

AMENDED IN SENATE FEBRUARY 15, 2011

SENATE BILL

No. 16

Introduced by Senator Rubio

December 6, 2010

~~An act relating to energy. An act to add Sections 2069.5 and 2099.7 to the Fish and Game Code, relating to energy, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 16, as amended, Rubio. ~~Energy: renewable energy and transmission projects: Renewable energy: Department of Fish and Game: expedited permitting.~~

(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 resulting from certain solar thermal and photovoltaic powerplants in the planning area of the Desert Renewable Energy Conservation Plan.

Existing law requires the department to collect, and requires the owner or developer of certain solar thermal powerplants or photovoltaic powerplants to pay, a one-time permit application fee of \$75,000. 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 require the department to collect a permit application fee of \$75,000 from the owner or developer of an eligible renewable energy project to support the department's permitting and review of the project, as provided. The bill would require the Energy Commission to provide \$75,000 to the department from revenues created from application fees received by the commission for each permit application for a project funded under the American Recovery and Reinvestment Act of 2009 for which the commission has entered into an agreement with the department for the review of the impacts of the project on fish and wildlife.

The bill would require the department to notify an applicant for an incidental take permit for an eligible renewable energy project when the application is complete, and require the department to approve or reject an incidental take permit application for an eligible renewable energy project in 90 days or less. The bill, until January 1, 2015, would authorize the department to enter into a contract with a private entity for the review necessary to issue an incidental take permit for an eligible project, as provided.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law requires energy and transmission projects to obtain specified certification or permits or both certification and permits from various state and local agencies.~~

~~This bill would state the intent of the Legislature to enact legislation to establish a new program to ease and expedite the state permitting process for renewable energy and transmission projects within the state.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~^{yes}. State-mandated local program: no.

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

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

1 (a) It is important to facilitate the permitting of renewable
2 energy projects that are eligible renewable energy resources under
3 the California Renewables Portfolio Standard (Article 16
4 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of
5 Division 1 of the Public Utilities Code), including expediting the
6 scientific evaluation by the Department of Fish and Game of the
7 wildlife impacts of those projects with special attention to the
8 impacts on threatened and endangered species.

9 (b) In imposing statutory deadlines on the review of these
10 projects, it is important not only for the department to respond
11 more efficiently, but also important for project proponents to
12 submit accurate information from which the department can
13 commence a complete review without being required to obtain
14 further information in a piecemeal manner.

15 (c) Existing law provides a timeline of 30 days for the
16 department to determine whether an application for an incidental
17 take permit is complete and 120 days to approve or reject the
18 application. In practice, if an application is considered incomplete,
19 applications are routinely amended or resubmitted and therefore
20 there is no incentive for applicants to submit a timely, complete
21 application.

22 (d) It is reasonable to expect the department to expedite its
23 decisionmaking in order to help achieve the renewable energy
24 goals of the state and create jobs.

25 (e) The Legislature expects that the department may be
26 inundated with more than 150 applications for renewable energy
27 projects in this calendar year because of the increasing interest
28 in renewable energy projects and because of the investment and
29 tax provisions contained in state and federal law. It is important
30 to give each of those applications fair consideration by the
31 department and absent the provisions of this act the department
32 will simply be unable to adequately review these applications.

33 SEC. 2. Section 2069.5 is added to the Fish and Game Code,
34 to read:

35 2069.5. (a) The department shall notify an applicant for an
36 incidental take permit for an eligible project when the application
37 is complete.

38 (b) The department shall approve or reject an incidental take
39 permit application for an eligible project in 90 days or less from
40 the date the application was deemed complete.

1 (c) To the extent permitted by state law, the department, until
2 January 1, 2015, may enter into a contract with a private entity
3 for the review necessary to issue an incidental take permit for an
4 eligible project, if the number of applications for an incidental
5 take permit exceeds 40 at any one time. A review undertaken by a
6 private entity pursuant to this subdivision shall be approved by
7 the director. Nothing in this subdivision expressly or impliedly
8 reduces the authority of the department to review applications for
9 incidental take permits. The department shall report quarterly to
10 the appropriate policy and appropriation committees of the
11 Legislature on expenditures made pursuant to this subdivision.

12 (d) For purposes of this section, an “eligible project” means
13 an eligible renewable energy resource, as defined in the California
14 Renewables Portfolio Standard (Article 16 (commencing with
15 Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public
16 Utilities Code).

17 SEC. 3. Section 2099.7 is added to the Fish and Game Code,
18 to read:

19 2099.7. (a) (1) The department shall collect a permit
20 application fee from the owner or developer of an eligible project
21 to support the department’s permitting and review of the eligible
22 project. The owner or developer of a proposed eligible project
23 shall pay a one-time permit application fee of seventy-five thousand
24 dollars (\$75,000) to the department that shall be applied to the
25 department’s services in reviewing that application. The fee shall
26 be assessed for all applications filed with the department on and
27 after January 1, 2011.

28 (2) If the application described in paragraph (1) is incomplete,
29 the applicant may remedy any specific deficiencies identified by
30 the department and for each separate reapplication it shall submit
31 an additional application fee of ____ (\$ ____).

32 (3) For purposes of this subdivision, an “eligible project” means
33 an eligible renewable energy resource, as defined in the California
34 Renewables Portfolio Standard (Article 16 (commencing with
35 Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public
36 Utilities Code).

37 (b) The State Energy Resources Conservation and Development
38 Commission shall provide seventy-five thousand dollars (\$75,000)
39 to the department from revenues created from application fees
40 received by the commission for each permit application for a

1 *project funded under the American Recovery and Reinvestment*
2 *Act of 2009 (Public Law 111-5) for which the commission has*
3 *entered into an agreement with the department for the review of*
4 *the impacts of the project on fish and wildlife.*

5 *SEC. 4. This act is an urgency statute necessary for the*
6 *immediate preservation of the public peace, health, or safety within*
7 *the meaning of Article IV of the Constitution and shall go into*
8 *immediate effect. The facts constituting the necessity are:*

9 *In order to expedite permitting of needed renewable energy*
10 *projects as soon as possible, it is necessary for this act to take*
11 *effect immediately.*

12 ~~SECTION 1. (a) It is the intent of the Legislature to enact~~
13 ~~legislation to establish a new program to ease and expedite the~~
14 ~~state permitting process for renewable energy projects and~~
15 ~~transmission projects within the state.~~

16 ~~(b) It is further the intent of the Legislature that this new~~
17 ~~program require appropriate state agencies to establish one program~~
18 ~~under which qualified renewable energy and transmission projects~~
19 ~~would have expedited, coordinated, and knowledgeable processing~~
20 ~~of all necessary state permits, and would have a defined timeframe~~
21 ~~within which all permits would be issued after all documents~~
22 ~~required pursuant to the California Environmental Quality Act~~
23 ~~(Division 13 (commencing with Section 21000) of the Public~~
24 ~~Resources Code) have been certified.~~