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AMENDED IN SENATE APRIL 24, 2006

**SENATE BILL**

**No. 1368**

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**Introduced by Senator Perata**  
(Coauthor: Assembly Member Levine)

February 21, 2006

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An act to add Chapter 3 (commencing with Section 8340) to Division 4.1 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 1368, as amended, Perata. Electricity: emissions of greenhouse gases.

(1) Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations. Existing law authorizes the PUC to establish rules for all public utilities, and the Legislature has established procedures for rulemaking proceedings before the PUC. Existing law requires the PUC to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program.

Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to certify eligible

renewable energy resources, to design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, and to allocate and award supplemental energy payments to cover *the* above-market costs of electricity generated by eligible renewable energy resources.

Under existing law the governing board of a local publicly owned electric utility is 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. Existing law requires the governing board of a local publicly owned electric utility to report certain information relative to renewable energy resources to its customers.

Existing law defines an “electric service provider” as an entity that offers electrical service to customers within the service territory of an electrical corporation, excluding electrical corporations, local publicly owned electric utilities, and certain cogenerators. Provisions of the existing Public Utilities Act restructuring the electrical services industry require that electric service providers register with the PUC and require the PUC to authorize and facilitate direct transactions between electric service providers and retail end-use customers. However, other existing law suspends the right of retail end-use customers other than community aggregators, to acquire service through a direct transaction, until the Department of Water Resources no longer supplies electricity under that law.

Existing law defines a “community choice aggregator” and authorizes customers to aggregate their electric loads as members of their local community with community choice aggregators.

The existing restructuring of the electrical industry within the Public Utilities Act provides for the establishment of an Independent System Operator (ISO) as a nonprofit public benefit corporation. Existing law requires the ISO to ensure efficient use and reliable operation of the transmission grid consistent with achieving planning and operating reserve criteria no less stringent than those established by the Western Electricity Coordinating Council and the American Electric Reliability Council.

Under existing law, the State Air Resources Board, the Energy Commission, and the California Climate Action Registry all have responsibilities with respect to the control of emissions of greenhouse

gases, as defined, and the Secretary for Environmental Protection is required to coordinate emission reductions of greenhouse gases and climate change activity in state government.

This bill would prohibit any load-serving entity, as defined, and any local publicly owned electric utility, from entering into a long-term financial commitment, as defined, unless any baseload generation, as defined, complies with a greenhouse gases emission performance standard. The bill would require the PUC, by February 1, 2007, through a rulemaking proceeding and in consultation with the Energy Commission and the State Air Resources Board, to establish a greenhouse gases emission performance standard for all baseload generation of load-serving entities. The bill would require the Energy Commission, by June 30, 2007, at a duly noticed public hearing and in consultation with the PUC and the State Air Resources Board, to establish a greenhouse gases emission performance standard for all baseload generation of local publicly owned electric utilities. The bill would require that the greenhouse gases emission performance standard not exceed the rate of emissions of greenhouse gases for combined-cycle natural gas, as defined, baseload generation. The bill would prohibit the PUC from approving any long-term financial commitment by an electrical corporation unless any baseload generation supplied under the long-term commitment complies with the greenhouse gases emission performance standard. The bill would authorize the PUC to review any long-term financial commitment proposed to be entered into by an electric service provider or community choice aggregator in order to enforce the bill's requirements. The bill would require the PUC to adopt rules to enforce these requirements for load-serving entities and would require the PUC to 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. The bill would require the PUC, through a rulemaking proceeding and in consultation with the Energy Commission and the State Air Resources Control Board, to reevaluate and continue, modify, or replace the greenhouse gases emissions performance standard when an enforceable greenhouse gases emissions limit is established and in operation, that is applicable to load-serving entities.

The bill would require the Energy Commission to adopt regulations for the enforcement of the greenhouse gases emission performance

standard with respect to a local publicly owned electric utility. The bill would require the Energy Commission, in a duly noticed public hearing and in consultation with the PUC and the State Air Resources Board, to 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.

(2) Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Because certain of the provisions of this bill are within the act and require action by the commission to implement its requirements, a violation of these provisions would impose a state-mandated local program by creating a new crime.

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

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

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Global warming will have serious adverse consequences on
- 4 the economy, health, and environment of California.
- 5 (b) The Governor, in Executive Order S-3-05, has called for
- 6 the reduction of California’s emission of greenhouse gases to
- 7 1990 levels by 2020.
- 8 (c) Over the past three decades, the state has taken significant
- 9 strides towards implementing an environmentally and
- 10 economically sound energy policy through reliance on energy
- 11 efficiency, conservation, and renewable energy resources in order
- 12 to promote a sustainable energy future that ensures an adequate
- 13 and reliable energy supply at reasonable and stable prices.
- 14 (d) To the extent energy efficiency and renewable resources
- 15 are unable to satisfy increasing energy and capacity needs, the
- 16 Energy Action Plan II establishes a policy that the state will rely

1 on clean and efficient fossil fuel fired generation and will  
2 “encourage the development of cost-effective, highly-efficient,  
3 and environmentally-sound supply resources to provide  
4 reliability and consistency with the state’s energy priorities.”

5 (e) California’s investor-owned electric utilities currently have  
6 long-term procurement plans that include proposals for making  
7 new long-term financial commitments to electrical generating  
8 resources over the next decade, which will generate electricity  
9 while producing emissions of greenhouse gases for the next 30  
10 years or longer. New long-term financial commitments to zero-  
11 or low-carbon generating resources should be encouraged.

12 (f) The Public Utilities Commission (PUC) and State Energy  
13 Resources Conservation and Development Commission (Energy  
14 Commission) both have concluded, and the Legislature finds,  
15 that federal regulation of emissions of greenhouse gases is likely  
16 during this decisionmaking timeframe.

17 (g) It is vital to ensure all electricity load-serving entities  
18 internalize the significant and underrecognized cost of emissions  
19 recognized by the PUC with respect to the investor-owned  
20 electric utilities, and to reduce California’s exposure to costs  
21 associated with future federal regulation of these emissions.

22 (h) The establishment of a policy to reduce emissions of  
23 greenhouse gases, including an emissions performance standard  
24 for all procurement of electricity by load-serving entities, is a  
25 logical and necessary step to meet the goals of the Energy Action  
26 Plan II and the Governor’s goals for reduction of emissions of  
27 greenhouse gases.

28 (i) A greenhouse gases emission performance standard for new  
29 long-term financial commitments to electrical generating  
30 resources will reduce potential financial risk to California  
31 consumers for future pollution-control costs.

32 (j) A greenhouse gases emission performance standard for new  
33 long-term financial commitments to electric generating resources  
34 will reduce potential exposure of California consumers to future  
35 reliability problems in electricity supplies.

36 (k) In order to have any meaningful impact on climate change,  
37 the Governor’s goals for reducing emissions of greenhouse gases  
38 must be applied to the state’s electricity consumption, not just the  
39 state’s electricity production.

1 (l) The 2005 Integrated Energy Policy Report adopted by the  
 2 Energy Commission recommends that any greenhouse gases  
 3 emission performance standard for utility procurement of  
 4 baseload generation be set no lower than levels achieved by a  
 5 new combined-cycle natural gas turbine.

6 (m) As the largest electricity consumer in the region,  
 7 California has an obligation to provide clear guidance on  
 8 performance standards for procurement of electricity by  
 9 load-serving entities.

10 SEC. 2. Chapter 3 (commencing with Section 8340) is added  
 11 to Division 4.1 of the Public Utilities Code, to read:

12  
 13 CHAPTER 3. GREENHOUSE GASES EMISSION PERFORMANCE  
 14 STANDARD FOR BASELOAD ELECTRICAL GENERATING RESOURCES  
 15

16 8340. For purposes of this chapter, the following terms have  
 17 the following meanings:

18 (a) “Baseload generation” means electricity generation from a  
 19 powerplant that is designed and intended to provide electricity at  
 20 an annualized plant capacity factor of at least 60 percent.

21 (b) “Combined-cycle natural gas” with respect to a powerplant  
 22 means the powerplant employs a combination of one or more gas  
 23 turbines and steam turbines in which electricity is produced in  
 24 the steam turbine from otherwise lost waste heat exiting from one  
 25 or more of the gas turbines.

26 (c) “Community choice aggregator” means a “community  
 27 choice aggregator” as defined in Section 331.1.

28 (d) “Electrical corporation” means an “electrical corporation”  
 29 as defined in Section 218.

30 (e) “Electric service provider” means an “electric service  
 31 provider” as defined in Section 218.3, but does not include  
 32 corporations or persons employing cogeneration technology or  
 33 producing electricity from other than a conventional power  
 34 source consistent with subdivision (b) of Section 218.

35 (f) “Energy Commission” means the State Energy Resources  
 36 Conservation and Development Commission.

37 (g) “Greenhouse gases” means those gases listed in  
 38 subdivision (h) of Section 42801.1 of the Health and Safety  
 39 Code.

1 ~~(h) “Load-serving entity” means a “load-serving entity” as~~  
2 ~~defined in subdivision (j) of Section 380.~~

3 *(h) “Load-serving entity” means every electrical corporation,*  
4 *electric service provider, or community choice aggregator*  
5 *serving end-use customers in the state.*

6 (i) “Local publicly owned electric utility” means a “local  
7 publicly owned electric utility” as defined in Section 9604.

8 (j) “Long-term financial commitment” means either a new  
9 ownership investment in baseload generation or a new or  
10 renewed contract with a term of five or more years, which  
11 includes procurement of baseload generation.

12 (k) “Output-based methodology” means a greenhouse gases  
13 emission performance standard that is expressed in pounds of  
14 greenhouse gases emitted per megawatthour and factoring in the  
15 useful thermal energy employed for purposes other than the  
16 generation of electricity.

17 (l) “Plant capacity factor” means the ratio of the electricity  
18 produced during a given time period, measured in kilowatthours,  
19 to the electricity the unit could have produced if it had been  
20 operated at its rated capacity during that period, expressed in  
21 kilowatthours.

22 (m) “Powerplant” means a facility for the generation of  
23 electricity, and includes one or more generating units at the same  
24 location.

25 (n) “Zero- or low-carbon generating resource” means an  
26 electrical generating resource that will generate electricity while  
27 producing emissions of greenhouse gases at a rate substantially  
28 below the greenhouse gas emission performance standard, as  
29 determined by the commission.

30 8341. (a) No load-serving entity or local publicly owned  
31 electric utility may enter into a long-term financial commitment  
32 unless any baseload generation supplied under the long-term  
33 financial commitment complies with the greenhouse gases  
34 emission performance standard established by the commission,  
35 pursuant to subdivision (d), for a load-serving entity, or by the  
36 Energy Commission, pursuant to subdivision (e), for a local  
37 publicly owned electric utility.

38 (b) (1) The commission shall not approve a long-term  
39 financial commitment by an electrical corporation unless any  
40 baseload generation supplied under the long-term financial

1 commitment complies with the greenhouse gases emission  
2 performance standard established by the commission pursuant to  
3 subdivision (d).

4 (2) The commission may, in order to enforce the requirements  
5 of this section, review any long-term financial commitment  
6 proposed to be entered into by an electric service provider or a  
7 community choice aggregator.

8 (3) The commission shall adopt rules to enforce the  
9 requirements of this section, for load-serving entities. The  
10 commission shall adopt procedures, for all load-serving entities,  
11 to verify the emissions of greenhouse gases from any baseload  
12 generation supplied under a contract subject to the greenhouse  
13 gases emission performance standard to ensure compliance with  
14 the standard.

15 (4) In determining whether a long-term financial commitment  
16 is for baseload generation, the commission shall consider the  
17 design of the powerplant and the intended use of the powerplant,  
18 as determined by the commission based upon the electricity  
19 purchase contract, any certification received from the Energy  
20 Commission, any other permit or certificate necessary for the  
21 operation of the powerplant, including a certificate of public  
22 convenience and necessity, any procurement approval decision  
23 for the load-serving entity, and any other matter the commission  
24 determines is relevant under the circumstances.

25 (5) Costs incurred by an electrical corporation to comply with  
26 this section, including those costs incurred for electricity  
27 purchase agreements that are approved by the commission that  
28 comply with the greenhouse gases emission performance  
29 standard, are to be treated as procurement costs incurred pursuant  
30 to an approved procurement plan and the commission shall  
31 ensure timely cost recovery of those costs pursuant to paragraph  
32 (3) of subdivision (d) of Section 454.5.

33 (6) A long-term financial commitment entered into through a  
34 contract approved by the commission, for electricity generated by  
35 a zero- or low-carbon generating resource that is contracted for,  
36 on behalf of consumers of this state on a cost-of-service basis,  
37 shall be recoverable in rates, in a manner determined by the  
38 commission consistent with Section 380. The commission may,  
39 after a hearing, approve an increase from one-half to 1 percent in  
40 the return on investment by the third party entering into the



1 contract with an electrical corporation with respect to investment  
2 in zero- or low-carbon generation resources authorized pursuant  
3 to this subdivision.

4 (c) (1) The Energy Commission shall adopt regulations for the  
5 enforcement of this chapter with respect to a local publicly  
6 owned electric utility.

7 (2) The Energy Commission may, in order to ensure  
8 compliance with the greenhouse gases emission performance  
9 standard by local publicly owned electric utilities, apply the  
10 procedures adopted by the commission to verify the emissions of  
11 greenhouse gases from baseload generation pursuant to  
12 subdivision (b).

13 (3) In determining whether a long-term financial commitment  
14 is for baseload generation, the Energy Commission shall consider  
15 the design of the powerplant and the intended use of the  
16 powerplant, as determined by the Energy Commission based  
17 upon the electricity purchase contract, any certification received  
18 from the Energy Commission, any other permit for the operation  
19 of the powerplant, any procurement approval decision for the  
20 load-serving entity, and any other matter the Energy Commission  
21 determines is relevant under the circumstances.

22 (d) (1) On or before February 1, 2007, the commission,  
23 through a rulemaking proceeding, and in consultation with the  
24 Energy Commission and the State Air Resources Board, shall  
25 establish a greenhouse gases emission performance standard for  
26 all baseload generation of load-serving entities, at a rate of  
27 emissions of greenhouse gases that is no higher than the rate of  
28 emissions of greenhouse gases for combined-cycle natural gas  
29 baseload generation. Enforcement of the greenhouse gases  
30 emission performance standard shall begin immediately upon the  
31 establishment of the standard. All combined-cycle natural gas  
32 powerplants that are in operation, or that have an Energy  
33 Commission final permit decision to operate as of June 30, 2007,  
34 shall be deemed to be in compliance with the greenhouse gases  
35 emission performance standard.

36 (2) In determining the rate of emissions of greenhouse gases  
37 for baseload generation, the commission shall include the net  
38 emissions resulting from the production of electricity by the  
39 baseload generation.

1 (3) The commission shall establish an output-based  
2 methodology to ensure that the calculation of emissions of  
3 greenhouse gases for cogeneration recognizes the total usable  
4 energy output of the process, and includes all greenhouse gases  
5 emitted by the facility in the production of both electrical and  
6 thermal energy.

7 (4) In calculating the emissions of greenhouse gases by  
8 facilities generating electricity from biomass, biogas, or landfill  
9 gas energy, the commission shall consider net emissions from the  
10 process of growing, processing, and generating the electricity  
11 from the fuel source.

12 ~~(5) Carbon dioxide that is captured from the emissions of a~~  
13 ~~powerplant and that is permanently disposed of in geological~~  
14 ~~formations in compliance with applicable laws and regulations,~~  
15 ~~shall not be counted as emissions from the powerplant.~~

16 *(5) Carbon dioxide that is injected in geological formations,*  
17 *so as to prevent releases into the atmosphere, in compliance with*  
18 *applicable laws and regulations shall not be counted as*  
19 *emissions of the powerplant in determining compliance with the*  
20 *greenhouse gases emissions performance standard.*

21 (6) In adopting and implementing the greenhouse gases  
22 emission performance standard, the commission, in consultation  
23 with the Independent System Operator shall consider the effects  
24 of the standard on system reliability and overall costs to  
25 electricity customers.

26 (7) In developing and implementing the greenhouse gases  
27 emission performance standard, the commission shall address  
28 long-term purchases of electricity from unspecified sources in a  
29 manner consistent with this chapter.

30 (8) In developing and implementing the greenhouse gases  
31 emission performance standard, the commission shall consider  
32 and act in a manner consistent with any rules adopted pursuant to  
33 Section 824a-3 of Title 16 of the United States Code.

34 (9) An electrical corporation that provides electric service to  
35 75,000 or fewer retail end-use customers in California may file  
36 with the commission a proposal for alternative compliance with  
37 this section, which the commission may accept upon a showing  
38 by the electrical corporation of both of the following:

39 (A) A majority of the electrical corporation's retail end-use  
40 customers for electric service are located outside of California.

1 (B) The emissions of greenhouse gases to generate electricity  
2 for the retail end-use customers of the electrical corporation are  
3 subject to a review by the utility regulatory commission of at  
4 least one other state in which the electrical corporation provides  
5 regulated retail electric service.

6 (e) (1) On or before June 30, 2007, the Energy Commission,  
7 at a duly noticed public hearing and in consultation with the  
8 commission and the State Air Resources Board, shall establish a  
9 greenhouse gases emission performance standard for all baseload  
10 generation of local publicly owned electric utilities at a rate of  
11 emissions of greenhouse gases that is no higher than the rate of  
12 emissions of greenhouse gases for combined-cycle natural gas  
13 baseload generation. The greenhouse gases emission  
14 performance standard established by the Energy Commission for  
15 local publicly owned electric utilities shall be consistent with the  
16 standard adopted by the commission for load-serving entities.  
17 Enforcement of the greenhouse gases emission performance  
18 standard shall begin immediately upon the establishment of the  
19 standard. All combined-cycle natural gas powerplants that are in  
20 operation, or that have an Energy Commission final permit  
21 decision to operate as of June 30, 2007, shall be deemed to be in  
22 compliance with the greenhouse gases emission performance  
23 standard.

24 (2) The greenhouse gases emission performance standard shall  
25 be adopted by regulation pursuant to the Administrative  
26 Procedure Act (Chapter 3.5 (commencing with Section 11340) of  
27 Part 1 of Division 3 of Title 2 of the Government Code).

28 (3) In determining the rate of emissions of greenhouse gases  
29 for baseload generation, the Energy Commission shall include  
30 the net emissions resulting from the production of electricity by  
31 the baseload generation.

32 (4) The Energy Commission shall establish an output-based  
33 methodology to ensure that the calculation of emissions of  
34 greenhouse gases for cogeneration recognizes the total usable  
35 energy output of the process, and includes all greenhouse gas  
36 emitted by the facility in the production of both electrical and  
37 thermal energy.

38 (5) In calculating the emissions of greenhouse gases by  
39 facilities generating electricity from biomass, biogas, or landfill  
40 gas energy, the Energy Commission shall consider net emissions

1 from the process of growing, processing, and generating the  
2 electricity from the fuel source.

3 (6) Carbon dioxide that is captured from the emissions of a  
4 powerplant and that is permanently disposed of in geological  
5 formations in compliance with applicable laws and regulations,  
6 shall not be counted as emissions from the powerplant.

7 (7) In adopting and implementing the greenhouse gases  
8 emission performance standard, the Energy Commission, in  
9 consultation with the Independent System Operator, shall  
10 consider the effects of the standard on system reliability and  
11 overall costs to electricity customers.

12 (8) In developing and implementing the greenhouse gases  
13 emission performance standard, the Energy Commission shall  
14 address long-term purchases of electricity from unspecified  
15 sources in a manner consistent with this chapter.

16 (9) In developing and implementing the greenhouse gases  
17 emission performance standard, the Energy Commission shall  
18 consider and act in a manner consistent with any rules adopted  
19 pursuant to Section 824a-3 of Title 16 of the United States Code.

20 (f) The Energy Commission, in a duly noticed public hearing  
21 and in consultation with the commission and the State Air  
22 Resources Board, shall reevaluate and continue, modify, or  
23 replace the greenhouse gases emission performance standard  
24 when an enforceable greenhouse gases emissions limit is  
25 established and in operation, that is applicable to local publicly  
26 owned electric utilities.

27 (g) The commission, through a rulemaking proceeding and in  
28 consultation with the Energy Commission and the State Air  
29 Resources Board, shall reevaluate and continue, modify, or  
30 replace the greenhouse gases emission performance standard  
31 when an enforceable greenhouse gases emissions limit is  
32 established and in operation, that is applicable to load serving  
33 entities.

34 SEC. 3. No reimbursement is required by this act pursuant to  
35 Section 6 of Article XIII B of the California Constitution because  
36 the only costs that may be incurred by a local agency or school  
37 district will be incurred because this act creates a new crime or  
38 infraction, eliminates a crime or infraction, or changes the  
39 penalty for a crime or infraction, within the meaning of Section  
40 17556 of the Government Code, or changes the definition of a

1 crime within the meaning of Section 6 of Article XIII B of the  
2 California Constitution.

O