

AMENDED IN SENATE MARCH 29, 2011

AMENDED IN SENATE FEBRUARY 15, 2011

SENATE BILL

No. 16

Introduced by Senator Rubio

December 6, 2010

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. 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~~ *provide written notification* to an applicant for an incidental take permit for an eligible renewable energy project ~~when~~ *within 10 days after the department has determined that 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, *or within 150 days for certain projects*. ~~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. The bill would require the department to provide an accounting to the Legislature on incidental take permit applications for eligible renewable energy projects, and to report to the Legislature on the extent to which it arranges for entities other than itself to provide all or part of the environmental review of eligible renewable energy projects.~~

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

Vote: $\frac{2}{3}$. 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:

1 (a) It is important to facilitate the permitting of renewable energy
2 projects that are eligible renewable energy resources under the
3 California Renewables Portfolio Standard *Program* (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)~~

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

26 ~~(e)~~

27 (d) The Legislature expects that the department may be
28 inundated with more than ~~150~~ 300 applications for renewable
29 energy projects in this calendar year because of the increasing
30 interest in renewable energy projects and because of the investment
31 and tax provisions contained in state and federal law. It is important
32 to give each of those applications fair consideration by the
33 department and absent the provisions of this act the department
34 will simply be unable to adequately review these applications.

35 (e) *It is the intent of the Legislature to monitor closely the*
36 *performance of the department in implementing this act. It is*
37 *further the intent of the Legislature that the department use, upon*
38 *appropriation by the Legislature, a small portion of the fees*
39 *submitted to it by renewable energy applicants to provide the*
40 *Legislature with an accounting of the department's review and*

1 *decisionmaking process for these permit applications, to evaluate*
2 *whether the process has been carried out as efficiently and as*
3 *effectively as possible and in furtherance of the department's*
4 *statutory responsibilities.*

5 *(f) It is further the intent of the Legislature to reevaluate the*
6 *performance of the department in two years, and, if necessary, to*
7 *consider whether there is a need to enact legislation that would*
8 *provide incentives for timely permit decisions by requiring the*
9 *department to refund a portion of permit fees in the event that the*
10 *department failed to meet permit decisionmaking deadlines.*

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

13 2069.5. (a) ~~The~~ *For purposes of this section, an "eligible*
14 *project" means an eligible renewable energy resource, as defined*
15 *in the California Renewables Portfolio Standard Program (Article*
16 *16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of*
17 *Division 1 of the Public Utilities Code).*

18 *(b) The department shall ~~notify~~ provide written notification to*
19 *an applicant for an incidental take permit for an eligible project*
20 *when within 10 days after the department has determined that the*
21 *application is complete.*

22 ~~(b)~~

23 *(c) The department shall approve or reject an incidental take*
24 *permit application for an eligible project in 90 days or less from*
25 *the date the application was deemed complete, except for projects*
26 *that the department determines are eligible to obtain an incidental*
27 *take permit pursuant to Section 2080.1, in which case the*
28 *department shall approve or reject an incidental take permit*
29 *application for these projects within 150 days after the application*
30 *was deemed complete.*

31 ~~(e) To the extent permitted by state law, the department, until~~
32 ~~January 1, 2015, may enter into a contract with a private entity for~~
33 ~~the review necessary to issue an incidental take permit for an~~
34 ~~eligible project, if the number of applications for an incidental take~~
35 ~~permit exceeds 40 at any one time. A review undertaken by a~~
36 ~~private entity pursuant to this subdivision shall be approved by the~~
37 ~~director. Nothing in this subdivision expressly or impliedly reduces~~
38 ~~the authority of the department to review applications for incidental~~
39 ~~take permits. The department shall report quarterly to the~~

1 appropriate policy and appropriation committees of the Legislature
2 on expenditures made pursuant to this subdivision.

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

8 *(d) (1) By January 1, 2014, the department shall provide an*
9 *accounting to the Legislature on incidental take permit applications*
10 *for eligible projects. This accounting shall include, but shall not*
11 *be limited to, all of the following:*

12 *(A) The number of applications that have been received.*

13 *(B) The number of applications that have been approved,*
14 *rejected, or withdrawn.*

15 *(C) The type and nature of the incidental take permits sought,*
16 *including, but not limited to, the number of acres in each permit,*
17 *the location of the project, the list of endangered or threatened*
18 *species and whether the species were state or federally listed, the*
19 *land ownership, the other permits involved in the project during*
20 *the permit review period and which agencies were involved, and*
21 *any relevant special resource issues.*

22 *(D) The time that elapsed between when a permit was deemed*
23 *complete and when it was approved, if the permit was approved.*

24 *(E) The staff time spent on each permit.*

25 *(F) Other information determined by the department to be*
26 *relevant in assessing whether the permit approval process,*
27 *including the deadlines prescribed by this section, provide for an*
28 *efficient review process in furtherance of the department’s statutory*
29 *obligations.*

30 *(2) By January 1, 2012, and annually thereafter for two years*
31 *until 2014, the department shall report to the Legislature on the*
32 *extent to which it arranges for entities other than itself to provide*
33 *all or part of the environmental review of eligible projects. The*
34 *2014 report may be combined with the report described in*
35 *paragraph (1).*

36 *(3) A report to be submitted pursuant to this subdivision shall*
37 *be submitted in compliance with Section 9795 of the Government*
38 *Code.*

39 *(4) Pursuant to Section 10231.5 of the Government Code, this*
40 *subdivision is inoperative on January 1, 2016.*

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

3 ~~2099.7. (a) (1) The department shall collect a permit~~
4 ~~application fee from the owner or developer of an eligible project~~
5 ~~to support the department's permitting and review of the eligible~~
6 ~~project. The owner or developer of a proposed eligible project~~
7 ~~shall pay a one-time permit application fee of seventy-five thousand~~
8 ~~dollars (\$75,000) to the department that shall be applied to the~~
9 ~~department's services in reviewing that application. The fee shall~~
10 ~~be assessed for all applications filed with the department on and~~
11 ~~after January 1, 2011.~~

12 ~~(2) If the application described in paragraph (1) is incomplete,~~
13 ~~the applicant may remedy any specific deficiencies identified by~~
14 ~~the department and for each separate reapplication it shall submit~~
15 ~~an additional application fee of _____ (\$_____).~~

16 ~~(3) For purposes of this subdivision, an "eligible project" means~~
17 ~~an eligible renewable energy resource, as defined in the California~~
18 ~~Renewables Portfolio Standard (Article 16 (commencing with~~
19 ~~Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public~~
20 ~~Utilities Code).~~

21 ~~(b) The State Energy Resources Conservation and Development~~
22 ~~Commission shall provide seventy-five thousand dollars (\$75,000)~~
23 ~~to the department from revenues created from application fees~~
24 ~~received by the commission for each permit application for a~~
25 ~~project funded under the American Recovery and Reinvestment~~
26 ~~Act of 2009 (Public Law 111-5) for which the commission has~~
27 ~~entered into an agreement with the department for the review of~~
28 ~~the impacts of the project on fish and wildlife.~~

29 *2099.7. (a) For purposes of this section, an "eligible project"*
30 *means an eligible renewable energy resource, as defined in the*
31 *California Renewables Portfolio Standard Program (Article 16*
32 *(commencing with Section 399.11) of Chapter 2.3 of Part 1 of*
33 *Division 1 of the Public Utilities Code).*

34 *(b) The department shall collect a permit application fee from*
35 *the owner or developer of an eligible project to support its*
36 *permitting and review of eligible projects pursuant to this chapter.*
37 *Except as provided in subdivision (d), the owner or developer of*
38 *a proposed eligible project shall pay a one-time permit application*
39 *fee of seventy-five thousand dollars (\$75,000) to the department.*

1 (c) The department shall collect the permit application fee, at
2 the time the owner or developer submits its permit application or,
3 for eligible projects for which an application has already been
4 submitted, on or before January 30, 2012. The department shall
5 utilize the permit application fee to pay for all or a portion of the
6 department's cost of processing incidental take permit applications
7 pursuant to subdivision (b) of Section 2081 and Section 2080.1.
8 If the permit application fee is insufficient to complete permitting
9 work due to the complexity of a project or timeline delays, the
10 department may collect an additional fee from the owner or
11 developer to pay for its actual costs, not to exceed an additional
12 seventy-five thousand dollars (\$75,000).

13 (d) Notwithstanding subdivisions (b) and (c), if the department's
14 cost of processing an incidental take permit application is limited
15 to activities pursuant to Section 2080.1, the department shall
16 collect a fee from the owner or developer of an eligible project in
17 an amount that does not exceed the anticipated full costs to the
18 department for those activities.

19 (e) The fees shall be deposited in the Fish and Game
20 Preservation Fund, and shall be eligible for expenditure by the
21 department, upon appropriation by the Legislature.

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

26 In order to expedite permitting of needed renewable energy
27 projects as soon as possible, it is necessary for this act to take effect
28 immediately.