

AMENDED IN ASSEMBLY AUGUST 25, 2011
AMENDED IN ASSEMBLY AUGUST 22, 2011
AMENDED IN ASSEMBLY JUNE 30, 2011
AMENDED IN SENATE MAY 27, 2011
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 Section 2099.20 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 take prescribed procedural steps regarding applications for certain eligible renewable energy projects, including determining whether the application is complete or incomplete, notifying the applicant of its determination, and approving or rejecting an incidental take permit application for an eligible project ~~60 days or less from the date the application is deemed complete, unless a longer period is agreed upon by the department and applicant~~ *within specified timeframes*. 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 become operative only if AB 13 of the 2011–12 First Extraordinary Session is enacted.

(3) The bill would also declare that it is to become operative on the effective date of AB 13 of the 2011–12 First Extraordinary Session.

(4) 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

1 California Renewables Portfolio Standard Program (Article 16
2 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of
3 Division 1 of the Public Utilities Code), including expediting the
4 scientific evaluation by the Department of Fish and Game of the
5 wildlife impacts of those projects with special attention to the
6 impacts on threatened and endangered species.

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

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

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

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

34 (f) It is further the intent of the Legislature to reevaluate the
35 performance of the department in two years, and, if necessary, to
36 consider whether there is a need to enact legislation that would
37 provide incentives for timely permit decisions by requiring the
38 department to refund a portion of permit fees in the event that the
39 department failed to meet permit decisionmaking deadlines.

1 SEC. 2. Section 2099.20 is added to the Fish and Game Code,
2 to read:

3 2099.20. (a) As used in this section, “eligible project” has the
4 same meaning as defined in Section 2099.10.

5 (b) (1) At the request of the applicant, the department shall
6 meet with the applicant in person or by telephone to develop a
7 plan for processing the application and, to the extent feasible,
8 identify and clarify information that will be needed in an
9 application for a project subject to Section 2099.10 prior to its
10 submittal to the department.

11 (2) Within 45 days after the department receives an application
12 for a project subject to Section 2099.10, the department shall
13 determine whether the application is complete or incomplete and
14 shall notify the applicant of its determination. If the department
15 determines that the application is incomplete, it shall concurrently
16 identify and inform the applicant in writing of the specific
17 information or supporting documentation that is needed to complete
18 the application currently under review, unless otherwise requested
19 in writing by the applicant. The department shall make all
20 reasonable efforts to consolidate its information request into a
21 single request.

22 (3) Within 30 days of receipt of the information requested of
23 the applicant pursuant to paragraph (2), the department shall make
24 a determination whether the application is complete.

25 (4) If the department determines pursuant to paragraph (3) that
26 additional information is needed to complete the application, the
27 department shall inform the applicant in writing of the specific
28 information or supporting documentation that is needed to complete
29 the application, and the director, or his or her designee reporting
30 directly to the director, shall offer to meet with the applicant to
31 review the application and establish a plan and a timeframe to
32 complete the application, unless otherwise requested in writing by
33 the applicant.

34 (c) ~~The~~ *Except as otherwise provided in subdivisions (d) and*
35 *(e), the department shall approve or reject an incidental take permit*
36 *application for an eligible project 60 days or less from the date the*
37 *application is deemed complete, unless a longer period is agreed*
38 *upon by the department and the applicant. If the department has*
39 *not made a determination within 45 days to approve or reject the*
40 *application to reject or approve the incidental take permit*

1 application within 45 days after deeming the application complete,
2 the director, or his or her designee reporting directly to the director,
3 shall offer to meet with the applicant to review the status of the
4 application.

5 (d) If the department deems an application is complete more
6 than 60 days before the project is certified under the California
7 Environmental Quality Act (Division 13 (commencing with Section
8 21000) of the Public Resources Code) by an agency other than
9 the department, the department shall reject or approve the
10 incidental take permit application within 30 days after the
11 California Environmental Quality Act certification, unless a longer
12 period is agreed upon by the department and the applicant. If the
13 department is the lead agency under the California Environmental
14 Quality Act, the department shall reject or approve the incidental
15 take permit application concurrently with the California
16 Environmental Quality Act certification.

17 ~~(d)~~

18 (e) Subdivision (c) does not apply to projects that the department
19 determines are eligible to obtain ~~an incidental take permit a~~
20 ~~consistency determination~~ pursuant to Section 2080.1, in which
21 case the department shall approve or reject ~~an incidental take permit~~
22 ~~a consistency determination~~ application for these projects within
23 30 days after the ~~issuance of the federal permit~~ director has
24 received notice pursuant to Section 2080.1 that a federal permit
25 has been issued.

26 ~~(e)~~

27 (f) (1) By January 1, 2014, the department shall provide an
28 accounting to the Legislature on incidental take permit applications
29 for eligible projects. This accounting shall include, but shall not
30 be limited to, all of the following:

31 (A) The number of applications received.

32 (B) The number of applications approved, rejected, or
33 withdrawn.

34 (C) The type and nature of the incidental take permits sought,
35 including, but not limited to, the number of acres in each permit,
36 the location of the project, the list of endangered or threatened
37 species and whether the species were state or federally listed, the
38 land ownership, the other permits involved in the project during
39 the permit review period and which agencies were involved, and
40 any relevant special resource issues.

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

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

4 (F) Other information determined by the department to be
5 relevant in assessing whether the permit approval process,
6 including the deadlines prescribed by this section, provide for an
7 efficient review process in furtherance of the department’s statutory
8 obligations.

9 (2) By January 1, 2012, and annually thereafter for two years
10 until 2014, the department shall report to the Legislature on the
11 extent to which it arranges for entities other than itself to provide
12 all or part of the environmental review of eligible projects. The
13 2014 report may be combined with the report described in
14 paragraph (1).

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

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

20 SEC. 3. This act shall become operative only if Assembly Bill
21 13 of the 2011–12 First Extraordinary Session is enacted.

22 SEC. 4. This act shall become operative on the effective date
23 of Assembly Bill 13 of the 2011–12 First Extraordinary Session.

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

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