

AMENDED IN SENATE JUNE 23, 2009

AMENDED IN SENATE JUNE 10, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 45

Introduced by Assembly Member Blakeslee

December 1, 2008

An act to add ~~Article 2.11 (commencing with Section 65893) to and repeal Article 2.11 (commencing with Section 65893) of~~, and to repeal the heading of Article 2.11 (commencing with Section 65892.13) of, Chapter 4 of Division 1 of Title 7 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 45, as amended, Blakeslee. Distributed generation: small wind energy systems.

The California Renewables Portfolio Standard Program requires that an electrical corporation, as defined, procure a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard), subject to specified limits. The renewables portfolio standard requires each retail seller to increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010.

This bill would authorize a local agency to provide, by ordinance, for the installation of small wind energy systems, as specified, and to establish a process for the issuance of conditional use permits for these systems. The bill would also authorize a local agency to impose conditions on the installation of these systems, but would prohibit the local agency from imposing conditions relating to specified aspects of these systems that are more restrictive than certain specified requirements of, and conditions upon, these systems. ~~The~~

This bill would require a local agency that has not adopted an ordinance providing for the installation of these systems, and receives an application for the installation of a small wind energy system after July 1, 2010, but before it adopts an ordinance providing for the installation of these systems, to approve the application through a ministerial permit. The bill would specifically exempt ordinances approved prior to July 1, 2010, from the provisions of this article.

This bill would authorize a local agency to require as a condition of approval that a small wind energy system be removed if it remains inoperable for 12 consecutive months, and the small wind energy system, at that time, would be subject to nuisance codes and code enforcement action. The bill would declare that it is the policy of the state to promote and encourage the use of distributed renewable energy systems and to limit obstacles to their use.

The bill would require the State Energy Resources Conservation and Development Commission to submit, on or before January 1, 2016, to the Assembly and Senate Committees on Local Government, a report containing specified information, including the number of applications for small wind energy systems received and approved by local agencies on or after July 1, 2010.

This bill would provide that its provisions would be repealed on January 1, 2017.

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

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

- 1 SECTION 1. The heading of Article 2.11 (commencing with
- 2 Section 65892.13) of Chapter 4 of Division 1 of Title 7 of the
- 3 Government Code is repealed.

1 SEC. 2. Article 2.11 (commencing with Section 65893) is
2 added to Chapter 4 of Division 1 of Title 7 of the Government
3 Code, to read:

4
5 Article 2.11. Wind Energy
6

7 65893. (a) The Legislature finds and declares all of the
8 following:

9 (1) Wind energy is an abundant, renewable, and nonpolluting
10 energy resource.

11 (2) Wind energy, when converted to electricity, reduces our
12 dependence on nonrenewable energy resources, reduces air and
13 water pollution that result from conventional sources burning fossil
14 fuels, and reduces emissions of greenhouse gases.

15 (3) Distributed generation small wind energy systems also
16 enhance the reliability and quality of electricity delivered by the
17 electrical grid, reduce peak power demands, increase in-state
18 electricity generation, diversify the state's energy supply portfolio,
19 and make the electricity supply market more competitive by
20 promoting consumer choice.

21 (4) Small wind energy systems designed for onsite home, farm,
22 and small commercial use are recognized by the Legislature and
23 the Energy Commission as an excellent technology to help achieve
24 the goals of increased in-state electricity generation, reduced
25 demand on the state electrical grid, increased consumer energy
26 independence, and nonpolluting electricity generation.

27 (5) It is the intent of the Legislature to encourage local agencies
28 to support the state's ambitious renewable energy procurement
29 requirements by developing and adopting ordinances that facilitate
30 the installation of small wind energy systems and do not
31 unreasonably restrict the ability of homeowners, farms, and small
32 businesses to install small wind energy systems in zones in which
33 they are authorized by local ordinance.

34 (6) It is the intent of the Legislature to facilitate the
35 implementation of consistent statewide standards to achieve the
36 timely and cost-effective installation of small wind energy systems.

37 65894. For purposes of this article, the following terms shall
38 have the following meanings:

39 (1) "Energy Commission" means the State Energy Resources
40 Conservation and Development Commission.

(2) “Small wind energy system” means a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics that has a rated capacity of not more than 50 kilowatts per customer site, consistent with the requirements of paragraph (3) of subdivision (b) of Section 25744 of the Public Resources Code, and that will be used primarily to reduce onsite consumption of utility power.

(3) “System height” means the higher of either the height of the tower and the system measured to the top of the blade at the 12 o’clock position or the highest point of the system extended above the existing grade when being operated.

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

(5) “Urbanized area” has the same meaning as set forth in Section 65944.

65895. (a) A local agency that has not adopted an ordinance providing for the installation of small wind energy systems located outside an urbanized area, but within the local agency’s jurisdiction, by July 10, 2010, may adopt such an ordinance at a later date, but the ordinance shall be in accordance with Section 65896. Ordinances adopted prior to July 1, 2010, are exempt from this article.

(b) A local agency may establish a process for the issuance of conditional use permits for small wind energy systems, subject to all of the following conditions:

(1) A local agency shall review an application for a small wind energy system pursuant to the timelines established in the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

(2) Fees charged by a local agency to review an application for a small wind energy system shall be determined in accordance with Sections 66014 and 66016.

(3) An application for the installation of a small wind energy system submitted between July 1, 2010, and the date of the local agency’s adoption of an ordinance that meets the requirements and conditions of subdivision (b) of Section 65896 shall be approved through a ministerial permit by the local agency.

65896. (a) A local agency may by ordinance, provide for the installation of small wind energy systems outside an urbanized area, but within the local agency’s jurisdiction.

(b) 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, setback, noise level, visual effects, turbine approval, tower drawings, and engineering analysis, or line drawings that are more restrictive than the following requirements and conditions:

(1) The parcel where the system is located shall be at least one acre in size and located outside an urbanized area.

(2) Tower heights of not more than 80 feet shall be allowed on parcels between one and five acres. Tower heights of not more than 100 feet shall be allowed on parcels above five acres. All tower heights shall not exceed the applicable limits established by the Federal Aviation Administration. An application shall include evidence that the proposed height of a tower does not exceed the height recommended by the manufacturer or distributor of the system.

(3) Setbacks for the system tower shall be no farther from the property line than the system height, provided the system also complies with applicable fire setback requirements set forth in Section 4290 of the Public Resources Code.

(4) 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 nearest property line, except during short-term events, such as utility outages and severe windstorms.

(5) 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.

(6) The system shall not substantially obstruct views of adjacent property owners and shall be placed or constructed below any major ridgeline when visible from any 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 or any scenic highway corridor designated by a local agency general plan.

(7) The system shall use a wind turbine that has been approved by the Energy Commission as qualifying under its Emerging

1 Renewables Program pursuant to Section 25744 of the Public
2 Resources Code or has been certified by a national program
3 recognized and approved by the commission.

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

15 (9) The system shall comply with all applicable Federal Aviation
16 Administration requirements, including Subpart B (commencing
17 with Section 77.11) of Part 77 of Title 14 of the Code of Federal
18 Regulations regarding installations close to airports, and the State
19 Aeronautics Act (Part 1 (commencing with Section 21001) of
20 Division 9 of the Public Utilities Code). A system that complies
21 with this subdivision shall be deemed to meet the applicable health
22 and safety requirements regarding civil aviation.

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

27 (11) If required by the local agency, the applicant shall provide
28 information demonstrating the system will be used primarily to
29 reduce onsite consumption of electricity. The local agency may
30 also require the application to include evidence, unless the applicant
31 does not plan to connect the system to the electricity grid, that the
32 electric utility service provider that serves the proposed site has
33 been informed of the applicant's intent to install an interconnected
34 customer-owned electricity generator.

35 ~~(12) If the governing authority of the restricted military airspace~~
36 ~~known as "R-2515" files a detailed diagram of that restricted~~
37 ~~military airspace with a local agency, and if a local agency receives~~
38 ~~an application to install a small wind energy system on a site that~~
39 ~~is within that restricted military airspace, then the local agency~~
40 ~~shall promptly forward a copy of that application to the governing~~

1 ~~authority of that restricted military airspace. If the governing~~
2 ~~authority of the restricted military airspace known as “R-2515”~~
3 ~~provides written comments regarding that application, the local~~
4 ~~agency shall consider those comments before acting on the~~
5 ~~application.~~

6 *(12) If a local agency receives an application in install a small*
7 *wind energy system on a site that is within 1,000 feet of a military*
8 *installation, or within special use airspace or beneath a low-level*
9 *flight path as defined by Section 21098 of the Public Resources*
10 *Code, then the local agency shall promptly comply with Section*
11 *65944. If the governing authority of any military installation,*
12 *special use airspace, or low-level flight path provides written*
13 *comments regarding that application, the local agency shall*
14 *consider those comments before acting on the application.*

15 *(13) If a small wind energy system is proposed to be sited in an*
16 *agricultural area that may have aircraft operating at low altitudes,*
17 *the local agency shall take reasonable steps, concurrent with other*
18 *notices issued pursuant to this subdivision, to notify pest control*
19 *aircraft pilots registered to operate in the county pursuant to Section*
20 *11921 of the Food and Agricultural Code.*

21 *(14) Tower structure lighting shall be prohibited unless*
22 *otherwise required by another provision of law or pursuant to*
23 *paragraph (13).*

24 *(15) No climbing apparatus attached to the system shall be*
25 *located less than 12 feet above the ground, and the system shall*
26 *be designed to prevent climbing within the first 12 feet.*

27 *(16) No sign shall be attached to the system if visible from a*
28 *public road, except for manufacturer or installer-identification*
29 *signs, owner-identification signs, or public-health and safety signs*
30 *applicable to the installed system, but in no case shall the signs be*
31 *larger than four square feet and located at the base of the system*
32 *within 10 feet of the ground surface unless approved by the city*
33 *or county.*

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

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

1 (B) The California Coastal Commission, pursuant to the
2 California Coastal Act (Division 20 (commencing with Section
3 30000) of the Public Resources Code).

4 (C) The regional plan and any implementing regulations adopted
5 by the Tahoe Regional Planning Agency pursuant to the Tahoe
6 Regional Planning Compact (Title 7.4 (commencing with Section
7 66800)).

8 (D) The San Francisco Bay Plan and any implementing
9 regulations adopted by the San Francisco Bay Conservation and
10 Development Commission pursuant to the McAteer-Petris Act
11 (Title 7.2 (commencing with Section 66600)).

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

16 (F) The Alquist-Priolo Earthquake Fault Zoning Act (Chapter
17 7.5 (commencing with Section 2621) of Division 2 of the Public
18 Resources Code).

19 (G) A local agency to protect the scenic appearance of the scenic
20 highway corridor designated pursuant to Article 2.5 (commencing
21 with Section 260) of Chapter 2 of Division 1 of the Streets and
22 Highways Code or pursuant to scenic highways designated in the
23 local general plan.

24 (H) The terms of a conservation easement entered into pursuant
25 to Chapter 4 (commencing with Section 815) of Division 2 of Part
26 2 of the Civil Code.

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

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

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

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

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

6 (d) A local agency may require as a condition of approval that
7 a small wind energy system be removed if it remains inoperable
8 for 12 consecutive months, and at that time the small wind energy
9 system shall be subject to nuisance codes and code enforcement
10 action.

11 65897. It is the policy of the state to promote and encourage
12 the use of distributed renewable energy systems and to limit
13 obstacles to their use, and it is the intent of the Legislature that
14 local agencies encourage the installation of distributed renewable
15 energy systems by removing obstacles to, and minimizing costs
16 of, permitting distributed renewable energy systems.

17 65898. *On or before January 1, 2016, the State Energy*
18 *Resources Conservation and Development Commission shall*
19 *submit to the Assembly Committee on Local Government and the*
20 *Senate Committee on Local Government a report that contains all*
21 *of the following:*

22 (a) *The number of ordinances adopted on or after July 1, 2010,*
23 *by local agencies pursuant to Section 65895.*

24 (b) *The number of applications to install small wind energy*
25 *systems received by local agencies on or after July 1, 2010.*

26 (c) *The number of applications to install small wind energy*
27 *systems approved by local agencies on or after July 1, 2010.*

28 (d) *The tower heights, system heights, parcel sizes, and*
29 *generating capacities of the small wind energy systems approved*
30 *by local agencies on or after July 1, 2010.*

31 (e) *Any recommendations to the Legislature by the State Energy*
32 *Resources Conservation and Development Commission for the*
33 *continuation, modification, or termination of this article.*

34 65899. *This article shall remain in effect only until January 1,*
35 *2017, and as of that date is repealed, unless a later enacted statute,*
36 *that is enacted before January 1, 2017, deletes or extends that*
37 *date.*