

Assembly Bill No. 45

CHAPTER 404

An act to add 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.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 45, 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 county to adopt an ordinance that provides for the installation of small wind energy systems outside an urbanized area, but within the county's jurisdiction, and to establish a process for the issuance of conditional use permits for these systems, subject to specified conditions. The bill would also authorize a county to impose conditions on the installation of these systems, but would prohibit the county from imposing conditions relating to specified aspects of these systems that are more restrictive than certain specified requirements of, and conditions upon, these systems.

This bill would authorize a county that has not adopted an ordinance providing for the installation of these systems within its jurisdiction by January 1, 2011, to adopt an ordinance providing for the installation of these systems within its jurisdiction at a later date, but would require that ordinance, when adopted, to be in accordance with a specified provision of law. The bill would specifically exempt ordinances approved prior to January 1, 2011, from the provisions of this article. The bill would require a county to approve an application for the installation of one of these systems submitted between January 1, 2011, and the date of the county's adoption of an ordinance that meets specified requirements through the issuance of a ministerial permit that meets specified requirements, if the county

establishes a process for the issuance of conditional use permits for small wind energy systems.

This bill would authorize a county to impose as a condition of approval a requirement 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 specify that nothing in this article interferes with or prevents the exercise of authority by a county to carry out its programs, projects, or responsibilities, or affects the requirements imposed under any other provision of law.

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 and the Assembly Committee on Utilities and Commerce, a report containing specified information, including the number of applications for small wind energy systems received and approved by the counties that have adopted wind energy system ordinances on or after January 1, 2011.

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

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

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

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

Article 2.11. Wind Energy

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

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

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

(3) Distributed generation small wind energy systems also enhance the reliability and quality of electricity delivered by the electrical 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.

(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 electrical grid, increased consumer energy independence, and nonpolluting electricity generation.

(5) It is the intent of the Legislature to encourage local agencies to support the state's ambitious renewable energy procurement requirements by developing and adopting ordinances that facilitate the installation of small wind energy systems and 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.

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

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

(1) "Energy Commission" means the State Energy Resources 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 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" means either of the following:

(A) An urbanized area as defined in paragraph (2) of subdivision (d) of Section 65944.

(B) A city as defined in Section 56023.

65895. (a) A county that has not adopted an ordinance providing for the installation of small wind energy systems located outside an urbanized area, but within the county's jurisdiction, by January 1, 2011, may adopt such an ordinance at a later date, but the ordinance shall be in accordance with Section 65896. Ordinances adopted prior to January 1, 2011, are exempt from this article.

(b) A county may establish a process for the issuance of conditional use permits for small wind energy systems located outside an urbanized area, subject to all of the following conditions:

(1) A county 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 county 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 January 1, 2011, and the date of the county'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 county meeting the requirements and conditions of subdivision (b) of Section 65896.

65896. (a) A county may adopt an ordinance that provides for the installation of small wind energy systems outside an urbanized area, but within the county'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) Minimum setbacks for the system tower shall be no farther from the property line than the system height, unless a greater setback is needed to comply 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 or applicable noise regulations, 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, except that the county may, if it deems it necessary due to circumstances specific to the proposed installation, require the applicant to provide notice by placing a display advertisement of at least one-eighth of a page in at least one newspaper of general circulation within the county in which the installation is proposed.

(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 county in its general plan.

(7) The system shall use a wind turbine that has been approved by the Energy Commission as qualifying under its Emerging Renewables Program pursuant to Section 25744 of the Public Resources Code or has been certified by a national program recognized and approved by the commission.

(8) The application shall include standard drawings and an engineering analysis of the system's tower, showing compliance with the current version of the California Building Standards Code and certification by a professional mechanical, structural, or civil engineer licensed by this state. A wet stamp, however, shall not be 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 county.

(9) 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). A system that complies with this subdivision shall be deemed to meet the applicable health and safety requirements regarding civil aviation.

(10) 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.

(11) If required by the county, the applicant shall provide information demonstrating the system will be used primarily to reduce onsite consumption of electricity. The county 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.

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

(13) If a small wind energy system is proposed to be sited in an agricultural area that may have aircraft operating at low altitudes, the county 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.

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

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

(16) No sign shall be attached to the system if visible from a public road, except for signs that identify the manufacturer, installer, or owner of the system, or public health and safety signs applicable to the installed system, but the signs shall neither be larger than four square feet, unless approved by the county, nor located at the base of the system within 10 feet of the ground surface.

(17) 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)).

(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)).

(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 ordinance 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 or pursuant to scenic highways designated in the local general plan.

(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).

(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).

(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.

(c) A county may impose, as a condition of approval, a requirement that a small wind energy system be removed if it remains inoperable for 12 consecutive months, and at that time the small wind energy system shall be subject to nuisance codes and code enforcement action.

(d) (1) Nothing in this article interferes with or prevents the exercise of authority by a county to carry out its programs, projects, or responsibilities.

(2) Nothing in this article affects requirements imposed under any other law.

65897. 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, and it is the intent of the Legislature that local agencies encourage the installation of distributed renewable energy systems by removing obstacles to, and minimizing costs of, permitting distributed renewable energy systems.

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

(a) The number of ordinances adopted on or after January 1, 2011, by counties pursuant to Section 65895.

(b) The number of applications to install small wind energy systems received by those counties on or after January 1, 2011.

(c) The number of applications to install small wind energy systems approved by those counties on or after January 1, 2011.

(d) The tower heights, system heights, parcel sizes, and generating capacities of the small wind energy systems approved by those counties on or after January 1, 2011.

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

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