

AMENDED IN SENATE APRIL 12, 2011
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 department to provide written notification to an applicant for an incidental take permit for an eligible renewable energy project 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 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:
- 3 (a) It is important to facilitate the permitting of renewable energy
- 4 projects that are eligible renewable energy resources under the
- 5 California Renewables Portfolio Standard Program (Article 16
- 6 commencing with Section 399.11) of Chapter 2.3 of Part 1 of
- 7 Division 1 of the Public Utilities Code), including expediting the
- 8 scientific evaluation by the Department of Fish and Game of the
- 9 wildlife impacts of those projects with special attention to the
- 10 impacts on threatened and endangered species.

1 (b) In imposing statutory deadlines on the review of these
2 projects, it is important not only for the department to respond
3 more efficiently, but also important for project proponents to
4 submit accurate information from which the department can
5 commence a complete review without being required to obtain
6 further information in a piecemeal manner.

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

10 (d) The Legislature expects that the department may be
11 inundated with more than 300 applications for renewable energy
12 projects in this calendar year because of the increasing interest in
13 renewable energy projects and because of the investment and tax
14 provisions contained in state and federal law. It is important to
15 give each of those applications fair consideration by the department
16 and absent the provisions of this act the department will simply
17 be unable to adequately review these applications.

18 (e) It is the intent of the Legislature to monitor closely the
19 performance of the department in implementing this act. It is
20 further the intent of the Legislature that the department use, upon
21 appropriation by the Legislature, a small portion of the fees
22 submitted to it by renewable energy applicants to provide the
23 Legislature with an accounting of the department's review and
24 decisionmaking process for these permit applications, to evaluate
25 whether the process has been carried out as efficiently and as
26 effectively as possible and in furtherance of the department's
27 statutory responsibilities.

28 (f) It is further the intent of the Legislature to reevaluate the
29 performance of the department in two years, and, if necessary, to
30 consider whether there is a need to enact legislation that would
31 provide incentives for timely permit decisions by requiring the
32 department to refund a portion of permit fees in the event that the
33 department failed to meet permit decisionmaking deadlines.

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

36 2069.5. (a) For purposes of this section, an "eligible project"
37 means an eligible renewable energy resource, as defined in the
38 California Renewables Portfolio Standard Program (Article 16
39 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of
40 Division 1 of the Public Utilities Code).

1 (b) The department shall provide written notification to an
2 applicant for an incidental take permit for an eligible project within
3 10 days after the department has determined that the application
4 is complete.

5 (c) The department shall approve or reject an incidental take
6 permit application for an eligible project in 90 days or less from
7 the date the application was deemed complete, except for projects
8 that the department determines are eligible to obtain an incidental
9 take permit pursuant to Section 2080.1, in which case the
10 department shall approve or reject an incidental take permit
11 application for these projects within 150 days after the application
12 was deemed complete.

13 (d) (1) By January 1, 2014, the department shall provide an
14 accounting to the Legislature on incidental take permit applications
15 for eligible projects. This accounting shall include, but shall not
16 be limited to, all of the following:

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

18 (B) The number of applications that have been approved,
19 rejected, or withdrawn.

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

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

29 (E) The staff time spent on each permit.

30 (F) Other information determined by the department to be
31 relevant in assessing whether the permit approval process,
32 including the deadlines prescribed by this section, provide for an
33 efficient review process in furtherance of the department's statutory
34 obligations.

35 (2) By January 1, 2012, and annually thereafter for two years
36 until 2014, the department shall report to the Legislature on the
37 extent to which it arranges for entities other than itself to provide
38 all or part of the environmental review of eligible projects. The
39 2014 report may be combined with the report described in
40 paragraph (1).

1 (3) A report to be submitted pursuant to this subdivision shall
2 be submitted in compliance with Section 9795 of the Government
3 Code.

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

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

8 2099.7. (a) For purposes of this section, an “eligible project”
9 means an eligible renewable energy resource, as defined in the
10 California Renewables Portfolio Standard Program (Article 16
11 commencing with Section 399.11) of Chapter 2.3 of Part 1 of
12 Division 1 of the Public Utilities Code).

13 (b) The department shall collect a permit application fee from
14 the owner or developer of an eligible project to support its
15 permitting and review of eligible projects pursuant to this chapter.
16 Except as provided in subdivision (d), the owner or developer of
17 a proposed eligible project shall pay a one-time permit application
18 fee of seventy-five thousand dollars (\$75,000) to the department.

19 (c) The department shall collect the permit application fee; at
20 the time the owner or developer submits its permit application or,
21 for eligible projects for which an application has already been
22 submitted *and is currently under review*, on or before January 30,
23 2012. The department shall utilize the permit application fee to
24 pay for all or a portion of the department’s cost of processing
25 incidental take permit applications pursuant to subdivision (b) of
26 Section 2081 and Section 2080.1. If the permit application fee is
27 insufficient to complete permitting work due to the complexity of
28 a project or timeline delays, the department may collect an
29 additional fee from the owner or developer to pay for its actual
30 costs, not to exceed an additional seventy-five thousand dollars
31 (\$75,000).

32 (d) Notwithstanding subdivisions (b) and (c), if the department’s
33 cost of processing an incidental take permit application is limited
34 to activities pursuant to Section 2080.1, the department shall collect
35 a fee from the owner or developer of an eligible project in an
36 amount that does not exceed the anticipated full costs to the
37 department for those activities.

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

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

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

O