

AMENDED IN ASSEMBLY MAY 10, 2007

AMENDED IN ASSEMBLY MAY 8, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 985**

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**Introduced by Assembly Member Saldana**

February 22, 2007

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An act to amend Sections 21168.6 and 25531 of the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 985, as amended, Saldana. Environment: judicial review.

The California Environmental Quality Act provides that in an action or proceeding against the Public Utilities Commission pursuant to the act the writ of mandate may only be filed with the Supreme Court of California. The Warren-Alquist State Energy Resources Conservation and Development Act provides that judicial review of decisions of the State Energy Resources Conservation and Development Commission on applications for certification of a power facility and related facility are subject to judicial review by the Supreme Court of California. ~~The California Constitution requires that decisions of the Supreme Court and courts of appeal that determine causes be in writing with reasons stated.~~

This bill would additionally provide jurisdiction in these instances to a court of appeal. The bill would specify the venue in the Court of Appeal for a petition or judicial review. ~~The bill would deem such a petition to constitute a cause, and the Supreme Court and courts of appeal would be required to issue their decisions granting or denying the petition in writing with reasons stated.~~

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

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

1 SECTION 1. Section 21168.6 of the Public Resources Code  
2 is amended to read:

3 21168.6. ~~(a)~~In an action or proceeding under Sections 21168  
4 or 21168.5 against the Public Utilities Commission the writ of  
5 mandate shall lie only from the Supreme Court or a court of appeal  
6 to the commission. The venue of a petition for a writ of mandate  
7 filed in the Court of Appeal pursuant to this section shall be in the  
8 judicial district in which the petitioner resides. If the petitioner is  
9 a business, the venue shall be the judicial district in which the  
10 petitioner has its principle place of business in California.

11 ~~(b) A petition for a writ of mandate pursuant to this section shall~~  
12 ~~constitute “cause” within the meaning of Section 14 of Article VI~~  
13 ~~of the California Constitution, and the decision granting or denying~~  
14 ~~the petition shall be in writing with reasons stated.~~

15 SEC. 2. Section 25531 of the Public Resources Code is  
16 amended to read:

17 25531. (a) The decisions of the commission on an application  
18 for certification of a site and related facility are subject to judicial  
19 review by the Supreme Court of California or a court of appeal.  
20 The venue of a petition for a writ of mandate filed in the Court of  
21 Appeal shall be in the judicial district in which the petitioner  
22 resides. If the petitioner is a business, the venue shall be the judicial  
23 district in which the petitioner has its principle place of business  
24 in California.

25 (b) New or additional evidence shall not be introduced upon  
26 review and the cause shall be heard on the record of the  
27 commission as certified to by it. The review shall not be extended  
28 further than to determine whether the commission has regularly  
29 pursued its authority, including a determination of whether the  
30 order or decision under review violates any right of the petitioner  
31 under the United States Constitution or the California Constitution.  
32 The findings and conclusions of the commission on questions of  
33 fact are final and are not subject to review, except as provided in  
34 this article. These questions of fact shall include ultimate facts and  
35 the findings and conclusions of the commission. A report prepared

1 by, or an approval of, the commission pursuant to Section 25510,  
2 25514, 25516, or 25516.5, or subdivision (b) of Section 25520.5,  
3 shall not constitute a decision of the commission subject to judicial  
4 review.

5 (c) Subject to the right of judicial review of decisions of the  
6 commission, a court in this state does not have jurisdiction to hear  
7 or determine a case or controversy concerning a matter that was,  
8 or could have been, determined in a proceeding before the  
9 commission, or to stop or delay the construction or operation of a  
10 thermal powerplant except to enforce compliance with the  
11 provisions of a decision of the commission.

12 (d) Notwithstanding Section 1250.370 of the Code of Civil  
13 Procedure:

14 (1) If the commission requires, pursuant to subdivision (a) of  
15 Section 25528, as a condition of certification of any site and related  
16 facility, that the applicant acquire development rights, that  
17 requirement conclusively establishes the matters referred to in  
18 Sections 1240.030 and 1240.220 of the Code of Civil Procedure  
19 in any eminent domain proceeding brought by the applicant to  
20 acquire the development rights.

21 (2) If the commission certifies a site and related facility, that  
22 certification conclusively establishes the matters referred to in  
23 Sections 1240.030 and 1240.220 of the Code of Civil Procedure  
24 in an eminent domain proceeding brought to acquire the site and  
25 related facility.

26 (e) A decision of the commission pursuant to Section 25516,  
27 25522, or 25523 shall not be found to mandate a specific supply  
28 plan for an utility as prohibited by Section 25323.

29 ~~(f) A petition for a writ of mandate pursuant to this section shall~~  
30 ~~constitute “cause” within the meaning of Section 14 of Article VI~~  
31 ~~of the California Constitution, and the decision granting or denying~~  
32 ~~the petition shall be in writing with reasons stated.~~