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AMENDED IN ASSEMBLY MARCH 1, 2011

CALIFORNIA LEGISLATURE—2011–12 FIRST EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 13

**Introduced by Assembly Members V. Manuel Pérez, Bradford, and
Skinner**
(Principal coauthor: Senator Rubio)
(Coauthor: Assembly Member John A. Pérez)

February 7, 2011

An act to amend Sections 2069 and 2099 of, and to add ~~Section 2099.10 to~~ *and repeal Section 2099.10 of*, the Fish and Game Code, and to amend Section 25524 of, and to add Section 25619 to, the Public Resources Code, relating to renewable energy resources, *and* making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 13, as amended, V. Manuel Pérez. Energy: renewable resources: endangered species: environmental impact reports.

(1) The California Endangered Species Act (CESA) requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species, and requires the Department of Fish and Game to recommend, and the commission to adopt, criteria for determining if a species is endangered or threatened. CESA authorizes the department to authorize the take of threatened species, endangered species, or candidate species by permit if certain requirements are met. CESA

authorizes the department, in consultation with the State Energy Resources Conservation and Development Commission (Energy Commission) and, to the extent practicable, the United States Fish and Wildlife Service and the United States Bureau of Land Management, to design and implement actions to protect, restore, or enhance the habitat of plants and wildlife that can be used to fully mitigate the impacts of the take of endangered, threatened, or candidate species (mitigation actions) resulting from certain solar thermal and photovoltaic powerplants in the planning area of the Desert Renewable Energy Conservation Plan.

This bill additionally would authorize the department to design and implement these mitigation actions for proposed wind and geothermal powerplants in the planning area subject to the Desert Renewable Energy Conservation Plan.

(2) Existing law requires the department to collect, and requires the owner or developer of an eligible project to pay, a one-time permit application fee of \$75,000 to the department for deposit into the Fish and Game Preservation Fund. Existing law requires the department to utilize the permit application fee to pay for all or a portion of the department's cost of processing incidental take permit applications pursuant to CESA.

This bill would additionally require the department, *until January 1, 2016*, to collect, and an owner or developer of an eligible project to pay, a permit application fee of either \$25,000, \$50,000, or \$75,000, as specified, to the department for deposit into the *Renewable Resources Permitting Account, to be established in the Fish and Game Preservation Fund*, to pay for all or a portion of the department's cost of processing incidental take permit applications *and specified administrative expenses*. The bill would define "eligible project" to mean an eligible renewable energy resource, as defined in the California Renewables Portfolio Standard Program. If the permit application fee is determined by the department to be insufficient to complete permitting work due to the complexity of a project, the bill would require the department to collect an additional fee from the owner or developer to pay for its estimated costs, not to exceed an additional \$200,000. The bill would require the department and the Energy Commission to enter into a cost-sharing agreement, as specified, governing all eligible projects, as defined, that are subject to the commission's certification requirements. The bill would appropriate \$6,000,000 from the Fish and Game Preservation Fund, thereby making an appropriation. ~~The bill would~~

~~require, of the funds appropriated, that 10% be allocated only after the department submits to the Joint Legislative Budget Committee, by February 1, 2012, certain information related to fee collection, expenditure, and workload, for the first 6 months of the fiscal year. The bill would prohibit the release of that allocation for expenditure until March 1, 2012.~~

Existing law establishes the Renewable Energy Resources Development Fee Trust Fund as a continuously appropriated fund in the State Treasury to serve, and be managed, as an optional, voluntary method for developers or owners of eligible projects, as defined, to deposit fees sufficient to complete mitigation actions established by the department and thereby meet their requirements pursuant to CESA or the certification authority of the Energy Commission. The definition of eligible projects, for purposes of these provisions and fees, is limited to certain solar thermal powerplants and photovoltaic powerplants proposed to be constructed in the planning area subject to the Desert Renewable Energy Conservation Plan.

This bill would expand the definition of eligible projects to include wind and geothermal powerplants proposed to be constructed in the planning area subject to the Desert Renewable Energy Conservation Plan. By expanding the purposes for which moneys in this continuously appropriated fund may be used, this bill would make an appropriation.

(3) The Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission), and requires it to certify sufficient sites and related facilities that are required to provide a supply of electricity sufficient to accommodate projected demand for power statewide. The act grants the Energy Commission the exclusive authority to certify any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto.

Existing law requires the Energy Commission to establish a process for certain applicants for certification of a solar thermal powerplant that is proposed to be constructed in the planning area subject to the Desert Renewable Energy Conservation Plan, as defined, that allows the applicant to elect to pay additional fees to be used by the Energy Commission to contract with 3rd parties to assist the Energy Commission staff in performing the analysis otherwise performed by staff in determining whether or not to issue a certification.

This bill would expand this process to include any applicant for certification of an eligible renewable energy resource.

The bill would require the Energy Commission to provide \$7,000,000 in grants to qualified counties, *as defined*, for the development or revision of rules and policies, including, but not limited to, general plan elements, zoning ordinances, and a natural community conservation plan as a plan participant, to facilitate the development of eligible renewable energy resources, and their associated electric transmission facilities, ~~on disturbed lands, as defined~~, and the processing of permits for eligible renewable energy resources. The bill would require a general plan element or zoning ordinance that is adopted or revised pursuant to a grant to be completed within 2 years of receipt of the grant and be consistent with the conservation strategies of any natural community conservation plan, if one has been approved or is under development. The bill would prohibit the commission from awarding a grant to a county that is not a “plan participant,” as defined, in the Desert Renewable Energy Conservation Plan. The bill would require the Energy Commission, in its initial round of grant funding, to establish a preference for a grant to a qualified county in an amount that is adequate to develop a renewable energy element in its general plan that will facilitate the development and siting of eligible renewable energy resources that utilize multiple renewable energy technologies, and to also establish a preference for a grant for those counties that have experience in geothermal energy development and have adopted a geothermal element, as defined, to its general plan.

(4) This bill would provide that Section 3 of this bill would be operative only if SB 16 of the 2011–12 Regular Session is enacted and becomes effective on or before January 1, 2012. This bill would require Section 3 of this bill to be operative on the effective date of this act or on the effective date of SB 16, whichever is later.

(5) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.

This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

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

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

1 SECTION 1. Section 2069 of the Fish and Game Code is
2 amended to read:

3 2069. (a) For purposes of this section, the following terms
4 have the following meanings:

5 (1) “Desert Renewable Energy Conservation Plan” means the
6 completed conservation plan in the Mojave and Colorado Desert
7 regions adopted pursuant to the Natural Community Conservation
8 Planning Act (Chapter 10 (commencing with Section 2800)), and
9 covers the geographical area described in the Draft Planning
10 Agreement, as amended by, and among, the Department of Fish
11 and Game, California Energy Commission, United States Bureau
12 of Land Management, and United States Fish and Wildlife Service
13 for the Desert Renewable Energy Conservation Plan.

14 (2) “Energy Commission” means the State Energy Resources
15 Conservation and Development Commission.

16 (b) The department, in consultation with the Energy Commission
17 and, to the extent practicable, the United States Fish and Wildlife
18 Service and the United States Bureau of Land Management, may
19 design and implement actions, including the purchase of land and
20 conservation easements, to protect, restore, or enhance the habitat
21 of plants and wildlife that can be used to fully mitigate the impacts
22 of the take of endangered species, threatened species, or candidate
23 species, for purposes of paragraph (2) of subdivision (b) of Section
24 2081 and Chapter 6 (commencing with Section 25500) of Division
25 15 of the Public Resources Code, resulting from solar thermal,
26 photovoltaic, wind, and geothermal powerplants in the Desert
27 Renewable Energy Conservation Plan planning area that meet
28 either of the following requirements:

29 (1) Either the Energy Commission determines that the
30 application for certification is complete by December 31, 2011,
31 or the lead agency for purposes of the California Environmental
32 Quality Act (Division 13 (commencing with Section 21000) of

1 the Public Resources Code) has determined the project permit
2 application is complete or has issued a notice of preparation of an
3 environmental impact report by December 31, 2011.

4 (2) The developer or owner of the proposed powerplant or
5 generation facility has applied for, and would qualify for, funding
6 under the federal American Recovery and Reinvestment Act of
7 2009 (Public Law 111-5). For purposes of this paragraph,
8 “funding” means a loan guarantee made pursuant to Section 406
9 of the act (42 U.S.C. Sec. 16516) or a grant for specified energy
10 property in lieu of a tax credit provided pursuant to Section 1603
11 of Division B of the act, which division is titled the American
12 Recovery and Reinvestment Tax Act of 2009.

13 (c) A mitigation action may only be used for the mitigation
14 purposes described in subdivision (b) if it meets one of the
15 following conditions:

16 (1) The department has implemented the mitigation action and
17 determined that the action has resulted in the protection, restoration,
18 or enhancement of the habitat of one or more species that are
19 proposed to be covered by the Desert Renewable Energy
20 Conservation Plan, and that are located in the planning area, and,
21 based upon that determination, can be used, for purposes of
22 paragraph (2) of subdivision (b) of Section 2081, to fully mitigate
23 for the impacts of the take of those species from one or more
24 projects that meet the requirement of subdivision (b).

25 (2) The mitigation action is included in an interim mitigation
26 strategy for projects that meet the requirement of subdivision (b).
27 An interim mitigation strategy pursuant to this paragraph shall be
28 developed by the department, in consultation with the Energy
29 Commission and, to the extent practicable, the United States Fish
30 and Wildlife Service and the United States Bureau of Land
31 Management, and shall include all of the following:

32 (A) A description of specific mitigation areas and specific
33 actions on public or private land within the Desert Renewable
34 Energy Conservation Plan planning area that are to be
35 implemented, including a focus on habitat preservation, while also
36 including enhancement or restoration actions that will do all of the
37 following:

38 (i) Contribute to the conservation of each candidate species,
39 threatened species, or endangered species for which a permit is
40 issued.

1 (ii) Adopt a regional planning perspective that provides a
2 foundation for, or that will complement, any conservation strategy
3 to be developed for the Desert Renewable Energy Conservation
4 Plan.

5 (iii) Implement mitigation actions within a reasonable period
6 of time relative to the impact to the affected candidate species,
7 threatened species, or endangered species, including, where
8 feasible, advance mitigation. For purposes of this clause, “advance
9 mitigation” means mitigation implemented before, and in
10 anticipation of, future impacts to natural resources.

11 (iv) Include a description of the species that would be benefited
12 by each mitigation action and how it would be benefited.

13 (B) A cost estimate for each action, whether on public or private
14 land, using total cost accounting, including, as applicable, land
15 acquisition costs, conservation easement costs, monitoring costs,
16 transaction costs, restoration costs, the amount of a perpetual
17 endowment account for land management or easement stewardship
18 costs by the department or other management entity, and
19 administrative costs.

20 (d) The interim mitigation strategy shall be based on best
21 available science and shall be reviewed by the Desert Renewable
22 Energy Conservation Plan independent science advisers. The
23 department shall seek and consider comments from the Desert
24 Renewable Energy Conservation Plan independent science advisers
25 in the design and location of each mitigation action implemented
26 pursuant to this section. If the department elects to not incorporate
27 comments of the independent science advisers into mitigation
28 actions, the department shall explain the reasons for that decision
29 in writing.

30 (e) The interim mitigation strategy shall be completed by the
31 department no later than 60 days following the operative date of
32 the act adding this section.

33 (f) (1) This section does not modify the requirements of Section
34 2081, including the requirement to avoid and minimize impacts,
35 where feasible, or the requirements of Division 13 (commencing
36 with Section 21000) of, or Chapter 6 (commencing with Section
37 25500) of Division 15 of, the Public Resources Code, or affect the
38 existing authority of the department to authorize mitigation actions
39 to comply with this chapter.

1 (2) With respect to the Energy Commission, in the case of an
 2 applicant seeking certification for a solar thermal or geothermal
 3 powerplant pursuant to Chapter 6 (commencing with Section
 4 25500) of Division 15 of the Public Resources Code, or a lead
 5 agency, as defined in Section 21067 of the Public Resources Code,
 6 in the case of an applicant seeking approval of a renewable energy
 7 powerplant not subject to the Energy Commission’s jurisdiction,
 8 the sole effect of a mitigation action described in subdivision (c),
 9 and paid for through the deposit of fees as described in Section
 10 2099, is to relieve an applicant of the obligation to directly take
 11 actions that are taken instead by the department or its contractor
 12 or designee pursuant to subdivision (b) to meet the applicant’s
 13 obligations with respect to mitigating the powerplant’s impacts to
 14 species and habitat. The mitigation action and deposit of fees shall
 15 not relieve the applicant of any other obligation, or the Energy
 16 Commission or the lead agency of any of its existing requirements
 17 of Division 13 (commencing with Section 21000) of, or the
 18 requirements of Chapter 6 (commencing with Section 25500) of
 19 Division 15 of, the Public Resources Code to analyze, avoid,
 20 minimize, or mitigate impacts to species and habitat, or make the
 21 findings required by those statutes.

22 (g) The mitigation actions implemented pursuant to this section
 23 shall be incorporated into the Desert Renewable Energy
 24 Conservation Plan upon the finalization of the plan, to the extent
 25 the mitigation actions are consistent with the plan’s conservation
 26 strategy.

27 SEC. 2. Section 2099 of the Fish and Game Code is amended
 28 to read:

29 2099. (a) For purposes of this section, the following terms
 30 have the following meanings:

31 (1) “Eligible project” means a solar thermal powerplant,
 32 photovoltaic powerplant, wind powerplant, or geothermal
 33 powerplant meeting the requirements of paragraph (1) or (2) of
 34 subdivision (b) of Section 2069 or meeting the definition of a
 35 “covered activity” in the final Desert Renewable Energy
 36 Conservation Plan, as approved by the department.

37 (2) “Energy Commission” means the State Energy Resources
 38 Conservation and Development Commission.

39 (b) (1) The Renewable Energy Resources Development Fee
 40 Trust Fund is hereby established in the State Treasury. The

1 department shall collect a fee from the owner or developer of an
2 eligible project that elects to use mitigation actions developed and
3 approved by the department pursuant to Section 2069, and all
4 moneys received for purposes of mitigation actions pursuant to
5 Section 2069 shall be deposited in the fund and shall be held in
6 trust and be expended solely for the purposes of, and in conformity
7 with, that section, applicable permit or certification requirements
8 for eligible projects, and any contractual agreement between the
9 Energy Commission or department and the owner or developer of
10 an eligible project. The department may contract with, or award
11 grants to, third parties to implement mitigation actions in
12 conformity with Section 2069 and this section.

13 (2) Upon direction by the department, the Controller shall create
14 any accounts or subaccounts within the fund that the department
15 determines are necessary or convenient to facilitate management
16 of the fund.

17 (3) The fund shall serve, and be managed, as an optional,
18 voluntary method for developers or owners of eligible projects to
19 deposit fees to complete mitigation actions meeting the conditions
20 of subdivision (c) of Section 2069 and for the purpose of meeting
21 the requirements of this chapter or the requirements of Chapter 6
22 (commencing with Section 25500) of Division 15 of the Public
23 Resources Code by funding mitigation actions implemented by
24 the department or third parties in a contractual relationship with
25 the department. Notwithstanding Section 13340 of the Government
26 Code, the money in the fund is hereby continuously appropriated
27 to the department, without regard to fiscal years, for the purposes
28 enumerated in this section and Section 2069. An expenditure shall
29 not be made from the fund except as authorized by the department.

30 (4) The sum of ten million dollars (\$10,000,000) is hereby
31 transferred, as a loan, from the Renewable Resource Trust Fund
32 to the fund. This loan shall be repaid from the fund to the
33 Renewable Resource Trust Fund no later than December 31, 2012.
34 The department shall use these funds, pursuant to paragraph (1)
35 of subdivision (c) of Section 2069, to purchase mitigation lands
36 or conservation easements, and to cover related restoration,
37 monitoring, and transaction costs incurred in advance of the receipt
38 of fees pursuant to paragraph (5) and to cover the department's
39 administrative costs for the program.

1 (5) A developer or owner of an eligible project that elects to
2 use mitigation actions developed and authorized by the department
3 pursuant to Section 2069 shall remit fees to the department for
4 deposit into the fund for those mitigation actions in an amount that
5 reflects the determination by the Energy Commission, with respect
6 to a solar thermal or geothermal powerplant subject to its
7 jurisdiction, or the department, with respect to a renewable energy
8 powerplant not subject to the Energy Commission's jurisdiction,
9 of the costs attributable to the mitigation actions that meet the
10 standards of this chapter. The amount of fees to be paid by a
11 developer or owner of an eligible project to meet the standards of
12 this chapter shall be calculated on a per acre basis, using total cost
13 accounting, and shall include, as applicable, land acquisition or
14 conservation easement costs, monitoring costs, restoration costs,
15 transaction costs, the amount of a perpetual endowment account
16 for land management or easement stewardship costs by the
17 department or other management entity, and administrative costs
18 and funds sufficient to repay any expenditure of state funds made
19 pursuant to paragraph (4). To ensure the funds deposited pursuant
20 to this section are sufficient to meet the standards of this chapter,
21 the project developer or owner, in addition to payment of those
22 funds, shall provide security, in a form and amount, not to exceed
23 5 percent of the amount of the funds, excluding any portion of the
24 funds to be used for a perpetual endowment, to be determined by
25 the Energy Commission, with respect to a solar thermal or
26 geothermal powerplant subject to its jurisdiction, or to be
27 determined by the department, with respect to a renewable energy
28 powerplant not subject to the Energy Commission's jurisdiction.

29 (c) The department shall monitor the implementation of the
30 mitigation actions and the progress of the construction of the
31 eligible projects. The department shall report all deposits, and the
32 source of those deposits, on its Internet Web site. The department
33 shall also report all expenditures from the fund on its Internet Web
34 site and identify the mitigation activities or programs that each
35 expenditure funded and its relationship to the permitted project.
36 The Energy Commission, with respect to a solar thermal or
37 geothermal powerplant subject to its jurisdiction, and the
38 department, with respect to a renewable energy powerplant not
39 subject to the Energy Commission's jurisdiction, shall ensure that
40 moneys paid pursuant to this section are used only for purposes

1 of satisfying the standards of paragraph (2) of subdivision (b) of
2 Section 2081. Where moneys are used to fund mitigation actions,
3 including the acquisition of lands or conservation easements, or
4 the restoration of lands, that use shall be in addition to, and not
5 duplicative of, mitigation obtained through any other means.

6 (d) The department and the Energy Commission shall not allow
7 any use of the interim mitigation strategy subsequent to a
8 determination by the department that the time and extent of
9 mitigation actions are not being implemented in rough proportion
10 to the impacts of those projects. The department shall reinstitute
11 the use of the interim mitigation strategy when the department
12 determines the rough proportionality between mitigation actions
13 and impacts of eligible projects has been reestablished by the
14 completion of additional mitigation actions.

15 SEC. 3. Section 2099.10 is added to the Fish and Game Code,
16 to read:

17 2099.10. (a) (1) The Legislature finds and declares that it is in
18 the interest of the state that incidental take permit applications
19 submitted by renewable energy developers be processed by the
20 department in a timely, efficient, and thorough manner and the
21 department be funded adequately to review and process the
22 applications. It is further the intent of the Legislature that the
23 department work in a transparent and consultative manner with
24 renewable energy developers who apply for incidental take permits,
25 including as described in this section and Section 2099.20.

26 (2) For purposes of this section and Section 2099.20, the
27 following terms have the following meanings:

28 (A) “Eligible project” means an eligible renewable energy
29 resource, as defined in the California Renewables Portfolio
30 Standard Program (Article 16 (commencing with Section 399.11)
31 of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code).

32 (B) “Energy Commission” means the State Energy Resources
33 Conservation and Development Commission.

34 (b) The department shall collect the following permit
35 application fee from the owner or developer of an eligible project
36 that is not subject to the Energy Commission’s certification
37 requirements to support the permitting of eligible projects pursuant
38 to this chapter:

39 (1) Twenty-five thousand dollars (\$25,000) for projects,
40 regardless of size, that are subject only to Section 2080.1.

1 (2) Twenty-five thousand dollars (\$25,000) for projects that are
2 less than 50 megawatts.

3 (3) Fifty thousand dollars (\$50,000) for projects that are not
4 less than 50 megawatts and not more than 250 megawatts.

5 (4) Seventy-five thousand dollars (\$75,000) for projects that
6 are more than 250 megawatts.

7 (c) (1) For applications submitted to the department on or after
8 the effective date of this act, the department shall collect the permit
9 application fee at the time the owner or developer submits its
10 permit application. For applications submitted after June 30, 2011,
11 but before the effective date of the act, the department shall collect
12 the permit application fee upon the effective date of the act and
13 shall not deem the application complete until it has collected the
14 permit application fee. Permit applications submitted prior to June
15 30, 2011, or deemed complete prior to the effective date of the act
16 shall not be subject to fees established pursuant to this section.

17 (2) *If an owner or developer withdraws a project within 30 days*
18 *after paying the permit application fee, the department shall refund*
19 *any unused portion of the fee to the owner or developer.*

20 ~~(2)~~

21 (3) The department shall utilize the permit application fee only
22 to pay for all or a portion of the department's cost of processing
23 incidental take permit applications pursuant to subdivision (b) of
24 Section 2081 and Section 2080.1 *and of the department's cost of*
25 *complying with the requirements of subdivision (f).*

26 (d) (1) If the permit application fee paid pursuant to subdivision
27 (b) is determined by the department to be insufficient to complete
28 permitting work due to the complexity of a project, the department
29 shall collect an additional fee from the owner or developer to pay
30 for its estimated costs. Upon its determination, the department
31 shall notify the applicant of the reasons why an additional fee is
32 necessary and the estimated amount of the additional fee.

33 (2) The additional fee shall not exceed an amount that, when
34 added to the fee paid pursuant to subdivision (b), equals two
35 hundred thousand dollars (\$200,000). The department shall collect
36 the additional fee before a final decision on the application by the
37 department.

38 (e) (1) It is the intent of the Legislature that the department
39 participate in the Energy Commission's site certification process
40 for eligible projects as the state's trustee for natural resources.

1 (2) The department and the Energy Commission shall enter into
2 a cost-sharing agreement governing all eligible projects that are
3 subject to the Energy Commission's certification requirements.
4 The agreement shall ensure that all or a portion of the department's
5 costs of participating in the Energy Commission's site certification
6 process for eligible projects for the purpose of advising the Energy
7 Commission with regard to the Energy Commission's issuance of
8 incidental take authorization, pursuant to Section 2080.1 and
9 subdivision (b) of Section 2081, shall be paid to the department
10 by the Energy Commission from the fees received by the Energy
11 Commission pursuant to subdivision (a) of Section 25806 of the
12 Public Resources Code.

13 (3) Funds identified by the Energy Commission for transfer to
14 the department pursuant to the cost-sharing agreement required in
15 paragraph (2) are exempt from the requirements of subdivision (d)
16 of Section 25806 of the Public Resources Code.

17 (f) ~~The department shall annually~~ (1) *In order to meet the intent*
18 *of the Legislature pursuant to paragraph (1) of subdivision (a),*
19 *the department shall carry out both of the following:*

20 (A) *By January 1, 2012, and every six months thereafter, until*
21 *January 1, 2014, the department shall submit a report to the*
22 *Legislature that provides information related to the department's*
23 *fee collections, expenditures, and workload pursuant to this section,*
24 *including, as feasible, the information required in paragraph (1)*
25 *of subdivision (e) of Section 2099.20.*

26 (B) *By January 1, 2013, and annually thereafter, the department*
27 *shall review the permit application fees paid pursuant to*
28 *subdivisions (b) and (d) and shall recommend adjustments to the*
29 *Legislature in an amount necessary to pay the full costs of*
30 *processing the project's incidental take permit.* ~~The~~

31 (2) *It is the intent of the Legislature that the Joint Legislative*
32 *Audit Committee shall, during the 2014 calendar year, determine*
33 *whether to approve an audit of the department's activities pursuant*
34 *to this section. In making its determination, the committee shall*
35 *consider information submitted by the department to the*
36 *Legislature pursuant to this section and Section 2099.20.*

37 (g) *The fees paid to the department pursuant to this section shall*
38 *be deposited in the Renewable Resources Permitting Account,*
39 *which is hereby established in the Fish and Game Preservation*

1 Fund, and shall be eligible for expenditure by the department
2 pursuant to subdivision (b) of Section 2081 and Section 2080.1.

3 ~~(g) If an owner or developer withdraws a project within 30 days
4 after paying the permit application fee, the department shall refund
5 any unused portion of the fee to the owner or developer.~~

6 (h) ~~(1)~~ For purposes of this section, the Legislature hereby
7 appropriates six million dollars (\$6,000,000) from the Fish and
8 Game Preservation Fund.

9 ~~(2) Of the funds appropriated pursuant to this subdivision, 10
10 percent shall be allocated only after the department submits to the
11 Joint Legislative Budget Committee, by February 1, 2012,
12 information related to fee collection, expenditure and workload,
13 including, as feasible, the information required in paragraph (1)
14 of subdivision (e) of Section 2099.20, for the first six months of
15 the fiscal year. That allocation shall not be released for expenditure,
16 until March 1, 2012.~~

17 (i) *This section shall remain in effect only until January 1, 2016,
18 and as of that date is repealed, unless a later enacted statute, that
19 is enacted before January 1, 2016, deletes or extends that date.*

20 SEC. 4. Section 25524 of the Public Resources Code is
21 amended to read:

22 25524. (a) “Qualified applicant” for purposes of this section
23 means an applicant for certification of an eligible renewable energy
24 resource, as defined in the California Renewables Portfolio
25 Standard Program (Article 16 (commencing with Section 399.11)
26 of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code).

27 (b) The commission shall establish a process to allow a qualified
28 applicant to elect to pay additional fees to be used by the
29 commission to contract with a third party, or more than one third
30 party, to assist commission staff in performing the analysis
31 otherwise performed by commission staff in determining whether
32 or not to issue a certification. The commission shall retain
33 discretion as to when this option will be offered to a qualified
34 applicant.

35 (c) The amount of the fees charged by the commission pursuant
36 to this section shall be conditioned upon the qualified applicant
37 agreeing to that amount and electing to proceed with the retention
38 of the third party or parties pursuant to subdivision (b).

1 (d) All fees paid by a qualified applicant shall be used
2 exclusively for analysis of that applicant’s application for
3 certification.

4 SEC. 5. Section 25619 is added to the Public Resources Code,
5 to read:

6 25619. (a) For purposes of this section, ~~the following~~
7 ~~definitions shall apply:~~

8 (1) ~~“Agricultural activities” has the same meaning as defined~~
9 ~~in subdivision (c) of Section 3482.5 of the Civil Code except for~~
10 ~~livestock production, notwithstanding the periodic use of the land~~
11 ~~for the production and utilization of forage.~~

12 (2) ~~“Disturbed lands” means lands that have been mechanically~~
13 ~~disturbed, including lands that have been converted from native~~
14 ~~vegetation through plowing, bulldozing, or other mechanical means~~
15 ~~in support of activities that change the land cover, including, but~~
16 ~~not limited to, agriculture, mining, and clearance for development~~
17 ~~purposes. These lands, based on appropriate biological surveys,~~
18 ~~may also have diminished value as habitat for mitigation purposes~~
19 ~~for endangered, threatened, candidate, and other sensitive species.~~
20 ~~Agricultural land shall not qualify for disturbed lands unless it also~~
21 ~~qualifies as marginally productive or physically impaired, pursuant~~
22 ~~to paragraphs (3) and (4).~~

23 (3) ~~“Marginally productive” means parcels consisting~~
24 ~~predominantly of soil with significantly reduced agricultural~~
25 ~~productivity due to chemical or physical limitations. A parcel of~~
26 ~~land may be designated as marginally productive pursuant to this~~
27 ~~paragraph if both of the following apply:~~

28 (A) ~~The parcel was not irrigated for agricultural activities during~~
29 ~~the prior six years.~~

30 (B) ~~Use of the parcel is significantly limited for agricultural~~
31 ~~activities due to its topography, drainage, flooding, adverse soil~~
32 ~~conditions, or other physical reasons.~~

33 (4) ~~“Physically impaired land” means land with severely adverse~~
34 ~~soil conditions that are detrimental to continued agricultural~~
35 ~~cultivation and production. Severely adverse soil conditions may~~
36 ~~include, but are not limited to, contamination by salts or selenium,~~
37 ~~or other naturally occurring contaminants. The Secretary of Food~~
38 ~~and Agriculture may consult with the Secretary of the Natural~~
39 ~~Resources Agency and consider information from the agricultural~~
40 ~~commissioner in the county where the land is located.~~

1 ~~(5) “Qualified~~
 2 “*qualified* counties” means the Counties of Fresno, Imperial,
 3 Inyo, Kern, Kings, Los Angeles, Madera, Merced, Riverside, San
 4 Bernardino, San Diego, San Joaquin, Stanislaus, and Tulare.
 5 (b) The commission shall provide up to seven million dollars
 6 (\$7,000,000) in grants to qualified counties for the development
 7 or revision of rules and policies, including, but not limited to,
 8 general plan elements, zoning ordinances, and a natural community
 9 conservation plan as a plan participant, that facilitate the
 10 development of eligible renewable energy resources, and their
 11 associated electric transmission facilities, ~~on disturbed lands~~ and
 12 the processing of permits for eligible renewable energy resources.
 13 The commission may allocate not more than 1 percent of
 14 appropriated funds to provide training to county planning staff to
 15 facilitate the siting and permitting of eligible renewable energy
 16 resources. A general plan element or zoning ordinance that is
 17 adopted or revised pursuant to this section shall be completed
 18 within two years of receipt of the grant and shall be consistent with
 19 the conservation strategies of any natural community conservation
 20 plan if one has been approved, or is under development, pursuant
 21 to the Natural Community Conservation Planning Act (Chapter
 22 10 (commencing with Section 2800) of Division 3 of the Fish and
 23 Game Code). For counties within the Desert Renewable Energy
 24 Conservation Plan planning area, the commission shall not award
 25 a grant to a county that is not a “plan participant,” as defined by
 26 paragraph (1) of subdivision (j) of Section 2805 of the Fish and
 27 Game Code, in the Desert Renewable Energy Conservation Plan.
 28 (c) In its initial round of grant funding, the commission shall
 29 establish a preference for a grant to a qualified county in an amount
 30 that is adequate to develop a renewable energy element in its
 31 general plan that will facilitate the development and siting of
 32 eligible renewable energy resources that utilize multiple renewable
 33 energy technologies. The commission shall also establish a
 34 preference for a grant for those counties that have experience in
 35 geothermal energy development and have adopted a geothermal
 36 element, as defined in Section 25133, to its general plan.
 37 (d) The commission shall only implement this section upon
 38 receiving a specific appropriation for the purposes of this section
 39 by the Legislature from the Renewable Resources Trust Fund or
 40 other funds from the Energy Resources Program Account.

1 SEC. 6. Section 3 of this bill shall become operative only if
2 Senate Bill 16 of the 2011–12 Regular Session is enacted and takes
3 effect on or before January 1, 2012. Section 3 of this bill shall
4 become operative on the effective date of this act or on the effective
5 date of Senate Bill 16 of the 2011–12 Regular Session, whichever
6 is later.

7 SEC. 7. This act addresses the fiscal emergency declared and
8 reaffirmed by the Governor by proclamation on January 20, 2011,
9 pursuant to subdivision (f) of Section 10 of Article IV of the
10 California Constitution.

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