes, provides the applicant with funds in excess of the incremental cost of the project. Incremental lease costs may be



capitalized according to guidelines adopted by the state board so that these incremental costs may be offset by a one-time grant award.

(f) Funds under a district's budget authority or fiduciary control may be used to pay for the incremental cost of liquid or gaseous fuel, other than standard gasoline or diesel, which is integral to a NOx reducing technology that is part of a project receiving grant funding under the program. The fuel shall be approved for sale by the state board. The incremental fuel cost over the expected lifetime of the vehicle may be offset by the district if the project as a whole, including the incremental fuel cost, meets all of the requirements of this chapter, including the maximum allowed cost-effectiveness. The state board shall develop an appropriate methodology for converting incremental fuel costs over the vehicle lifetime into an initial cost for the purposes of determining project cost-effectiveness. Incremental fuel costs may not be included in project costs for fuels dispensed from any facility that was funded, in whole or in part, from the fund.

(g) For purposes of determining any grant amount pursuant to this chapter, the incremental cost of any new purchase, retrofit, repower, or add-on equipment shall be reduced by the value of any current financial incentive that directly reduces the project price, including any tax credits or deductions, grants, or other public financial assistance. Project proponents applying for funding shall be required to state in their application any other public financial assistance to the project.

(h) For projects that would repower offroad equipment by replacing uncontrolled diesel engines with new, certified diesel engines, the state board may establish maximum grant award amounts per repower. A repower project shall also be subject to the incremental cost maximum pursuant to subdivision (e).

(i) After study of available emission reduction technologies and costs and after public notice and comment, the state board may reduce the values of the maximum grant award criteria stated in this section to improve the ability of the program to achieve its goals. Every year the state board shall adjust the maximum cost-effectiveness amount established in subdivision (a) and any per-project maximum set by the state board pursuant to subdivision (h) to account for inflation.

## **Article 6. Infrastructure Demonstration Project**

### **§ 44284. Authorized expenditure; project approval; funding rates; qualifying criteria; applications; staff and technical support; reporting**

(a) In order to provide sufficient support for low-emission vehicle projects at the start of the program, the commission shall administer a demonstration project that provides limited funds for fueling infrastructure. Expenditures from the fund for this demonstration program shall not exceed two million five hundred thousand dollars (\$2,500,000). In addition to providing necessary financial assistance to a limited number of infrastructure projects, the purpose of the infrastructure demonstration program is to assess whether funding for infrastructure is an appropriate and cost-effective use of public funds.

(b) The commission shall solicit applications for a balanced mix of demonstration projects involving fueling and electrification infrastructure that is linked to covered vehicle projects and that is consistent with program goals. The commission, in consultation with participating districts, shall make every effort to coordinate infrastructure projects with covered

vehicle projects representing a broad variety of fuels, technologies, and applications as appropriate and consistent with this chapter. Infrastructure projects that begin to dispense qualifying fuel on or after the date the program is implemented are eligible for funding under the program. The commission may also subvene infrastructure funds to districts to solicit applications and to expend the funds in accordance with this section. The commission shall have oversight and reporting responsibility for any funds that are subvended pursuant to this subdivision.

(c) Any fueling infrastructure funded under the program shall be approved for funding by both the commission and the applicable district. The commission, in consultation with the districts, shall develop guidelines and criteria for infrastructure projects to be funded under the program.

(d) The purchase and installation of equipment at a site that is designed primarily to dispense qualifying fuel is eligible for funding under the program. "Qualifying fuel" includes any liquid or gaseous fuel, other than standard gasoline or diesel, which is ultimately dispensed into covered vehicles that provide NOx reductions in California, and which were introduced into operation in California on or after the date the program is implemented.

(e) Infrastructure projects to dispense qualifying fuel are eligible for funding from the Infrastructure Demonstration Program at a rate of seven dollars (\$7) in one-time funding per million Btus of qualifying fuel to be dispensed annually. Projects that cannot demonstrate sufficient annual fuel throughput to qualify for a one hundred thousand dollar (\$100,000) award, that is, over 14,280 million Btus per year, are not eligible for funding. Projects that can demonstrate an annual throughput of more than 14,280 million Btus per year, however, may request funding in amounts less than one hundred thousand dollars (\$100,000). Private access facilities are eligible for a maximum award of up to four hundred thousand dollars (\$400,000). Public access or limited public access facilities are eligible for a maximum award of up to six hundred thousand dollars (\$600,000). Cofunding may be required to receive the applicable award amount. Infrastructure project awards from the fund, net of taxes, shall not exceed the total cost of the infrastructure project less any other applicable grants or tax credits.

(f) Infrastructure projects to dispense qualifying fuel shall meet all of the following criteria:

(1) Provide documentation, signed by owners of vehicles that will use the fuel, to demonstrate that an approvable amount of qualifying fuel is expected to be dispensed over a period of at least five years.

(2) Be designed to meet current industry standards and codes and any applicable regulations.

(3) If the owner of the fuel storage and dispensing equipment will be fueling vehicles the owner does not own, the owner shall provide one or more statements, signed by the proposed fueling equipment owner and by the owners of those vehicles that are referenced in the demonstration of adequate fuel throughput pursuant to subdivision (e), that mutually satisfactory arrangements regarding fuel price have been made. If the owner and operator of the fueling equipment will use the equipment exclusively to fuel his or her own vehicles, no documentation regarding fuel pricing arrangements is required.

(g) Infrastructure projects to dispense electricity to covered vehicles shall be eligible for funding from the Infrastructure Demonstration Program at the rate of a minimum of four thousand dollars (\$4,000), up to a maximum of ten thousand dollars (\$10,000) per charger infrastructure charge port including installation for each qualifying charger. A "qualifying charger" is any charger that dispenses 4,000 kWh or more of energy per year, through each of one or more charging ports, into one or more covered vehicles that provide NOx reductions in California. Awards shall be based on a sliding scale of four thousand dollars (\$4,000) to fourteen thousand dollars (\$14,000) per charger port for qualifying chargers that dispense between 4,000 kWh and 15,000 kWh of electricity per port. In order for the project to be eligible for funding, documentation shall be provided, signed by owners of the vehicles that will use the charger, to demonstrate that the claimed kilowatt hours of electricity are expected to be dispensed per year for a period of at least five years. Funding shall be limited to a maximum award of two hundred thousand dollars (\$200,000) per business per location. Infrastructure project awards from the fund, net of taxes, shall not exceed the total cost of the infrastructure project less any other applicable grants or tax credits.

(h) The commission, in consultation with the state board and the districts, shall develop a simple, standardized application package for a project to be funded from the Infrastructure Demonstration Program. In addition to the application form, an application package shall include a brief description of the program, the projects that are eligible for the funding that is available, the selection criteria and evaluation process, the documentation that is required, and who to contact for more information, as well as an example of the contract that an applicant will be required to execute before receiving a grant award. The application form shall require as much information as the commission determines is necessary to properly evaluate each project, but shall otherwise minimize the information required. An applicant shall not be required to calculate tons of emissions reduced or cost-effectiveness as part of the application. Application packages shall be finalized and published as soon as practicable.

(i) The commission shall make staff or technical support contractors available on an as-needed basis within available budgetary resources to assist project proponents to address issues common to infrastructure projects eligible for funding. Those issues may involve permitting and safety requirements.

(j) As part of the annual program reports required pursuant to Section 44295, the commission shall report on the use of Infrastructure Demonstration Program funds. The commission shall report on facilities funded, how those facilities are supporting covered vehicle projects, fuel or electricity dispensed from each facility, and associated emissions reductions and cost-effectiveness.

The commission shall calculate a total cost-effectiveness of NOx reductions from the vehicles that fuel at facilities funded from the Infrastructure Demonstration Program. This total cost-effectiveness shall include program funding provided to vehicles as well as funding provided from the Infrastructure Demonstration Program.

## **Article 7. Advanced Technology Development**

### **§ 44285. Requests for proposals and program opportunity notices**

(a) From time to time, the commission shall issue specific requests for proposals (RFPs) or program opportunity notices (PONs) for technology proposals to be funded from the Advanced Technology Account. The first issuance of RFPs or PONs shall be no later

than January 31, 2000. It is the intent of the Legislature that the technology grants be used to support development of emission-reducing technologies that could be used for projects eligible for funding pursuant to this chapter. It is also the intent of the Legislature that the technology grants be directed to a balanced mix of retrofit and add-on technologies to reduce emissions from the existing stock of targeted vehicles, as well as to advanced technologies for new engines and vehicles that produce very low or zero-NOx emissions. The commission, in consultation with the state board, may also consider funding technology projects that would allow qualifying fuels, as defined in subdivision (d) of Section 44284, to be produced from California energy resources, with preference given to projects involving otherwise unusable California energy resources, at prices lower than prices otherwise available and low enough to make projects that would qualify for funding under the program economically attractive to local businesses. Not more than 20 percent of Advanced Technology Account funds may be directed to those qualifying fuel projects. Advanced technologies and any retrofit or add-on projects that provide multiple benefits by reducing emissions of particulates and other air pollutants should be given special consideration by the commission in soliciting proposals and determining how to allocate funds. At least 50 percent of the funds available in the Advanced Technology Account shall be directed toward technologies that provide multiple benefits.

(b) Proposals involving technologies that allow onroad covered vehicles to replace with electric power the power normally supplied by the vehicles' internal combustion engine while the vehicle is parked shall be eligible for funding from the Advanced Technology Account if they meet all applicable criteria under this section.

(c) Technologies proposed for technology grants shall show clear and compelling evidence that the technology being funded has a strong commercialization plan and organization, is likely to be offered for commercial sale in California within five years of the application for funding, and that, once commercial, the technology will present opportunities for projects otherwise eligible for funding pursuant to this chapter. The commission shall specifically consider the projected NOx reducing potential and cost-effectiveness of the commercialized technology, the potential for the technology to contribute in a significant way to air quality goals, and the strength of the commercialization plan.

(d) The commission may require cost sharing for technology projects, but shall not require repayment of funds granted.

(e) Proposals for projects involving either publicly owned or privately owned vehicles or vessels shall be eligible for technology awards.

(f) In developing RFPs and PONs and in evaluating proposals for funding, the commission shall consider that the primary objective of technology grants is to advance toward commercialization technologies that would support projects to be funded under the program.

## **Article 8. Program Administration: General**

### **§ 44286. Responsibilities of state board, districts and commission**

(a) The responsibilities of the state board include management of program funds and program oversight. The state board is responsible for producing guidelines, protocols, and criteria for covered vehicle projects and developing methodologies for evaluating

project cost-effectiveness in accordance with this chapter. The state board shall have primary responsibility for the reporting aspects of the program.

(b) The responsibilities of a district include local administration of project funds, monitoring funded projects, and reporting results to the state board, in accordance with this chapter. Any project funds awarded to a successful applicant shall be disbursed by the district.

(c) Relative to the allocation of funds in the south coast district, for purposes of this program, Mobile Source Air Pollution Reduction Review Committee funds shall only be used as matching funds upon approval, by minute action, of the Mobile Source Air Pollution Reduction Review Committee.

(d) The state board may reserve up to 10 percent of the program funds available each year to directly fund any project that is multidistrict in nature. A project that is multidistrict in nature shall be funded by the state board in coordination with the appropriate districts. The state board shall coordinate outreach efforts with a participating district to ensure that any parallel availability of a district grant and a grant from the state board is clear to an eligible applicant. Reserved funds not committed to a project funded directly by the state board by the end of the fiscal year shall be made available to the districts in the following year.

(e) The commission, in consultation with the state board, shall manage the Advanced Technology Account and the Infrastructure Demonstration Program in accordance with this chapter.

(f) The state board shall work closely with the commission and the districts for the duration of this program to maximize the ability of the program to achieve its goals.

(g) The state board and the districts shall take all appropriate and necessary actions to ensure that emissions reductions achieved through the program are credited by the United States Environmental Protection Agency to the appropriate emission reduction objectives in the State Implementation Plan.

**§ 44287. Grant criteria and guidelines; administration of funds; district applications**

(a) The state board shall establish grant criteria and guidelines consistent with this chapter for covered vehicle projects as soon as practicable, but not later than January 1, 2000. The adoption of guidelines is exempt from the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The state board shall solicit input and comment from the districts during the development of the criteria and guidelines and shall make every effort to develop criteria and guidelines that are compatible with existing district programs that are also consistent with this chapter. Guidelines shall include protocols to calculate project cost-effectiveness. The grant criteria and guidelines shall include safeguards to ensure that the project generates surplus emissions reductions. Guidelines shall enable and encourage districts to cofund projects that provide emissions reductions in more than one district. The state board shall make draft criteria and guidelines available to the public 45 days before final adoption, and shall hold at least one public meeting to consider public comments before final adoption.

(b) The state board, in consultation with the participating districts, may propose revisions to the criteria and guidelines established pursuant to subdivision (a) as necessary to improve the ability of the program to achieve its goals. A proposed revision shall be made available to the public 45 days before final adoption of the revision and the state board shall hold at least one public meeting to consider public comments before final adoption of the revision.

(c) The state board shall reserve funds for, and disburse funds to, districts from the fund for administration pursuant to this section and Section 44299.1.

(d) The state board shall develop guidelines for a district to follow in applying for the reservation of funds, in accordance with this chapter. It is the intent of the Legislature that district administration of any reserved funds be in accordance with the project selection criteria specified in Sections 44281, 44282, and 44283 and all other provisions of this chapter. The guidelines shall be established and published by the state board as soon as practicable, but not later than January 1, 2000.

(e) Funds shall be reserved by the state board for administration by a district that adopts an eligible program pursuant to this chapter and offers matching funds at a ratio of one dollar (\$1) of matching funds committed by the district or the Mobile Source Air Pollution Reduction Review Committee for every two dollars (\$2) committed from the fund. Funds available to the Mobile Source Air Pollution Reduction Review Committee may be counted as matching funds for projects in the South Coast Air Basin only if the committee approves the use of these funds for matching purposes. Matching funds may be any funds under the district's budget authority that are committed to be expended in accordance with the program. Funds committed by a port authority or a local government, in cooperation with a district, to be expended in accordance with the program may also be counted as district matching funds. Matching funds provided by a port authority or a local government may not exceed 30 percent of the total required matching funds in any district that applies for more than three hundred thousand dollars (\$300,000) of the state board funds. Only a district, or a port authority or a local government teamed with a district, may provide matching funds.

(f) The state board may adjust the ratio of matching funds described in subdivision (e), if it determines that an adjustment is necessary in order to maximize the use of, or the air quality benefits provided by, the program, based on a consideration of the financial resources of the district.

(g) Notwithstanding subdivision (e), a district need not provide matching funds for state board funds allocated to the district for program outreach activities pursuant to paragraph (4) of subdivision (a) of Section 44299.1.

(h) A district may include within its matching funds a reasonable estimate of direct or in-kind costs for assistance in providing program outreach and application evaluation. In-kind and direct matching funds shall not exceed 15 percent of the total matching funds offered by a district. A district may also include within its matching funds any money spent on or after February 25, 1999, that would have qualified as matching funds but were not previously claimed as matching funds.

(i) A district desiring a reservation of funds shall apply to the state board following the application guidelines established pursuant to this section. The state board shall approve or disapprove a district application not later than 60 days after receipt. Upon approval

of any district application, the state board shall simultaneously approve a reservation of funding for that district to administer. Reserved funds shall be disbursed to the district so that funding of a district-approved project is not impeded.

(j) Notwithstanding any other provision of this chapter, districts and the Mobile Source Air Pollution Reduction Review Committee shall not use funds collected pursuant to Section 41081 or Chapter 7 (commencing with Section 44220), or pursuant to Section 9250.11 of the Vehicle Code, as matching funds to fund a project with stationary or portable engines, locomotives, or marine vessels.

(k) Any funds reserved for a district pursuant to this section are available to the district for a period of not more than two years from the time of reservation. Funds not expended by June 30 of the second calendar year following the date of the reservation shall revert back to the state board as of that June 30, and shall be deposited in the Covered Vehicle Account established pursuant to Section 44299. The funds may then be redirected based on applications to the fund. Regardless of any reversion of funds back to the state board, the district may continue to request other reservations of funds for local administration. Each reservation of funds shall be accounted for separately, and unused funds from each application shall revert back to the state board as specified in this subdivision.

(l) The state board shall specify a date each year when district applications are due. If the eligible applications received in any year oversubscribe the available funds, the state board shall reserve funds on an allocation basis, pursuant to subdivision (b) of Section 44299.1. The state board may accept a district application after the due date for a period of months specified by the state board. Funds may be reserved in response to those applications, in accordance with this chapter, out of funds remaining after the original reservation of funds for the year.

(m) Guidelines for a district application shall require information from an applicant district to the extent necessary to meet the requirements of this chapter, but shall otherwise minimize the information required of a district.

(n) A district application shall be reviewed by the state board immediately upon receipt. If the state board determines that an application is incomplete, the applicant shall be notified within 10 working days with an explanation of what is missing from the application. A completed application fulfilling the criteria shall be approved as soon as practicable, but not later than 60 working days after receipt.

(o) The commission, in consultation with the districts, shall establish project approval criteria and guidelines for infrastructure projects consistent with Section 44284 as soon as practicable, but not later than February 15, 2000. The commission shall make draft criteria and guidelines available to the public 45 days before final adoption, and shall hold at least one public meeting to consider public comments before final adoption.

(p) The commission, in consultation with the participating districts, may propose revisions to the criteria and guidelines established pursuant to subdivision (o) as necessary to improve the ability of the program to achieve its goals. A revision may be proposed at any time, or may be proposed in response to a finding made in the annual report on the program published by the state board pursuant to Section 44295. A proposed revision shall be made available to the public 45 days before final adoption of the revision and the

commission shall hold at least one public meeting to consider public comments before final adoption of the revision.

## **Article 9. Program Administration: Application Evaluation and Program Outreach**

### **§ 44288. Application evaluation and processing**

(a) An application for a project grant shall be reviewed by the administering district immediately upon receipt. If the administering district determines that an application is incomplete, the applicant shall be notified within five working days with an explanation of what is missing from the application. The date and time of receipt of each application determined to be complete shall be recorded and the completed application shall be evaluated with respect to the appropriate project selection criteria. A district shall make every effort to process an application and grant an award rapidly and to coordinate project approval with any purchase or installation timing constraint on an applicant. Notwithstanding any other provision of this chapter, the administering district may determine that an application is not in good faith, not credible, or not in compliance with this chapter and its objectives.

(b) A participating district may request assistance from the state board on an as needed basis to clarify project evaluation protocols or to obtain information necessary to properly evaluate an application.

(c) An application for a grant for an infrastructure project shall be reviewed by the commission immediately upon receipt. If the commission determines that an application is incomplete, the applicant shall be notified within five working days with an explanation of what is missing from the application. The date and time of receipt of each application determined to be complete shall be recorded and the completed application shall be evaluated with respect to the appropriate project selection criteria. A complete grant application fulfilling the project selection criteria shall be approved as soon as practicable, but not later than 60 working days after receipt. Notwithstanding any other provision of this chapter, the commission may determine that an application is not in good faith, not credible, or not in compliance with this chapter and its objectives. The commission shall expedite the processing of an application and shall grant an award as rapidly as possible.

(d) Funds shall be awarded in conjunction with the execution of a contract that obligates the state board or a participating district to make the grant and obligates the grantee to take the actions described in the grant application. A contract shall incorporate the recapturing provisions contained in subdivision (c) of Section 44291.

### **§ 44290. Outreach program**

The state board and participating districts shall institute an outreach program to inform potential participants, technology suppliers, vendors, engine and equipment dealers and distributors, fleet owners, industry organizations and publications, districts, and rail and port organizations of the availability of grants, and of the requirements and objectives of the grant program. The state board and district shall vigorously recruit grant applications and publish examples of successful projects. The commission shall work closely with the state board and districts so that infrastructure and technology development projects are closely coordinated with overall program implementation. Outreach efforts on the part of the state board shall be coordinated with district outreach efforts.



## **Article 10. Monitoring**

### **§ 44291. Monitoring and auditing procedures**

(a) The state board shall assist districts with developing procedures to monitor whether the emission reductions projected in successful grant applications are actually achieved. Monitoring procedures may include project audits, and may also include requirements, as part of the contract between the state board or districts and the grant recipients, that each grant recipient provide information about the project on an annual basis. Information required from grant recipients should be minimized and the format for reporting the information should be made simple and convenient.

(b) As soon as practicable, the commission, in consultation with the districts, shall publish procedures to monitor and audit infrastructure projects. These procedures shall ensure that the amount of qualifying fuel dispensed annually is greater than or equal to the amount upon which the grant award is based and that any project qualifying for funding on the basis of public accessibility or limited public accessibility is, in fact, providing that accessibility.

(c) The monitoring and auditing procedures shall be sufficient to allow emission reductions generated to be fully credited to air quality plans. The monitoring procedures shall contain provisions for recapturing grant awards in proportion to any loss of emission reductions or underachievement in dispensing qualifying fuel compared with the reductions and fuel dispensing projected in the grant application. Funds recaptured shall be deposited in the accounts from which the funds were originally expended. From time to time, monitoring and auditing procedures shall be revised as appropriate to enhance program effectiveness.

(d) The state board shall monitor district programs to ensure that participating districts conduct their programs consistent with the criteria and guidelines established by the state board and the commission pursuant to this chapter. The monitoring procedures shall contain provisions for recapture of funds not yet awarded to approved projects if a district fails to show that they are implementing a program consistent with the approved program. If the state board determines, pursuant to this subdivision, that moneys from the fund allocated to a district should be recaptured, the state board shall hold at least one public meeting to consider public comments prior to recapturing the allocated funds. The state board shall make every effort to assist districts to implement programs in an approved manner and shall only recapture allocated funds if these efforts fail to address problems adequately. Recaptured funds shall be deposited in the Covered Vehicle Account. The state board shall not recapture funds already awarded to approved projects.

## **Article 11. Reporting**

### **§ 44295. Annual program report**

(a) Not later than March 1, 2001, and each March 1 thereafter, through March 1, 2003, the state board in cooperation with participating districts, and assisted by the commission with regard to projects funded from the Infrastructure Demonstration Program and the Advanced Technology Account, shall publish, and notwithstanding Section 7550.5 of the Government Code, provide the Legislature with, a program report. The report shall describe each covered vehicle project funded by the state board and by districts that have received funds

pursuant to this chapter, the amount granted for the project, and the emission reductions obtained and the cost-effectiveness of the project. For projects funded from the Advanced Technology Account, the report shall describe the technical objectives and accomplishments of the project, and the progress of the technology toward commercialization. For projects funded from the Infrastructure Demonstration Program, the report shall describe whether the funding has been critical to supplying qualifying fuel and supporting vehicles that reduce NOx emissions in California, shall include a discussion of demonstration program cost-effectiveness pursuant to subdivision (j) of Section 44284, and shall make a finding as to the need for additional moneys to be appropriated from the fund to the Infrastructure Demonstration Program in order to improve the ability of the program to achieve its goals.

(b) The report shall detail funds received, funds granted, funds reserved for grants based on project approvals, district matching funds and the sources of those funds, and any recommended transfer of funds between accounts, and shall estimate future demand for grant funds.

(c) The report shall describe the overall effectiveness of the program in delivering the emission reductions required by air quality plans, including rate of progress plans and milestone and conformity tests, as well as attainment and maintenance plans. The report shall evaluate the effectiveness of the program in soliciting and evaluating project applications, providing awards in a timely manner, and monitoring project implementation. The report shall describe any adjustments made to the project selection criteria and recommend any further needed changes or adjustments to the grant program, including changes in grant award criteria, administrative procedures, or statutory provisions that would enhance the effectiveness and efficiency of the grant program.

(d) The state board shall request comments and hold public meetings on each draft annual report to obtain public comments. The state board shall consider and respond to all significant comments received in producing a final annual report.

(e) A final annual report shall be published within 90 days from the date of publication of each draft annual report.

## **Article 12. Disposition of Funds**

### **§ 44296. Disposition of funds**

(a) All program funds shall be encumbered prior to January 1, 2002. No grants shall be made by districts using money reserved within the fund after that date, and no technology or infrastructure project may be funded by the commission after that date.

(b) On January 1, 2002, all unencumbered funds reserved for districts shall revert back to the state board, and thereafter shall be permanently allocated by the state board to districts in proportion to the aggregate net disbursements that the participating districts received during the life of the grant program, to be used in accordance with the goals and objectives of the grant program and to be granted by the districts in accordance with the procedures and criteria in place at the termination of the grant program or as subsequently modified by the districts as needed to better meet the grant program objectives and protect human health and welfare.

(c) Notwithstanding subdivision (b), the advisory board may recommend that unused funds be allocated to fund a continuing statewide program similar to the program established as part of the advisory board recommendations for a continuing program pursuant to Section 44297.

(d) Notwithstanding any provision in the Budget Act of 1999, funds appropriated in that act to carry out the provisions of this act shall only be available for encumbrance during the 1999-2000 fiscal year.

### **Article 13. Heavy-Duty Fleet Modernization Projects**

#### **§ 44297. Revision of grant criteria and guidelines; eligible costs; consideration of existing heavy-duty fleet modernization program; offset of incremental costs; weighted cost-effectiveness standard**

(a) The state board, acting within its existing authority, shall, at its first opportunity following January 1, 2005, revise the grant criteria and guidelines adopted pursuant to Section 44287 to incorporate projects described in subdivision (c).

(b) The guidelines may define eligible costs to include monitoring and verifying compliance with this article.

(c) Notwithstanding any other provision of this chapter, a project that meets either of the following criteria constitutes a heavy-duty fleet modernization project and thus is eligible for funding under the program, if it complies with the guidelines established by the state board pursuant to subdivision (a):

(1) Replaces an old engine or vehicle with a newer engine or vehicle certified to more stringent emissions standards than the engine or vehicle being replaced, pursuant to paragraph (2) of subdivision (a) of Section 44281.

(2) Provides the equivalent emission reductions as would be gained by a project that combines both of the following:

(A) The purchase of a new very low or zero-emission covered vehicle pursuant to paragraph (1) of subdivision (a) of Section 44281.

(B) The replacement of an old engine or vehicle with a newer engine or vehicle certified to more stringent standards than the engine or vehicle being replaced, pursuant to paragraph (2) of subdivision (a) of Section 44281.

(c) In establishing guidelines pursuant to subdivision (a), the state board shall consider any existing heavy-duty fleet modernization program carried out by a district. The state board shall design a program that, to the extent feasible, includes fleet owners, independent truck owners, heavy-duty vehicle dealers, districts, and other participants it determines appropriate from existing local programs.

(d) The grants provided pursuant to this article shall provide moneys to offset the incremental cost of projects that reduce emissions of oxides of nitrogen (NOx) and particulate matter (PM).

(e) The state board shall determine an appropriate weighted cost-effectiveness standard for projects intended to reduce particulate matter.

#### **Article 14. Funds**

##### **§ 44299. Carl Moyer Memorial Air Quality Standards Attainment Trust Fund; creation**

(a) The Carl Moyer Memorial Air Quality Standards Attainment Trust Fund is hereby created in the State Treasury. The Controller shall transfer any unencumbered funds appropriated to the commission or the state board for the diesel emissions reduction incentive program by Items 3360-001-0314 and 3900-001-0001 of Section 2.00 of the Budget Act of 1998 (Ch. 324, Stats. 1998), and Items 3360-001-0314, 3360-001-0001, 3360-001-0465, 3900-001-0001, and 3900-001-0115 of Section 2.00 of the Budget Act of 1999 (Ch. 50, Stats. 1999), to the trust fund. The money in the trust fund shall be available upon appropriation by the Legislature to carry out the purposes of this chapter.

(b) To ensure that emission reductions are obtained as needed from air pollution sources, the following accounts are hereby created in the trust fund:

- (1) The Covered Vehicle Account.
- (2) The Advanced Technology Account.

(c) Notwithstanding Sections 16475, 16475.1, and 16480.6 of the Government Code, all of the interest earned on money in the trust fund shall be deposited in the trust fund.

##### **§ 44299.1. Carl Moyer Memorial Air Quality Standards Attainment Trust Fund; administration**

(a) To ensure that emission reductions are obtained as needed from pollution sources, any money deposited in or appropriated to the fund shall be segregated and administered as follows:

(1) Ten percent, not to exceed two million dollars (\$2,000,000), shall be allocated to the Infrastructure Demonstration Project to be used pursuant to Section 44284.

(2) Ten percent shall be deposited in the Advanced Technology Account to be used to support research, development, demonstration, and commercialization of advanced low-emission technologies for covered sources that show promise of contributing to the goals of the program.

(3) Not more than 2 percent of the moneys in the fund shall be allocated to program support and outreach costs incurred by the state board and the commission directly associated with implementing the program pursuant to this chapter. These funds shall be allocated to the state board and the commission in proportion to total program funds administered by the state board and the commission.

(4) Not more than 2 percent of the moneys in the fund shall be allocated to direct program outreach activities. The state board may use these funds for program outreach

contracts or may allocate outreach funds to participating air districts in proportion to each district's allocation from the Covered Vehicle Account. The state board shall report on the use of outreach funds in their reports to the Legislature pursuant to Section 44295.

(5) The balance shall be deposited in the Covered Vehicle Account to be expended to offset added costs of new very low or zero-emission vehicle technologies, and emission reducing repowers, retrofits, and add-on equipment for covered vehicles and engines.

(b) Funds in the Covered Vehicle Account shall be allocated to a district that submits an eligible application to the state board pursuant to Section 44287. The state board shall determine the maximum amount of annual funding from the Covered Vehicle Account that each district may receive. This determination shall be based on the population in each district as well as the relative importance of obtaining NOx reductions in each district, specifically through the program.

Sec. 3. (a) It is the intent of the Legislature that funds appropriated to the State Energy Resources Conservation and Development Commission for the Diesel Emissions Incentive Program pursuant to Item 3360-001-0001 of Section 2.00 of the Budget Act of 1999 are to be encumbered for the support of the Carl Moyer Memorial Air Quality Standards Attainment Program as follows:

(1) Two million dollars (\$2,000,000) for Advanced Technology Development grants awarded pursuant to Article 7 (commencing with Section 44285) of Chapter 9 of Part 5 of Division 26 of the Health and Safety Code.

(2) Two million dollars (\$2,000,000) for the Infrastructure Demonstration Program described in Article 6 (commencing with Section 44284) of Chapter 9 of Part 5 of Division 26 of the Health and Safety Code.

(b) Funds specified in subdivision (a), and any other funds appropriated during the 1999-2000 fiscal year to the State Energy Resources Conservation and Development Commission for support of the Carl Moyer Memorial Air Quality Standards Attainment Program, may be used for any of the following purposes:

(1) Grants.

(2) Loans.

(3) Contracts.

(4) Technical support.

(c) Any unencumbered funds appropriated to the State Air Resources Board for the diesel emissions reduction incentive program by the Budget Act of 1998 and the Budget Act of 1999, other than those funds listed in the items in subdivision (a) of Section 44299, shall be transferred by the Controller to the Carl Moyer Memorial Air Quality Standards Attainment Trust Fund for the support of the Carl Moyer Air Quality Standards Attainment Program.

**PUBLIC RESOURCES CODE - DIVISION 3**

Chapter 6 - Disposition of Geothermal Revenues - Section 3800 et seq.

**Article 1. Purpose**

**§ 3800. Allocation of revenues; general objectives**

The purpose of this chapter is to provide for the allocation of revenues distributed to the state pursuant to Section 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. Sec. 191), with respect to activities of the United States Bureau of Land Management, the United States Forest Service, and other federal agencies undertaken pursuant to the Geothermal Steam Act of 1970 (Chapter 23 (commencing with Section 1001) of Title 30 of the United States Code) in order to accomplish the following general objectives:

- (a) Reduction of dependence on fossil fuels and stimulation of the state's economy through development of geothermal resources.
- (b) Mitigation of the adverse social, economic, and environmental impacts caused by geothermal development.
- (c) Financial assistance to cities, counties, and districts to offset the costs of providing public services and facilities necessitated by the development of geothermal resources within their jurisdictions.
- (d) Maintenance of the productivity of renewable resources through the investment of the proceeds of a depleting resource.

**Article 2. Definitions**

**§ 3805. Construction of chapter**

The definitions set forth in this article shall govern the construction of this chapter.

**§ 3805.5. Commission**

"Commission" means the State Energy Resources Conservation and Development Commission.

**§ 3806. County of origin**

"County of origin" means any county in which the United States has leased lands for geothermal development.

**§ 3807. Local jurisdiction**

"Local jurisdiction" means any unit of Indian government, any city, county, or district, including, but not limited to, a regional planning agency and a public utility district, or any combination thereof formed for the joint exercise of any power, except that "public utility district"

does not include any public utility district which generates for sale more than 50 megawatts gross of electricity.

**§ 3808. Geothermal resources**

"Geothermal resources" means geothermal resources designated by the United States Geological Survey or the Department of Conservation, or by both.

The department shall periodically review, and revise as necessary, its designation of geothermal resource areas and shall transmit any changes to the State Energy Resources Conservation and Development Commission.

**§ 3809. Private entity**

"Private entity" means any individual or organization engaged in the exploration and development of geothermal energy for profit.

**§ 3810. Award repayment or program reimbursement agreement; royalty agreement**

(a)(1) "Award repayment or program reimbursement agreement," including a "royalty agreement," as specified in subdivision (b), means a method used at the discretion of the commission to determine and establish the terms of replenishment of program funds, including, at a minimum, repayment of the award to provide for further awards under this chapter. The award repayment or program reimbursement agreement may provide that payments be made to the commission when the award recipient, affiliate of the award recipient, or third party receives, through any kind of transaction, an economic benefit from the project, invention, or product developed, made possible, or derived, in whole or in part, as a result of the award.

(2) An award repayment or program reimbursement agreement shall specify the method to be used by the commission to determine and establish the terms of repayment and reimbursement of the award.

(3) The commission may require due diligence of the award recipient and may take any action that is necessary to bring the project, invention, or product to market.

(4) Subject to the confidentiality requirements of Section 2505 of Title 20 of the California Code of Regulations, the commission may require access to financial, sales, and production information, and to other agreements involving transactions of the award recipient, affiliates of the award recipient, and third parties, as necessary, to ascertain the royalties or other payments due the commission.

(b) A "royalty agreement" is an award repayment or program reimbursement agreement" and is subject to all of the following conditions:

(1) The royalty rate shall be determined by the commission and shall not exceed 5 percent of the gross revenue derived from the project, invention, or product.

(2) The royalty agreement shall specify the method to be used by the commission to determine and establish the terms of payment of the royalty rate.

(3) The commission shall determine the duration of the royalty agreement and may negotiate a collection schedule.

(4) The commission, for separate consideration, may negotiate and receive payments to provide for an early termination of the royalty agreement.

(c)(1) The commission may require that the intellectual property developed, made possible, or derived, in whole or in part, as a result of the award repayment or program reimbursement agreement, revert to the state upon a default in the terms of the award repayment or program reimbursement agreement or royalty agreement.

(2) The commission may require advance notice of any transaction involving intellectual property rights.

### **Article 3. Allocation and Use of Revenues**

#### **§ 3820. Geothermal resources development account; creation; deposits; appropriation**

(a) The Geothermal Resources Development Account is hereby created in the General Fund.

(b) All revenues received by the state pursuant to Section 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. Sec. 191), with respect to activities undertaken pursuant to the Geothermal Steam Act of 1970 (Chapter 23 (commencing with Section 1001) of Title 30 of the United States Code) shall be deposited in the Geothermal Resources Development Account immediately upon receipt, and are hereby continuously appropriated from the account or expenditure or transfer in the manner and at the times specified in this article.

(c) Commencing with the 1980-81 fiscal year, two million dollars (\$2,000,000), or so much thereof as may be necessary, of the revenues received by the state pursuant to Section 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U. S.C. Sec. 191), from sources other than activities undertaken pursuant to the Geothermal Steam Act of 1970 (Chapter 23 (commencing with Section 1001) of Title 30 of the United States Code) shall be deposited each fiscal year in the account until a total amount is deposited which is equal to the revenues that were received by the state on and after January 1, 1976, from activities undertaken pursuant to the Geothermal Steam Act of 1970, but which were not deposited in the account pursuant to subdivision (b). The revenues so deposited are hereby continuously appropriated from the account for expenditure or transfer in the manner and at the times specified in this article. The deposit of revenues required by this subdivision are in addition to the deposit of revenues required by subdivision (b).

#### **§ 3821. Disbursement of revenues to counties of origin; accounts or funds; expenditures**

(a) Upon receipt and deposit of revenues in the Geothermal Resources Development Account, 40 percent of the revenues derived from the sale of a lease, and any bonus paid in connection therewith, shall be immediately disbursed by the State Controller to the county of origin; and 40 percent of the revenues consisting of royalties and rents shall be immediately disbursed to all counties of origin in proportion to the amounts of the revenues



derived from existing leases within each county of origin. If a lease includes land in more than one county, each county's share shall be computed on the basis of the ratio that the acreage within each county bears to the total acreage in the lease.

(b) Each county of origin shall establish for deposit of such revenues an account or fund separate from the other accounts and funds of the county, and may expend such revenues only for the purposes specified in this chapter.

**§ 3822. Grants or loan to local jurisdictions or private entities; application; account; repayment**

(a) Thirty percent of the revenues received and deposited in the Geothermal Resources Development Account shall be available for expenditure by the commission as grants or loans to local jurisdictions or private entities without regard to fiscal years. These revenues shall be held by the commission in the Local Government Geothermal Resources Revolving Subaccount, which is hereby created in the Geothermal Resources Development Account. Loan repayments shall be deposited in the subaccount and shall be used for making additional grants and loans pursuant to Section 3823.

(b) No local jurisdiction shall be eligible to apply for a grant or loan pursuant to this section unless its governing body approves the application by resolution.

(c) Each recipient of a grant or loan made pursuant to this section shall establish, for the deposit of the revenues, an account or fund that is separate from the other accounts and funds of the recipient, and may expend the revenues only for the purposes specified in this chapter.

(d) The commission shall make grants and loans pursuant to this section irrespective of whether a local jurisdiction is a county of origin.

(e) Any of the revenues that are not disbursed as grants or loans pursuant to this section during the fiscal year received shall be retained in the subaccount and may be disbursed as grants or loans pursuant to this section in succeeding fiscal years.

(f)(1) Any loan made under this section shall:

(A) Not exceed 80 percent of the local jurisdiction's costs,

(B) Be repaid together with interest within 20 years from receipt of the loan funds.

(2) Notwithstanding any other provision of law, the commission shall, unless it determines that the purposes of this chapter would be better served by establishing an alternative interest rate schedule, periodically set interest rates on the loans based on surveys of existing financial markets and at rates not lower than the Pooled Money Investment Account.

(g) Any loan or grant made to a private entity under this section shall (1) be matched with at least an equal investment by the recipient, (2) provide tangible benefits, as determined by the commission, to a local jurisdiction, and (3) be approved by the city, county, or Indian reservation within which the project is to be located.

(h) The commission may require an award repayment or program reimbursement agreement of any recipient of a grant or loan made pursuant to this section.

**§ 3822.1. Governor's budget; execution of funding agreements**

Notwithstanding any other provision of law, commencing with the 1984-85 fiscal year and in each fiscal year thereafter, any revenues not granted pursuant to Section 3822 remaining in the Geothermal Resources Development Account and any revenues expected to be received and disbursed during the 1984-85 fiscal year and in each fiscal year thereafter shall be made a part of the Governor's Budget. Projects approved by the State Energy Resources Conservation and Development Commission under this chapter shall be submitted for review and comment to the Department of Finance, the Legislative Analyst, and the Joint Legislative Budget Committee when the Legislature is in session. After a 30-day period, the commission shall execute the funding agreements. The commission shall submit to the Legislature by April 1 of each year, a list of projects, in priority order, selected and approved during the previous year.

**§ 3822.2. Technical assistance to local jurisdictions**

(a) Notwithstanding any other provision of law, the State Energy Resources Conservation and Development Commission may expend funds, from that portion of the Geothermal Resources Development Account used by the commission for grants and loans, to provide direct technical assistance to local jurisdictions which are eligible for grants and loans pursuant to Section 3822.

(b) The total of all amounts expended pursuant to this section shall not exceed 5 percent of all funds available under Section 3822 or one hundred thousand dollars (\$100,000), whichever amount is less.

(c) In making expenditures under this section, the commission shall consider, but not be limited to a consideration of, all of the following:

- (1) The availability of energy resource and technology opportunities.
- (2) The project definition and likelihood of success.
- (3) Local needs and potential project benefits.

**§ 3823. Expenditures; revenues and grants; activities**

Revenues disbursed to counties of origin pursuant to Section 3821 and grants or loans made to local jurisdictions or private entities pursuant to Section 3822 shall be expended by the county or recipient for the following purposes:

(a) Undertaking research and development projects relating to geothermal resource assessment and exploration, and direct-use and electric generation technology.

(b) Local and regional planning and policy development and implementation necessary for compliance with programs required by local, state, or federal laws and regulations.

(c) Identification of feasible measures that will mitigate the adverse impacts of the development of geothermal resources and the adoption of ordinances, regulations, and guidelines to implement those measures.

(d) Collecting baseline data and conducting environmental monitoring.

(e) Preparation or revision of geothermal resource elements, or geothermal components of energy elements, for inclusion in the local general plan, zoning and other ordinances, and related planning and environmental documents.

(f) Administrative costs incurred by the local jurisdiction that are attributable to the development or production of geothermal resources.

(g) Monitoring and inspecting geothermal facilities and related activities to assure compliance with applicable laws, regulations, and ordinances.

(h) Identifying, researching, and implementing feasible measures that will mitigate the adverse impacts of that development or production.

(i) Planning, constructing, providing, operating, and maintaining those public services and facilities that are necessitated by and result from the development or production.

(j) Undertaking projects demonstrating the technical and economic feasibility of geothermal direct heat and electrical generation applications.

(k) Undertaking projects for the enhancement, restoration, or preservation of natural resources, including, but not limited to, water development, water quality improvement, fisheries enhancement, and park and recreation facilities and areas.

## **PUBLIC RESOURCES CODE - DIVISION 6**

Part 2, Chapter 3 - Oil and Gas and Mineral Leases - Section 6801 et seq.

Part 2 of Division 6 of the Public Resources Code (section 6501 et seq.) gives the State Lands Commission the authority to lease lands owned by the state which are under the commission's jurisdiction. The leases may be for such purposes as the commission deems advisable. Chapter 3 of Part 2 (section 6801 et seq.) contains specific requirements for oil, gas and mineral leases. If the State Lands Commission exercises a right to take oil, gas or other hydrocarbons in kind pursuant to any lease, Section 6815.1 requires the commission to dispose of the oil, gas or other hydrocarbons by contract with the highest bidder. Section 6815.2 provides that the commission may exchange any oil, gas or other hydrocarbons for refined products, which must be allocated to state agencies or other public agencies if the Energy Commission finds that this is necessary to alleviate fuel shortage conditions or will result in a substantial cost savings to the state. These refined products must be allocated to state agencies or other public agencies in accordance with regulations adopted by the Energy Commission (section 6815.2(d)).

## **PUBLIC RESOURCES CODE - DIVISION 12.1**

Chapter 1 - California Beverage Container Recycling and Litter Reduction Act - Section 14500 et seq.

This Division of the Public Resources Code sets out policies and procedures for recycling beverage containers in California. The beverage container recycling program is administered by the Department of Conservation. Section 14584 of this Act provides that:

(b) Corporations, companies, or individuals may apply for loan and grant funds from the Energy Technologies Research, Development, and Demonstration Account specified in Section 25683 by applying to the State Energy Resources Conservation and Development Commission for the purpose of demonstrating equipment for enhancing recycling opportunities.

## **PUBLIC RESOURCES CODE - DIVISION 16**

California Alternative Energy and Advanced Transportation Financing Authority Act - Section 26000 et seq. (Summarized and presented here in part)

This Division of the Public Resources Code establishes the California Alternative Energy and Advanced Transportation Financing Authority. The function of the Authority is to provide an alternative method of financing for alternative energy sources in the state. (Section 26002.) The Authority is comprised of 5 members: the Director of Finance, the Chairperson of the State Energy Resources Conservation and Development Commission, the President of the Public Utilities Commission, the Controller and the Treasurer. (Pub. Resources Code § 26004.) The Authority is authorized to sell bonds to raise money to finance alternative energy projects.

In addition to providing an alternative method of financing for alternative energy sources, the Authority is to provide alternative financing for facilities needed for the development and commercialization of advanced transportation technologies.

### **§ 26003. Definitions**

As used in this division, unless the context otherwise requires:

(a) "Authority" means the California Alternative Energy and Advanced Transportation Financing Authority established pursuant to Section 26004, and any board, commission, department, or officer succeeding to the functions of the authority, or to which the powers conferred upon the authority by this division shall be given.

(b) "Cost" as applied to a project or portion thereof financed under this division means all or any part of the cost of construction and acquisition of all lands, structures, real or personal property or an interest therein, rights, rights-of-way, franchises, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which those buildings or structures may be moved; the cost of all machinery, equipment, and furnishings, financing charges, interest prior to, during, and for a period after, completion of construction as determined by the authority; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; the cost of architectural, engineering, financial, accounting, auditing and legal services, plans,

specifications, estimates, administrative expenses, and other expenses necessary or incident to determining the feasibility of constructing any project or incident to the construction, acquisition, or financing of any project.

(c)(1) "Alternative sources" means the application of cogeneration technology, as defined in Section 25134; the conservation of energy; or the use of solar, biomass, wind, geothermal, hydroelectricity under 30 megawatts and meeting the criteria set forth in subdivision (b) of Section 15352 of the Government Code, or any other source of energy, the efficient use of which will reduce the use of fossil and nuclear fuels.

(2) "Alternative sources" does not include any hydroelectric facility that does not meet state laws pertaining to the control, appropriation, use, and distribution of water, including, but not limited to, the obtaining of applicable licenses and permits.

(d) "Advanced transportation technologies" means emerging commercially competitive transportation-related technologies identified by the authority as capable of creating long-term, high value-added jobs for Californians while enhancing the state's commitment to energy conservation, pollution reduction, and transportation efficiency. Those technologies may include, but are not limited to, any of the following:

- (1) Intelligent vehicle highway systems.
- (2) Advanced telecommunications for transportation.
- (3) Command, control, and communications for public transit vehicles and systems.
- (4) Electric vehicles and ultra-low emission vehicles.
- (5) High-speed rail and magnetic levitation passenger systems.
- (6) Fuel cells.

(e) "Financial assistance" includes, but is not limited to, either, or any combination, of the following:

(1) Loans, loan loss reserves, interest rate reductions, proceeds of bonds issued by the authority, insurance, guarantees or other credit enhancements or liquidity facilities, contributions of money, property, labor, or other items of value, or any combination thereof, as determined by, and approved by the resolution of, the board.

(2) Any other type of assistance the authority determines is appropriate.

(f) "Participating party" means either of the following:

(1) Any person or any entity or group of entities engaged in business or operations in the state, whether organized for profit or not for profit, that applies for financial assistance from the authority for the purpose of implementing a project in a manner prescribed by the authority.

(2) Any public agency or nonprofit corporation that applies for financial assistance from the authority for the purpose of implementing a project in a manner prescribed by the authority.

(g) "Project" means any land, building, improvement thereto, rehabilitation, work, property, or structure, real or personal, stationary or mobile, including, but not limited to, machinery and equipment, whether or not in existence or under construction, that utilizes, or is designed to utilize, an alternative source, or that is utilized for the design, technology transfer, manufacture, production, assembly, distribution, or service of advanced transportation technologies.

(h) "Public agency" means any federal or state agency, board, or commission, or any county, city and county, city, regional agency, public district, or other political subdivision.

(i)(1) "Renewable energy" means any device or technology that conserves or produces heat, processes heat, space heating, water heating, steam, space cooling, refrigeration, mechanical energy, electricity, or energy in any form convertible to these uses, that does not expend or use conventional energy fuels, and that uses any of the following electrical generation technologies:

- (A) Biomass.
- (B) Solar thermal.
- (C) Photovoltaic.
- (D) Wind.
- (E) Geothermal.

(2) For purposes of this subdivision, "conventional energy fuel" means any fuel derived from petroleum deposits, including, but not limited to, oil, heating oil, gasoline, fuel oil, or natural gas, including liquefied natural gas, or nuclear fissionable materials.

(3) Notwithstanding paragraph (1), for purposes of this section, "renewable energy" also means ultralow emission equipment for energy generation based on thermal energy systems such as natural gas turbines and fuel cells.

(j) "Revenue" means all rents, receipts, purchase payments, loan repayments, and all other income or receipts derived by the authority from the sale, lease, or other disposition of alternative source or advanced transportation technology facilities, or the making of loans to finance alternative source or advanced transportation technology facilities, and any income or revenue derived from the investment of any money in any fund or account of the authority.

**§ 26011.5. Criteria for selection of projects to receive financing assistance; considerations**

The authority, in consultation with the State Energy Resources Conservation and Development Commission, shall establish criteria for the selection of projects to receive

financing assistance from the authority. In the selection of projects, the authority shall, in accordance with the legislative intent, provide financial assistance under this division in a manner consistent with sound financial practice. In developing project selection criteria, the authority shall consider, but not be limited to, all of the following:

- (a) The technological feasibility of the projects.
- (b) The economic soundness of the projects and a realistic expectation that all financial obligations can and will be met by the participating parties.
- (c) The contribution that the projects can make to a reduction or more efficient use of fossil fuels.
- (d) The contribution that the project can make toward diversifying California's energy resources by fostering renewable energy systems that can substitute, or preferably eliminate, the demand for conventional energy fuels.
- (e) Any other such factors that the authority finds significant in achieving the purposes and objectives of this division.

**§ 26011.6. Renewable energy program; financial assistance for specified projects**

(a) The authority shall establish a renewable energy program to provide financial assistance to public power entities, independent generators, utilities, or businesses manufacturing components or systems, or both, to generate new and renewable energy sources, develop clean and efficient distributed generation, and demonstrate the economic feasibility of new technologies, such as solar, photovoltaic, wind, and ultralow emission equipment. The authority shall give preference to utility-scale projects that can be rapidly deployed to provide a significant contribution as a renewable energy supply.

(b) The authority shall make every effort to expedite the operation of renewable energy systems, and shall adopt regulations for purposes of this section and Sections 26011.5 and 26011.7 as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding the 120-day limitation specified in subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date, unless the authority complies with Sections 11346.2 to 11347.3, inclusive, as provided in subdivision (e) of Section 11346.1 of the Government Code.

(c) The authority shall consult with the State Energy Resources Conservation and Development Commission regarding the financing of projects to avoid duplication of other renewable energy projects.

(d) The authority shall ensure that any financed project shall offer its power within California on a long-term contract basis.

## PUBLIC UTILITIES CODE – DIVISION 1

Part 1, Chapter 2 – The Public Utilities Commission: Organization – Section 301 et seq.

### **§ 321.7. Distributed energy generation on distribution and transmission grid; California Solar Initiative program; self-generation incentive program; net energy metering pilot program; biennial impact report**

(a) On or before January 1, 2010, and biennially thereafter, the commission, in consultation with the Independent System Operator and the State Energy Resources Conservation and Development Commission, shall study, and submit a report to the Legislature and the Governor, on the impacts of distributed energy generation on the state's distribution and transmission grid. The study shall evaluate all of the following:

(1) Reliability and transmission issues related to connecting distributed energy generation to the local distribution networks and regional grid.

(2) Issues related to grid reliability and operation, including interconnection, and the position of federal and state regulators toward distributed energy accessibility.

(3) The effect on overall grid operation of various distributed energy generation sources.

(4) Barriers affecting the connection of distributed energy to the state's grid.

(5) Emerging technologies related to distributed energy generation interconnection.

(6) Interconnection issues that may arise for the Independent System Operator and local distribution companies.

(7) The effect on peak demand for electricity.

(b) In addition, the commission shall specifically assess the impacts of the California Solar Initiative program, specified in Section 2851 and Section 25783 of the Public Resources Code, the self-generation incentive program authorized by Section 379.6, and the net energy metering pilot program authorized by Section 2827.9.

## PUBLIC UTILITIES CODE – DIVISION 1

Part 1, Chapter 2.3 – Electrical Restructuring – Section 330 et seq.

### **Article 6. Requirements for the Public Utilities Commission**

### **§ 379.6. Self-generation incentive program; administration; eligibility conditions; program requirements**

(a)(1) The commission, in consultation with the State Energy Resources Conservation and Development Commission, shall administer, until January 1, 2012, the self-



generation incentive program for distributed generation resources originally established pursuant to Chapter 329 of the Statutes of 2000.

(2) Except as provided in paragraph (3), the extension of the program pursuant to Chapter 894 of the Statutes of 2003, as amended by Chapter 675 of the Statutes of 2004 and Chapter 22 of the Statutes of 2005, shall apply to all eligible technologies, as determined by the commission, until January 1, 2008.

(3) The commission shall administer solar technologies separately, after January 1, 2007, pursuant to the California Solar Initiative adopted by the commission in Decision 06-01-024.

(b) Commencing January 1, 2008, until January 1, 2012, eligibility for the program pursuant to paragraphs (1) and (2) of subdivision (a) shall be limited to fuel cells and wind distributed generation technologies that meet or exceed the emissions standards required under the distributed generation certification program requirements of Article 3 (commencing with Section 94200) of Subchapter 8 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations.

(c) Eligibility for the self-generation incentive program's level 3 incentive category shall be subject to the following conditions:

(1) Commencing January 1, 2007, all combustion-operated distributed generation projects using fossil fuel shall meet an oxides of nitrogen (NOx) emissions rate standard of 0.07 pounds per megawatthour and a minimum efficiency of 60 percent. A minimum efficiency of 60 percent shall be measured as useful energy output divided by fuel input. The efficiency determination shall be based on 100 percent load.

(2) Combined heat and power units that meet the 60-percent efficiency standard may take a credit to meet the applicable NOx emissions standard of 0.07 pounds per megawatthour. Credit shall be at the rate of one megawatthour for each 3.4 million British thermal units (Btus) of heat recovered.

(3) Notwithstanding paragraph (1), a project that does not meet the applicable NOx emissions standard is eligible if it meets both of the following requirements:

(A) The project operates solely on waste gas. The commission shall require a customer that applies for an incentive pursuant to this paragraph to provide an affidavit or other form of proof, that specifies that the project shall be operated solely on waste gas. Incentives awarded pursuant to this paragraph shall be subject to refund and shall be refunded by the recipient to the extent the project does not operate on waste gas. As used in this paragraph, "waste gas" means natural gas that is generated as a byproduct of petroleum production operations and is not eligible for delivery to the utility pipeline system.

(B) The air quality management district or air pollution control district, in issuing a permit to operate the project, determines that operation of the project will produce an onsite net air emissions benefit, compared to permitted onsite emissions if the project does not operate. The commission shall require the customer to secure the permit prior to receiving incentives.

(d) In determining the eligibility for the self-generation incentive program, minimum system efficiency shall be determined either by calculating electrical and process heat efficiency as set forth in Section 218.5, or by calculating overall electrical efficiency.

(e) In administering the self-generation incentive program, the commission may adjust the amount of rebates, include other ultraclean and low-emission distributed generation technologies, as defined in Section 353.2, and evaluate other public policy interests, including, but not limited to, ratepayers, and energy efficiency and environmental interests.

(f) On or before November 1, 2008, the State Energy Resources Conservation and Development Commission, in consultation with the commission and the State Air Resources Board, shall evaluate the costs and benefits, including air pollution, efficiency, and transmission and distribution system improvements, of providing ratepayer subsidies for renewable and fossil fuel "ultraclean and low-emission distributed generation," as defined in Section 353.2, as part of the integrated energy policy report adopted pursuant to Chapter 4 (commencing with Section 25300) of Division 15 of the Public Resources Code. The State Energy Resources Conservation and Development Commission shall include recommendations for changes in the eligibility of technologies and fuels under the program, and whether the level of subsidy should be adjusted, after considering its conclusions on costs and benefits pursuant to this subdivision.

(g)(1) In administering the self-generation incentive program, the commission shall provide an additional incentive of 20 percent from existing program funds for the installation of eligible distributed generation resources from a California supplier.

(2) "California supplier" as used in this subdivision means any sole proprietorship, partnership, joint venture, corporation, or other business entity that manufactures eligible distributed generation resources in California and that meets either of the following criteria:

(A) The owners or policymaking officers are domiciled in California and the permanent principal office, or place of business from which the supplier's trade is directed or managed, is located in California.

(B) A business or corporation, including those owned by, or under common control of, a corporation, that meets all of the following criteria continuously during the five years prior to providing eligible distributed generation resources to a self-generation incentive program recipient:

(i) Owns and operates a manufacturing facility located in California that builds or manufactures eligible distributed generation resources.

(ii) Is licensed by the state to conduct business within the state.

(iii) Employs California residents for work within the state.

(3) For purposes of qualifying as a California supplier, a distribution or sales management office or facility does not qualify as a manufacturing facility.

## **Article 7. Research, Environmental, and Low-Income Funds**

### **§ 384. Public Interest Research, Development and Demonstration Fund**

(a) Funds transferred to the State Energy Resources Conservation and Development Commission pursuant to this article for purposes of public interest research, development, and demonstration shall be transferred to the Public Interest Research, Development, and Demonstration Fund, which is hereby created in the State Treasury. The fund is a trust fund and shall contain money from all interest, repayments, disencumbrances, royalties, and any other proceeds appropriated, transferred, or otherwise received for purposes pertaining to public interest research, development, and demonstration. Any appropriations that are made from the fund shall have an encumbrance period of not longer than two years, and a liquidation period of not longer than four years.

(b) Funds deposited in the Public Interest Research, Development, and Demonstration Fund may be expended for projects that serve the energy needs of both stationary and transportation purposes if the research provides an electricity ratepayer benefit.

(c) The State Energy Resources Conservation and Development Commission shall report annually to the appropriate budget committees of the Legislature on any encumbrances or liquidations that are outstanding at the time the commission's budget is submitted to the Legislature for review.

### **§ 387. Local publicly owned electrical utilities; implementation and enforcement of renewable portfolio standard; annual report**

(a) Each governing body of a local publicly owned electric utility shall be responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.

(b) Each local publicly owned electric utility shall report, on an annual basis, to its customers and to the State Energy Resources Conservation and Development Commission, the following:

(1) Expenditures of public goods funds collected pursuant to Section 385 for eligible renewable energy resource development. Reports shall contain a description of programs, expenditures, and expected or actual results.

(2) The resource mix used to serve its customers by fuel type. Reports shall contain the contribution of each type of renewable energy resource with separate categories for those fuels that are eligible renewable energy resources as defined in Section 399.12, except that the electricity is delivered to the local publicly owned electric utility and not a retail seller. Electricity shall be reported as having been delivered to the local publicly owned electric utility from an eligible renewable energy resource when the electricity would qualify for compliance with the renewable portfolio standard if it were delivered to a retail seller.

(3) The utility's status in implementing a renewables portfolio standard pursuant to subdivision (a) and the utility's progress toward attaining the standard following implementation.

**§ 387.5. Local publicly owned electric utilities; solar initiative program**

(a) In order to further the state goal of encouraging the installation of 3,000 megawatts of photovoltaic solar energy in California within 10 years, the governing body of a local publicly owned electric utility that sells electricity at retail, shall adopt, implement, and finance a solar initiative program, funded in accordance with subdivision (b), for the purpose of investing in, and encouraging the increased installation of, residential and commercial solar energy systems.

(b) On or before January 1, 2008, a local publicly owned electric utility shall offer monetary incentives for the installation of solar energy systems of at least two dollars and eighty cents (\$2.80) per installed watt, or for the electricity produced by the solar energy system, measured in kilowatthours, as determined by the governing board of a local publicly owned electric utility, for photovoltaic solar energy systems. The incentive level shall decline each year thereafter at a rate of no less than an average of 7 percent per year.

(c) A local publicly owned electric utility shall initiate a public proceeding to fund a solar energy program to adequately support the goal of installing 3,000 megawatts of photovoltaic solar energy in California. The proceeding shall determine what additional funding, if any, is necessary to provide the incentives pursuant to subdivision (b). The public proceeding shall be completed and the comprehensive solar energy program established by January 1, 2008.

(d) The solar energy program of a local publicly owned electric utility shall be consistent with all of the following:

(1) That a solar energy system receiving monetary incentives comply with the eligibility criteria, design, installation, and electrical output standards or incentives established by the State Energy Resources Conservation and Development Commission pursuant to Section 25782 of the Public Resources Code.

(2) That solar energy systems receiving monetary incentives are intended primarily to offset part or all of the consumer's own electricity demand.

(3) That all components in the solar energy system are new and unused, and have not previously been placed in service in any other location or for any other application.

(4) That the solar energy system has a warranty of not less than 10 years to protect against defects and undue degradation of electrical generation output.

(5) That the solar energy system be located on the same premises of the end-use consumer where the consumer's own electricity demand is located.

(6) That the solar energy system be connected to the electric utility's electrical distribution system within the state.

(7) That the solar energy system has meters or other devices in place to monitor and measure the system's performance and the quantity of electricity generated by the system.

(8) That the solar energy system be installed in conformance with the manufacturer's specifications and in compliance with all applicable electrical and building code standards.

(e) A local publicly owned electric utility shall, on an annual basis beginning June 1, 2008, make available to its customers, to the Legislature, and to the State Energy Resources Conservation and Development Commission, information relating to the utility's solar initiative program established pursuant to this section, including, but not limited to, the number of photovoltaic solar watts installed, the total number of photovoltaic systems installed, the total number of applicants, the amount of incentives awarded, and the contribution toward the program goals.

(f) In establishing the program required by this section, no moneys shall be diverted from any existing programs for low-income ratepayers, or from cost-effective energy efficiency or demand response programs.

(g) The statewide expenditures for solar programs adopted, implemented, and financed by local publicly owned electric utilities shall be seven hundred eighty-four million dollars (\$784,000,000). The expenditure level for each local publicly owned electric utility shall be based on that utility's percentage of the total statewide load served by all local publicly owned electric utilities. Expenditures by a local publicly owned electric utility may be less than the utility's cap amount, provided that funding is adequate to provide the incentives required by subdivisions (a) and (b).

#### **Article 14. Disclosure of Sources of Electrical Generation**

##### **§ 398.1. Legislative findings and declarations**

(a) The Legislature finds and declares that there is a need for reliable, accurate, and timely information regarding fuel sources for electric generation offered for retail sale in California.

(b) The purpose of this article is to establish a program under which entities offering electric services in California disclose accurate, reliable, and simple to understand information on the sources of energy that are used to provide electric services.

##### **§ 398.2. Definitions**

The definitions set forth in this section shall govern the construction of this article.

(a) "System operator" means the Independent System Operator with responsibility for the efficient use and reliable operation of the transmission grid, as provided by Section 345, or a local publicly owned electric utility that does not utilize the Independent System Operator.

(b) "Specific purchases" means electricity transactions which are traceable to specific generation sources by any auditable contract trail or equivalent, such as a tradable commodity system, that provides commercial verification that the electricity source claimed has been sold once and only once to a retail consumer. Retail suppliers may rely on annual data to meet this requirement, rather than hour-by-hour matching of loads and resources.

(c) "Net system power" means the mix of electricity fuel source types established by the California Energy Resources Conservation and Development Commission representing the sources of electricity consumed in California that are not disclosed as specific purchases pursuant to Section 398.4.

**§ 398.3. Electricity generation data in kilowatthours; disclosure of data**

(a) Beginning January 1, 1998, or as soon as practicable thereafter, each generator that provides meter data to a system operator shall report to the system operator electricity generated in kilowatthours by hour by generator, the fuel type or fuel types and fuel consumption by fuel type by month on an historical recorded quarterly basis. Facilities using only one fuel type may satisfy this requirement by reporting fuel type only. With regard to any facility using more than one fuel type, reports shall reflect the fuel consumed as a percentage of electricity generation.

(b) The California Energy Resources Conservation and Development Commission shall have authorization to access the electricity generation data in kilowatthours by hour for each facility that provides meter data to the system operator, and the fuel type or fuel types.

(c) With regard to out-of-state generation, the California Energy Resources Conservation and Development Commission shall have authorization to access the electricity generation data in kilowatthours by hour at the point at which out-of-state generation is metered, to the extent the information has been submitted to a system operator.

(d) Trade secrets as defined in subdivision (d) of Section 3426.1 of the Civil Code contained in the information provided to the system operators pursuant to this section shall be treated as confidential. These data may be disclosed only by the system operators and only by authorization of the generator except that the California Energy Resources Conservation and Development Commission shall have authorization to access these data, shall consider all these data to be trade secrets, and shall only release these data in an aggregated form such that trade secrets cannot be discerned.

**§ 398.4. Retail suppliers of electricity; disclosure of electricity sources**

(a) Every retail supplier that makes an offering to sell electricity that is consumed in California shall disclose its electricity sources. A retail supplier that does not make any claims that identify its electricity sources as different than net system power may disclose net system power. Every retail supplier that makes an offering to sell electricity that is consumed in California and makes any claims that identify any of its electricity sources as different than net system power shall disclose these sources as specific purchases.

(b) The disclosures required by this section shall be made to potential end-use consumers in all product-specific written promotional materials that are distributed to consumers by either printed or electronic means, except that advertisements and notices in general circulation media shall not be subject to this requirement.

(c) The disclosures required by this section shall be made at least quarterly to end-use consumers of the offered electricity.

(d) The disclosures required by this section shall be made separately for each offering made by the retail supplier.

(e) On or before January 1, 1998, the California Energy Resources Conservation and Development Commission shall specify guidelines for the format and means for disclosure required by Section 398.3 and this section, based on the requirements of this article and subject to public hearing.

(f) The costs of making the disclosures required by this section shall be considered to be generation-related.

(g) The disclosures required by this section shall be expressed as a percentage of annual sales derived from each of the following categories, unless no specific purchases are disclosed, in which case only the first category shall be disclosed:

(1) Net system power.

(2) Specific purchases.

(h)(1) Each of the categories specified in subdivision (g) shall be additionally identified as a percentage of annual sales that is derived from each fuel type of the categories specified as follows:

(A) Coal.

(B) Large hydroelectric (greater than 30 megawatts).

(C) Natural gas.

(D) Nuclear.

(E) Other.

(F) Eligible renewables, which means 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, shall be additionally identified as a percentage of annual sales that is derived from each fuel type of the subcategories specified as follows:

(i) Biomass and waste.

(ii) Geothermal.

(iii) Small hydroelectric (less than or equal to 30 megawatts).

(iv) Solar.

(v) Wind.

(2) The category "Other" shall be used for fuel types other than those listed above that represent less than 2 percent of net system power. The California Energy Resources

Conservation and Development Commission may specify additional categories or change these categories, consistent with the requirements of this article and subject to public hearing, if it determines that the changes will facilitate the disclosure objectives of this section.

(i) All electricity sources disclosed as specific purchases shall meet the requirements of subdivision (b) of Section 398.2.

(j) Specific purchases identified pursuant to this section shall be from sources connected to the Western Systems Coordinating Council interconnected grid.

(k) Net system power shall be disclosed for the most recent calendar year available. Disclosure of net system power shall be accompanied by this qualifying note: "The State of California determines this net system power mix annually; your actual electricity purchases may vary." The California Energy Resources Conservation and Development Commission may modify this note, consistent with the requirements of this article and subject to public hearing, if it determines that the changes will facilitate the disclosure objectives of this section.

(l) For each offering made by a retail supplier for which specific purchases are disclosed, the retail supplier shall disclose projected specific purchases for the current calendar year. Projected specific purchases need not be disclosed by numerical percentage at the subcategory level identified in subparagraph (F) of paragraph (1) of subdivision (h). On or before April 15, 1999, and annually thereafter, every retail supplier that discloses specific purchases shall also disclose to its customers, separately for each offering made by the retail supplier, its actual specific purchases for the previous calendar year consistent with information provided to the California Energy Resources Conservation and Development Commission pursuant to Section 398.5. Disclosure of projected specific purchases and actual specific purchases shall each be accompanied by statements identifying whether the data are projected or actual, as developed by the California Energy Resources Conservation and Development Commission, subject to public hearing.

(m) The provisions of this section shall not apply to generators providing electric service onsite, under an over-the-fence transaction as described in Section 218, or to an affiliate or affiliates, as defined in subdivision (a) of Section 372.

#### **§ 398.5. Annual report by retail suppliers of electricity**

(a) Retail suppliers that disclose specific purchases pursuant to Section 398.4 shall report on March 1, 1999, and annually thereafter, to the California Energy Resources Conservation and Development Commission, for each electricity offering, for the previous calendar year each of the following:

(1) The kilowatthours purchased, by generator and fuel type during the previous calendar year, consistent with the meter data, including losses, reported to the system operator.

(2) For each electricity offering the kilowatthours sold at retail.

(3) For each electricity offering the disclosures made to consumers pursuant to Section 398.4.



(b) Information submitted to the California Energy Resources Conservation and Development Commission pursuant to this section that is a trade secret as defined in subdivision (d) of Section 3426.1 of the Civil Code shall not be released except in an aggregated form such that trade secrets cannot be discerned.

(c) On or before January 1, 1998, the California Energy Resources Conservation and Development Commission shall specify guidelines and standard formats, based on the requirements of this article and subject to public hearing, for the submittal of information pursuant to this article.

(d) In developing the rules and procedures specified in this section, the California Energy Resources Conservation and Development Commission shall seek to minimize the reporting burden and cost of reporting that it imposes on retail suppliers.

(e) On or before October 15, 1999, and annually thereafter, the California Energy Resources Conservation and Development Commission shall issue a report comparing information available pursuant to Section 398.3 with information submitted by retail suppliers pursuant to this section, and with information disclosed to consumers pursuant to Section 398.4. This report shall be forwarded to the California Public Utilities Commission.

(f) Beginning April 15, 1999, and annually thereafter, the California Energy Resources Conservation and Development Commission shall issue a report calculating net system power. The California Energy Resources Conservation and Development Commission will establish the generation mix for net generation imports delivered at interface points and metered by the system operators. The California Energy Resources Conservation and Development Commission shall issue an initial report calculating preliminary net system power for calendar year 1997 on or before January 1, 1998. This report shall be updated on or before October 15, 1998.

(g) The provisions of this section shall not apply to generators providing electric service on site, under an over-the-fence transaction as described in Section 218, or to an affiliate or affiliates, as defined in subdivision (a) of Section 372.

(h) The California Energy Resources Conservation and Development Commission may verify the veracity of environmental claims made by retail suppliers.

## **Article 15. Reliable Electric Service Investments Act**

### **§ 399. Short title; Legislative findings, declarations and intent**

(a) This article shall be known, and may be cited, as the Reliable Electric Service Investments Act.

(b) The Legislature finds and declares that safe, reliable electric service is of utmost importance to the citizens of this state, and its economy.

(c) The Legislature further finds and declares that in order to ensure that the citizens of this state continue to receive safe, reliable, affordable, and environmentally sustainable electric service, it is essential that prudent investments continue to be made in all of the following areas:

- (1) To protect the integrity of the electric distribution grid.
- (2) To ensure an adequately sized and trained utility workforce.
- (3) To ensure cost-effective energy efficiency improvements.
- (4) To achieve a sustainable supply of renewable energy.
- (5) To advance public interest research, development and demonstration programs not adequately provided by competitive and regulated markets.

(d) It is the intent of the Legislature to reaffirm, without requiring revision, California's doctrine, as reflected in regulatory and judicial decisions, regarding electrical corporations' reasonable opportunity to recover costs and investments associated with their electric distribution grid and the reasonable opportunity to attract capital for investment on reasonable terms.

(e) The Legislature further finds and declares all of the following:

(1) Acting under applicable constitutional and statutory authorities, the Public Utilities Commission and the boards of local publicly owned electric utilities have included in regulated electricity prices, investments that are essential to maintaining system reliability, reducing California electricity users' bills, and mitigating environmental costs of California users' electricity consumption.

(2) Among the most important of these "system benefits" investments categories are energy efficiency, renewable energy, and public interest research, development and demonstration (RD&D).

(3) Energy efficiency investments funded from California's usage-based charges on electricity distribution help improve systemwide reliability by reducing demand in times and areas of system congestion, and at the same time reduce all California electricity users' costs. These investments also significantly reduce environmental costs associated with California's electricity consumption, including, but not limited to, degradation of the state's air, water, and land resources.

(4) California's in-state renewable energy resources help alleviate supply deficits that could threaten electric system reliability, reduce environmental costs associated with California's electricity consumption, and increase the diversity of the electricity system's fuel mix, reducing electricity users' exposure to fossil-fuel price volatility.

(5) California's public interest RD&D investments enhance private and regulated sector investment in electricity system technologies, and are designed specifically to help ensure sustained improvement in the economic and environmental performance of the distribution, transmission, and generation and end-use systems that serve California electricity users.

(6) California has established a long tradition of recovering system benefits investments through usage-based electricity charges, which is reflected in at least two decades of electricity price regulation by the commission, the boards of local publicly owned electric utilities, and the mandate of the Legislature in Chapter 854 of the Statutes of 1996 (Assembly

Bill 1890 of the 1995-96 Regular Session of the Legislature) and Chapter 905 of the Statutes of 1997 (Senate Bill 90 of the 1997-98 Regular Session of the Legislature).

(7) Unless the Legislature acts to extend the mandate of this article for minimum levels of usage based system benefits charges, California electricity users are at substantial risk of higher economic and environmental costs and degraded reliability.

**§ 399.8. Charges and rate components; collection and allocation of funds**

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

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

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

(c)(1) The commission shall require each electrical corporation to identify a separate rate component to collect revenues to fund energy efficiency, renewable energy, and research, development and demonstration programs authorized pursuant to this section beginning January 1, 2002, and ending January 1, 2012. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage.

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

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

(1) Two hundred twenty-eight million dollars (\$228,000,000) per year in total for energy efficiency and conservation activities, sixty-five million five hundred thousand dollars (\$65,500,000) in total per year for renewable energy, and sixty-two million five hundred thousand dollars (\$62,500,000) in total per year for research, development and demonstration. The funds for energy efficiency and conservation activities shall continue to be allocated in proportions established for the year 2000 as set forth in paragraph (1) of subdivision (c) of Section 381.

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

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

(f) The commission and the Energy Commission shall retain and continue their oversight responsibilities as set forth in Sections 381 and 383, and Chapter 7.1 (commencing with Section 25620) and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code.

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

## **Article 16. California Renewables Portfolio Standard Program**

### **§ 399.11. Legislative findings and declarations**

The Legislature finds and declares all of the following:

(a) In order to attain a target of generating 20 percent of total retail sales of electricity in California from eligible renewable energy resources by December 31, 2010, and for the purposes of increasing the diversity, reliability, public health and environmental benefits of the energy mix, it is the intent of the Legislature that the commission and the State Energy Resources Conservation and Development Commission implement the California Renewables Portfolio Standard Program described in this article.

(b) Increasing California's reliance on eligible renewable energy resources may promote stable electricity prices, protect public health, improve environmental quality, stimulate sustainable economic development, create new employment opportunities, and reduce reliance on imported fuels.

(c) The development of eligible renewable energy resources and the delivery of the electricity generated by those resources to customers in California may ameliorate air quality problems throughout the state and improve public health by reducing the burning of fossil fuels and the associated environmental impacts and by reducing in-state fossil fuel consumption.

(d) The California Renewables Portfolio Standard Program is intended to complement the Renewable Energy Resources Program administered by the State Energy Resources Conservation and Development Commission and established pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code.

(e) New and modified electric transmission facilities may be necessary to facilitate the state achieving its renewables portfolio standard targets.

**§ 399.12. Definitions**

For purposes of this article, the following terms have the following meanings:

(a) "Conduit hydroelectric facility" means a facility for the generation of electricity that uses only the hydroelectric potential of an existing pipe, ditch, flume, siphon, tunnel, canal, or other manmade conduit that is operated to distribute water for a beneficial use.

(b) "Delivered" and "delivery" have the same meaning as provided in subdivision (a) of Section 25741 of the Public Resources Code.

(c) "Eligible renewable energy resource" means an electric generating facility that meets the definition of "in-state renewable electricity generation facility" in Section 25741 of the Public Resources Code, subject to the following limitations:

(1)(A) An existing small hydroelectric generation facility of 30 megawatts or less shall be eligible only if a retail seller or local publicly owned electric utility owned or procured the electricity from the facility as of December 31, 2005. A new hydroelectric facility is not an eligible renewable energy resource if it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(B) Notwithstanding subparagraph (A), a conduit hydroelectric facility of 30 megawatts or less that commenced operation before January 1, 2006, is an eligible renewable energy resource. A conduit hydroelectric facility of 30 megawatts or less that commences operation after December 31, 2005, is an eligible renewable energy resource so long as it does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(2) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable resource unless it is located in Stanislaus County and was operational prior to September 26, 1996.

(d) "Procure" means that a retail seller or local publicly owned electric utility receives delivered electricity generated by an eligible renewable energy resource that it owns or for which it has entered into an electricity purchase agreement. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller's obligation to comply with this article or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section 387.

(e) "Renewables portfolio standard" means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to

procure pursuant to this article or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section 387.

(f)(1) "Renewable energy credit" means a certificate of proof, issued through the accounting system established by the Energy Commission pursuant to Section 399.13, that one unit of electricity was generated and delivered by an eligible renewable energy resource.

(2) "Renewable energy credit" includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, except for an emissions reduction credit issued pursuant to Section 40709 of the Health and Safety Code and any credits or payments associated with the reduction of solid waste and treatment benefits created by the utilization of biomass or biogas fuels.

(3) No electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimis quantity, as determined by the Energy Commission, shall result in the creation of a renewable energy credit.

(g) "Retail seller" means an entity engaged in the retail sale of electricity to end-use customers located within the state, including any of the following:

(1) An electrical corporation, as defined in Section 218.

(2) A community choice aggregator. The commission shall institute a rulemaking to determine the manner in which a community choice aggregator will participate in the renewables portfolio standard program subject to the same terms and conditions applicable to an electrical corporation.

(3) An electric service provider, as defined in Section 218.3, for all sales of electricity to customers beginning January 1, 2006. The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewable portfolio standard program. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article. Nothing in this paragraph shall impair a contract entered into between an electric service provider and a retail customer prior to the suspension of direct access by the commission pursuant to Section 80110 of the Water Code.

(4) "Retail seller" does not include any of the following:

(A) A corporation or person employing cogeneration technology or producing electricity consistent with subdivision (b) of Section 218.

(B) The Department of Water Resources acting in its capacity pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(C) A local publicly owned electric utility.

**§ 399.12.5. Small hydroelectric generation facilities; eligibility for renewable energy resource**

(a) Notwithstanding subdivision (c) of Section 399.12, a small hydroelectric generation facility that satisfies the criteria for an eligible renewable energy resource pursuant to Section 399.12 shall not lose its eligibility if efficiency improvements undertaken after January 1, 2008, cause the generating capacity of the facility to exceed 30 megawatts, and the efficiency improvements do not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. The entire generating capacity of the facility shall be eligible.

(b) Notwithstanding subdivision (c) of Section 399.12, the incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility, is electricity from an eligible renewable energy resource, without regard to the electrical output of the facility, if all of the following conditions are met:

(1) The incremental increase is the result of efficiency improvements from a retrofit that do not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(2) The hydroelectric generation facility has, within the immediately preceding 15 years, received certification from the State Water Resources Control Board pursuant to Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341), or has received certification from a regional board to which the state board has delegated authority to issue certification, unless the facility is exempt from certification because there is no potential for discharge into waters of the United States.

(3) The hydroelectric generation facility was operational prior to January 1, 2007, the efficiency improvements are initiated on or after January 1, 2008, the efficiency improvements are not the result of routine maintenance activities, as determined by the Energy Commission, and the efficiency improvements were not included in any resource plan sponsored by the facility owner prior to January 1, 2008.

(4) All of the incremental increase in electricity resulting from the efficiency improvements are demonstrated to result from a long-term financial commitment by the retail seller or local publicly owned electric utility. For purposes of this paragraph, "long-term financial commitment" means either new ownership investment in the facility by the retail seller or local publicly owned electric utility or a new or renewed contract with a term of 10 or more years, which includes procurement of the incremental generation.

(c) The incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility are not eligible for supplemental energy payments pursuant to the Renewable Energy Resources Program (Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code), or a successor program.

**§ 399.13. Duties of Energy Commission**

The Energy Commission shall do all of the following:

(a) Certify eligible renewable energy resources that it determines meet the criteria described in subdivision (b) of Section 399.12.

(b) Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, to ensure that electricity generated by an eligible renewable energy resource is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, to certify renewable energy credits produced by eligible renewable energy resources, and to verify retail product claims in this state or any other state. In establishing the guidelines governing this accounting system, the Energy Commission shall collect data from electricity market participants that it deems necessary to verify compliance of retail sellers, in accordance with the requirements of this article and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). In seeking data from electrical corporations, the Energy Commission shall request data from the commission. The commission shall collect data from electrical corporations and remit the data to the Energy Commission within 90 days of the request.

(c) Establish a system for tracking and verifying renewable energy credits that, through the use of independently audited data, verifies the generation and delivery of electricity associated with each renewable energy credit and protects against multiple counting of the same renewable energy credit. The Energy Commission shall consult with other western states and with the Western Electricity Coordinating Council in the development of this system.

(d) Certify, for purposes of compliance with the renewable portfolio standard requirements by a retail seller, the eligibility of renewable energy credits associated with deliveries of electricity by an eligible renewable energy resource to a local publicly owned electric utility, if the Energy Commission determines that the following conditions have been satisfied:

(1) The local publicly owned electric utility that is procuring the electricity is in compliance with the requirements of Section 387.

(2) The local publicly owned electric utility has established an annual renewables portfolio standard target comparable to those applicable to an electrical corporation, is procuring sufficient eligible renewable energy resources to satisfy the targets, and will not fail to satisfy the targets in the event that the renewable energy credit is sold to another retail seller.

**§ 399.14. Procurement plans; review and acceptance, modification, or rejection; acceptance or rejection of proposed contracts; compliance; authorization to enter into contracts; recoverable costs; public works.**

(a)(1) The commission shall direct each electrical corporation to prepare a renewable energy procurement plan that includes the matter in paragraph (3), to satisfy its obligations under the renewables portfolio standard. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the commission as part of, and pursuant to, a general procurement plan process. The commission shall require each electrical corporation to review and update its renewable energy procurement plan as it determines to be necessary.



(2) The commission shall adopt, by rulemaking, all of the following:

(A) A process for determining market prices pursuant to subdivision (c) of Section 399.15. The commission shall make specific determinations of market prices after the closing date of a competitive solicitation conducted by an electrical corporation for eligible renewable energy resources.

(B) A process that provides criteria for the rank ordering and selection of least-cost and best-fit eligible renewable energy resources to comply with the annual California Renewables Portfolio Standard Program obligations on a total cost basis. This process shall consider estimates of indirect costs associated with needed transmission investments and ongoing utility expenses resulting from integrating and operating eligible renewable energy resources.

(C)(i) Flexible rules for compliance, including rules permitting retail sellers to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years. The flexible rules for compliance shall apply to all years, including years before and after a retail seller procures at least 20 percent of total retail sales of electricity from eligible renewable energy resources.

(ii) The flexible rules for compliance shall address situations where, as a result of insufficient transmission, a retail seller is unable to procure eligible renewable energy resources sufficient to satisfy the requirements of this article. Any rules addressing insufficient transmission shall require a finding by the commission that the retail seller has undertaken all reasonable efforts to do all of the following:

(I) Utilize flexible delivery points.

(II) Ensure the availability of any needed transmission capacity.

(III) If the retail seller is an electric corporation, to construct needed transmission facilities.

(IV) Nothing in this subparagraph shall be construed to revise any portion of Section 454.5.

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

(3) Consistent with the goal of procuring the least-cost and best-fit eligible renewable energy resources, the renewable energy procurement plan submitted by an electrical corporation shall include all of the following:

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

(B) Provisions for employing available compliance flexibility mechanisms established by the commission.

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

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

(5) In soliciting and procuring eligible renewable energy resources, each electrical corporation may give preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(b) The commission may authorize a retail seller to enter into a contract of less than 10 years' duration with an eligible renewable energy resource, if the commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured either through contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005.

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

(d) The commission shall review the results of an eligible renewable energy resources solicitation submitted for approval by an electrical corporation and accept or reject proposed contracts with eligible renewable energy resources based on consistency with the approved renewable energy procurement plan. If the commission determines that the bid prices are elevated due to a lack of effective competition among the bidders, the commission shall direct the electrical corporation to renegotiate the contracts or conduct a new solicitation.

(e) If an electrical corporation fails to comply with a commission order adopting a renewable energy procurement plan, the commission shall exercise its authority pursuant to Section 2113 to require compliance. The commission shall enforce comparable penalties on any other retail seller that fails to meet annual procurement targets established pursuant to Section 399.15.

(f)(1) The commission may authorize a procurement entity to enter into contracts on behalf of customers of a retail seller for deliveries of eligible renewable energy resources to satisfy annual renewables portfolio standard obligations. The commission may not require any person or corporation to act as a procurement entity or require any party to purchase eligible renewable energy resources from a procurement entity.

(4) Subject to review and approval by the commission, the procurement entity shall be permitted to recover reasonable administrative and procurement costs through

the retail rates of end-use customers that are served by the procurement entity and are directly benefiting from the procurement of eligible renewable energy resources.

(g) Procurement and administrative costs associated with long-term contracts entered into by an electrical corporation for eligible renewable energy resources pursuant to this article and approved by the commission shall be deemed reasonable per se, and shall be recoverable in rates.

(a) Construction, alteration, demolition, installation, and repair work on an eligible renewable energy resource that receives production incentives pursuant to Section 25742 of the Public Resources Code, including work performed to qualify, receive, or maintain production incentives is "public works" for the purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

**§ 399.15. Annual procurement targets; conditions; implementation; market price; cost limitation**

(a) In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of electricity generated by eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year, subject to limits on the total amount of costs expended above the market prices determined in subdivision (c), to achieve the targets established under this article.

(b) The commission shall implement annual procurement targets for each retail seller as follows:

(1) Each retail seller shall, pursuant to subdivision (a), increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010. A retail seller with 20 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of renewable energy resources in the following year.

(2) For purposes of setting annual procurement targets, the commission shall establish an initial baseline for each retail seller based on the actual percentage of retail sales procured from eligible renewable energy resources in 2001, and to the extent applicable, adjusted going forward pursuant to Section 399.12.

(3) Only for purposes of establishing these targets, the commission shall include all electricity sold to retail customers by the Department of Water Resources pursuant to Section 80100 of the Water Code in the calculation of retail sales by an electrical corporation.

(4) In the event that a retail seller fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the retail seller shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall, subject to the limitation on costs for electrical corporations established pursuant to subdivision (d).

(c) The commission shall establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with eligible renewable energy resources, in consideration of the following:

(1) The long-term market price of electricity for fixed price contracts, determined pursuant to an electrical corporation's general procurement activities as authorized by the commission.

(2) The long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities.

(3) The value of different products including baseload, peaking, and as-available electricity.

(d) The commission shall establish, for each electrical corporation, a limitation on the total costs expended above the market prices determined in subdivision (c) for the procurement of eligible renewable energy resources to achieve the annual procurement targets established under this article.

(1) The cost limitation shall be equal to the amount of funds transferred to each electrical corporation by the Energy Commission pursuant to subdivision (b) of Section 25743 of the Public Resources Code and the 51.5 percent of the funds which would have been collected through January 1, 2012, from the customers of the electrical corporation based on the renewable energy public goods charge in effect as of January 1, 2007.

(2) The above-market costs of a contract selected by an electrical corporation may be counted toward the cost limitation if all of the following conditions are satisfied:

(A) The contract has been approved by the commission and was selected through a competitive solicitation pursuant to the requirements of subdivision (d) of Section 399.14.

(B) The contract covers a duration of no less than 10 years.

(C) The contracted project is a new or repowered facility commencing commercial operations on or after January 1, 2005.

(D) No purchases of renewable energy credits may be eligible for consideration as an above-market cost.

(E) The above-market costs of a contract do not include any indirect expenses including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades.

(3) If the cost limitation for an electrical corporation is insufficient to support the total costs expended above the market prices determined in subdivision (c) for the procurement of eligible renewable energy resources satisfying the conditions of paragraph (2), the commission shall allow the electrical corporation to limit its procurement to the quantity of eligible renewable energy resources that can be procured at or below the market prices established in subdivision (c).

(4) Nothing in this section prevents an electrical corporation from voluntarily proposing to procure eligible renewable energy resources at above-market prices that are not counted toward the cost limitation. Any voluntary procurement involving above-market costs shall be subject to commission approval prior to the expense being recovered in rates.

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

(f) The commission shall consult with the Energy Commission in calculating market prices under subdivision (c) and establishing other renewables portfolio standard policies.

**§ 399.16. Use of reviewable energy credits to satisfy renewable portfolio standard requirements conditions; cost recovery**

(a) The commission, by rule, may authorize the use of renewable energy credits to satisfy the requirements of the renewables portfolio standard established pursuant to this article, subject to the following conditions:

(1) Prior to authorizing any renewable energy credit to be used toward satisfying annual procurement targets, the commission and the Energy Commission shall conclude that the tracking system established pursuant to subdivision (c) of Section 399.13, is operational, is capable of independently verifying the electricity generated by an eligible renewable energy resource and delivered to the retail seller, and can ensure that renewable energy credits shall not be double counted by any seller of electricity within the service territory of the Western Electricity Coordinating Council (WECC).

(2) A renewable energy credit shall be counted only once for compliance with the renewables portfolio standard of this state or any other state, or for verifying retail product claims in this state or any other state.

(3) The electricity is delivered to a retail seller, the Independent System Operator, or a local publicly owned electric utility.

(4) All revenues received by an electrical corporation for the sale of a renewable energy credit shall be credited to the benefit of ratepayers.

(5) No renewable energy credits shall be created for electricity generated pursuant to any electricity purchase contract with a retail seller or a local publicly owned electric utility executed before January 1, 2005, unless the contract contains explicit terms and conditions specifying the ownership or disposition of those credits. Deliveries under those contracts shall be tracked through the accounting system described in subdivision (b) of Section 399.13 and included in the baseline quantity of eligible renewable energy resources of the purchasing retail seller pursuant to Section 399.15.

(6) No renewable energy credits shall be created for electricity generated under any electricity purchase contract executed after January 1, 2005, pursuant to the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Sec. 2601 et seq.). Deliveries under the electricity purchase contracts shall be tracked through the accounting system described in

subdivision (b) of Section 399.12 and count toward the renewables portfolio standard obligations of the purchasing retail seller.

(7) The commission may limit the quantity of renewable energy credits that may be procured unbundled from electricity generation by any retail seller, to meet the requirements of this article.

(8) No electrical corporation shall be obligated to procure renewable energy credits to satisfy the requirements of this article in the event that the total costs expended above the applicable market prices for the procurement of eligible renewable energy resources exceeds the cost limitation established pursuant to subdivision (d) of Section 399.15.

(9) Any additional condition that the commission determines is reasonable.

(b) The commission shall allow an electrical corporation to recover the reasonable costs of purchasing renewable energy credits in rates.

## **PUBLIC UTILITIES CODE - DIVISION 1**

Part 1, Chapter 3 – Rights and Obligations of Public Utilities - Section 454.5.

### **Article 1. Rates**

#### **§ 454.5. Electrical corporations; procurement plans**

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

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

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

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

(3) The duration of the plan.

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

(5) A competitive procurement process under which the electrical corporation may request bids for procurement-related services, including the format and criteria of that procurement process.

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

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

(8) Procedures for updating the procurement plan.

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

(A) The electrical corporation will, in order to fulfill its unmet resource needs and in furtherance of Section 701.3, until a 20 percent renewable resources portfolio is achieved, procure renewable energy resources with the goal of ensuring that at least an additional 1 percent per year of the electricity sold by the electrical corporation is generated from renewable energy resources, provided sufficient funds are made available pursuant to Sections 399.6 and 399.15, to cover the above-market costs for new renewable energy resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule



determined by the commission. Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of Water Resources. The commission shall determine the schedule for amortizing the overcollection or undercollection in the balancing account to ensure that the 5 percent threshold is not exceeded. After January 1, 2006, this adjustment shall occur when deemed appropriate by the commission consistent with the objectives of this section.

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

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

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

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

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

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

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

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

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

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

## **PUBLIC UTILITIES CODE - DIVISION 1**

Part 1, Chapter 5 - Certificates of Public Convenience and Necessity - Section 1001 et seq.

### **Article 1. Specified Utilities**

#### **§ 1001. Construction or extension of facilities; certificate requirements; interference with another utility;**

No railroad corporation whose railroad is operated primarily by electric energy, street railroad corporation, gas corporation, electrical corporation, telegraph corporation, telephone corporation, water corporation, or sewer system corporation shall begin the construction of a street railroad, or of a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction.

This article shall not be construed to require any such corporation to secure such certificate for an extension within any city or city and county within which it has theretofore lawfully commenced operations, or for an extension into territory either within or without a city or city and county contiguous to its street railroad, or line, plant, or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business. If any public utility, in constructing or extending its line, plant, or system, interferes or is about to interfere with the operation of the line, plant, or system of any other public utility or of the water system of a public agency, already constructed, the commission, on complaint of the public utility or public agency claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants, or systems affected as to it may seem just and reasonable.

#### **§ 1001.5. Exemption for construction or extension of facilities outside boundaries of state; time for determination; extensions**

(a) The commission shall exempt the construction of any line, plant, or system, or extension thereof, located outside the boundaries of the state from the requirements of Section 1001, upon the application of the public utility constructing that line, plant, or system, or extension thereof, if the public utility derives 75 percent or more of its operating revenues from outside the state, as recorded in the fiscal period immediately before the filing of the application, unless the commission determines that the public interest requires that the construction should not be exempt from Section 1001.

(b) Except as provided in subdivision (c), the commission shall make the determination denying the exemption, as specified in subdivision (a), within 90 days after the

public utility files the application for exemption with the commission. If the commission fails to make this determination within that 90-day period, the construction of that line, plant, or system, or extension thereof, is exempt from the requirements of Section 1001.

(c) The commission and the public utility filing the application for exemption may, if both agree, extend the time period within which the commission is required to make the determination denying the exemption, for not more than an additional 60 days after the expiration of the 90-day period specified in subdivision (b).

**§ 1002. Certification factors**

(a) The commission, as a basis for granting any certificate pursuant to Section 1001 shall give consideration to the following factors:

- (1) Community values.
- (2) Recreational and park areas.
- (3) Historical and aesthetic values.

(4) Influence on environment, except that in the case of any line, plant, or system or extension thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (Chapter 55 (commencing with Section 4321) of Title 42 of the United States Code) or similar state laws in the other state, the commission shall not consider influence on the environment unless any emissions or discharges therefrom would have a significant influence on the environment of this state.

(b) With respect to any thermal powerplant or electrical transmission line for which a certificate is required pursuant to the provisions of Division 15 (commencing with Section 25000) of the Public Resources Code, no certificate of public convenience and necessity shall be granted pursuant to Section 1001 without such other certificate having been obtained first, and the decision granting such other certificate shall be conclusive as to all matters determined thereby and shall take the place of the requirement for consideration by the commission of the four factors specified in subdivision (a) of this section.

**§ 1002.3. Consideration of cost-effective alternatives; review of applications for certification for electric transmission facilities**

In considering an application for a certificate for an electric transmission facility pursuant to Section 1001, the commission shall consider cost-effective alternatives to transmission facilities that meet the need for an efficient, reliable, and affordable supply of electricity, including, but not limited to, demand-side alternatives such as targeted energy efficiency, ultraclean distributed generation, as defined in Section 353.2, and other demand reduction resources.

**§ 1002.5. Natural gas pipeline construction; additional capacity; certificate of convenience**

In issuing a certificate of convenience and necessity for additional natural gas pipeline capacity proposed for construction within this state, the commission shall consider the state's need to provide sufficient and competitively priced natural gas supplies for both present and

anticipated future residential, industrial, commercial, and utility demand. When it finds that it is in the state's best interests to do so, the commission shall expeditiously issue certificates of convenience and necessity for those additional natural gas pipeline capacity projects.

**§ 1003. Electrical and gas corporations; applications for certificates authorizing new construction not subject to power facility and site certification; additional information**

Every electrical and every gas corporation submitting an application to the commission for a certificate authorizing the new construction of any electric plant, line or extension, or gas plant, line, or extension, not subject to the provisions of Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code, shall include all of the following information in the application in addition to any other required information:

(a) Preliminary engineering and design information on the project. The design information provided for thermal electric plants shall include preliminary data regarding the operating characteristics of the proposed plant, including, but not limited to, the annual capacity factor, availability factor, and the heat rate for each year of the useful life of the plant, line, or extension.

(b) A project implementation plan showing how the project would be contracted for and constructed. This plan shall show how all major tasks would be integrated and shall include a timetable identifying the design, construction, completion, and operation dates for each major component of the plant, line, or extension.

(c) An appropriate cost estimate, including preliminary estimates of the costs of financing, construction and operation, including fuel, maintenance, and dismantling or inactivation after the useful life of the plant, line, or extension.

(d) A cost analysis comparing the project with any feasible alternative sources of power. The corporation shall demonstrate the financial impact of the plant, line, or extension construction on the corporation's ratepayers, stockholders, and on the cost of the corporation's borrowed capital. The cost analyses shall be performed for the projected useful life of the plant, line, or extension, including dismantling or inactivation after the useful life of the plant, line, or extension.

(e) A design and construction management and cost control plan which indicates the contractual and working responsibilities and interrelationships between the corporation's management and other major parties involved in the project. This plan shall also include a construction progress information system and specific cost controls.

**§ 1003.5. Applications for certificates authorizing new construction subject to power facility and site certification; additional information**

Every electrical and gas corporation submitting an application to the commission for a certificate authorizing the new construction of an electric plant, line, or extension, or gas plant, line, or extension, which is subject to the provisions of Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code, shall include in the application the information specified in subdivisions (b), (c), and (e) of Section 1003, in addition to any other required information. The corporation may also include in the application any other information specified in Section 1003.

**§ 1004. Filing of articles and evidence of issuance of franchise**

Before any certificate may issue, under this article, a certified copy of its articles of incorporation or charter, if the applicant is a corporation, shall be filed in the office of the commission. Every applicant for a certificate shall file in the office of the commission such evidence as is required by the commission to show that the applicant has received the required consent, franchise, or permit of the proper county, city and county, city, or other public authority.

**§ 1005. Issuance of certificate; terms and conditions**

(a) The commission may, with or without hearing, issue the certificate as prayed for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated street railroad line, plant, or system, or extension thereof, or for the partial exercise only of the right or privilege, and may attach to the exercise of the rights granted by the certificate such terms and conditions, including provisions for the acquisition by the public of the franchise or permit and all rights acquired thereunder and all works constructed or maintained by authority thereof, as in its judgment the public convenience and necessity require; provided, however, upon timely application for a hearing by any person entitled to be heard thereat, the commission, before issuing or refusing to issue the certificate, shall hold a hearing thereon.

(b) When the commission issues a certificate for the new construction of a gas or electric plant, line, or extension, the certificate shall specify the operating and cost characteristics of the plant, line, or extension, including, but not limited to, the size, capacity, cost, and all other characteristics of the plant, line, or extension which are specified in the information which the gas and electrical corporations are required to submit, pursuant to Section 1003 or 1003.5.

**§ 1005.5. Issuance of certificate; construction of addition or extension of plant; maximum cost; application for increases or to discontinue construction**

(a) Whenever the commission issues to an electrical or gas corporation a certificate authorizing the new construction of any addition to or extension of the corporation's plant estimated to cost greater than fifty million dollars (\$50,000,000), the commission shall specify in the certificate a maximum cost determined to be reasonable and prudent for the facility. The commission shall determine the maximum cost using an estimate of the anticipated construction cost, taking into consideration the design of the project, the expected duration of construction, an estimate of the effects of economic inflation, and any known engineering difficulties associated with the project.

(b) After the certificate has been issued, the corporation may apply to the commission for an increase in the maximum cost specified in the certificate. The commission may authorize an increase in the specified maximum cost if it finds and determines that the cost has in fact increased and that the present or future public convenience and necessity require construction of the project at the increased cost; otherwise, it shall deny the application.

(c) After construction has commenced, the corporation may apply to the commission for authorization to discontinue construction and recover those costs which were reasonably and prudently incurred. After a showing to the satisfaction of the commission that the present or future public convenience and necessity no longer require the completion of construction of the project, the commission may authorize discontinuance of construction and the recovery of those construction costs which were reasonable and prudent.

(d) In any decision establishing rates for an electrical or gas corporation reflecting the reasonable and prudent costs of the new construction of any addition to or extension of the corporation's plant, when the commission has found and determined that the addition or extension is used and useful, the commission shall consider whether or not the actual costs of construction are within the maximum cost specified by the commission.

**§1006. Construction without certificate; cease and desist order**

When a complaint has been filed with the commission alleging that a public utility of the class specified in Section 1001 is engaged or is about to engage in construction work without having secured from the commission a certificate of public convenience and necessity as required by this article, the commission may, with or without notice, make its order requiring the public utility complained of to cease and desist from such construction until the commission makes and files its decision on the complaint or until the further order of the commission.

**PUBLIC UTILITIES CODE - DIVISION 1**

Part 2, Chapter 7 – Private Energy Producers – Section 2827

**Article 3. Rights, Obligations, and Charges**

**§ 2827. Legislative findings and declaration with respect to a program to provide net energy metering, co-energy metering, and wind-energy cometering for eligible customer-generators**

(a) The Legislature finds and declares that a program to provide net energy metering, co-energy metering, and wind energy co-metering for eligible customer-generators is one way to encourage substantial private investment in renewable energy resources, stimulate in-state economic growth, reduce demand for electricity during peak consumption periods, help stabilize California's energy supply infrastructure, enhance the continued diversification of California's energy resource mix, and reduce interconnection and administrative costs for electricity suppliers.

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

(1) "Co-energy metering" means a program that is the same in all other respects as a net energy metering program, except that the local publicly owned electric utility has elected to apply a generation-to-generation energy and time-of-use credit formula as provided in subdivision (i).

(2) "Electrical cooperative" means an electrical cooperative as defined in Section 2776.

(3) "Electric distribution utility or cooperative" means an electrical corporation, a local publicly owned electric utility, or an electrical cooperative, or any other entity, except an electric service provider, that offers electrical service. This section shall not apply to a local publicly owned electric utility that serves more than 750,000 customers and that also conveys water to its customers.

(4) "Eligible customer-generator" means a residential, small commercial customer as defined in subdivision (h) of Section 331, commercial, industrial, or agricultural customer of an electricity distribution utility or cooperative, who uses a solar or a wind turbine electrical generating facility, or a hybrid system of both, with a capacity of not more than one megawatt that is located on the customer's owned, leased, or rented premises, is interconnected and operates in parallel with the electric grid, and is intended primarily to offset part or all of the customer's own electrical requirements.

(5) "Net energy metering" means measuring the difference between the electricity supplied through the electric grid and the electricity generated by an eligible customer-generator and fed back to the electric grid over a 12-month period as described in subdivision (h). An eligible customer-generator who already owns an existing solar or wind turbine electrical generating facility, or a hybrid system of both, is eligible to receive net energy metering service in accordance with this section.

(6) "Ratemaking authority" means, for an electrical corporation, electrical cooperative, or electric service provider, the commission, and for a local publicly owned electric utility, the local elected body responsible for setting the rates of the local publicly owned utility.

(7) "Wind energy co-metering" means any wind energy project greater than 50 kilowatts, but not exceeding one megawatt, where the difference between the electricity supplied through the electric grid and the electricity generated by an eligible customer-generator and fed back to the electric grid over a 12-month period is as described in subdivision (h). Wind energy co-metering shall be accomplished pursuant to Section 2827.8.

(c)(1) Every electricity distribution utility or cooperative shall develop a standard contract or tariff providing for net energy metering, and shall make this standard contract or tariff available to eligible customer-generators, upon request, on a first-come-first-served basis until the time that the total rated generating capacity used by eligible customer-generators exceeds 2.5 percent of the electricity distribution utility or cooperative's aggregate customer peak demand. Net energy metering shall be accomplished using a single meter capable of registering the flow of electricity in two directions. An additional meter or meters to monitor the flow of electricity in each direction may be installed with the consent of the customer-generator, at the expense of the electricity distribution utility or cooperative, and the additional metering shall be used only to provide the information necessary to accurately bill or credit the customer-generator pursuant to subdivision (h), or to collect solar or wind electric generating system performance information for research purposes. If the existing electrical meter of an eligible customer-generator is not capable of measuring the flow of electricity in two directions, the customer-generator shall be responsible for all expenses involved in purchasing and installing a meter that is able to measure electricity flow in two directions. If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a single meter.

(2)(A) On an annual basis, beginning in 2003, every electricity distribution utility or cooperative shall make available to the ratemaking authority information on the total rated generating capacity used by eligible customer-generators that are customers of that provider in the provider's service area.

(B) An electric service provider operating pursuant to Section 394 shall make available to the ratemaking authority the information required by this paragraph for each eligible customer-generator that is their customer for each service area of an electric corporation, local

publicly owned electric utility, or electrical cooperative, in which the customer has net energy metering.

(C) The ratemaking authority shall develop a process for making the information required by this paragraph available to electricity distribution utilities and cooperatives, and for using that information to determine when, pursuant to paragraphs (1) and (3), an electricity distribution utility or cooperative is not obligated to provide net energy metering to additional customer-generators in its service area.

(3) An electricity distribution utility or cooperative is not obligated to provide net energy metering to additional customer-generators in its service area when the combined total peak demand of all customer-generators served by all the electricity distribution utilities or cooperatives in that service area furnishing net energy metering to eligible customer-generators exceeds 2.5 percent of the aggregate customer peak demand of those electricity distribution utilities or cooperatives.

(4) By January 1, 2010, the commission, in consultation with the Energy Commission, shall submit a report to the Governor and the Legislature on the costs and benefits of net energy metering, wind energy co-metering, and co-energy metering to participating customers and nonparticipating customers and with options to replace the economic costs and benefits of net energy metering, wind energy co-metering, and co-energy metering with a mechanism that more equitably balances the interests of participating and nonparticipating customers, and that incorporates the findings of the report on economic and environmental costs and benefits of net metering required by subdivision (n).

(d) Every electricity distribution utility or cooperative shall make all necessary forms and contracts for net energy metering service available for download from the Internet.

(e)(1) Every electricity distribution utility or cooperative shall ensure that requests for establishment of net energy metering are processed in a time period not exceeding that for similarly situated customers requesting new electric service, but not to exceed 30 working days from the date it receives a completed application form for net energy metering service, including a signed interconnection agreement from an eligible customer-generator and the electric inspection clearance from the governmental authority having jurisdiction.

(2) Every electricity distribution utility or cooperative shall ensure that requests for an interconnection agreement from an eligible customer-generator are processed in a time period not to exceed 30 working days from the date it receives a completed application form from the eligible customer-generator for an interconnection agreement.

(3) If an electricity distribution utility or cooperative is unable to process a request within the allowable timeframe pursuant to paragraph (1) or (2), it shall notify the eligible customer-generator and the ratemaking authority of the reason for its inability to process the request and the expected completion date.

(f)(1) If a customer participates in direct transactions pursuant to paragraph (1) of subdivision (b) of Section 365 with an electric service provider that does not provide distribution service for the direct transactions, the electricity distribution utility or cooperative that provides distribution service for an eligible customer-generator is not obligated to provide net energy metering to the customer.



(2) If a customer participates in direct transactions pursuant to paragraph (1) of subdivision (b) of Section 365 with an electric service provider, and the customer is an eligible customer-generator, the electricity distribution utility or cooperative that provides distribution service for the direct transactions may recover from the customer's electric service provider the incremental costs of metering and billing service related to net energy metering in an amount set by the ratemaking authority.

(g) Except for the time-variant kilowatthour pricing portion of any tariff adopted by the commission pursuant to paragraph (4) of subdivision (a) of Section 2851, each net energy metering contract or tariff shall be identical, with respect to rate structure, all retail rate components, and any monthly charges, to the contract or tariff to which the same customer would be assigned if the customer did not use an eligible solar or wind electrical generating facility, except that eligible customer-generators shall not be assessed standby charges on the electrical generating capacity or the kilowatthour production of an eligible solar or wind electrical generating facility. The charges for all retail rate components for eligible customer-generators shall be based exclusively on the customer-generator's net kilowatthour consumption over a 12-month period, without regard to the customer-generator's choice as to whom it purchases electricity that is not self-generated. Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or any other charge that would increase an eligible customer-generator's costs beyond those of other customers who are not eligible customer-generators in the rate class to which the eligible customer-generator would otherwise be assigned if the customer did not own, lease, rent, or otherwise operate an eligible solar or wind electrical generating facility are contrary to the intent of this section, and shall not form a part of net energy metering contracts or tariffs.

(h) For eligible residential and small commercial customer-generators, the net energy metering calculation shall be made by measuring the difference between the electricity supplied to the eligible customer-generator and the electricity generated by the eligible customer-generator and fed back to the electric grid over a 12-month period. The following rules shall apply to the annualized net metering calculation:

(1) The eligible residential or small commercial customer-generator shall, at the end of each 12-month period following the date of final interconnection of the eligible customer-generator's system with an electricity distribution utility or cooperative, and at each anniversary date thereafter, be billed for electricity used during that 12-month period. The electricity distribution utility or cooperative shall determine if the eligible residential or small commercial customer-generator was a net consumer or a net producer of electricity during that period.

(2) At the end of each 12-month period, where the electricity supplied during the period by the electricity distribution utility or cooperative exceeds the electricity generated by the eligible residential or small commercial customer-generator during that same period, the eligible residential or small commercial customer-generator is a net electricity consumer and the electricity distribution utility or cooperative shall be owed compensation for the eligible customer-generator's net kilowatthour consumption over that 12-month period. The compensation owed for the eligible residential or small commercial customer-generator's consumption shall be calculated as follows:

(A) For all eligible customer-generators taking service under contracts or tariffs employing "baseline" and "over baseline" rates or charges, any net monthly consumption of electricity shall be calculated according to the terms of the contract or tariff to which the same

customer would be assigned to, or be eligible for, if the customer was not an eligible customer-generator. If those same customer-generators are net generators over a billing period, the net kilowatthours generated shall be valued at the same price per kilowatthour as the electricity distribution utility or cooperative would charge for the baseline quantity of electricity during that billing period, and if the number of kilowatthours generated exceeds the baseline quantity, the excess shall be valued at the same price per kilowatthour as the electricity distribution utility or cooperative would charge for electricity over the baseline quantity during that billing period.

(B) For all eligible customer-generators taking service under contracts or tariffs employing "time-of-use" rates or charges, any net monthly consumption of electricity shall be calculated according to the terms of the contract or tariff to which the same customer would be assigned to, or be eligible for, if the customer was not an eligible customer-generator. When those same customer-generators are net generators during any discrete time-of-use period, the net kilowatthours produced shall be valued at the same price per kilowatthour as the electricity distribution utility or cooperative would charge for retail kilowatthour sales during that same "time-of-use" period. If the eligible customer-generator's "time-of-use" electrical meter is unable to measure the flow of electricity in two directions, subparagraph (A) of paragraph (1) of subdivision (c) shall apply.

(C) For all eligible residential and small commercial customer-generators and for each billing period, the net balance of moneys owed to the electricity distribution utility or cooperative for net consumption of electricity or credits owed to the eligible customer-generator for net generation of electricity shall be carried forward as a monetary value until the end of each 12-month period. For all eligible commercial, industrial, and agricultural customer-generators, the net balance of moneys owed shall be paid in accordance with the electricity distribution utility or cooperative's normal billing cycle, except that if the eligible commercial, industrial, or agricultural customer-generator is a net electricity producer over a normal billing cycle, any excess kilowatthours generated during the billing cycle shall be carried over to the following billing period as a monetary value, calculated according to the procedures set forth in this section, and appear as a credit on the eligible customer-generator's account, until the end of the annual period when paragraph (3) shall apply.

(3) At the end of each 12-month period, where the electricity generated by the eligible customer-generator during the 12-month period exceeds the electricity supplied by the electricity distribution utility or cooperative during that same period, the eligible customer-generator is a net electricity producer and the electricity distribution utility or cooperative shall retain any excess kilowatthours generated during the prior 12-month period. The eligible customer-generator shall not be owed any compensation for those excess kilowatthours unless the electricity distribution utility or cooperative enters into a purchase agreement with the eligible customer-generator for those excess kilowatthours.

(4) The electricity distribution utility or cooperative shall provide every eligible residential or small commercial customer-generator with net electricity consumption information with each regular bill. That information shall include the current monetary balance owed the electricity distribution utility or cooperative for net electricity consumed, or the current amount of excess electricity produced, since the last 12-month period ended. Notwithstanding this subdivision, an electricity distribution utility or cooperative shall permit that customer to pay monthly for net energy consumed.

(5) If an eligible residential or small commercial customer-generator terminates the customer relationship with the electricity distribution utility or cooperative, the

electricity distribution utility or cooperative shall reconcile the eligible customer-generator's consumption and production of electricity during any part of a 12-month period following the last reconciliation, according to the requirements set forth in this subdivision, except that those requirements shall apply only to the months since the most recent 12-month bill.

(6) If an electric service provider or electricity distribution utility or cooperative providing net energy metering to a residential or small commercial customer-generator ceases providing that electric service to that customer during any 12-month period, and the customer-generator enters into a new net energy metering contract or tariff with a new electric service provider or electricity distribution utility or cooperative, the 12-month period, with respect to that new electric service provider or electricity distribution utility or cooperative, shall commence on the date on which the new electric service provider or electricity distribution utility or cooperative first supplies electric service to the customer-generator.

(i) Notwithstanding any other provisions of this section, the following provisions shall apply to an eligible customer-generator with a capacity of more than 10 kilowatts, but not exceeding one megawatt, that receives electric service from a local publicly owned electric utility that has elected to utilize a co-energy metering program unless the local publicly owned electric utility chooses to provide service for eligible customer-generators with a capacity of more than 10 kilowatts in accordance with subdivisions (g) and (h):

(1) The eligible customer-generator shall be required to utilize a meter, or multiple meters, capable of separately measuring electricity flow in both directions. All meters shall provide "time-of-use" measurements of electricity flow, and the customer shall take service on a time-of-use rate schedule. If the existing meter of the eligible customer-generator is not a time-of-use meter or is not capable of measuring total flow of energy in both directions, the eligible customer-generator shall be responsible for all expenses involved in purchasing and installing a meter that is both time-of-use and able to measure total electricity flow in both directions. This subdivision shall not restrict the ability of an eligible customer-generator to utilize any economic incentives provided by a government agency or an electricity distribution utility or cooperative to reduce its costs for purchasing and installing a time-of-use meter.

(2) The consumption of electricity from the local publicly owned electric utility shall result in a cost to the eligible customer-generator to be priced in accordance with the standard rate charged to the eligible customer-generator in accordance with the rate structure to which the customer would be assigned if the customer did not use an eligible solar or wind electrical generating facility. The generation of electricity provided to the local publicly owned electric utility shall result in a credit to the eligible customer-generator and shall be priced in accordance with the generation component, established under the applicable structure to which the customer would be assigned if the customer did not use an eligible solar or wind electrical generating facility.

(3) All costs and credits shall be shown on the eligible customer-generator's bill for each billing period. In any months in which the eligible customer-generator has been a net consumer of electricity calculated on the basis of value determined pursuant to paragraph (2), the customer-generator shall owe to the local publicly owned electric utility the balance of electricity costs and credits during that billing period. In any billing period in which the eligible customer-generator has been a net producer of electricity calculated on the basis of value determined pursuant to paragraph (2), the local publicly owned electric utility shall owe to the eligible customer-generator the balance of electricity costs and credits during that billing period. Any net credit to the eligible customer-generator of electricity costs may be carried forward to

subsequent billing periods, provided that a local publicly owned electric utility may choose to carry the credit over as a kilowatthour credit consistent with the provisions of any applicable contract or tariff, including any differences attributable to the time of generation of the electricity. At the end of each 12-month period, the local publicly owned electric utility may reduce any net credit due to the eligible customer-generator to zero.

(j) A solar or wind turbine electrical generating system, or a hybrid system of both, used by an eligible customer-generator shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories, including Underwriters Laboratories and, where applicable, rules of the commission regarding safety and reliability. A customer-generator whose solar or wind turbine electrical generating system, or a hybrid system of both, meets those standards and rules shall not be required to install additional controls, perform or pay for additional tests, or purchase additional liability insurance.

(k) If the commission determines that there are cost or revenue obligations for an electric corporation, as defined in Section 218, that may not be recovered from customer-generators acting pursuant to this section, those obligations shall remain within the customer class from which any shortfall occurred and may not be shifted to any other customer class. Net energy metering and co-energy metering customers shall not be exempt from the public goods charges imposed pursuant to Article 7 (commencing with Section 381), Article 8 (commencing with Section 385), or Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1. In its report to the Legislature, the commission shall examine different methods to ensure that the public goods charges remain nonbypassable.

(l) A net energy metering, co-energy metering, or wind energy co-metering customer shall reimburse the Department of Water Resources for all charges that would otherwise be imposed on the customer by the commission to recover bond-related costs pursuant to an agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, as well as the costs of the department equal to the share of the department's estimated net unavoidable power purchase contract costs attributable to the customer. The commission shall incorporate the determination into an existing proceeding before the commission, and shall ensure that the charges are nonbypassable. Until the commission has made a determination regarding the nonbypassable charges, net energy metering, co-energy metering, and wind energy co-metering shall continue under the same rules, procedures, terms, and conditions as were applicable on December 31, 2002.

(m) In implementing the requirements of subdivisions (k) and (l), a customer-generator shall not be required to replace its existing meter except as set forth in subparagraph (A) of paragraph (1) of subdivision (c), nor shall the electricity distribution utility or cooperative require additional measurement of usage beyond that which is necessary for customers in the same rate class as the eligible customer-generator.

(n) It is the intent of the Legislature that the Treasurer incorporate net energy metering, co-energy metering, and wind energy co-metering projects undertaken pursuant to this section as sustainable building methods or distributive energy technologies for purposes of evaluating low-income housing projects.

## PUBLIC UTILITIES CODE - DIVISION 1

Part 2, Chapter 8 - Energy Efficiency Systems - Sections 2840 et seq.

### Article 1. Waste Heat and Carbon Emissions Reduction Act

#### § 2840. Short Title

This article shall be known and may be cited as the Waste Heat and Carbon Emissions Reduction Act.

#### § 2840.2. Definitions

For purposes of this article, the following terms have the following meanings:

(a) “Combined heat and power system” means a system that produces both electricity and thermal energy for heating or cooling from a single fuel input that meets all of the following:

(1) Is interconnected to, and operates in parallel with, the electric transmission and distribution grid.

(2) Is sized to meet the eligible customer-generator’s onsite thermal demand.

(3) Meets the efficiency standards of subdivisions (a) and (d), and the greenhouse gases emissions performance standard of subdivision (f) of Section 2843.

(b) “Eligible customer-generator” means a customer of an electrical corporation that meets both of the following requirements:

(1) Uses a combined heat and power system with a generating capacity of not more than 20 megawatts, that first commences operation on or after January 1, 2008.

(2) Uses a time-of-use meter capable of registering the flow of electricity in two directions. If the existing electrical meter of an eligible customer-generator is not capable of measuring the flow of electricity in two directions, the eligible customer-generator shall be responsible for all expenses involved in purchasing and installing a meter that is able to measure electricity flow in two directions. If an additional meter or meters are installed, the electricity flow calculations shall yield a result identical to that of a time-of-use meter.

(c) “Electrical corporation” has the same meaning as defined in Section 218.

(d) “Energy Commission” means the State Energy Resources Conservation and Development Commission.

(e) “Excess electricity” means the net electricity exported to the electrical grid, generated by a combined heat and power system that is in compliance with Section 2843.

(f) “Greenhouse gas” or “greenhouse gases” includes all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

**§ 2840.4. Legislative findings and declarations**

The Legislature finds and declares all of the following:

(a) Combined heat and power systems produce both electricity and thermal energy from a single fuel input, thus achieving much greater efficiency than the usual separate systems for producing these forms of energy, and reducing consumption of fuel.

(b) Combined heat and power systems recover heat that would otherwise be wasted in separate energy applications, and use this heat to avoid consumption of fuel that would otherwise be required to produce heat.

(c) Gigawatthours of potential useful electricity and millions of British thermal units of thermal energy could be derived from unused waste heat that is currently being vented into the atmosphere.

**§ 2840.6. Legislative intent**

(a) It is the intent of the Legislature that state policies dramatically advance the efficiency of the state’s use of natural gas by capturing unused waste heat, and in so doing, help offset the growing crisis in electricity supply and transmission congestion in the state.

(b) It is the intent of the Legislature to reduce wasteful consumption of energy through improved residential, commercial, institutional, industrial, and manufacturer utilization of waste heat whenever it is cost effective, technologically feasible, and environmentally beneficial, particularly when this reduces emissions of carbon dioxide and other carbon-based greenhouse gases.

(c) It is the intent of the Legislature to support and facilitate both customer- and utility-owned combined heat and power systems.

(d) This article does not apply to, and shall not impact, combined heat and power systems in operation prior to January 1, 2008, or combined heat and power systems with a generating capacity greater than 20 megawatts.

**§ 2841. Excess electricity; purchase from eligible customer-generator; tariffs; time-of-delivery rates; costs and benefits allocated; combined heat and power system; article adjustments**

(a) The commission may require an electrical corporation to purchase from an eligible customer-generator, excess electricity that is delivered to the grid that is generated by a combined heat and power system that is in compliance with Section 2843. The commission may establish a maximum kilowatthours limitation on the amount of excess electricity that an electrical corporation is required to purchase if the commission finds that the anticipated excess electricity generated has an adverse effect on long-term resource planning or reliable operation of the grid. The commission shall establish, in consultation with the Independent System

Operator, tariff provisions that facilitate both the provisions of this chapter and the reliable operation of the grid.

(b)(1) Every electrical corporation shall file with the commission a standard tariff for the purchase of excess electricity from an eligible customer-generator.

(2) The tariff shall provide for payment for every kilowatthour delivered to the electrical grid by the combined heat and power system at a price determined by the commission.

(3) The tariff shall include flexible rates with options for different durations, not to exceed 10 years, and fixed or variable rates relative to the cost of natural gas.

(4) The commission shall ensure that ratepayers not utilizing combined heat and power systems are held indifferent to the existence of this tariff.

(c) The commission, in reviewing the tariff filed by an electrical corporation, shall establish time-of-delivery rates that encourage demand management and net generation of electricity during periods of peak system demand.

(d) Every electrical corporation shall make the tariff available to eligible customer-generators that own, or lease, and operate a combined heat and power system within the service territory of the electrical corporation, upon request. An electrical corporation may make the terms of the tariff available to an eligible customer in the form of a standard contract.

(e) The costs and benefits associated with any tariff or contract entered into by an electrical corporation pursuant to this section shall be allocated to all benefiting customers. For purposes of this section "benefiting customers" may, as determined by the commission, include bundled service customers of the electrical corporation, customers of the electrical corporation that receive their electric service through a direct transaction, as defined in subdivision (c) of Section 331, and customers of an electrical corporation that receive their electric service from a community choice aggregator, as defined in Section 331.1.

(f) The physical generating capacity of the combined heat and power system shall count toward the resource adequacy requirements of load-serving entities for purposes of Section 380.

(g) The commission shall adopt or maintain standby rates or charges for combined heat and power systems that are based only upon assumptions that are supported by factual data, and shall exclude any assumptions that forced outages or other reductions in electricity generation by combined heat and power systems will occur simultaneously on multiple systems, or during periods of peak electrical system demand, or both.

(h) The commission may modify or adjust the requirements of this article for any electrical corporation with less than 100,000 service connections, as individual circumstances merit.

#### **§ 2841.5. Local publicly owned electric utility; required programs**

A local publicly owned electric utility serving retail end-use customers shall establish a program that does both of the following:

(a) Allows retail end-use customers to utilize combined heat and power systems that reduce emissions of greenhouse gases by achieving improved efficiencies utilizing heat that would otherwise be wasted in separate energy applications.

(b) Provides a market for the purchase of excess electricity generated by a combined heat and power system, at a just and reasonable rate, to be determined by the governing body of the utility.

**§ 2842. Procurement plans; approval requirements**

The commission, in approving a procurement plan for an electrical corporation pursuant to Section 454.5, shall require that the electrical corporation's procurement plan incorporate combined heat and power solutions to the extent that it is cost effective compared to other competing forms of wholesale generation, technologically feasible, and environmentally beneficial, particularly as it pertains to reducing emissions of carbon dioxide and other greenhouse gases.

**§ 2842.2. Transmission and distribution systems**

The commission shall ensure that an electrical corporation utilizes long-term planning and a reliability assessment for upgrades to its transmission and distribution systems and that any upgrades are not inconsistent with promoting combined heat and power systems that are cost effective, technologically feasible, and environmentally beneficial, particularly as those combined heat and power systems reduce emissions of greenhouse gases.

**§ 2842.4. Pay-as-you-save pilot program; on-bill financing**

(a) The commission shall, for each electrical corporation, establish a pay-as-you-save pilot program for eligible customers.

(b) For the purposes of this section, an "eligible customer" means a customer of an electrical corporation that meets the following criteria:

(1) The customer uses a combined heat and power system with a generating capacity of not more than 20 megawatts that is in compliance with Section 2843.

(2) The customer is a nonprofit organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)), that is exempt from taxation under Section 501(a) of that code (26 U.S.C. Sec. 501(a)).

(c) The pilot program shall enable an eligible customer to finance all of the upfront costs for the purchase and installation of a combined heat and power system by repaying those costs over time through on-bill financing at the difference between what an eligible customer would have paid for electricity and the actual savings derived for a period of up to 10 years.

(d) The commission shall ensure that the reasonable costs of the electrical corporation associated with the pilot program are recovered.



(e) All costs of the pay-as-you-save program or financing mechanisms shall be borne solely by the combined heat and power generators that use the program or financing mechanisms, and the commission shall ensure that the costs of the program are not shifted to the other customers or classes of customers of the electrical corporation.

(f) Each electric corporation shall make on-bill financing available to eligible customers until the statewide cumulative rated generating capacity from pilot program combined heat and power systems in the service territories of the three largest electrical corporations in the state reaches 100 megawatts. An electrical corporation shall only be required to participate in the pilot program until it meets its proportionate share of the 100-megawatt limitation, based on the percentage of its peak demand to the total statewide peak demand within the service territories of all electrical corporations.

**§ 2843. Guidelines; requirements; intent; adoption; eligibility; maintenance**

(a) The Energy Commission shall, by January 1, 2010, adopt guidelines that combined heat and power systems subject to this chapter shall meet, and shall accomplish all of the following:

- (1) Reduce waste energy.
- (2) Be sized to meet the eligible customer-generator's thermal load.
- (3) Operate continuously in a manner that meets the expected thermal load and optimizes the efficient use of waste heat.
- (4) Are cost effective, technologically feasible, and environmentally beneficial.

(b) It is the intent of the Legislature that the guidelines do not permit customers to operate as de facto wholesale generators with guaranteed purchasers for their electricity.

(c) Notwithstanding any other provisions of law, the guidelines required by this section shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The guidelines shall be adopted at a publicly noticed meeting offering all interested parties an opportunity to comment. At least 30 days' public notice shall be given of the meeting required by this section, before the Energy Commission initially adopts guidelines. Substantive changes to the guidelines shall not be adopted without at least 10 days' written notice to the public.

(d) Prior to January 1, 2010, the Energy Commission may adopt temporary guidelines for combined heat and power systems that comply with the parameters set forth in subdivision (a).

(e)(1) An eligible customer-generator's combined heat and power system shall meet an oxides of nitrogen (NOx) emissions rate standard of 0.07 pounds per megawatthour and a minimum efficiency of 60 percent. A minimum efficiency of 60 percent shall be measured as useful energy output divided by fuel input. The efficiency determination shall be based on 100-percent load.

(2) An eligible customer-generator's combined heat and power system that meets the 60-percent efficiency standard may take a credit to meet the applicable NOx emissions standard of 0.07 pounds per megawatthour. Credit shall be at the rate of one megawatthour for each 3.4 million British thermal units of heat recovered.

(f) An eligible customer-generator's combined heat and power system shall comply with the greenhouse gases emission performance standard established by the commission pursuant to Section 8341.

(g) An eligible customer-generator shall adequately maintain and service the combined heat and power system so that during operation, the system continues to meet or exceed the efficiency and emissions standards established pursuant to subdivisions (a), (d), and (f).

#### **§ 2845. Reporting requirements**

The State Air Resources Board shall report to the Governor and the Legislature by December 31, 2011, on the reduction in emissions of greenhouse gases resulting from the increase of new electrical generation that utilizes excess waste heat through combined heat and power systems and recommend policies that further the goals of this article.

### **PUBLIC UTILITIES CODE - DIVISION 1**

Part 2, Chapter 9 – Solar Energy Systems – Sections 2851 et seq.

#### **Article 1. Solar Energy Systems**

#### **§ 2851. Implementation of the California Solar Initiative; duties of commission**

(a) In implementing the California Solar Initiative, the commission shall do all of the following:

(1) The commission shall authorize the award of monetary incentives for up to the first megawatt of alternating current generated by solar energy systems that meet the eligibility criteria established by the State Energy Resources Conservation and Development Commission pursuant to Chapter 8.8 (commencing with Section 25780) of Division 15 of the Public Resources Code. The commission shall determine the eligibility of a solar energy system, as defined in Section 25781 of the Public Resources Code, to receive monetary incentives until the time the State Energy Resources Conservation and Development Commission establishes eligibility criteria pursuant to Section 25782. Monetary incentives shall not be awarded for solar energy systems that do not meet the eligibility criteria. The incentive level authorized by the commission shall decline each year following implementation of the California Solar Initiative, at a rate of no less than an average of 7 percent per year, and shall be zero as of December 31, 2016. The commission shall adopt and publish a schedule of declining incentive levels no less than 30 days in advance of the first decline in incentive levels. The commission may develop incentives based upon the output of electricity from the system, provided those incentives are consistent with the declining incentive levels of this paragraph and the incentives apply to only the first megawatt of electricity generated by the system.

(2) The commission shall adopt a performance-based incentive program so that by January 1, 2008, 100 percent of incentives for solar energy systems of 100 kilowatts or greater and at least 50 percent of incentives for solar energy systems of 30 kilowatts or greater are earned based on the actual electrical output of the solar energy systems. The commission shall encourage, and may require, performance-based incentives for solar energy systems of less than 30 kilowatts. Performance-based incentives shall decline at a rate of no less than an average of 7 percent per year. In developing the performance-based incentives, the commission may:

(A) Apply performance-based incentives only to customer classes designated by the commission.

(B) Design the performance-based incentives so that customers may receive a higher level of incentives than under incentives based on installed electrical capacity.

(C) Develop financing options that help offset the installation costs of the solar energy system, provided that this financing is ultimately repaid in full by the consumer or through the application of the performance-based rebates.

(3) By January 1, 2008, the commission, in consultation with the State Energy Resources Conservation and Development Commission, shall require reasonable and cost-effective energy efficiency improvements in existing buildings as a condition of providing incentives for eligible solar energy systems, with appropriate exemptions or limitations to accommodate the limited financial resources of low-income residential housing.

(4)(A) Notwithstanding subdivision (g) of Section 2827, the commission shall require time-variant pricing for all ratepayers with a solar energy system. The commission shall develop a time-variant tariff that creates the maximum incentive for ratepayers to install solar energy systems so that the system's peak electricity production coincides with California's peak electricity demands and that assures that ratepayers receive due value for their contribution to the purchase of solar energy systems and customers with solar energy systems continue to have an incentive to use electricity efficiently. In developing the time-variant tariff, the commission may exclude customers participating in the tariff from the rate cap for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, as required by Section 80110 of the Water Code. Nothing in this paragraph authorizes the commission to require time-variant pricing for ratepayers without a solar energy system.

(D) The commission may delay implementation of time-variant pricing pursuant to subparagraph (A), until the effective date of the rates subject to the next general rate case of the state's three largest electrical corporations, scheduled to be completed after January 1, 2009.

(C) If the commission delays implementation of time-variant pricing pursuant to subparagraph (B), ratepayers required to take service under time-variant pricing between January 1, 2007, and January 1, 2008, shall be given the option to take service under flat rate or time-variant pricing and shall be credited any difference between the time-variant rate and the otherwise applicable flat rate, provided there is a flat rate pricing schedule for which the ratepayer would qualify if the ratepayer had not installed the solar energy system.

(b) Notwithstanding subdivision (a), in implementing the California Solar Initiative, the commission may authorize the award of monetary incentives for solar thermal and solar water heating devices, in a total amount up to one hundred million eight hundred thousand dollars (\$100,800,000).

(c)(1) In implementing the California Solar Initiative, the commission shall not allocate more than fifty million dollars (\$50,000,000) to research, development, and demonstration that explores solar technologies and other distributed generation technologies that employ or could employ solar energy for generation or storage of electricity or to offset natural gas usage. Any program that allocates additional moneys to research, development, and demonstration shall be developed in collaboration with the Energy Commission to ensure there is no duplication of efforts, and adopted by the commission through a rulemaking or other appropriate public proceeding. Any grant awarded by the commission for research, development, and demonstration shall be approved by the full commission at a public meeting. This subdivision does not prohibit the commission from continuing to allocate moneys to research, development, and demonstration pursuant to the self-generation incentive program for distributed generation resources originally established pursuant to Chapter 329 of the Statutes of 2000, as modified pursuant to Section 379.6.

(2) The Legislature finds and declares that a program that provides a stable source of monetary incentives for eligible solar energy systems will encourage private investment sufficient to make solar technologies cost effective.

(3) On or before June 30, 2009, and by June 30th of every year thereafter, the commission shall submit to the Legislature an assessment of the success of the California Solar Initiative program. That assessment shall include the number of residential and commercial sites that have installed solar thermal devices for which an award was made pursuant to subdivision (b) and the dollar value of the award, the number of residential and commercial sites that have installed solar energy systems, the electrical generating capacity of the installed solar energy systems, the cost of the program, total electrical system benefits, including the effect on electrical service rates, environmental benefits, how the program affects the operation and reliability of the electrical grid, how the program has affected peak demand for electricity, the progress made toward reaching the goals of the program, whether the program is on schedule to meet the program goals, and recommendations for improving the program to meet its goals. If the commission allocates additional moneys to research, development, and demonstration that explores solar technologies and other distributed generation technologies pursuant to paragraph (1), the commission shall include in the assessment submitted to the Legislature, a description of the program, a summary of each award made or project funded pursuant to the program, including the intended purposes to be achieved by the particular award or project, and the results of each award or project.

(d)(1) The commission shall not impose any charge upon the consumption of natural gas, or upon natural gas ratepayers, to fund the California Solar Initiative.

(2) Notwithstanding any other provision of law, any charge imposed to fund the program adopted and implemented pursuant to this section shall be imposed upon all customers not participating in the California Alternate Rates for Energy (CARE) or family electric rate assistance (FERA) programs as provided in paragraph (2), including those residential customers subject to the rate cap required by Section 80110 of the Water Code for existing baseline quantities or usage up to 130 percent of existing baseline quantities of electricity.

(3) The costs of the program adopted and implemented pursuant to this section may not be recovered from customers participating in the California Alternate Rates for Energy or CARE program established pursuant to Section 739.1, except to the extent that program costs are recovered out of the nonbypassable system benefits charge authorized pursuant to Section 399.8.

(e) In implementing the California Solar Initiative, the commission shall ensure that the total cost over the duration of the program does not exceed three billion three hundred fifty million eight hundred thousand dollars (\$3,350,800,000). The financial components of the California Solar Initiative shall consist of the following:

(1) Programs under the supervision of the commission funded by charges collected from customers of San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company. The total cost over the duration of these programs shall not exceed two billion one hundred sixty-six million eight hundred thousand dollars (\$2,166,800,000) and includes moneys collected directly into a tracking account for support of the California Solar Initiative and moneys collected into other accounts that are used to further the goals of the California Solar Initiative.

(2) Programs adopted, implemented, and financed in the amount of seven hundred eighty-four million dollars (\$784,000,000), by charges collected by local publicly owned electric utilities pursuant to Section 387.5. Nothing in this subdivision shall give the commission power and jurisdiction with respect to a local publicly owned electric utility or its customers.

(3) Programs for the installation of solar energy systems on new construction, administered by the State Energy Resources Conservation and Development Commission pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, and funded by nonbypassable charges in the amount of four hundred million dollars (\$400,000,000), collected from customers of San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company pursuant to Article 15 (commencing with Section 399).

**§ 2852. Prohibiting establishment of Solar Initiative from resulting in diversion of money from any existing low-income ratepayer programs or cost-effective energy efficiency or demand response programs**

(a) As used in this section, the following terms have the following meanings:

(1) "California Solar Initiative" means the program providing ratepayer funded incentives for eligible solar energy systems adopted by the Public Utilities Commission in Decision 05-12-044 and Decision 06-01-024.

(2) "Low-income residential housing" means either of the following:

(A) Residential housing financed with low-income housing tax credits, tax-exempt mortgage revenue bonds, general obligation bonds, or local, state, or federal loans or grants, and for which the rents of the occupants who are lower income households, as defined in Section 50079.5 of the Health and Safety Code, do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(B) A residential complex in which at least 20 percent of the total units are sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, and the housing units targeted for lower income households are subject to a deed restriction or affordability covenant with a public entity that ensures that the units will be available at an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or at an affordable rent, as defined in Section 50053 of the Health and Safety Code for a period of at least 30 years.

(3) "Solar energy system" means a solar energy device that has the primary purpose of providing for the collection and distribution of solar energy for the generation of electricity, that produces at least one kilowatt, and produces not more than five megawatts, alternating current rated peak electricity, and that meets or exceeds the eligibility criteria established by the commission or the State Energy Resources Conservation and Development Commission.

(b) In establishing the California Solar Initiative, no moneys shall be diverted from any existing programs for low-income ratepayers, or from cost-effective energy efficiency or demand response programs.

(c)(1) The commission shall ensure that not less than 10 percent of the funds for the California Solar Initiative are utilized for the installation of solar energy systems on low-income residential housing. Notwithstanding any other law, the commission may modify the monetary incentives made available pursuant to the California Solar Initiative to accommodate the limited financial resources of low-income residential housing.

(2) The commission may incorporate a revolving loan or loan guarantee program into the California Solar Initiative for low-income residential housing. All loans outstanding as of January 1, 2016, shall continue to be repaid consistent with the terms and conditions of the program adopted and implemented by the commission pursuant to this subdivision, until repaid in full.

(3) All moneys set aside for the purpose of funding the installation of solar energy systems on low-income residential housing that are unexpended and unencumbered on January 1, 2016, and all moneys thereafter repaid pursuant to paragraph (2), except to the extent those moneys are encumbered pursuant to this section, shall be utilized to augment existing cost-effective energy efficiency measures in low-income residential housing that benefit ratepayers.

**§ 2854. Report to legislature**

(a) Notwithstanding Section 7550.5 of the Government Code, on or before January 1, 2008, the commission shall report to the Legislature on the feasibility, desirability, and design of performance-based incentives for solar energy systems of less than 30 kilowatt.

(b) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

## **Article 2. Solar Water Heating Systems**

### **§ 2860. Short Title**

This article shall be known, and may be cited, as the Solar Water Heating and Efficiency Act of 2007.

### **§ 2861. Definitions**

As used in this article, the following terms have the following meanings:

(a) “Energy Commission” means the State Energy Resources Conservation and Development Commission.

(b) “Gas customer” includes both “core” and “noncore” customers, as those terms are used in Chapter 2.2 (commencing with Section 328) of Part 1, that receive retail end-use gas service within the service territory of a gas corporation.

(c) “kW<sub>th</sub>” means the kilowatt thermal capacity of a solar water heating system, measured consistent with the standard established by the SRCC.

(d) “kW<sub>h</sub>” means kilowatthours thermal as measured by the number of kilowatts thermal generated, or displaced, in an hour.

(e) “Low-income residential housing” means either of the following:

(1) Residential housing financed with low-income housing tax credits, tax-exempt mortgage revenue bonds, general obligation bonds, or local, state, or federal loans or grants, and for which the rents of the occupants who are lower income households, as defined in Section 50079.5 of the Health and Safety Code, do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(2) A residential complex in which at least 20 percent of the total units are sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, and the housing units targeted for lower income households are subject to a deed restriction or affordability covenant with a public entity that ensures that the units will be available at an affordable housing cost meeting the requirements of Section 50052.5 of the Health and Safety Code, or at an affordable rent meeting the requirements of Section 50053 of the Health and Safety Code, for a period of not less than 30 years.

(f) “New Solar Homes Partnership” means the 10-year program, administered by the Energy Commission, encouraging solar energy systems in new home construction.

(g) “Solar heating collector” means a device that is used to collect or capture heat from the sun and that is generally, but need not be, located on a roof.

(h) “Solar water heating system” means a solar energy device that has the primary purpose of reducing demand for natural gas through water heating, space heating, or other methods of capturing energy from the sun to reduce natural gas consumption in a home, business, or any building receiving natural gas that is subject to the surcharge established

pursuant to Section 2860, or exempt from the surcharge pursuant to subdivision (c) of Section 2863, and that meets or exceeds the eligibility criteria established pursuant to Section 2864. "Solar water heating systems" do not include solar pool heating systems.

- (i) "SRCC" means the Solar Rating and Certification Corporation.

**§ 2862. Legislative findings and declarations**

The Legislature finds and declares all of the following:

- (a) California is heavily dependent on natural gas, importing more than 80 percent of the natural gas it consumes.

- (b) Rising worldwide demand for natural gas and a shrinking supply create rising and unstable prices that can harm California consumers and the economy.

- (c) Natural gas is a fossil fuel and a major source of global warming pollution and the pollutants that cause air pollution, including smog.

- (d) California's growing population and economy will put a strain on energy supplies and threaten the ability of the state to meet its global warming goals unless specific steps are taken to reduce demand and generate energy cleanly and efficiently.

- (e) Water heating for domestic and industrial use relies almost entirely on natural gas and accounts for a significant percentage of the state's natural gas consumption.

- (f) Solar water heating systems represent the largest untapped natural gas saving potential remaining in California.

- (g) In addition to financial and energy savings, solar water heating systems can help protect against future gas and electricity shortages and reduce our dependence on foreign sources of energy.

- (h) Solar water heating systems can also help preserve the environment and protect public health by reducing air pollution, including carbon dioxide, a leading global warming gas, and nitrogen oxide, a precursor to smog.

- (i) Growing demand for these technologies will create jobs in California as well as promote greater energy independence, protect consumers from rising energy costs and result in cleaner air.

- (j) It is in the interest of the State of California to promote solar water heating systems and other technologies that directly reduce demand for natural gas in homes and businesses.

- (k) It is the intent of the Legislature to build a mainstream market for solar water heating systems that directly reduces demand for natural gas in homes, businesses, and government buildings. Toward that end, it is the goal of this article to install at least 200,000 solar water heating systems on homes, businesses, and government buildings throughout the state by 2017, thereby lowering prices and creating a self-sufficient market that will sustain itself beyond the life of this program.



(l) It is the intent of the Legislature that the solar water heating system incentives created by the act should be a cost-effective investment by gas customers. Gas customers will recoup the cost of their investment through lower prices as a result of avoiding purchases of natural gas, and benefit from additional system stability and pollution reduction benefits.

**§ 2863. Evaluation of Solar Water Heating Pilot Project data; public hearing and determination; implementation, administration, coordination, and funding**

(a) The commission shall evaluate the data available from the Solar Water Heating Pilot Project conducted by the California Center for Sustainable Energy. If, after a public hearing, the commission determines that a solar water heating program is cost effective for ratepayers and in the public interest, the commission shall do all of the following:

(1) Design and implement a program applicable to the service territories of a gas corporation, to achieve the goal of the Legislature to promote the installation of 200,000 solar water heating systems in homes and businesses throughout the state by 2017.

(2) The program shall be administered by gas corporations or third-party administrators, as determined by the commission, and subject to the supervision of the commission.

(3) The commission shall coordinate the program with the Energy Commission's New Solar Homes Partnership to achieve the goal of building zero-energy homes.

(b)(1) The commission shall fund the program through the use of a surcharge applied to gas customers based upon the amount of natural gas consumed. The surcharge shall be in addition to any other charges for natural gas sold or transported for consumption in this state.

(2) The commission shall impose the surcharge at a level that is necessary to meet the goal of installing 200,000 solar water heating systems, or the equivalent output of 200,000 solar water heating systems, on homes and businesses in California by 2017. Funding for the program established by this article shall not, for the collective service territories of all gas corporations, exceed two hundred fifty million dollars (\$250,000,000) over the course of the 10-year program.

(3) The commission shall annually establish a surcharge rate for each class of gas customers. Any gas customer participating in the California Alternate Rates for Energy (CARE) or Family Electric Rate Assistance (FERA) programs shall be exempt from paying any surcharge imposed to fund the program designed and implemented pursuant to this article.

(4) Any surcharge imposed to fund the program designed and implemented pursuant to this article shall not be imposed upon the portion of any gas customer's procurement of natural gas that is used or employed for a purpose that Section 896 excludes from being categorized as the consumption of natural gas.

(5) The gas corporation or other person or entity providing revenue cycle services, as defined in Section 328.1, shall be responsible for collecting the surcharge.

(c) Funds shall be allocated for the benefit of gas customers to promote utilization of solar water heating systems.

(d) In designing and implementing the program required by this article, no moneys shall be diverted from any existing programs for low-income ratepayers or cost-effective energy efficiency programs.

**§ 2864. Eligibility criteria for solar water heating systems receiving gas customer funded incentives pursuant to this article; specifications and requirements**

(a) The commission, in consultation with the Energy Commission and interested members of the public, shall establish eligibility criteria for solar water heating systems receiving gas customer funded incentives pursuant to this article. The criteria should specify and include all of the following:

(1) Design, installation, and energy output or displacement standards. To be eligible for rebate funding, a residential solar water heating system shall, at a minimum, have a SRCC OG-300 Solar Water Heating System Certification. Solar collectors used in systems for multifamily residential, commercial, or industrial water heating shall, at a minimum, have a SRCC OG-100 Solar Water Heating System Certification.

(2) Require that solar water heating system components are new and unused, and have not previously been placed in service in any other location or for any other application.

(3) Require that solar water heating collectors have a warranty of not less than 10 years to protect against defects and undue degradation.

(4) Require that solar water heating systems are in buildings connected to a natural gas utility's distribution system within the state.

(5) Require that solar water heating systems have meters or other kWhth measuring devices in place to monitor and measure the system's performance and the quantity of energy generated or displaced by the system. The criteria shall require meters for systems with a capacity for displacing over 30 kWth. The criteria may require meters for systems with a capacity of 30 kWth or smaller.

(6) Require that solar water heating systems are installed in conformity with the manufacturer's specifications and all applicable codes and standards.

(b) No gas customer funded incentives shall be made for a solar water heating system that does not meet the eligibility criteria.

**§ 2865. Establishment of conditions on gas customer funded incentives pursuant to this article; requirements; rating standards**

(a) The commission shall establish conditions on gas customer funded incentives pursuant to this article. The conditions shall require both of the following:

(1) Appropriate siting and high-quality installation of the solar water heating system based on installation guidelines that maximize the performance of the system and prevent qualified systems from being inefficiently or inappropriately installed. The conditions shall not impact housing designs or densities presently authorized by a city, county, or city and county. The goal of this paragraph is to achieve efficient installation of solar water heating systems and promote the greatest energy production or displacement per gas customer dollar.

(2) Appropriate energy efficiency improvements in the new or existing home or commercial structure where the solar hot water system is installed.

(b) The commission shall set rating standards for equipment, components, and systems to ensure reasonable performance and shall develop standards that provide for compliance with the minimum ratings.

**§ 2866. Funding for installation of solar water heating systems on low-income residential housing; grant program; participation; implementation; unexpended and unencumbered funds**

(a) The commission shall provide not less than 10 percent of the overall funds for installation of solar water heating systems on low-income residential housing.

(b) The commission may establish a grant program or a revolving loan or loan guarantee program for low-income residential housing consistent with the requirements of Chapter 5.3 (commencing with Section 25425) of Division 15 of the Public Resources Code. All loans outstanding as of August 1, 2018, shall continue to be repaid in a manner that is consistent with the terms and conditions of the program adopted and implemented by the commission pursuant to this subdivision, until repaid in full.

(c) The commission may extend eligibility for funding pursuant to this section to include residential housing occupied by ratepayers participating in a commission approved and supervised gas corporation Low-Income Energy Efficiency (LIEE) program and who either:

(1) Occupy a single-family home.

(2) Occupy at least 50 percent of all units in a multifamily dwelling structure.

(d) The commission shall ensure that lower income households, as defined in Section 50079.5 of the Health and Safety Code, and, if the commission expands the program pursuant to subdivision (c), ratepayers participating in a LIEE program, that receive gas service at residential housing with a solar water heating system receiving incentives pursuant to subdivision (a), benefit from the installation of the solar water heating systems through reduced or lowered energy costs.

(e) No later than January 1, 2010, the commission shall do all of the following to implement the requirements of this section:

(1) Maximize incentives to properties that are committed to continuously serving the needs of lower income households, as defined in Section 50079.5 of the Health and Safety Code, and, if the commission expands the program pursuant to subdivision (c), ratepayers participating in a LIEE program.

(2) Establish conditions on the installation of solar water heating systems that ensure properties on which solar water heating systems are installed under subdivision (a) remain low-income residential properties for at least 10 years from the time of installation, including property ownership restrictions and income rental protections, and appropriate enforcement of these conditions.

(f) All moneys set aside for the purpose of funding the installation of solar water heating systems on low-income residential housing that are unexpended and unencumbered on August 1, 2018, and all moneys thereafter repaid pursuant to subdivision (b), except to the extent that those moneys are encumbered pursuant to this section, shall be utilized to augment cost-effective energy efficiency measures in low-income residential housing that benefit ratepayers.

**§ 2867. Rebates structured to decline over time; determination of rebate amount; considerations**

(a) The rebates provided through this program shall decline over time. They shall be structured so as to drive down the cost of the solar water heating technologies, and be paid out on a performance-based incentive basis so that incentives are earned based on the actual energy savings, or on predicted energy savings as established by the commission.

(b) The commission shall consider federal tax credits and other incentives available for this technology when determining the appropriate rebate amount.

(c) The commission shall consider the impact of rebates for solar water heating systems pursuant to this article on existing incentive programs for energy efficiency technology.

(d) In coordination with the commission, the Energy Commission shall consider, when appropriate, coupling rebates for solar water heating systems with complementary energy efficiency technologies, including, but not limited to, efficient hot water heating tanks and tankless or on demand hot water systems that can be installed in addition to the solar water heating system.

**§ 2867.1. Report to the legislature**

Not later than July 1, 2010, the commission shall report to the Legislature as to the effectiveness of the program and make recommendations as to any changes that should be made to the program. This report shall include justification for the size of the rebate program in terms of total available incentive moneys as well as the anticipated benefits of the program in its entirety. To facilitate the understanding of how solar water heating systems compare with other clean energy and energy efficiency technologies, all documents related to and rebates provided by this program shall be measured in both kWhth and therms of natural gas saved.

**§ 2867.2. California Solar Initiative (CSI) funds; eligibility exclusions relating to solar water heating technologies; San Diego**

Except for the Solar Water Heating Pilot Program in San Diego, solar water heating technologies shall not be eligible for California Solar Initiative (CSI) funds, pursuant to Section 2851, unless they also displace electricity, in which case only the electricity displacing

portion of the technology may be eligible under the CSI program, as determined by the commission.

**§ 2867.3. Adoption, implementation, and financing of solar water heating system incentive program by governing bodies of publicly owned utilities providing gas service to retail end-use gas customers**

In order to further the state goal of encouraging the installation of 200,000 solar water heaters by 2017, the governing body of each publicly owned utility providing gas service to retail end-use gas customers shall, after a public proceeding, adopt, implement, and finance a solar water heating system incentive program that does all the following:

(a) Ensures that any solar water heating system receiving monetary incentives complies with eligibility criteria adopted by the governing body. The eligibility criteria shall include those elements contained in paragraphs (1) to (6), inclusive, of subdivision (a) of Section 2864.

(b) Includes minimum ratings and standards for equipment, components, and systems to ensure reasonable performance and compliance with the minimum ratings and standards.

(c) Includes an element that addresses the installation of solar water heating systems on low-income residential housing. If deemed appropriate in consultation with the California Tax Credit Allocation Committee, the governing board may establish a grant program or a revolving loan or loan guarantee program for low-income residential housing consistent with the requirements of Chapter 5.3 (commencing with Section 25425) of Division 15 of the Public Resources Code.

**§ 2867.4. Repeal of article**

This article shall remain in effect only until August 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before August 1, 2018, deletes or extends that date.

**PUBLIC UTILITIES CODE - DIVISION 4.1**

Chapter 3 – Greenhouse Gases Emission Performance Standard for Baseload Electrical Generating Resources - Sections 8340 et seq.

**§ 8340. Definitions**

For purposes of this chapter, the following terms have the following meanings:

(a) "Baseload generation" means electricity generation from a powerplant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60 percent.

(b) "Combined-cycle natural gas" with respect to a powerplant means the powerplant employs a combination of one or more gas turbines and steam turbines in which

electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

(c) "Community choice aggregator" means a "community choice aggregator" as defined in Section 331.1.

(d) "Electrical corporation" means an "electrical corporation" as defined in Section 218.

(e) "Electric service provider" means an "electric service provider" as defined in Section 218.3, but does not include corporations or persons employing cogeneration technology or producing electricity from other than a conventional power source consistent with subdivision (b) of Section 218.

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

(g) "Greenhouse gases" means those gases listed in subdivision (h) of Section 42801.1 of the Health and Safety Code.

(h) "Load-serving entity" means every electrical corporation, electric service provider, or community choice aggregator serving end-use customers in the state.

(i) "Local publicly owned electric utility" means a "local publicly owned electric utility" as defined in Section 9604.

(j) "Long-term financial commitment" means either a new ownership investment in baseload generation or a new or renewed contract with a term of five or more years, which includes procurement of baseload generation.

(k) "Output-based methodology" means a greenhouse gases emission performance standard that is expressed in pounds of greenhouse gases emitted per megawatthour and factoring in the useful thermal energy employed for purposes other than the generation of electricity.

(l) "Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatthours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatthours.

(m) "Powerplant" means a facility for the generation of electricity, and includes one or more generating units at the same location.

(n) "Zero- or low-carbon generating resource" means an electrical generating resource that will generate electricity while producing emissions of greenhouse gases at a rate substantially below the greenhouse gas emission performance standard, as determined by the commission.

**§ 8341. Conditions allowing a load-serving entity or local publicly owned electric utility to enter into a long-term financial commitment**

(a) No load-serving entity or local publicly owned electric utility may enter into a long-term financial commitment unless any baseload generation supplied under the long-term financial commitment complies with the greenhouse gases emission performance standard established by the commission, pursuant to subdivision (d), for a load-serving entity, or by the Energy Commission, pursuant to subdivision (e), for a local publicly owned electric utility.

(b)(1) The commission shall not approve a long-term financial commitment by an electrical corporation unless any baseload generation supplied under the long-term financial commitment complies with the greenhouse gases emission performance standard established by the commission pursuant to subdivision (d).

(2) The commission may, in order to enforce the requirements of this section, review any long-term financial commitment proposed to be entered into by an electric service provider or a community choice aggregator.

(3) The commission shall adopt rules to enforce the requirements of this section, for load-serving entities. The commission shall adopt procedures, for all load-serving entities, to verify the emissions of greenhouse gases from any baseload generation supplied under a contract subject to the greenhouse gases emission performance standard to ensure compliance with the standard.

(4) In determining whether a long-term financial commitment is for baseload generation, the commission shall consider the design of the powerplant and the intended use of the powerplant, as determined by the commission based upon the electricity purchase contract, any certification received from the Energy Commission, any other permit or certificate necessary for the operation of the powerplant, including a certificate of public convenience and necessity, any procurement approval decision for the load-serving entity, and any other matter the commission determines is relevant under the circumstances.

(5) Costs incurred by an electrical corporation to comply with this section, including those costs incurred for electricity purchase agreements that are approved by the commission that comply with the greenhouse gases emission performance standard, are to be treated as procurement costs incurred pursuant to an approved procurement plan and the commission shall ensure timely cost recovery of those costs pursuant to paragraph (3) of subdivision (d) of Section 454.5.

(6) A long-term financial commitment entered into through a contract approved by the commission, for electricity generated by a zero- or low-carbon generating resource that is contracted for, on behalf of consumers of this state on a cost-of-service basis, shall be recoverable in rates, in a manner determined by the commission consistent with Section 380. The commission may, after a hearing, approve an increase from one-half to 1 percent in the return on investment by the third party entering into the contract with an electrical corporation with respect to investment in zero- or low-carbon generation resources authorized pursuant to this subdivision.

(c)(1) The Energy Commission shall adopt regulations for the enforcement of this chapter with respect to a local publicly owned electric utility.

(2) The Energy Commission may, in order to ensure compliance with the greenhouse gases emission performance standard by local publicly owned electric utilities, apply the procedures adopted by the commission to verify the emissions of greenhouse gases from baseload generation pursuant to subdivision (b).

(3) In determining whether a long-term financial commitment is for baseload generation, the Energy Commission shall consider the design of the powerplant and the intended use of the powerplant, as determined by the Energy Commission based upon the electricity purchase contract, any certification received from the Energy Commission, any other permit for the operation of the powerplant, any procurement approval decision for the load-serving entity, and any other matter the Energy Commission determines is relevant under the circumstances.

(d)(1) On or before February 1, 2007, the commission, through a rulemaking proceeding, and in consultation with the Energy Commission and the State Air Resources Board, shall establish a greenhouse gases emission performance standard for all baseload generation of load-serving entities, at a rate of emissions of greenhouse gases that is no higher than the rate of emissions of greenhouse gases for combined-cycle natural gas baseload generation. Enforcement of the greenhouse gases emission performance standard shall begin immediately upon the establishment of the standard. All combined-cycle natural gas powerplants that are in operation, or that have an Energy Commission final permit decision to operate as of June 30, 2007, shall be deemed to be in compliance with the greenhouse gases emission performance standard.

(2) In determining the rate of emissions of greenhouse gases for baseload generation, the commission shall include the net emissions resulting from the production of electricity by the baseload generation.

(3) The commission shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for cogeneration recognizes the total usable energy output of the process, and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy.

(4) In calculating the emissions of greenhouse gases by facilities generating electricity from biomass, biogas, or landfill gas energy, the commission shall consider net emissions from the process of growing, processing, and generating the electricity from the fuel source.

(5) Carbon dioxide that is injected in geological formations, so as to prevent releases into the atmosphere, in compliance with applicable laws and regulations shall not be counted as emissions of the powerplant in determining compliance with the greenhouse gases emissions performance standard.

(6) In adopting and implementing the greenhouse gases emission performance standard, the commission, in consultation with the Independent System Operator shall consider the effects of the standard on system reliability and overall costs to electricity customers.

(7) In developing and implementing the greenhouse gases emission performance standard, the commission shall address long-term purchases of electricity from unspecified sources in a manner consistent with this chapter.



(8) In developing and implementing the greenhouse gases emission performance standard, the commission shall consider and act in a manner consistent with any rules adopted pursuant to Section 824a-3 of Title 16 of the United States Code.

(9) An electrical corporation that provides electric service to 75,000 or fewer retail end-use customers in California may file with the commission a proposal for alternative compliance with this section, which the commission may accept upon a showing by the electrical corporation of both of the following:

(A) A majority of the electrical corporation's retail end-use customers for electric service are located outside of California.

(B) The emissions of greenhouse gases to generate electricity for the retail end-use customers of the electrical corporation are subject to a review by the utility regulatory commission of at least one other state in which the electrical corporation provides regulated retail electric service.

(e)(1) On or before June 30, 2007, the Energy Commission, at a duly noticed public hearing and in consultation with the commission and the State Air Resources Board, shall establish a greenhouse gases emission performance standard for all baseload generation of local publicly owned electric utilities at a rate of emissions of greenhouse gases that is no higher than the rate of emissions of greenhouse gases for combined-cycle natural gas baseload generation. The greenhouse gases emission performance standard established by the Energy Commission for local publicly owned electric utilities shall be consistent with the standard adopted by the commission for load-serving entities. Enforcement of the greenhouse gases emission performance standard shall begin immediately upon the establishment of the standard. All combined-cycle natural gas powerplants that are in operation, or that have an Energy Commission final permit decision to operate as of June 30, 2007, shall be deemed to be in compliance with the greenhouse gases emission performance standard.

(2) The greenhouse gases emission performance standard shall be adopted by regulation pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(3) In determining the rate of emissions of greenhouse gases for baseload generation, the Energy Commission shall include the net emissions resulting from the production of electricity by the baseload generation.

(4) The Energy Commission shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for cogeneration recognizes the total usable energy output of the process, and includes all greenhouse gas emitted by the facility in the production of both electrical and thermal energy.

(5) In calculating the emissions of greenhouse gases by facilities generating electricity from biomass, biogas, or landfill gas energy, the Energy Commission shall consider net emissions from the process of growing, processing, and generating the electricity from the fuel source.

(6) Carbon dioxide that is captured from the emissions of a powerplant and that is permanently disposed of in geological formations in compliance with applicable laws and regulations, shall not be counted as emissions from the powerplant.

(7) In adopting and implementing the greenhouse gases emission performance standard, the Energy Commission, in consultation with the Independent System Operator, shall consider the effects of the standard on system reliability and overall costs to electricity customers.

(8) In developing and implementing the greenhouse gases emission performance standard, the Energy Commission shall address long-term purchases of electricity from unspecified sources in a manner consistent with this chapter.

(9) In developing and implementing the greenhouse gases emission performance standard, the Energy Commission shall consider and act in a manner consistent with any rules adopted pursuant to Section 824a-3 of Title 16 of the United States Code.

(f) The Energy Commission, in a duly noticed public hearing and in consultation with the commission and the State Air Resources Board, shall reevaluate and continue, modify, or replace the greenhouse gases emission performance standard when an enforceable greenhouse gases emissions limit is established and in operation, that is applicable to local publicly owned electric utilities.

(g) The commission, through a rulemaking proceeding and in consultation with the Energy Commission and the State Air Resources Board, shall reevaluate and continue, modify, or replace the greenhouse gases emission performance standard when an enforceable greenhouse gases emissions limit is established and in operation, that is applicable to load-serving entities.

## **REVENUE AND TAXATION CODE - DIVISION 2**

Part 19, Energy Resources Surcharge Law - Section 40001 et seq.

### **§ 40016. Rate**

(a) A surcharge is imposed on the consumption in this state of electrical energy purchased from an electric utility on and after January 1, 2003, at the rate of three-tenths mill (\$0.0003) per kilowatt-hour, or at the rate determined pursuant to subdivision (b).

(b) The Energy Commission shall fix the rate at a public meeting in each November for each calendar year starting the following January. Under no circumstances may the rate fixed exceed three-tenths mill (\$0.0003) per kilowatt-hour. If the commission fails to fix the rate in any November, the surcharge shall continue at the rate in effect during that November.

### **§ 40182. Refunds; energy resources programs account; legislative intent; appropriations from account to be made by annual budget act**

All money deposited in the Energy Resources Surcharge Fund under this part shall upon order of the Controller be drawn therefrom and transferred to pay the refunds authorized by this part. The balance shall be transferred to the Energy Resources Programs Account, which is hereby created in the General Fund.

It is the intent of the Legislature that the funds in the Energy Resources Programs Account be used for ongoing energy programs and energy projects deemed appropriate by the

Legislature, including, but not limited to, the activities of the State Energy Resources Conservation and Development Commission.

Notwithstanding any other provisions of law to the contrary, all appropriations from the Energy Resources Programs Account shall be made by the annual Budget Act.

# **UNCODIFIED LAWS**

## **UNCODIFIED LAWS**

### **ASSEMBLY BILL NO. 2105** (Chapter 1036, Statutes of 1991)

§ 3. Section 9 of Chapter 1291 of the Statutes of 1989 is amended to read:

§ 9. The State Energy Resources Conservation and Development Commission shall report on the environmental and fiscal benefits and the fiscal cost of the credit allowed pursuant to Sections 17052.5 and 23601.5 of the Revenue and Taxation Code, as amended by the act amending this section, to the Legislature no later than June 1, 1993. The State Energy Resources Conservation and Development Commission may obtain the information needed to prepare this study from the Franchise Tax Board and taxpayers who apply for the credit allowed pursuant to Sections 17052.5 and 23601.5 of the Revenue and Taxation Code.

§ 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, unless otherwise specifically provided, the provisions of this act shall be applied in the computation of taxes for taxable or income years beginning on or after January 1, 1991.

### **ASSEMBLY BILL NO. 1925** (Chapter 471, Statutes of 2006)

§ 1. (a)(1) On or before November 1, 2007, the State Energy Resources Conservation and Development Commission, in coordination with the Division of Oil, Gas, and Geothermal Resources of the Department of Conservation and the California Geological Survey, shall submit a report to the Legislature containing recommendations for how the state can develop parameters to accelerate the adoption of cost-effective geologic sequestration strategies for the long-term management of industrial carbon dioxide. In formulating recommendations, the commission shall meet with representatives from industry, environmental groups, academic experts, and other government officials, with expertise in indemnification, subsurface geology, fossil fuel electric generation facilities, advanced carbon separation and transport technologies, and greenhouse gas management.

(2) The study for the report shall be conducted using existing resources and shall include, but is not limited to, all of the following:

(A) Key components of site certification protocol, including seal characterization, reservoir capacity and fluid and gas dynamics, testing standards, and monitoring strategies.

(B) Integrity and longevity standards for storage sites.

(C) Mitigation, remediation, and indemnification strategies to manage long-term risks.

(3) The commission shall include the report prepared pursuant to this section in its 2007 integrated energy policy report required by Section 25302 of the Public Resources Code.

(b) The commission shall support research and development efforts to do all of the following:

(1) Identify and characterize state geological sites that potentially are appropriate for long-term storage of carbon dioxide.

(2) Evaluate the comparative economics of various technologies for capture and sequestration of carbon dioxide.

(3) Identify technical gaps in the science of sequestration of carbon dioxide, to be prioritized for further analysis.

(4) Evaluate the potential risks associated with geologic sequestration of carbon dioxide, including leakage resulting from carbonates and other dissolved minerals.

(5) Evaluate the potential risks if geologically sequestered carbon dioxide leaks into aquifers.

(6) Evaluate, and to the extent feasible quantify, the potential liability from the leakage of geologically sequestered carbon dioxide and potentially responsible parties.

(c) For purposes of this section, "commission" means the State Energy Resources Conservation and Development Commission (Chapter 3 (commencing with Section 25200) of Division 15 of the Public Resources Code).

**SENATE BILL NO. 2600**  
(Chapter 1611, Statutes of 1990)

§ 1. (a) The Legislature finds and declares as follows:

(1) In many areas of the state, motor vehicles with conventional gasoline and diesel combustion engines are responsible for more air pollution than any other single source.

(2) Improved technology has made the use of low-emission vehicles feasible for use in the state.

(3) It is in California's best interests to encourage the use of low-emission vehicles because they are expected to result in a substantial decrease in vehicle-created air pollution.

(4) In first enacting Sections 17052.11 and 23603 of the Revenue and Taxation Code, the Legislature recognized that tax credit incentives should be offered to individuals and corporations who convert their vehicles to the use of ethanol or methanol.

(b) It is the intent of the Legislature in enacting this act to provide similar tax incentives for the use of other types of low-emission vehicles, such as those powered by

compressed natural gas, liquified petroleum gas, and electricity. It is further the intent of the Legislature that these tax incentives also be available to purchasers of new vehicles which are factory equipped to qualify as low-emission vehicles as defined in Section 39037.05 of the Health and Safety Code. The Legislature intends that this act will also promote the early construction of the refueling infrastructure necessary to support the rapidly increasing numbers of low-emission vehicles on the state's roads and highways.

§ 4. The sum of fifty thousand dollars (\$50,000) is hereby appropriated from the General Fund to the State Energy Resources Conservation and Development Commission for administrative costs incurred pursuant to this act.

§ 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.