

AMENDED IN SENATE AUGUST 29, 2001

AMENDED IN SENATE JULY 18, 2001

AMENDED IN SENATE JULY 11, 2001

AMENDED IN SENATE JUNE 28, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1207

Introduced by Assembly Member Longville

February 23, 2001

An act to add and repeal Section 65892.13 of the Government Code, relating to wind energy, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1207, as amended, Longville. Small wind energy systems.

(1) Existing law prohibits the legislative body of any city or county from enacting an ordinance that prohibits or unreasonably restricts the use of solar energy systems other than for the preservation or protection of the public health and safety.

This bill would authorize until April 1, 2005, a local agency to provide, by ordinance, for the installation of small wind energy systems, as specified, and to issue a conditional use permit for this purpose. The bill would also authorize a local agency to impose conditions on the installation of these systems, as specified. This bill would also require a local agency to approve an application for a small

wind energy system by right if specified conditions are met and would authorize the local agency to charge a specified fee. By increasing the duties of local agencies, the bill would impose a state-mandated local program.

(2) 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.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 65892.13 is added to the Government
2 Code, to read:

3 65892.13. (a) The Legislature finds and declares all of the
4 following:

5 (1) California has a shortage of reliable electricity supply,
6 which has led the Governor to proclaim a state of emergency and
7 to issue numerous executive orders to lessen, and mitigate the
8 effects of, the shortage. The executive orders, among other things,
9 expedite and shorten the processing of applications for existing
10 and new powerplants, establish an emergency siting process for
11 peaking and renewable powerplants, and relax existing air
12 pollutant emission requirements in order to allow power
13 generation facilities to continue generating much needed
14 electricity.

15 (2) Wind energy is an abundant, renewable, and nonpolluting
16 energy resource. When converted to electricity, it reduces our
17 dependence on nonrenewable energy resources and reduces air
18 and water pollution that result from conventional sources.
19 Distributed small wind energy systems also enhance the reliability
20 and power quality of the power grid, reduce peak power demands,
21 increase in-state electricity generation, diversify the state's energy
22 supply portfolio, and make the electricity supply market more
23 competitive by promoting consumer choice.



1 (3) In 2000, the Legislature and Governor recognized the need
2 to promote all feasible adoption of clean, renewable, and
3 distributed energy sources by enacting the Reliable Electric
4 Service Investments Act (Article 15 (commencing with Section
5 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities
6 Code). As set forth in Section 399.6 of the Public Utilities Code,
7 the stated objectives of the act include to “increase, in the near
8 term, the quantity of California’s electricity generated by in-state
9 renewable energy resources while protecting system reliability,
10 fostering resource diversity, and obtaining the greatest
11 environmental benefits for California residents.”

12 (4) Small wind energy systems, designed for onsite home,
13 farm, and small commercial use, are recognized by the Legislature
14 and the State Energy Resources Conservation and Development
15 Commission as an excellent technology to help achieve the goals
16 of increased in-state electricity generation, reduced demand on the
17 state electric grid, increased consumer energy independence, and
18 nonpolluting electricity generation. In June 2001, the commission
19 adopted a Renewable Investment Plan that includes one hundred
20 one million two hundred fifty thousand dollars (\$101,250,000)
21 over the next five years, in the form of a 50 percent buydown
22 incentive for the purchasers of “emerging renewable
23 technologies,” including small wind energy systems.

24 (5) In light of the state’s electricity supply shortage and its
25 existing program to encourage the adoption of small wind energy
26 systems, it is the intent of the Legislature that any ordinances
27 regulating small wind energy systems adopted by local agencies
28 have the effect of providing for the installation and use of small
29 wind energy systems and that provisions in these ordinances
30 relating to matters including, but not limited to, parcel size, tower
31 height, noise, notice, and setback requirements do not
32 unreasonably restrict the ability of homeowners, farms, and small
33 businesses to install small wind energy systems in zones in which
34 they are authorized by local ordinance. It is the policy of the state
35 to promote and encourage the use of small wind energy systems
36 and to limit obstacles to their use.

37 (b) The implementation of consistent statewide standards to
38 achieve the timely and cost-effective installation of small wind
39 energy systems is not a municipal affair, as that term is used in
40 Section 5 of Article XI of the California Constitution, but is instead



1 a matter of statewide concern. It is the intent of the Legislature that
 2 this section apply to all local agencies, including, but not limited
 3 to, charter cities, charter counties, and charter cities and counties.

4 (c) The following definitions govern this section:

5 (1) “Small wind energy system” means a wind energy
 6 conversion system consisting of a wind turbine, a tower, and
 7 associated control or conversion electronics, which has a rated
 8 capacity that does not exceed the allowable rated capacity under
 9 the Emerging Renewables Fund of the Renewables Investment
 10 Plan administered by the California Energy Commission and
 11 which will be used primarily to reduce onsite consumption of
 12 utility power.

13 (2) “Tower height” means the height above grade of the fixed
 14 portion of the tower, excluding the wind turbine.

15 (d) Any local agency may, ~~be~~ by ordinance, provide for the
 16 installation of small wind energy systems in the jurisdiction
 17 outside an “urbanized area,” as defined in paragraph (2) of
 18 subdivision (b) of Section 21080.7 of the Public Resources Code
 19 pursuant to this section. The local agency may establish a process
 20 for the issuance of a conditional use permit for small wind energy
 21 systems.

22 (1) The ordinance may impose conditions on the installation of
 23 small wind energy systems that include, but are not limited to,
 24 notice, tower height, setback, view protection, aesthetics, aviation,
 25 and design safety requirements. However, the ordinance shall not
 26 require conditions on notice, tower height, setbacks, noise level,
 27 turbine approval, tower drawings, and engineering analysis, or
 28 line drawings that are more restrictive ~~that~~ *than* the following:

29 (A) Notice of an application for installation of a small wind
 30 energy system shall be provided to property owners within 300
 31 feet of the property on which the system is to be located.

32 (B) Tower heights of ~~at least not more than~~ 65 feet shall be
 33 allowed on parcels between one and five ~~acres. Tower acres and~~
 34 ~~tower heights of at least not more than~~ 80 feet shall be allowed on
 35 parcels of five acres or ~~more. No tower height shall be less than 30~~
 36 ~~feet. more, provided that the application includes evidence that the~~
 37 ~~proposed height does not exceed the height recommended by the~~
 38 ~~manufacturer or distributor of the system.~~

39 (C) Setbacks for the system tower shall be no farther from the
 40 property line ~~that~~ *than* the height of the system, provided that it



1 also complies with any applicable fire setback requirements
2 pursuant to Section 4290 of the Public Resources Code.

3 (D) Decibel levels for the system shall not exceed ~~60 decibels~~
4 ~~(dBA)~~ *the lesser of 60 decibels (dBA), or any existing maximum*
5 *noise levels applied pursuant to the noise element of a general plan*
6 *for the applicable zoning classification in a jurisdiction, as*
7 *measured at the closest neighboring inhabited dwelling, except*
8 *during short-term events such as utility outages and severe wind*
9 *storms.*

10 (E) The system's turbine must have been approved by the
11 California Energy Commission as qualifying under the Emerging
12 Renewables Fund of the commission's Renewables Investment
13 Plan or certified by a national program recognized and approved
14 by the Energy Commission.

15 (F) The application shall include standard drawings and an
16 engineering analysis of the system's tower, showing compliance
17 with the Uniform Building Code or the California Building
18 Standards Code and certification by a ~~licensed professional~~
19 ~~engineer~~ *professional mechanical, structural, or civil engineer*
20 *licensed by this state.* However, a wet stamp shall not be required,
21 provided that the application demonstrates that the system is
22 designed to meet the most stringent wind requirements (Uniform
23 Building Code wind exposure D), the requirements for the worst
24 seismic class (Seismic 4), and the weakest soil class, with a soil
25 strength of not more than 1,000 pounds per square foot, or other
26 relevant conditions normally required by a local agency.

27 (G) The system shall comply with all applicable Federal
28 Aviation Administration requirements, including any necessary
29 approvals for installations close to airports, and the State ~~Aviation~~
30 ~~Aeronautics~~ Act (Part 1 (commencing with Section 21001) of
31 Division 9 of the Public Utilities Code).

32 (H) The application shall include a line drawing of the
33 electrical components of the system in sufficient detail to allow for
34 a determination that the manner of installation conforms to the
35 National Electric Code.

36 (2) The ordinance may require the applicant to provide
37 information demonstrating that the system will be used primarily
38 to reduce onsite consumption of electricity. The ordinance may
39 also require the application to include evidence, unless the
40 applicant does not plan to connect the system to the electricity grid,



1 that the electric utility service provider that serves the proposed
2 site has been informed of the applicant’s intent to install an
3 interconnected customer-owned electricity generator.

4 (3) In no event shall a small wind energy system be allowed on
5 a site listed in the National Register of Historic Places or the
6 California Register of Historical Resources.

7 (4) A small wind energy system shall not be allowed where
8 otherwise prohibited by any of the following:

9 (A) A local coastal program and any implementing regulations
10 adopted pursuant to the California Coastal Act, Division 20
11 (commencing with Section 30000) of the Public Resources Code.

12 (B) The California Coastal Commission, pursuant to the
13 California Coastal Act, Division 20 (commencing with Section
14 30000) of the Public Resources Code.

15 (C) The regional plan and any implementing regulations
16 adopted by the Tahoe Regional Planning Agency pursuant to the
17 Tahoe Regional Planning Compact, Title 7.4 (commencing with
18 Section 66800) of the Government Code.

19 (D) The San Francisco Bay Plan and any implementing
20 regulations adopted by the San Francisco Bay Conservation and
21 Development Commission pursuant to the McAteer-Petris Act,
22 Title 7.2 (commencing with Section 66600) of the Government
23 Code.

24 (E) A comprehensive land use plan and any implementing
25 regulations adopted by an airport land use commission pursuant to
26 Article 3.5 (commencing with Section 21670) of Chapter 4 of
27 Division 9 of Part 1 of the Public Utilities Code.

28 (F) The Alquist-Priolo Earthquake Fault Zoning Act, Chapter
29 7.5 (commencing with Section 2621) of Division 2 of the Public
30 Resources Code.

31 (G) A local agency to protect the scenic appearance of the
32 scenic highway corridor designated pursuant to Article 2.5
33 (commencing with Section 260) of Chapter 2 of Division 1 of the
34 Streets and Highways Code.

35 (H) The terms of a conservation easement entered into pursuant
36 to Chapter 4 (commencing with Section 815) of Division 2 of Part
37 2 of the Civil Code.

38 (I) The terms of an open-space easement entered into pursuant
39 to the Open-space Easement Act of 1974, Chapter 6.6



1 (commencing with Section 51070) of Division 1 of Title 5 of the
2 Government Code.

3 (J) The terms of an agricultural conservation easement entered
4 into pursuant to the California Farmland Conservancy Program
5 Act, Division 10.2 (commencing with Section 10200) of the
6 Public Resources Code.

7 (K) The terms of a contract entered into pursuant to the
8 Williamson Act, Chapter 7 (commencing with Section 51200) of
9 Division 1 of Title 5 of the Government Code.

10 (e) Notwithstanding subdivision (f), any local agency that has
11 not adopted an ordinance in accordance with subdivision (d) by
12 April 1, 2002, may adopt such ordinance at a later date, but any
13 applications that are submitted between April 1, 2002, and the
14 adopted date of the ordinance must be approved pursuant to
15 subdivision (f).

16 (f) Any local agency which has not adopted an ordinance
17 pursuant to subdivision (d) on or before April 1, 2002, shall
18 approve applications for a small wind energy systems by right if
19 all of the following conditions are met:

20 (1) The size of the parcel where the system is located is at least
21 one acre and is outside an “urbanized area,” as defined in
22 paragraph (2) of subdivision (b) of Section 21080.7 of the Public
23 Resources Code.

24 (2) The tower height on parcels that are less than five acres does
25 not exceed 80 feet. No tower height shall be less than 30 feet.

26 (3) No part of the system, including guy wire anchors, extends
27 closer than 30 feet to the property boundary, provided that it also
28 complies with any applicable fire setback requirements pursuant
29 to Section 4290 of the Public Resources Code.

30 (4) The system does not exceed 60 decibels (dBA), as measured
31 at the closest neighboring inhabited dwelling, except during
32 short-term events such as utility outages and severe wind storms.

33 (5) The system’s turbine has been approved by the State Energy
34 Resources Conservation and Development Commission as
35 qualifying under the Emerging Renewables Fund of the
36 commission’s Renewables Investment Plan or certified by a
37 national program recognized and approved by the Energy
38 Commission.

39 (6) The application includes standard drawings and an
40 engineering analysis of the tower, showing compliance with the



1 Uniform Building Code or the California Building Standards Code
2 and certification by a licensed professional engineer. A wet stamp
3 is not required if the application demonstrates that the system is
4 designed to meet the most stringent wind requirements (Uniform
5 Building Code wind exposure D), the requirements for the worst
6 seismic class (Seismic 4), and the weakest soil class, with a soil
7 strength of not more than 1,000 pounds per square foot, or other
8 relevant conditions normally required by a local agency.

9 (7) The system complies with all applicable Federal Aviation
10 Administration requirements, including any necessary approvals
11 for installations close to airports, and the requirements of the State
12 Aeronautics Act (Part 1 (commencing with Section 21001) of
13 Division 9 of the Public Utilities Code).

14 (8) The application includes a line drawing of the electrical
15 components of the system in sufficient detail to allow for a
16 determination that the manner of installation conforms to the
17 National Electric Code.

18 (9) Unless the applicant does not plan to connect the system to
19 the electricity grid, the application includes evidence, that the
20 electric utility service provider that serves the proposed site has
21 been informed of the applicant’s intent to install an interconnected
22 customer-owned electricity generator.

23 (10) In no event shall a small wind energy system be allowed
24 on a site listed in the National Register of Historic Places or the
25 California Register of Historical Resources.

26 (11) A small wind energy system shall not be allowed where
27 otherwise prohibited by any of the following:

28 (A) A local coastal program and any implementing regulations
29 adopted pursuant to the California Coastal Act, Division 20
30 (commencing with Section 30000) of the Public Resources Code.

31 (B) The California Coastal Commission, pursuant to the
32 California Coastal Act, Division 20 (commencing with Section
33 30000) of the Public Resources Code.

34 (C) The regional plan and any implementing regulations
35 adopted by the Tahoe Regional Planning Agency pursuant to the
36 Tahoe Regional Planning Compact, Title 7.4 (commencing with
37 Section 66800) of the Government Code.

38 (D) The San Francisco Bay Plan and any implementing
39 regulations adopted by the San Francisco Bay Conservation and
40 Development Commission pursuant to the McAteer-Petris Act,



1 Title 7.2 (commencing with Section 66600) of the Government
2 Code.

3 (E) A comprehensive land use plan and any implementing
4 regulations adopted by an airport land use commission pursuant to
5 Article 3.5 (commencing with Section 21670) of Chapter 4 of
6 Division 9 of Part 1 of the Public Utilities Code.

7 (F) The Alquist-Priolo Earthquake Fault Zoning Act, Chapter
8 7.5 (commencing with Section 2621) of Division 2 of the Public
9 Resources Code.

10 (G) A local agency to protect the scenic appearance of the
11 scenic highway corridor designated pursuant to Article 2.5
12 (commencing with Section 260) of Chapter 2 of Division 1 of the
13 Streets and Highways Code.

14 (H) The terms of a conservation easement entered into pursuant
15 to Chapter 4 (commencing with Section 815) of Division 2 of Part
16 2 of the Civil Code.

17 (I) The terms of an open-space easement entered into pursuant
18 to the Open-space Easement Act of 1974, Chapter 6.6
19 (commencing with Section 51070) of Division 1 of Title 5 of the
20 Government Code.

21 (J) The terms of an agricultural conservation easement entered
22 into pursuant to the California Farmland Conservancy Program
23 Act, Division 10.2 (commencing with Section 10200) of the
24 Public Resources Code.

25 (K) The terms of a contract entered into pursuant to the
26 Williamson Act, Chapter 7 (commencing with Section 51200) of
27 Division 1 of Title 5 of the Government Code.

28 (12) No other local ordinance, policy, or regulation shall be the
29 basis for a local agency to deny the siting and operation of a small
30 wind energy system under this subdivision.

31 (13) No changes in the general plan shall be required to
32 implement this subdivision. Any local agency, when amending its
33 zoning ordinance or general plan to incorporate the policies,
34 procedures, or other provisions applicable to the approval of small
35 wind energy systems, must do so in a manner consistent with the
36 requirements of this subdivision and the Permit Streamlining Act
37 (commencing with Section 65920).

38 (g) This section does not limit the authority of local agencies
39 to adopt less restrictive requirements for the siting and operation
40 of small wind energy systems.



1 (h) A local agency shall review an application for a small wind
2 energy system as expeditiously as possible pursuant to the
3 timelines established in the Permit Streamlining Act
4 (commencing with Section 65920).

5 (i) Fees charged by a local agency to review an application for
6 a small wind energy system shall be determined in accordance with
7 Chapter 5 (commencing with Section 66000).

8 (j) Any requirement of notice to property owners imposed
9 pursuant to subdivision (d) shall ensure that responses to the notice
10 are filed in a timely manner.

11 (k) This section shall become inoperative on April 1, 2005, and
12 as of January 1, 2006, is repealed, unless a later enacted statute,
13 that becomes effective on or before January 1, 2006, deletes or
14 extends that date.

15 SEC. 2. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 a local agency or school district has the authority to levy service
18 charges, fees, or assessments sufficient to pay for the program or
19 level of service mandated by this act, within the meaning of
20 Section 17556 of the Government Code.

21 SEC. 3. This act is an urgency statute necessary for the
22 immediate preservation of the public peace, health, or safety
23 within the meaning of Article IV of the Constitution and shall go
24 into immediate effect. The facts constituting the necessity are:

25 In order to meet the energy crisis in this state, it is necessary for
26 this act to take effect immediately.

