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SENATE THIRD READING
SB 1078 (Sher)
As Amended August 28, 2002
Majority vote

SENATE VOTE : Vote not relevant

UTILITIES AND COMMERCE 12-4 NATURAL RESOURCES 7-4

Ayes:	Wright, Jackson, Canciamilla, Cardenas, Diaz, Horton, Kelley, Maddox, nation, Papan, Reyes, Simitian	Ayes:	Wayne, Harman, Jackson, Kelley, Koretz, Lowenthal, Pavley
Nays:	Bill Campbell, John Campbell, La Suer, Leonard	Nays:	Hollingsworth, Cardoza, Dickerson, Wyman

APPROPRIATIONS 15-7

Ayes:	Steinberg, Alquist, Aroner, Cohn, Corbett, Diaz, Firebaugh, Goldberg, Negrete McLeod, Papan, Pavley, Simitian, Washington, Wiggins, Wright		
Nays:	Bates, Ashburn, Daucher, Maldonado, Robert Pacheco, Runner, Zettel		

SUMMARY : Requires utilities to increase procurement of electricity from renewable energy sources by at least 1% per year. Specifically, this bill :

- 1) Requires a retail seller of electricity to increase its total amount of eligible renewable resources by at least 1% per

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year, until 20% of its retail sales are procured from renewables, provided sufficient public goods charge (PGC)<1> funds are available to cover any above-market costs of renewables. This constitutes the California Renewables Portfolio Standard, or RPS.

- 2) Defines a retail seller to include investor-owned utilities (IOUs), and, once specified conditions<2> are met, community choice aggregators and electric service providers (ESPs).
- 3) Directs the California Public Utilities Commission (PUC) to order IOUs to enter into contracts for renewable energy resource generators for at least 10 years' duration, unless PUC approves shorter terms.
- 4) Requires PUC to establish a process for determining the market price of electricity from renewable generators; for rank ordering and selection of renewables to fulfill program obligations; and for standard terms and conditions to be used by IOUs in contracting with renewables contractors.
- 5) Requires PUC to review the results of a renewable energy resources solicitation submitted for approval by an IOU. If PUC determines that bid prices are elevated due to a lack of effective competition among bidders, PUC shall require that the contracts be renegotiated.
- 6) Considers renewable energy purchases by IOUs made pursuant to a RPS procurement plan reasonable per se, and therefore recoverable in rates charged to retail customers.

<1> Existing law requires electric utilities to identify and collect a separate rate component to fund energy efficiency, public interest renewable energy research, and related "public goods" programs.

<2> An ESP is considered a retail seller, and subject to RPS for sales to any customer acquiring service after January 1, 2003, and for sales to all its customers beginning on January 1, 2005. In addition, this bill expressly declares that contracts entered into between an ESP and a retail customer prior to the suspension of direct access by PUC shall not be impaired. Before an ESP or a community choice aggregator is considered a retail seller, PUC must institute a rulemaking to determine the manner in which each will participate in RPS program.

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- 7) Requires each governing body, of a local publicly owned electric utility, to implement and enforce an RPS that takes into consideration the impact on rates, reliability, the goal of environmental improvement, and the impact on financial resources. The governing board would annually report to its customers concerning the RPS program.
- 8) Among other things, directs the California Energy Commission (CEC) to certify the renewable energy resources that are eligible to participate in the RPS, to develop an accounting system to verify RPS compliance, and to award supplemental energy payments to eligible renewable energy resources to cover above-market costs of renewable energy.
- 9) Provides that failure by an IOU to comply with a PUC order adopting a renewable procurement plan is punishable as contempt, and that PUC shall exercise this authority to require compliance.
- 10) Specifies that an application by an IOU to allow construction of new transmission facilities that are necessary in connection with renewables shall be deemed necessary by PUC in determining whether to issue a certificate of public convenience and necessity.
- 11) Specifies that an eligible renewable energy resource that receives PGC funds shall comply with prevailing wage laws.
- 12) Provide that a facility that engages in the combustion of municipal solid waste in Stanislaus County, that was operational prior to September 1996, shall be considered an eligible renewable resource for purposes of determining the baseline quantity of renewable energy resources in the portfolio of a retail seller.

EXISTING LAW directs PUC to require utilities to reserve or set aside a specific portion of future generating capacity for renewable resources.

FISCAL EFFECT : Appropriations Committee fixes costs to CEC and PUC, perhaps \$1 million annually to each.

COMMENTS : The RPS in this bill directs retail sellers, in order to fulfill unmet resource needs, to increase renewables purchases by at least an additional one (1) percent annually,

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until a 20 percent renewable resources portfolio is achieved, provided sufficient PGC funds are available to cover above-market costs. The RPS is imposed primarily on IOUs. The PUC incorporated this RPS into an Interim Order governing procurement on August 22, 2002.

This bill specifies that PUC shall, through rulemaking, determine how RPS should apply to ESP's, apparently implying that ESP's, who cannot enter into new contracts with retail customers until direct access resumes, <3> will not be required to participate in RPS program until then. Local publicly owned electric utilities <4> are required by this bill to implement and enforce a renewables portfolio standard that "recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the impact on rates, reliability, the goal of environmental improvement, and the impact on financial resources." Additionally, the local utility must annually report to its customers concerning expenditures of PGC funds for renewable energy resource development, and the resource mix used to serve its customers.

This bill directs PUC to establish a market price of electricity for terms corresponding to the length of contracts with renewable generators. If the actual contract price of renewable energy with the utility exceeds the market price, PGC payments

would flow to the renewable energy generator to cover the above-market costs.

In determining the market price (of non-renewable energy), PUC

 <3> Water Code 80110, enacted by AB X1 1 (Keeley) [Chapter 4, Statutes of 2001] provides in part that, "[a]fter the passage of such period of time . . . as shall be determined by the [PUC], the right of retail end use customers . . . to acquire service from [ESP's] shall be suspended until [DWR] no longer supplies power. (DWR has the same rights to payment for power by retail customers they sell as do providers of power to those customers.)

<4> Local publicly owned electric utilities include: a city operating as a public utility, a municipal utility district, a public utility district, an irrigation district, or a joint powers authority that includes one or more of these agencies, and that owns generation or transmission facilities, or furnishes electric services.

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is directed to take into account the long-term market price of electricity for fixed price contracts. This is determined pursuant to the IOU's general procurement activities, and the long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities.

Work done by renewable energy generators and developers who receive PGC funds pursuant to this bill for construction or repair of renewable energy resources would be regarded as "public works." By virtue of being regarded as public works, the work done would be subject to the state's prevailing wage laws. A question arises as to whether or not the PGC funds are genuinely public funds. Unlike taxes, the PGC is collected by private entities as a fee that is collected in proportion to the amount of energy used by the customer. It is, however, true that there is some government involvement in the administration of the funds once collected, which could lead to a conclusion that the character of the funds is public.

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