

AMENDED IN SENATE JUNE 25, 2001

CALIFORNIA LEGISLATURE—2001–02 SECOND EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 48

Introduced by Assembly Member Wright

May 22, 2001

An act to amend ~~Section~~ *Sections 25402.1 and 25550* of, and to add Sections 25137 and 25551 to, the Public Resources Code, relating to ~~electrical~~ energy, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 48, as amended, Wright. Powerplant siting: *energy conservation.*

Existing

(1) Existing law requires the State Energy Resources Conservation and Development Commission to prescribe, by regulation, lighting, insulation climate control system, and other building design and construction standards that increase the efficiency in the use of energy for new residential and new nonresidential buildings and to provide an energy conservation manual that includes a prescriptive method of complying with the standards. Existing law prohibits a city, county, city and county, or state agency from issuing a permit for any building unless the building satisfies the standards prescribed by the commission that are in effect on the date an application for a building permit is filed, unless the city, county, or city and county files a determination with the commission that its own standards are cost effective, and the commission makes a particular finding.

This bill would permit cities, counties, and cities and counties to implement building standards requiring the use of solar water heating or photovoltaic systems without demonstrating cost-effectiveness to the commission.

The bill would also make technical, nonsubstantive changes.

(2) Existing law requires the ~~State Energy Resources Conservation and Development Commission~~ *commission* to establish a process to issue its final certification for any thermal powerplant and related facilities within 6 months after the filing of the application for certification that, on the basis of an initial review, shows that there is substantial evidence that the project will not cause a significant adverse impact on the environment or electrical system and will comply with all applicable standards, ordinances, or laws.

This bill would include a repowering project, as defined, within this process. The bill would also provide that for purposes of this process, the commission ~~shall~~ *would be required to* deem an application complete if it substantially complies with applicable data requirements, which would be required to be met in sufficient time to enable the commission to fully evaluate the application.

~~The~~

(3) The 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 the
2 following:

3 (a) In recent years there has been significant growth in the
4 demand for electricity.

5 (b) In the past decade, efforts to construct and operate new,
6 environmentally superior and efficient generation facilities have
7 seriously lagged.

8 (c) California faces potentially serious electricity shortages
9 over the next two years, which necessitates immediate action by
10 the state.

11 (d) It is further the intent of this act to streamline the permitting
12 process for new and repowered powerplants without in any
13 manner compromising environmental protection.

SEC. 2. Section 25137 is added to the Public Resources Code, to read:

25137. “Repowering project,” as used in this division, means an application for certification filed after the effective date of the act adding this section for a thermal powerplant that complies with all of the following:

(a) It is located at the site of an existing thermal powerplant.

(b) It would comply with all requirements of applicable law.

(c) It would not require new rights of way for electric or natural gas transmission facilities.

(d) It would not expand the powerplant beyond the boundaries of the property currently containing the existing powerplant and related facilities.

(e) It would reduce emissions of criteria and toxic air pollutants compared to averages for the plant compiled over the immediately preceding five years.

(f) It would reduce thermal or other discharges into water resources compared to averages for the plant compiled over the five most recent calendar years.

(g) It would replace existing generating capacity with generating capacity that has a lower heat rate.

(h) There is no substantial evidence of any new or increased significant environmental impacts that are not already associated with the operation of the current facility.

SEC. 3. *Section 25402.1 of the Public Resources Code is amended to read:*

25402.1. In order to implement the requirements of subdivisions (a) and (b) of Section 25402, the commission shall do all of the following:

(a) Develop a public domain computer program ~~which~~ *that* will enable contractors, builders, architects, engineers, and government officials to estimate the energy consumed by residential and nonresidential buildings. The commission may charge a fee for the use of the program, which fee shall be based upon the actual cost of the program, including any computer costs.

(b) Establish a formal process for certification of compliance options for new products, materials, and calculation methods ~~which~~ *that* provides for adequate technical and public review to ensure accurate, equitable, and timely evaluation of certification applications. Proponents filing applications for new products,

1 materials, and calculation methods shall provide all information
2 needed to evaluate the application that is required by the
3 commission. The commission shall publish annually the results of
4 its certification decisions and instructions to users and local
5 building officials concerning requirements for showing
6 compliance with the building standards for new products,
7 materials, or calculation methods. The commission may charge
8 and collect a reasonable fee from applicants to cover the costs
9 under this subdivision. Any funds received by the commission for
10 purposes of this subdivision shall be deposited in the Energy
11 Resources Programs Account and, notwithstanding Section 13340
12 of the Government Code, are continuously appropriated to the
13 commission for the purposes of this subdivision. Any
14 unencumbered portion of funds collected as a fee for an
15 application remaining in the Energy Resources Programs Account
16 after completion of the certification process for that application
17 shall be returned to the applicant within a reasonable period of
18 time.

19 (c) Include a prescriptive method of complying with the
20 standards, including design aids such as a manual, sample
21 calculations, and model structural designs.

22 ~~(d) Conduct a pilot project of field testing of actual residential~~
23 ~~buildings to calibrate and identify potential needed changes in the~~
24 ~~modeling assumptions to increase the accuracy of the public~~
25 ~~domain computer program specified in subdivision (a) and to~~
26 ~~evaluate the impacts of the standards, including, but not limited to,~~
27 ~~the energy savings, cost effectiveness, and the effects on indoor air~~
28 ~~quality. The pilot project shall be conducted pursuant to a contract~~
29 ~~entered into by the commission. The commission shall consult~~
30 ~~with the participants designated pursuant to Section 9202 of the~~
31 ~~Public Utilities Code to seek funding and support for field~~
32 ~~monitoring in each public utility service territory, with the~~
33 ~~University of California to take advantage of its extensive building~~
34 ~~monitoring expertise, and with the California Building Industry~~
35 ~~Association to coordinate the involvement of builders and~~
36 ~~developers throughout the state. The pilot project shall include~~
37 ~~periodic public workshops to develop plans and review progress.~~
38 ~~The commission shall prepare and submit a report to the~~
39 ~~Legislature on progress and initial findings not later than~~
40 ~~December 31, 1988, and a final report on the results of the pilot~~

1 ~~project on residential buildings not later than June 30, 1990. The~~
2 ~~report shall include recommendations regarding the need and~~
3 ~~feasibility of conducting further monitoring of actual residential~~
4 ~~and nonresidential buildings. The report shall also identify any~~
5 ~~revisions to the public domain computer program and energy~~
6 ~~conservation standards if the pilot project determines that~~
7 ~~revisions are appropriate.~~

8 (e) Certify, not later than 180 days after approval of the
9 standards by the State Building Standards Commission, an energy
10 conservation manual for use by designers, builders, and
11 contractors of residential and nonresidential buildings. The
12 manual shall be furnished upon request at a price sufficient to
13 cover the costs of production and shall be distributed at no cost to
14 all affected local agencies. The manual shall contain, but not be
15 limited to, the following:

16 (1) The standards for energy conservation established by the
17 commission.

18 (2) Forms, charts, tables, and other data to assist designers and
19 builders in meeting the standards.

20 (3) Design suggestions for meeting or exceeding the standards.

21 (4) Any other information ~~which~~ *that* the commission finds
22 will assist persons in conforming to the standards.

23 (5) Instructions for use of the computer program for calculating
24 energy consumption in residential and nonresidential buildings.

25 (6) The prescriptive method for use as an alternative to the
26 computer program.

27 ~~(f)~~

28 (e) The commission shall establish a continuing program of
29 technical assistance to local building departments in the
30 enforcement of subdivisions (a) and (b) of Section 25402 and this
31 section. The program shall include the training of local officials in
32 building technology and enforcement procedures related to energy
33 conservation, and the development of complementary training
34 programs conducted by local governments, educational
35 institutions, and other public or private entities. The technical
36 assistance program shall include the preparation and publication
37 of forms and procedures for local building departments in
38 performing the review of building plans and specifications. The
39 commission shall provide, on a contract basis, a review of building
40 plans and specifications submitted by a local building department,

1 and shall adopt a schedule of fees sufficient to repay the cost of
2 those services.

3 ~~(g)~~

4 *(f)* Subdivisions (a) and (b) of Section 25402 and this section,
5 and the rules and regulations of the commission adopted pursuant
6 thereto, shall be enforced by the building department of every city,
7 county, or city and county.

8 (1) No building permit for any residential or nonresidential
9 building ~~shall~~ *may* be issued by a local building department, unless
10 a review by the building department of the plans for the proposed
11 residential or nonresidential building contains detailed energy
12 system specifications and confirms that the building satisfies the
13 minimum standards established pursuant to subdivision (a) or (b)
14 of Section 25402 and this section applicable to the building.

15 (2) Where there is no local building department, the
16 commission shall enforce subdivisions (a) and (b) of Section
17 25402 and this section.

18 (3) If a local building department fails to enforce subdivisions
19 (a) and (b) of Section 25402 and this section or any other provision
20 of this chapter or standard adopted pursuant thereto, the
21 commission may provide enforcement after furnishing 10 days'
22 written notice to the local building department.

23 (4) A city, county, or city and county may, by ordinance or
24 resolution, prescribe a schedule of fees sufficient to pay the costs
25 incurred in the enforcement of subdivisions (a) and (b) of Section
26 25402 and this section. The commission may establish a schedule
27 of fees sufficient to pay the costs incurred by that enforcement.

28 (5) No construction of any state building shall commence until
29 the Department of General Services or the state agency that
30 otherwise has jurisdiction over the property reviews the plans for
31 the proposed building and certifies that the plans satisfy the
32 minimum standards established pursuant to ~~subdivision (a) or (b)~~
33 ~~of Chapter 2.8 (commencing with Section 15814.30) of Part 10b~~
34 of Division 3 of Title 2 of the Government Code, *subdivision (a)*
35 *or (b) of Section 25402*, and this section ~~which~~ *that* are applicable
36 to the building.

37 ~~(h)~~

38 *(g)* Subdivisions (a) and (b) of Section 25402 and this section
39 ~~shall~~ apply only to new residential and nonresidential buildings on
40 which actual site preparation and construction have not

commenced prior to the effective date of rules and regulations adopted pursuant to those sections that are applicable to those buildings. Nothing in those sections ~~shall prohibit~~ *prohibits* either of the following:

(1) The enforcement of state or local energy conservation or energy insulation standards, adopted prior to the effective date of rules and regulations adopted pursuant to subdivisions (a) and (b) of Section 25402 and this section with regard to residential and nonresidential buildings on which actual site preparation and construction have commenced prior to that date.

(2) The enforcement of city ~~or~~, county, *or city and county* energy conservation or energy insulation standards, whenever adopted, with regard to residential and nonresidential buildings on which actual site preparation and construction have not commenced prior to the effective date of rules and regulations adopted pursuant to subdivisions (a) and (b) of Section 25402 and this section, if the city ~~or~~, county, *or city and county* files the basis of its determination that the standards are cost effective with the commission and the commission finds that the standards will require the diminution of energy consumption levels permitted by the rules and regulations adopted pursuant to those sections, *except that cities, counties, or cities and counties may implement building standards requiring the use of solar water heating or photovoltaic systems without demonstrating cost effectiveness to the commission.* If, after two or more years after the filing with the commission of the determination that ~~those~~ *any nonsolar* standards are cost effective, there has been a substantial change in the factual circumstances affecting the determination, upon application by any interested party, the city ~~or~~, county, *or city and county* shall update and file a new basis of its determination that the standards are cost effective. The determination that the standards are cost effective shall be adopted by the governing body of the city ~~or~~, county, *or city and county* at a public meeting. If, at the meeting on the matter, the governing body determines that the standards are no longer cost effective, the standards shall, as of that date, be unenforceable and no building permit or other entitlement shall be denied based on the noncompliance with the standards.

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(h) The commission may exempt from the requirements of this section and of any regulations adopted pursuant thereto any proposed building for which compliance would be impossible without substantial delays and increases in cost of construction, if the commission finds that substantial funds have been expended in good faith on planning, designing, architecture or engineering prior to the date of adoption of the regulations.

~~(i)~~

(i) If a dispute arises between an applicant for a building permit, or the state pursuant to paragraph (5) of subdivision ~~(g)~~ (f), and the building department regarding interpretation of Section 25402 or the regulations adopted pursuant thereto, either party may submit the dispute to the commission for resolution. The commission's determination of the matter shall be binding on the parties.

~~(k)~~

(j) Nothing in Section 25130, 25131, or 25402, or in this section prevents enforcement of any regulation adopted pursuant to this chapter, or Chapter 11.5 (commencing with Section 19878) of Part 3 of Division 13 of the Health and Safety Code, as they existed prior to September 16, 1977.

SEC. 4. Section 25550 of the Public Resources Code is amended to read:

25550. (a) (1) Notwithstanding subdivision (a) of Section 25522, and Section 25540.6, the commission shall establish a process to issue its final certification for any thermal powerplant and related facilities or repowering project within six months after the filing of the application for certification that, on the basis of an initial review, shows both of the following:

(A) That there is substantial evidence that the project will not cause a significant adverse impact on the environment or electrical system.

(B) That the powerplant will comply with all applicable standards, ordinances, regulations, or statutes.

(2) For purposes of this section, "filing" has the same meaning as in Section 25522.

(b) Thermal powerplants and related facilities reviewed under this process shall satisfy the requirements of Section 25520 and other necessary information required by the commission, by regulation, including the information required for permitting by

each local, state, and regional agency that would have jurisdiction over the proposed thermal powerplant and related facilities but for the exclusive jurisdiction of the commission and the information required for permitting by each federal agency that has jurisdiction over the proposed thermal powerplant and related facilities.

(c) After acceptance of an application under this section, the commission shall not be required to issue a six-month final decision on the application if it determines there is substantial evidence in the record that the thermal powerplant and related facilities may result in a significant adverse impact on the environment or electrical system or does not comply with an applicable standard, ordinance, regulation, or statute. Under this circumstance, the commission shall make its decision in accordance with subdivision (a) of Section 25522 and Section 25540.6, and a new application shall not be required.

(d) For an application that the commission accepts under this section, all local, regional, and state agencies that would have had jurisdiction over the proposed thermal powerplant and related facilities, but for the exclusive jurisdiction of the commission, shall provide their final comments, determinations, or opinions within 100 days after the filing of the application. The regional water quality control boards, as established pursuant to Chapter 4 (commencing with Section 13200) of Division 7 of the Water Code, shall retain jurisdiction over any applicable water quality standard that is incorporated into any final certification issued pursuant to this chapter.

(e) Thermal powerplants and related facilities that demonstrate superior environmental or efficiency performance shall receive priority in review.

(f) With respect to a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown that the applicant has a contract with a general contractor and has contracted for an adequate supply of skilled labor to construct, operate, and maintain the plant.

(g) With respect to a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown in the application that emission offsets will be obtained early enough in the commission's review process to enable the commission to fully evaluate the application and comply with paragraph (2) of subdivision (d) of Section 25523.

(h) With respect to a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown that the thermal powerplant and related facilities complies with all regulations adopted by the commission that ensure that an application addresses disproportionate impacts in a manner consistent with Section 65040.12 of the Government Code.

(i) This section shall not apply to an application filed with the commission on or before August 1, 1999.

(j) To implement this section, the commission may adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that chapter, including without limitation, Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(k) This section shall remain in effect until January 1, 2004, and as of that date is repealed unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

~~SEC. 4.~~

SEC. 5. Section 25551 is added to the Public Resources Code, to read:

25551. For purposes of this chapter, the commission shall deem an application complete if it substantially complies with the data requirements of Section 25550. The applicant shall correct any deficiencies in the application in sufficient time to enable the commission to fully evaluate the application.

~~SEC. 5.~~

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

In order to expeditiously address the rapid, unforeseen shortage of electric power and energy available in the state and rapid and substantial increases in wholesale energy costs and retail energy rates that endanger the ~~health, welfare, and safety~~ *public peace*,

- 1 *health, safety, and general welfare* of the people of this state, it is
- 2 necessary for this act to take effect immediately.

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