Assembly Bill No. 13

CHAPTER 10

An act to amend Sections 2069 and 2099 of, and to add 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.

[Approved by Governor August 29, 2011. Filed with Secretary of State August 29, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 13, 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.

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, 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.

Appropriation: yes.

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

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

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

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

(2) "Energy Commission" means the State Energy Resources Conservation and Development Commission.

(b) The department, in consultation with the Energy Commission and, to the extent practicable, the United States Fish and Wildlife Service and the United States Bureau of Land Management, may design and implement actions, including the purchase of land and conservation easements, 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 species, threatened species, or candidate species, for purposes of paragraph (2) of subdivision (b) of Section 2081 and Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code, resulting from solar thermal, photovoltaic, wind, and geothermal powerplants in the Desert Renewable Energy Conservation Plan planning area that meet either of the following requirements:

(1) Either the Energy Commission determines that the application for certification is complete by December 31, 2011, or the lead agency for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) has determined the project permit application is complete or has issued a notice of preparation of an environmental impact report by December 31, 2011.

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

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

(1) The department has implemented the mitigation action and determined that the action has resulted in the protection, restoration, or enhancement of the habitat of one or more species that are proposed to be covered by the Desert Renewable Energy Conservation Plan, and that are located in the planning area, and, based upon that determination, can be used, for purposes of paragraph (2) of subdivision (b) of Section 2081, to fully mitigate for the

impacts of the take of those species from one or more projects that meet the requirement of subdivision (b).

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

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

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

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

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

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

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

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

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

(f) (1) This section does not modify the requirements of Section 2081, including the requirement to avoid and minimize impacts, where feasible, or the requirements of Division 13 (commencing with Section 21000) of, or Chapter 6 (commencing with Section 25500) of Division 15 of, the Public

Resources Code, or affect the existing authority of the department to authorize mitigation actions to comply with this chapter.

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

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

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

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

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

(2) "Energy Commission" means the State Energy Resources Conservation and Development Commission.

(b) (1) The Renewable Energy Resources Development Fee Trust Fund is hereby established in the State Treasury. The department shall collect a fee from the owner or developer of an eligible project that elects to use mitigation actions developed and approved by the department pursuant to Section 2069, and all moneys received for purposes of mitigation actions pursuant to Section 2069 shall be deposited in the fund and shall be held in trust and be expended solely for the purposes of, and in conformity with, that section, applicable permit or certification requirements for eligible projects, and any contractual agreement between the Energy Commission or department and the owner or developer of an eligible project. The department may contract with, or award grants to, third parties to implement mitigation actions in conformity with Section 2069 and this section.

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

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

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

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

the department, with respect to a renewable energy powerplant not subject to the Energy Commission's jurisdiction.

(c) The department shall monitor the implementation of the mitigation actions and the progress of the construction of the eligible projects. The department shall report all deposits, and the source of those deposits, on its Internet Web site. The department shall also report all expenditures from the fund on its Internet Web site and identify the mitigation activities or programs that each expenditure funded and its relationship to the permitted project. The Energy Commission, with respect to a solar thermal or geothermal powerplant subject to its jurisdiction, and the department, with respect to a renewable energy powerplant not subject to the Energy Commission's jurisdiction, shall ensure that moneys paid pursuant to this section are used only for purposes of satisfying the standards of paragraph (2) of subdivision (b) of Section 2081. Where moneys are used to fund mitigation actions, including the acquisition of lands or conservation easements, or the restoration of lands, that use shall be in addition to, and not duplicative of, mitigation obtained through any other means.

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

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

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

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

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

(B) "Energy Commission" means the State Energy Resources Conservation and Development Commission.

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

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

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

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

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

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

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

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

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

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

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

(2) The department and the Energy Commission shall enter into a cost-sharing agreement governing all eligible projects that are subject to the Energy Commission's certification requirements. The agreement shall ensure that all or a portion of the department's costs of participating in the Energy Commission's site certification process for eligible projects for the purpose of advising the Energy Commission with regard to the Energy Commission's issuance of incidental take authorization, pursuant to Section 2080.1 and subdivision (b) of Section 2081, shall be paid to the department

by the Energy Commission from the fees received by the Energy Commission pursuant to subdivision (a) of Section 25806 of the Public Resources Code.

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

(f) (1) In order to meet the intent of the Legislature pursuant to paragraph (1) of subdivision (a), the department shall carry out both of the following:

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

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

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

(g) The fees paid to the department pursuant to this section shall be deposited in the Renewable Resources Permitting Account, which is hereby established in the Fish and Game Preservation Fund, and shall be eligible for expenditure by the department pursuant to subdivision (b) of Section 2081 and Section 2080.1.

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

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

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

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

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

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

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

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

25619. (a) For purposes of this section, "qualified counties" means the Counties of Fresno, Imperial, Inyo, Kern, Kings, Los Angeles, Madera, Merced, Riverside, San Bernardino, San Diego, San Joaquin, Stanislaus, and Tulare.

(b) The commission shall provide up to seven million dollars ($7,000,000) in grants to qualified counties 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, that facilitate the development of eligible renewable energy resources, and their associated electric transmission facilities, and the processing of permits for eligible renewable energy resources. The commission may allocate not more than 1 percent of appropriated funds to provide training to county planning staff to facilitate the siting and permitting of eligible renewable energy resources. A general plan element or zoning ordinance that is adopted or revised pursuant to this section shall be completed within two years of receipt of the grant and shall be consistent with the conservation strategies of any natural community conservation plan if one has been approved, or is under development, pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code). For counties within the Desert Renewable Energy Conservation Plan planning area, the commission shall not award a grant to a county that is not a "plan participant," as defined by paragraph (1) of subdivision (j) of Section 2805 of the Fish and Game Code, in the Desert Renewable Energy Conservation Plan.

(c) In its initial round of grant funding, the commission shall 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. The commission shall 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 in Section 25133, to its general plan.

(d) The commission shall only implement this section upon receiving a specific appropriation for the purposes of this section by the Legislature from the Renewable Resources Trust Fund or other funds from the Energy Resources Program Account.

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

date of this act or on the effective date of Senate Bill 16 of the 2011–12 Regular Session, whichever is later.

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

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