

Senate Bill No. 1989

CHAPTER 328

An act to amend Section 65892.13 of the Government Code, relating to local planning.

[Approved by Governor August 30, 2002. Filed with Secretary of State September 3, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1989, Knight. Small wind energy systems.

(1) Existing law authorizes a local agency to provide by ordinance, until July 1, 2005, for the installation of small wind energy systems, as specified, and to issue a conditional use permit for this purpose, except where otherwise prohibited by law. Existing law also authorizes a local agency to impose conditions on the installation of these systems, and requires a local agency to approve an application for a small wind energy system by right if specified conditions are met.

This bill would require a local agency that receives an application for a small wind energy system on a site within a specified restricted military airspace to forward a copy of the application to the governing authority of that airspace and to consider any written comments received from that governing authority. The bill would create a state-mandated local program by imposing new duties on local agencies.

(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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 65892.13 of the Government Code is amended to read:

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



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

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

(3) In 2000, the Legislature and Governor recognized the need to promote all feasible adoption of clean, renewable, and distributed energy sources by enacting 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). As set forth in Section 399.6 of the Public Utilities Code, the stated objectives of the act include 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."

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

(5) In light of the state's electricity supply shortage and its existing program to encourage the adoption of small wind energy systems, it is the intent of the Legislature that any ordinances regulating small wind energy systems adopted by local agencies have the effect of providing for the installation and use of small wind energy systems and that

provisions in these ordinances relating to matters including, but not limited to, parcel size, tower height, noise, notice, and setback requirements do not unreasonably restrict the ability of homeowners, farms, and small businesses to install small wind energy systems in zones in which they are authorized by local ordinance. It is the policy of the state to promote and encourage the use of small wind energy systems and to limit obstacles to their use.

(b) The implementation of consistent statewide standards to achieve the timely and cost-effective installation of small wind energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that this section apply to all local agencies, including, but not limited to, charter cities, charter counties, and charter cities and counties.

(c) The following definitions govern this section:

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

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

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

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

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

(B) Tower heights of not more than 65 feet shall be allowed on parcels between one and five acres and tower heights of not more than 80 feet shall be allowed on parcels of five acres or more, provided that the

application includes evidence that the proposed height does not exceed the height recommended by the manufacturer or distributor of the system.

(C) Setbacks for the system tower shall be no farther from the property line than the height of the system, provided that it also complies with any applicable fire setback requirements pursuant to Section 4290 of the Public Resources Code.

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

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

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

(G) The system shall comply with all applicable Federal Aviation Administration requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports, and the State Aeronautics Act (Part 1 (commencing with Section 21001) of Division 9 of the Public Utilities Code).

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

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

provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator.

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

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

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

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

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

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

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

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

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

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

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

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

(L) The listing of the proposed site in the National Register of Historic Places or the California Register of Historical Resources pursuant to Section 5024.1 of the Public Resources Code.

(4) If the governing authority of the restricted military airspace known as “R-2515” files a detailed diagram of that restricted military airspace with a local agency, and if a local agency receives an application to install a small wind energy system on a site that is within that restricted military airspace, then the local agency shall promptly forward a copy of that application to the governing authority of that restricted military airspace. If the governing authority of the restricted military airspace known as “R-2515” provides written comments regarding that application, the local agency shall consider those comments before acting on the application.

(5) In the event a small wind energy system is proposed to be sited in an agricultural area that may have aircraft operating at low altitudes, the local agency shall take reasonable steps, concurrent with other notices issued pursuant to this subdivision, to notify pest control aircraft pilots registered to operate in the county pursuant to Section 11921 of the Food and Agricultural Code.

(6) Notwithstanding the requirements of paragraph (1), a local agency may, if it deems it necessary due to circumstances specific to the proposed installation, provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the local agency in which the installation is proposed.

(7) Nothing in this section shall be construed to alter or affect existing law regarding the authority of local agencies to review an application.

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

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

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

(2) The tower height on parcels that are less than five acres does not exceed 80 feet.

(3) No part of the system, including guy wire anchors, extends closer than 30 feet to the property boundary, provided that it also complies with

any applicable fire setback requirements pursuant to Section 4290 of the Public Resources Code.

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

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

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

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

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

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

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

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

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

(C) The regional plan and any implementing regulations adopted by the Tahoe Regional Planning Agency pursuant to the Tahoe Regional

Planning Compact, Title 7.4 (commencing with Section 66800) of the Government Code.

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

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

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

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

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

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

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

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

(L) On a site listed in the National Register of Historic Places or the California Register of Historical Resources pursuant to Section 5024.1 of the Public Resources Code.

(11) If the governing authority of the restricted military airspace known as “R-2515” files a detailed diagram of that restricted military airspace with a local agency, and if a local agency receives an application to install a small wind energy system on a site that is within that restricted military airspace, then the local agency shall promptly forward a copy of that application to the governing authority of that restricted military airspace. If the governing authority of the restricted military airspace known as “R-2515” provides written comments regarding that application, the local agency shall consider those comments before acting on the application.

(12) In the event that a proposed site for a small wind energy system is in an agricultural area that may have aircraft operating at low altitudes, the local agency shall take reasonable steps, concurrent with other notices issued pursuant to this subdivision, to notify pest control aircraft pilots registered to operate in the county pursuant to Section 11921 of the Food and Agricultural Code.

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

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

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

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

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

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

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

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the restricted military airspace known as “R-2515.” The facts constituting the special circumstances are:

Federal agencies, including the Department of Defense and the Federal Aviation Administration, have designated certain specific areas as restricted military airspace in recognition of their vital national security importance. High-speed aircraft use the restricted military airspace known as “R-2515” for low-level operations that may be compromised by the siting of small wind energy systems.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

