

AMENDED IN SENATE JUNE 14, 2011

AMENDED IN ASSEMBLY MAY 10, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 644

Introduced by Assembly Member Blumenfield

February 16, 2011

An act to add Chapter 6.2 (commencing with Section 25560) to Division 15 of the Public Resources Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 644, as amended, Blumenfield. Energy: renewable energy facility: siting.

Existing law vests the State Energy Resources Conservation and Development Commission with the exclusive jurisdiction to certify the siting of a thermal powerplant with a generation capacity of 50 megawatts or more. Under existing law, a powerplant not under the jurisdiction of the commission is regulated by local jurisdictions through their land use authority.

This bill would require the commission, in consultation with the Department of Resources Recycling and Recovery, the Department of Toxic Substances Control, and the Department of Conservation, to establish criteria for identifying land with a high potential for use as a site of a renewable energy generation facility with a generation capacity of less than 50 megawatts in 3 specific types of parcels and to prepare a list identifying lands meeting the criteria. The bill would require the commission, the Department of Resources Recycling and Recovery, the Department of Toxic Substances Control, and the Department of

Conservation, to make best efforts to work with the United States Environmental Protection Agency under that agency’s RE-Powering America’s Land: Siting Renewable Energy on Potentially Contaminated Land and Mine Sites initiative.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Renewable energy promotes economic development and
4 provides opportunities to stimulate the creation of jobs for
5 Californians.

6 (b) California is seeking to increase renewable power generation
7 to help achieve the state’s climate change goals required by the
8 California Global Warming Solutions Act of 2006 (Division 25.5
9 (commencing with Section 38500) of the Health and Safety Code).

10 (c) The state has been seeking to revitalize and recycle
11 brownfields and provide for beneficial uses for closed landfills
12 and unproductive farmland that does not have access to water.

13 (d) Closed landfills and brownfields present a unique opportunity
14 for siting solar energy on land that has few reuses and is often
15 located close to roads and transmission lines.

16 (e) By identifying brownfields, closed landfills, and
17 unproductive farmland that does not have access to water and
18 creating incentives to use the land for renewable energy generation,
19 the state could put the land with limited reuses to beneficial use
20 while preserving undisturbed lands and advancing renewable
21 energy generation goals.

22 SEC. 2. Chapter 6.2 (commencing with Section 25560) is added
23 to Division 15 of the Public Resources Code, to read:

24

25 CHAPTER 6.2. RENEWABLE ENERGY SITING

26

27 25560. (a) The commission, in consultation with the
28 Department of Resources Recycling and Recovery, the Department
29 of Toxic Substances Control, and the Department of Conservation,
30 shall do both of the following:

1 (1) Establish criteria for identifying land with a high potential
2 for use as a site for a renewable generation facility with a
3 generation capacity of less than 50 megawatts of electricity in the
4 following types of parcels:

5 (A) A closed disposal site as defined in Section 40115.5.

6 (B) A brownfield as defined in Section 44504.1 of the Health
7 and Safety Code.

8 ~~(C) (i) Degraded agricultural land with no access to water.~~

9 ~~(ii) As used in this subparagraph, “degraded agricultural land”~~
10 ~~means land that has been mechanically disturbed, including land~~
11 ~~that has been converted from native vegetation through plowing,~~
12 ~~bulldozing, or other mechanical means in support of activities that~~
13 ~~change the land cover, including, but not limited to, agricultural~~
14 ~~activities, mining, and clearance for development purposes.~~
15 ~~Degraded agricultural lands also includes land, based on~~
16 ~~appropriate biological surveys, that has diminished value as habitat~~
17 ~~for mitigation purposes for endangered, threatened, candidate, and~~
18 ~~other sensitive species.~~

19 *(C) (i) Marginally productive and physically impaired*
20 *agricultural land.*

21 *(ii) A parcel shall be designated as marginally productive or*
22 *physically impaired agricultural land based on substantial evidence*
23 *in the record and if the designation is approved by the Secretary*
24 *of Food and Agriculture.*

25 *(iii) For the purposes of this subparagraph, “marginally*
26 *productive agricultural land” means land consisting predominantly*
27 *of soil with significantly reduced agricultural productivity due to*
28 *chemical or physical limitations that satisfies all of the following*
29 *conditions:*

30 *(I) The parcel has not been used for agricultural purposes*
31 *during the prior six years.*

32 *(II) Any voluntary transfer or retirement of the water rights*
33 *associated with the parcel was due to significant chemical or*
34 *physical soil limitations on the parcel that severely limit*
35 *agricultural productivity.*

36 *(III) The parcel is unsuitable for agricultural practices due to*
37 *the parcel’s topography.*

38 *(iv) For the purposes of this subparagraph, “physically impaired*
39 *agricultural land” means land with severely adverse soil conditions*
40 *that are detrimental to continued agricultural cultivation and*

1 *production. Severely adverse soil conditions may include, but are*
2 *not limited to, contamination by salts, selenium, or other naturally*
3 *occurring contaminants.*

4 *(2) Prepare a list that identifies lands that meet the criteria*
5 *development pursuant to paragraph (1).*

6 ~~*(2) The evaluation criteria*~~

7 *(b) The evaluation criteria developed pursuant to paragraph*
8 *(1) of subdivision (a) shall include, but is not limited to, low habitat*
9 *value for rare, endangered, and sensitive species, compatibility*
10 *with neighboring land uses, geological compatibility, absence of*
11 *recorded cultural resources determined for listing on the California*
12 *Register for Historical Resources, and absence of Native American*
13 *tribal cultural sites, as recorded in the Sacred Lands database of*
14 *the Native American Heritage Commission.*

15 ~~*(3) Prepare a list that identifies lands that meet the criteria*~~
16 ~~*developed pursuant to this section.*~~

17 ~~*(b)*~~

18 *(c) To avoid the duplication of effort, the commission, the*
19 *Department of Resources Recycling and Recovery, the Department*
20 *of Toxic Substances Control, and the Department of Conservation,*
21 *in implementing this section, shall make best efforts to work with*
22 *the United States Environmental Protection Agency pursuant to*
23 *that agency’s RE-Powering America’s Land: Siting Renewable*
24 *Energy on Potentially Contaminated Land and Mine Site initiative.*

25 *(d) It is the intent of the Legislature that a financial institution*
26 *providing financial assistance for renewable energy projects*
27 *located on landfills and brownfields identified pursuant to*
28 *subdivision (a) should be credited for providing that financial*
29 *assistance in the evaluation of that institution’s performance under*
30 *the Community Reinvestment Act (12 U.S.C. Sec. 2901 et seq.) to*
31 *the extent permitted by the appropriate federal agency with*
32 *jurisdiction over that financial institution.*