

AMENDED IN SENATE MARCH 5, 2001

CALIFORNIA LEGISLATURE—2001–02 FIRST EXTRAORDINARY SESSION

**SENATE BILL**

**No. 28**

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**Introduced by Senator Sher**  
*(Principal coauthors: Senators Battin and Brulte)*  
*(Principal coauthor: Assembly Member Calderon)*

February 5, 2001

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An act to ~~add Section 42301.15 to, and~~ amend and repeal Section 41204.1 of the Education Code, to add Section 42301.15 to, to add Chapter 7 (commencing with Section 39910) to Part 2 of Division 26 of, and to add and repeal Section 42314.3 of, the Health and Safety Code, and to amend Sections 25506, 25514, 25523, 25531, and 25552 of, to add Sections 25526.1 and 25544 to, and Section 25526.1 to, to add and repeal Section 25550.5 of, the Public Resources Code, and to add Section 100.8 to the Revenue and Taxation Code, relating to energy resources, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 28, as amended, Sher. Powerplant siting.

(1) Existing law requires the Director of Finance to make certain adjustments, with respect to ensuring that the modifications required by specified statutes to property tax revenue allocations do not have a net fiscal impact on school districts or community college districts, or upon the state's obligation under the California Constitution to provide funding to those districts.

This bill would require the property tax assessed value of new electrical generation property, as defined, assessed by county tax

*assessors to be allocated entirely to the county or city in which the property is located, as defined. The bill would require the Director of Finance to include this provision in its required modifications. The bill would also make related technical changes.*

(2) Existing law contains various provisions relative to air pollution control.

This bill would require the State Air Resources Board, in consultation with air districts and the State Energy Resources Conservation and Development Commission, to implement a program for the expedited retrofit of electrical generating facilities to ensure that the facilities are permitted to operate in a manner that ~~complies with law~~ *protects and improves air quality*. The bill also would require the state board to implement ~~a~~ *an expedited statewide* program for the identification *and banking* of emission reduction credits for electrical generating facilities ~~and~~, make that information available to the public and interested parties, *and consult with the owners of facilities being retrofitted and other specified entities to ensure that the program is coordinated with efforts to ensure electrical grid reliability*.

The bill would require each air pollution control district or air quality management district to adopt an expedited program for the permitting of standby electrical generation facilities ~~and~~, distributed generation facilities, and ~~an expedited program for the air pollution retrofit of existing electrical generation, where applicable, natural gas transmission~~ facilities, thereby imposing a state-mandated local program.

~~(2)~~

*The bill would, until January 1, 2004, authorize an applicant for a thermal powerplant to pay an air emissions mitigation fee to the appropriate air pollution control district or air quality management district for expenditure by the district pursuant to the Carl Moyer Memorial Air Quality Standards Attainment Program or a similar program established by the district. The bill would also authorize an applicant for a thermal powerplant to post a bond or a letter of credit in an amount sufficient to adequately cover the cost of required emissions offsets.*

(3) Existing law provides for the restructuring of California's electric power industry so that the price for the generation of electricity is determined by a competitive market.

Existing law requires the State Energy Resources Conservation and Development Commission to certify all sites and related facilities for



thermal powerplants in the state, including a new site and related facility or a change or addition to an existing facility. The commission is required to prepare a final report and written decision after a public hearing on the application for the powerplant.

Existing law requires the commission to request the appropriate local, regional, state, and federal agencies to make comments and recommendations about the design, operation, and location of facilities.

This bill would require a local jurisdiction, as defined, to file a preliminary list of issues regarding the design, operation, location, and financial impact of the facility with the commission within 45 days of the filing of the application for certification. The bill would require the local jurisdiction to provide a final list of those issues within 90 days. To the extent that the bill would require the local jurisdiction to provide a new program or higher level of service, it would impose a state-mandated local program.

This bill would require the final report prepared by the commission to additionally include findings and conclusions as to whether increased property taxes due to the construction of the project are sufficient to support needed local improvements and public services required to serve the project.

This bill would require the written decision prepared by the commission after the public hearing to include a discussion of any public benefits from the project including, but not limited to, economic benefits, environmental benefits, and electricity reliability benefits, resulting from modernization of the state's electric generation infrastructure.

This bill would require the commission to adopt a regulation governing ex parte contacts applicable to an adjudicatory proceeding, as specified.

This bill would clarify that decisions of the commission are subject to judicial review by the Supreme Court of California.

~~The bill would specify that no owner of a facility has standing to challenge a decision made by the commission unless the owner also owns transmission or fueling facilities adjacent to the facility.~~

~~(3)~~

(4) Existing law authorizes the commission to establish a process for the expedited review of applications to construct and operate powerplants and thermal powerplants and related facilities.

This bill would require the commission, until January 1, 2004, also to establish a process for the expedited review of a repowering project.



This bill would additionally delete the deadline for completed applications for an expedited decision on simple cycle thermal powerplants.

(4)

(5) *The bill would appropriate \$54,000,000 from the General Fund to the commission for expenditure, without regard to fiscal years, in accordance with a prescribed schedule.*

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(4)

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

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: ~~no~~—yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. *Section 41204.1 of the Education Code, as*  
2 *added by Chapter 1111 of the Statutes of 1996, is amended to read:*  
3 41204.1. (a) (1) Pursuant to paragraph (2) of subdivision (b)  
4 of Section 41204, the Director of Finance shall annually adjust  
5 “the percentage of General Fund revenues appropriated for school  
6 districts and community college districts, respectively, in the  
7 1986–87 fiscal year” for purposes of applying paragraph (1) of  
8 subdivision (b) of Section 8 of Article XVI of the California  
9 Constitution, to reflect those property tax revenue allocation  
10 modifications; required by the amendments made to Chapter 6  
11 (commencing with Section 95) of Part 0.5 of Division 1 of the  
12 Revenue and Taxation Code by the ~~act adding this section,~~  
13 *qualifying provisions* in a manner that ensures that those  
14 modifications will have no net fiscal impact upon the amounts that



1 are otherwise required to be applied by the state for the support of  
2 school districts and community college districts pursuant to  
3 Section 8 of Article XVI of the California Constitution.

4 ~~(b)~~

5 (2) *For purposes of this section, “qualifying provisions” means*  
6 *the following:*

7 (A) *The amendments made to Chapter 6 (commencing with*  
8 *Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation*  
9 *Code during the 1991–92 Regular Session and the 1993–94*  
10 *Regular Session.*

11 (B) *The amendments made to Sections 97.2 and 97.3 of the*  
12 *Revenue and Taxation Code by Chapter 1111 of the Statutes of*  
13 *1996.*

14 (C) *Section 100.8 of the Revenue and Taxation Code.*

15 (b) *Notwithstanding any other provision of law, for the*  
16 *2002–03 fiscal year and each fiscal year thereafter, the percentage*  
17 *of “General Fund revenues appropriated for school districts and*  
18 *community college districts, respectively, in fiscal year 1986–87,”*  
19 *for purposes of paragraph (1) of subdivision (b) of Section 8 of*  
20 *Article XVI of the California Constitution, shall be deemed to be*  
21 *the percentage of General Fund revenues that would have been*  
22 *appropriated for those entities if the amendments made to Chapter*  
23 *6 (commencing with Section 95) of Part 0.5 of Division 1 of the*  
24 *Revenue and Taxation Code during the 1991–92 Regular Session,*  
25 *the amendments made to that same chapter during the 1993–94*  
26 *Regular Session, and Section 100.8 of the Revenue and Taxation*  
27 *Code, had been operative for the 1986–87 fiscal year.*

28 (c) *In no event may the recalculations required by subdivisions*  
29 *(a) and (b) result in a percentage that exceeds the “percentage of*  
30 *General Fund revenues appropriated for school districts and*  
31 *community college districts, respectively, in fiscal year 1986–87,”*  
32 *for purposes of paragraph (1) of subdivision (b) of Section 8 of*  
33 *Article XVI of the California Constitution prior to the amendments*  
34 *made to Chapter 6 (commencing with Section 95) of Part 0.5 of*  
35 *Division 1 of the Revenue and Taxation Code during the 1991–92*  
36 *Regular Session.*

37 (d) ~~It is the intent of the Legislature in enacting the act adding~~  
38 ~~this section to ensure both of the following:~~

39 (1) ~~That the changes required by the act adding this section~~  
40 ~~qualifying provisions in the allocations of ad valorem property tax~~



1 revenues do not have a net fiscal impact upon school districts, as  
2 defined in ~~accordance with~~ Section 41302.5, or community  
3 college districts.

4 (2) That the changes required by the ~~act adding this section~~  
5 *qualifying provisions* in the allocations of ad valorem property tax  
6 revenues do not have a net fiscal impact upon the amounts of  
7 revenue otherwise required to be applied by the state for the  
8 support of school districts and community college districts  
9 pursuant to Section 8 of Article XVI of the California Constitution.

10 *SEC. 2. Section 41204.1 of the Education Code, as amended*  
11 *by Section 1 of Chapter 84 of the Statutes of 1999, is repealed:*

12 ~~41204.1. (a) (1) Pursuant to paragraph (2) of subdivision (b)~~  
13 ~~of Section 41204, the Director of Finance shall annually adjust~~  
14 ~~“the percentage of General Fund revenues appropriated for school~~  
15 ~~districts and community college districts, respectively, in the~~  
16 ~~1986–87 fiscal year” for purposes of applying paragraph (1) of~~  
17 ~~subdivision (b) of Section 8 of Article XVI of the California~~  
18 ~~Constitution, to reflect those property tax revenue allocation~~  
19 ~~modifications, required by the amendments made to Chapter 6~~  
20 ~~(commencing with Section 95) of Part 0.5 of Division 1 of the~~  
21 ~~Revenue and Taxation Code by the qualifying provisions, in a~~  
22 ~~manner that ensures that those modifications will have no net fiscal~~  
23 ~~impact upon the amounts that are otherwise required to be applied~~  
24 ~~by the state for the support of school districts and community~~  
25 ~~college districts pursuant to Section 8 of Article XVI of the~~  
26 ~~California Constitution.~~

27 (2) For purposes of this section, “~~qualifying provisions~~”  
28 means all of the following:

29 (A) ~~The amendments made to Chapter 6 (commencing with~~  
30 ~~Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation~~  
31 ~~Code during the 1991–92 Regular Session and the 1993–94~~  
32 ~~Regular Session.~~

33 (B) ~~The amendments made to Sections 97.2 and 97.3 of the~~  
34 ~~Revenue and Taxation Code by Chapter 1111 of the Statutes of~~  
35 ~~1996.~~

36 (C) ~~Section 97.43 of the Revenue and Taxation Code.~~

37 (b) ~~Notwithstanding any other provision of law, for the~~  
38 ~~2000–01 fiscal year and each fiscal year thereafter, the percentage~~  
39 ~~of “General Fund revenues appropriated for school districts and~~  
40 ~~community college districts, respectively, in fiscal year~~



1 ~~1986–87,” for purposes of paragraph (1) of subdivision (b) of~~  
 2 ~~Section 8 of Article XVI of the California Constitution, shall be~~  
 3 ~~deemed to be the percentage of General Fund revenues that would~~  
 4 ~~have been appropriated for those entities if the amendments made~~  
 5 ~~to Chapter 6 (commencing with Section 95) of Part 0.5 of Division~~  
 6 ~~1 of the Revenue and Taxation Code during the 1991–92 Regular~~  
 7 ~~Session, the amendments made to that same chapter during the~~  
 8 ~~1993–94 Regular Session, and Section 97.43 of the Revenue and~~  
 9 ~~Taxation Code, had been operative for the 1986–87 fiscal year.~~

10 (e) ~~In no event shall the recalculations pursuant to subdivisions~~  
 11 ~~(a) and (b) result in a percentage that exceeds the “percentage of~~  
 12 ~~General Fund revenues appropriated for school districts and~~  
 13 ~~community college districts, respectively, in fiscal year~~  
 14 ~~1986–87,” for purposes of paragraph (1) of subdivision (b) of~~  
 15 ~~Section 8 of Article XVI of the California Constitution prior to the~~  
 16 ~~amendments made to Chapter 6 (commencing with Section 95) of~~  
 17 ~~Part 0.5 of Division 1 of the Revenue and Taxation Code during~~  
 18 ~~the 1991–92 Regular Session.~~

19 (d) ~~It is the intent of the Legislature to ensure both of the~~  
 20 ~~following:~~

21 (1) ~~That the changes required by the qualifying provisions in~~  
 22 ~~the allocations of ad valorem property tax revenues do not have a~~  
 23 ~~net fiscal impact upon school districts, as defined in accordance~~  
 24 ~~with Section 41302.5, or community college districts.~~

25 (2) ~~That the changes required by the qualifying provisions in~~  
 26 ~~the allocations of ad valorem property tax revenues do not have a~~  
 27 ~~net fiscal impact upon the amounts of revenue otherwise required~~  
 28 ~~to be applied by the state for the support of school districts and~~  
 29 ~~community college districts pursuant to Section 8 of Article XVI~~  
 30 ~~of the California Constitution.~~

31 *SEC. 3.* Chapter 7 (commencing with Section 39910) is added  
 32 to Part 2 of Division 26 of the Health and Safety Code, to read:

33

34 CHAPTER 7. EXPEDITED AIR QUALITY IMPROVEMENT PROGRAM  
 35 FOR ELECTRICAL GENERATION

36

37 39910. The Legislature finds and declares that it is in the  
 38 interests of the people of the State of California to ensure that the  
 39 state board establish an expedited process to assist in the

[1]



1 permitting, retrofit, and operation of electrical generating  
2 facilities in a manner that protects public health and air quality.

3 39915. The state board, in consultation with the districts and  
4 the State Energy Resources Conservation and Development  
5 Commission, shall implement a program for the expedited retrofit  
6 of electrical generating facilities to ensure that those facilities  
7 ~~operate, by permit, in a manner that complies with applicable~~  
8 ~~statutes and regulations.~~ *are operated in a manner that protects*  
9 *and improves air quality. The state board shall establish standards*  
10 *and timeframes in a manner consistent with existing requirements*  
11 *to implement this section.*

12 39920. The state board shall implement ~~a~~ *an expedited*  
13 *statewide* program for the identification *and banking* of emission  
14 reduction credits for electrical generating facilities *and, where*  
15 *applicable, natural gas transmission facilities* and make that  
16 information available to the public and interested parties. *The*  
17 *board shall consult with the owners of facilities being retrofitted,*  
18 *the Independent System Operator, the Public Utilities*  
19 *Commission, and the State Energy Resources Conservation and*  
20 *Development Commission to ensure that the program is*  
21 *coordinated with efforts to ensure electrical grid reliability.*

22 ~~SEC. 2.—~~

23 *SEC. 4.* Section 42301.15 is added to the Health and Safety  
24 Code, to read:

25 42301.15. ~~(a)~~ Each district shall adopt an expedited program  
26 for the permitting of standby electrical generation facilities ~~and~~,  
27 distributed generation facilities, *and, where applicable, natural*  
28 *gas transmission facilities* which ensures that those facilities may  
29 operate in compliance with applicable air quality standards,  
30 statutes, and regulations.

31 ~~(b)~~ Each district shall adopt an expedited program for the  
32 retrofit of existing electrical generation facilities so that those  
33 facilities may operate in compliance with applicable air quality  
34 standards, statutes, and regulations. Each district shall consult with  
35 the Independent System Operator, the Public Utilities  
36 Commission, and the State Energy Resources Conservation and  
37 Development Commission to ensure that the program is  
38 coordinated with efforts to ensure electrical grid reliability.

39 ~~SEC. 3.—~~

1 SEC. 5. Section 42314.3 is added to the Health and Safety  
2 Code, to read:

3 42314.3. (a) Notwithstanding any other provision of law, and  
4 to the extent permitted by the federal Clean Air Act (42 U.S.C. Sec.  
5 7401 et seq.), and upon demonstration by the owner or operator  
6 of the facility that those offsets are not available, in lieu of  
7 obtaining emissions offsets, the applicant for a thermal  
8 powerplant may pay an air emissions mitigation fee to the  
9 appropriate air pollution control district or air quality  
10 management district for expenditure by the district pursuant to  
11 Chapter 9 (commencing with Section 44275) of Part 5 or a similar  
12 program established by the district.

13 (b) Notwithstanding any other provision of law, and to the  
14 extent permitted by the federal Clean Air Act (42 U.S.C. Sec. 7401  
15 et seq.), in lieu of obtaining emissions offsets, the applicant for a  
16 thermal powerplant may post a bond or letter of credit in an  
17 amount sufficient to adequately cover the cost of required  
18 emissions offsets. Prior to commencement of commercial  
19 operation, the owner or operator of the thermal powerplant shall  
20 obtain the required emissions offsets, or shall obtain a portion of  
21 the required emissions offsets and forfeit a proportionate amount  
22 of the bond or letter of credit for the portion of the required  
23 emissions offsets that are not obtained. The district may, by  
24 regulation, establish the time period, not to exceed six months  
25 prior to commencement of commercial operations, at which time  
26 the offsets or funds shall be provided.

27 (c) With respect to subdivisions (a) and (b), the appropriate  
28 district shall hold a public hearing before the governing board or  
29 air pollution control officer to establish the amount to be paid.  
30 Notice of the hearing shall be published at least 30 days prior to  
31 the hearing in a newspaper of general circulation in the area to be  
32 affected by the powerplant emissions. The amount shall be  
33 sufficient in the judgment of the district to obtain equivalent  
34 emission reductions as would have been provided by the otherwise  
35 required emissions offsets, and may include an additional amount  
36 not to exceed 3 percent to cover the district's administrative costs.  
37 The district shall use the funds to obtain equivalent emissions  
38 reductions as would have been provided by offsets, to the maximum  
39 extent feasible.



1 (d) This section shall apply to all proposed thermal  
2 powerplants, including those subject to the jurisdiction of the State  
3 Energy Resources Conservation and Development Commission.

4 (e) The district may, by regulation, suspend or limit the  
5 applicability of this section for any period of time or with respect  
6 to a particular powerplant to the extent the district determines that  
7 application of this section would interfere with attainment or  
8 maintenance of national ambient air quality standards, or to the  
9 extent it determines that adequate offsets are available at a  
10 reasonable price.

11 (f) This section shall remain in effect only until January 1,  
12 2004, and as of that date is repealed, unless a later enacted statute,  
13 which is enacted before January 1, 2004, deletes or extends that  
14 date.

15 SEC. 6. Section 25506 of the Public Resources Code is  
16 amended to read:

17 25506. (a) The commission shall request the appropriate  
18 local, regional, state, and federal agencies to make comments and  
19 recommendations regarding the design, operation, and location of  
20 the facilities designated in the notice, in relation to environmental  
21 quality, public health and safety, and other factors on which they  
22 may have expertise.

23 (b) Each local jurisdiction responding to the request shall file  
24 a preliminary list of issues regarding the design, operation,  
25 location, and financial impacts of the facility with the commission  
26 no later than 45 days after the filing of an application for  
27 certification and shall provide a final list of those issues with the  
28 commission no later than 90 days after the filing of an application  
29 for certification.

30 (c) “Local jurisdiction,” for purposes of this section, means  
31 any city, county, city and county, or regional planning agency, or  
32 any combination thereof formed for the joint exercise of any  
33 power.

34 ~~SEC. 4.~~

35 SEC. 7. Section 25514 of the Public Resources Code is  
36 amended to read:

37 25514. After conclusion of the hearings held pursuant to  
38 Section 25513 and no later than 300 days after the filing of the  
39 notice, a final report shall be prepared and distributed. The final  
40 report shall include, but not be limited to, all of the following:



1 (a) The findings and conclusions of the commission regarding  
2 the conformity of alternative sites and related facilities designated  
3 in the notice or considered in the notice of intention proceeding  
4 with both of the following:

5 (1) The 12-year forecast of statewide and service area electric  
6 power demands adopted pursuant to subdivision (e) of Section  
7 25305, except as provided in Section 25514.5.

8 (2) Applicable local, regional, state, and federal standards,  
9 ordinances, and laws, including any long-range land use plans or  
10 guidelines adopted by the state or by any local or regional planning  
11 agency, which would be applicable but for the exclusive authority  
12 of the commission to certify sites and related facilities; and the  
13 standards adopted by the commission pursuant to Section 25216.3.

14 (b) Any findings and comments submitted by the California  
15 Coastal Commission pursuant to Section 25507 and subdivision  
16 (d) of Section 30413.

17 (c) Any findings and comments submitted by the San Francisco  
18 Bay Conservation and Development Commission pursuant to  
19 Section 25507 of this code and subdivision (d) of Section 66645  
20 of the Government Code.

21 (d) The commission’s findings on the acceptability and relative  
22 merit of each alternative siting proposal designated in the notice  
23 or presented at the hearings and reviewed by the commission. The  
24 specific findings of relative merit shall be made pursuant to  
25 Sections 25502 to 25516, inclusive. In its findings on any  
26 alternative siting proposal, the commission may specify  
27 modification in the design, construction, location, or other  
28 conditions which will meet the standards, policies, and guidelines  
29 established by the commission.

30 (e) Findings and conclusions with respect to the safety and  
31 reliability of the facility or facilities at each of the sites designated  
32 in the notice, as determined by the commission pursuant to Section  
33 25511, and any conditions, modifications, or criteria proposed for  
34 any site and related facility proposal resulting from the findings  
35 and conclusions.

36 (f) Findings and conclusions as to whether increased property  
37 taxes due to the construction of the project are sufficient to support  
38 needed local improvements and public services required to serve  
39 the project.

40 ~~SEC. 5.—~~



1 SEC. 8. Section 25523 of the Public Resources Code is  
2 amended to read:

3 25523. The commission shall prepare a written decision after  
4 the public hearing on an application, which includes all of the  
5 following:

6 (a) Specific provisions relating to the manner in which the  
7 proposed facility is to be designed, sited, and operated in order to  
8 protect environmental quality and assure public health and safety.

9 (b) In the case of a site to be located in the coastal zone, specific  
10 provisions to meet the objectives of Division 20 (commencing  
11 with Section 30000) as may be specified in the report submitted by  
12 the California Coastal Commission pursuant to subdivision (d) of  
13 Section 30413, unless the commission specifically finds that the  
14 adoption of the provisions specified in the report would result in  
15 greater adverse effect on the environment or that the provisions  
16 proposed in the report would not be feasible.

17 (c) In the case of a site to be located in the Suisun Marsh or in  
18 the jurisdiction of the San Francisco Bay Conservation and  
19 Development Commission, specific provisions to meet the  
20 requirements of Division 19 (commencing with Section 29000) of  
21 this code or Title 7.2 (commencing with Section 66600) of the  
22 Government Code as may be specified in the report submitted by  
23 the San Francisco Bay Conservation and Development  
24 Commission pursuant to subdivision (d) of Section 66645 of the  
25 Government Code, unless the commission specifically finds that  
26 the adoption of the provisions specified in the report would result  
27 in greater adverse effect on the environment or the provisions  
28 proposed in the report would not be feasible.

29 (d) (1) Findings regarding the conformity of the proposed site  
30 and related facilities with standards adopted by the commission  
31 pursuant to Section 25216.3 and subdivision (d) of Section 25402,  
32 with public safety standards and the applicable air and water  
33 quality standards, and with other relevant local, regional, state, and  
34 federal standards, ordinances, or laws. If the commission finds that  
35 there is noncompliance with any state, local, or regional ordinance  
36 or regulation in the application, it shall consult and meet with the  
37 state, local, or regional governmental agency concerned to attempt  
38 to correct or eliminate the noncompliance. If the noncompliance  
39 cannot be corrected or eliminated, the commission shall inform the



1 state, local, or regional governmental agency if it makes the  
2 findings required by Section 25525.

3 (2) The commission may not find that the proposed facility  
4 conforms with applicable air quality standards pursuant to  
5 paragraph (1) unless the applicable air pollution control district or  
6 air quality management district certifies that complete emissions  
7 offsets for the proposed facility have been identified and will be  
8 obtained by the applicant prior to the commission’s licensing of the  
9 project, to the extent that the proposed facility requires emission  
10 offsets to comply with local, regional, state, or federal air quality  
11 standards.

12 (e) Provision for restoring the site as necessary to protect the  
13 environment, if the commission denies approval of the  
14 application.

15 (f) In the case of a site and related facility using resource  
16 recovery (waste-to-energy) technology, specific conditions  
17 requiring that the facility be monitored to ensure compliance with  
18 paragraphs (1), (2), (3), and (6) of subdivision (a) of Section 42315  
19 of the Health and Safety Code.

20 (g) In the case of a facility, other than a resource recovery  
21 facility subject to subdivision (f), specific conditions requiring the  
22 facility to be monitored to ensure compliance with toxic air  
23 contaminant control measures adopted by an air pollution control  
24 district or air quality management district pursuant to subdivision  
25 (d) of Section 39666 or Section 41700 of the Health and Safety  
26 Code, whether the measures were adopted before or after issuance  
27 of a determination of compliance by the district.

28 (h) A discussion of any public benefits from the project  
29 including, but not limited to, economic benefits, environmental  
30 benefits, and electricity reliability benefits, resulting from  
31 modernization of the state’s electric generation infrastructure.

32 ~~SEC. 6.—~~

33 *SEC. 9.* Section 25526.1 is added to the Public Resources  
34 Code, to read:

35 25526.1. The commission shall adopt a regulation, applicable  
36 to any adjudicatory proceeding before the commission, governing  
37 ex parte contacts. The regulation shall provide for prompt  
38 disclosure of any ex parte contact. The rule shall apply to any  
39 contact regarding a substantive, nonprocedural matter at issue in  
40 the adjudicatory proceeding between any party to the proceeding

1



1 and commission staff *where the staff is acting as a party to the*  
2 *proceeding*, and any commissioner, commissioner’s advisor, or  
3 hearing officer. The regulation shall not restrict exchanges of  
4 information among the public and any parties to the proceeding,  
5 including contacts between parties and commission staff, other  
6 than a commissioner, commissioner’s advisor, or hearing officer.  
7 The commission staff shall docket a written summary of the  
8 substance of any ex parte contact between staff and a party.

9 ~~SEC. 7.—~~

10 *SEC. 10.* Section 25531 of the Public Resources Code is  
11 amended to read:

12 25531. (a) The decisions of the commission on any  
13 application of any electric utility for certification of a site and  
14 related facility are subject to judicial review by the Supreme Court  
15 of California.

16 (b) No new or additional evidence may be introduced upon  
17 review and the cause shall be heard on the record of the  
18 commission as certified to by it. The review shall not be extended  
19 further than to determine whether the commission has regularly  
20 pursued its authority, including a determination of whether the  
21 order or decision under review violates any right of the petitioner  
22 under the United States Constitution or the California  
23 Constitution. The findings and conclusions of the commission on  
24 questions of fact are final and are not subject to review, except as  
25 provided in this article. These questions of fact shall include  
26 ultimate facts and the findings and conclusions of the commission.  
27 A report prepared by, or an approval of, the commission pursuant  
28 to Section 25510, 25514, 25516, or 25516.5, or subdivision (b) of  
29 Section 25520.5, shall not constitute a decision of the commission  
30 subject to judicial review.

31 (c) Subject to the right of judicial review of decisions of the  
32 commission, no court in this state has jurisdiction to hear or  
33 determine any case or controversy concerning any matter which  
34 was, or could have been, determined in a proceeding before the  
35 commission, or to stop or delay the construction or operation of  
36 any thermal powerplant except to enforce compliance with the  
37 provisions of a decision of the commission.

38 (d) Notwithstanding Section 1250.370 of the Code of Civil  
39 Procedure:



1 (1) If the commission requires, pursuant to subdivision (a) of  
2 Section 25528, as a condition of certification of any site and  
3 related facility, that the applicant acquire development rights, that  
4 requirement conclusively establishes the matters referred to in  
5 Sections 1240.030 and 1240.220 of the Code of Civil Procedure  
6 in any eminent domain proceeding brought by the applicant to  
7 acquire the development rights.

8 (2) If the commission certifies any site and related facility, that  
9 certification conclusively establishes the matters referred to in  
10 Sections 1240.030 and 1240.220 of the Code of Civil Procedure  
11 in any eminent domain proceeding brought to acquire the site and  
12 related facility.

13 (e) No decision of the commission pursuant to Section 25516,  
14 25522, or 25523 shall be found to mandate a specific supply plan  
15 for any utility as prohibited by Section 25323.

16 ~~SEC. 8. Section 25544 is added to the Public Resources Code,~~  
17 ~~to read:~~

18 ~~25544. Notwithstanding any other provision of law, no owner~~  
19 ~~of a facility shall have standing to challenge a decision made by the~~  
20 ~~commission pursuant to this chapter unless that owner also owns~~  
21 ~~transmission or fueling facilities adjacent to the facility.~~

22 ~~SEC. 9.—~~

23 ~~SEC. 11. Section 25550.5 is added to the Public Resources~~  
24 ~~Code, to read:~~

25 25550.5. (a) Notwithstanding subdivision (a) of Section  
26 25522 and Section 25540.6, the commission shall establish a  
27 process to issue its final certification for the repowering of a  
28 thermal powerplant and related facilities within 180 days after the  
29 filing of the application for certification that, on the basis of an  
30 initial review, shows that there is substantial evidence that the  
31 project will not cause a significant adverse impact on the  
32 environment or electrical system, that the project will comply with  
33 all applicable standards, ordinances, regulations, or statutes, and  
34 that electrical output from the project will be made available to  
35 serve electrical customers located within the state. For purposes of  
36 this section, filing has the same meaning as in Section 25522.

37 (b) The repowering of a thermal powerplant and related  
38 facilities reviewed under this process shall satisfy the requirements  
39 of Section 25520 and other necessary information required by the  
40 commission by regulation, including the information required for



1 permitting by each local, state, and regional agency that would  
2 have jurisdiction over the proposed repowering of a thermal  
3 powerplant and related facilities but for the exclusive jurisdiction  
4 of the commission and the information required for permitting by  
5 each federal agency that has jurisdiction over the proposed  
6 repowering of a thermal powerplant and related facilities.

7 (c) After acceptance of an application under this section, the  
8 commission shall not be required to issue a six-month final  
9 decision on the application if it determines there is substantial  
10 evidence in the record that the thermal powerplant and related  
11 facilities may result in a significant adverse impact on the  
12 environment or electrical system or does not comply with an  
13 applicable standard, ordinance, regulation, or statute. Under this  
14 circumstance, the commission shall make its decision in  
15 accordance with subdivision (a) of Section 25522 and Section  
16 25540.6, and a new application shall not be required.

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

28 (e) The repowering of a thermal powerplant and related  
29 facilities that demonstrate superior environmental or efficiency  
30 performance improvement shall receive first priority in review by  
31 the commission.

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

37 (g) With respect to a repowering of a thermal powerplant and  
38 related facilities reviewed under the process established by this  
39 chapter, it shall be shown that the thermal powerplant and related  
40 facilities complies with all regulations adopted by the commission



1 that ensure that an application addresses disproportionate impacts  
2 in a manner consistent with Section 65040.12 of the Government  
3 Code.

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

6 (i) To implement this section, the commission may adopt  
7 emergency regulations in accordance with Chapter 3.5  
8 (commencing with Section 11340) of Part 1 of Division 3 of Title  
9 2 of the Government Code. For purposes of that chapter, including,  
10 without limitation, Section 11349.6 of the Government Code, the  
11 adoption of the regulations shall be considered by the Office of  
12 Administrative Law to be necessary for the immediate  
13 preservation of the public peace, health, safety, and general  
14 welfare.

15 (j) For purposes of this section, “repowering” means a project  
16 for the modification of an existing thermal powerplant that meets  
17 all of the following criteria:

18 (1) The project complies with all applicable requirements of  
19 federal, state, and local laws.

20 (2) The project is located on the site of, and within the existing  
21 boundaries of, an existing thermal facility.

22 (3) The project will not require significant additional  
23 *rights-of-way* for electrical or fuel-related transmission facilities.

24 (4) The project will result in significant and substantial  
25 increases in the efficiency of the production of electricity,  
26 including, but not limited to, reducing the heat rate, reducing the  
27 use of natural gas, reducing the use and discharge of water, and  
28 reducing air pollutants emitted by the project, *as measured on a*  
29 *per kilowatthour basis*.

30 (k) This section shall remain in effect only until January 1,  
31 2004, and as of that date is repealed, unless a later enacted statute,  
32 that is enacted before January 1, 2004, deletes or extends that date.

33 ~~SEC. 10.—~~

34 *SEC. 12.* Section 25552 of the Public Resources Code is  
35 amended to read:

36 25552. (a) The commission shall implement a procedure,  
37 consistent with Division 13 (commencing with Section 21000)  
38 and with the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.),  
39 for an expedited decision on simple cycle thermal powerplants and  
40 related facilities that can be put into service on or before August



1 † *December 31, 2002*, including a procedure for considering  
2 amendments to a pending application if the amendments specify  
3 a change from a combined cycle thermal powerplant and related  
4 facilities to a simple cycle thermal powerplant and related  
5 facilities.

6 (b) The procedure shall include all of the following:

7 (1) A requirement that, within ~~30~~ 15 days of receiving the  
8 application or amendment to a pending application, the  
9 commission shall determine whether the application is complete.

10 (2) A requirement that, within ~~30~~ 15 days of determining that  
11 an application is complete, the commission, or a committee of the  
12 commission, shall determine whether the application qualifies for  
13 an expedited decision pursuant to this section. If an application  
14 qualifies for an expedited decision pursuant to this section, the  
15 commission shall provide the notice required by Section 21092.

16 (c) The commission shall issue its final decision on an  
17 application, including an amendment to a pending application,  
18 within four months from the date on which it deems the application  
19 or amendment complete, or at any later time mutually agreed upon  
20 by the commission and the applicant, provided that the thermal  
21 powerplant and related facilities remain likely to be in service  
22 ~~before or during August~~ on or before *December 31, 2002*.

23 (d) The commission shall issue a decision granting a license to  
24 a simple cycle thermal powerplant and related facilities pursuant  
25 to this section if the commission finds all of the following:

26 (1) The thermal powerplant is not a major stationary source or  
27 a modification to a major stationary source, as defined by the  
28 federal Clean Air Act, and will be equipped with best available  
29 control technology, in consultation with the appropriate air  
30 pollution control district or air quality management district and the  
31 State Air Resources Board.

32 (2) The thermal powerplant and related facilities will not have  
33 a significant adverse effect on the environment or the electrical  
34 system as a result of construction or operation.

35 (3) With respect to a project for a thermal powerplant and  
36 related facilities reviewed under the process established by this  
37 section, the applicant has contracted for an adequate supply of  
38 skilled labor to construct, operate, and maintain the thermal  
39 powerplant.



1 (e) In order to qualify for the procedure established by this  
2 section, an application shall satisfy the requirements of Section  
3 25523, and include a description of the proposed conditions of  
4 certification that will do all of the following:

5 (1) Assure that the thermal powerplant and related facilities  
6 will not have a significant adverse effect on the environment as a  
7 result of construction or operation.

8 (2) Assure protection of public health and safety.

9 (3) Result in compliance with all applicable federal, state, and  
10 local laws, ordinances, and standards.

11 (4) A reasonable demonstration that the thermal powerplant  
12 and related facilities, if licensed on the expedited schedule  
13 provided by this section, will be in service before August 1, 2002.

14 (5) A binding and enforceable agreement with the commission,  
15 that demonstrates either of the following:

16 (A) That the thermal powerplant will cease to operate and the  
17 permit will terminate within three years.

18 (B) That the thermal powerplant will be recertified, modified,  
19 replaced, or removed within a period of three years with a  
20 cogeneration or combined-cycle thermal powerplant that uses best  
21 available control technology and obtains necessary offsets, as  
22 determined at the time the combined-cycle thermal powerplant is  
23 constructed, and that complies with all other applicable laws,  
24 ordinances, and standards.

25 (6) Where applicable, that the thermal powerplant will obtain  
26 offsets or, where offsets are unavailable, pay an air emissions  
27 mitigation fee to the air pollution control district or air quality  
28 management district based upon the actual emissions from the  
29 thermal powerplant, to the district for expenditure by the district  
30 pursuant to Chapter 9 (commencing with Section 44275) of Part  
31 5 of Division 26 of the Health and Safety Code, to mitigate the  
32 emissions from the plant. To the extent consistent with federal law  
33 and regulation, any offsets required pursuant to this paragraph  
34 shall be based upon a 1:1 ratio, unless, after consultation with the  
35 applicable air pollution control district or air quality management  
36 district, the commission finds that a different ratio should be  
37 required.

38 (7) Nothing in this section shall affect the ability of an applicant  
39 that receives approval to install simple cycle thermal powerplants  
40 and related facilities as an amendment to a pending application to



1 proceed with the original application for a combined cycle thermal  
2 powerplant or related facilities.

3 (f) This section shall remain in effect only until January 1,  
4 2003, and as of that date is repealed, unless a later enacted statute,  
5 that is enacted before January 1, 2003, deletes or extends that date  
6 except that the binding commitments in paragraph (5) of  
7 subdivision (e) shall remain in effect after that date.

8 ~~SEC. 11.—~~

9 *SEC. 13. Section 100.8 is added to the Revenue and Taxation  
10 Code, to read:*

11 *100.8. Notwithstanding any other provision of law, for the  
12 2001–02 fiscal year and each fiscal year thereafter, all of the  
13 following apply:*

14 (a) *The property tax assessed value of new electrical  
15 generation property assessed by county tax assessors in each  
16 county shall be allocated entirely to the county or city in which the  
17 property is located.*

18 (b) *The total tax rate applied to the assessed value allocated  
19 pursuant to subdivision (a) shall be the sum of the rates calculated  
20 pursuant to subdivision (b) of Section 100.*

21 (c) *The revenues derived from the application of the total tax  
22 rate described in subdivision (b) to the assessed value allocated to  
23 a tax rate area pursuant to subdivision (a) shall be allocated  
24 among the jurisdictions in that tax rate area, in those same  
25 percentage shares that property tax revenues, derived from locally  
26 assessed property, are allocated to those jurisdictions in that tax  
27 rate area.*

28 (d) *For purposes of this section, “new electrical generation  
29 property” means a powerplant, cogeneration facility, new  
30 generation facility, or a transmission or distribution facility, or  
31 any portion thereof, completed and placed in service on or after  
32 January 1, 2001.*

33 *SEC. 14. The sum of fifty-four million dollars (\$54,000,000)  
34 is hereby appropriated from the General Fund to the State Energy  
35 Resources Conservation and Development Commission for  
36 expenditure, without regard to fiscal years, for the following  
37 purposes:*

38 (a) *Fifty million dollars (\$50,000,000) to increase rebates for  
39 clean, renewable distributed energy systems smaller than 10  
40 kilowatts.*



1 (b) Three million dollars (\$3,000,000) to provide assistance to  
2 cities and counties to expedite the review and analysis of  
3 applications for electrical generating facilities which will assist  
4 the state in meeting its urgent energy needs and ensuring system  
5 reliability.

6 (c) One million dollars (\$1,000,000) to contract for a study of  
7 the causes and effects of shoreline water contamination located in  
8 the vicinity of the City of Huntington Beach to be conducted  
9 concurrent with the Huntington Beach Shoreline Contamination  
10 Study conducted by the Orange County Sanitation district.

11 SEC. 15. Notwithstanding Section 17610 of the Government  
12 Code, if the Commission on State Mandates determines that this  
13 act contains costs mandated by the state, reimbursement to local  
14 agencies and school districts for those costs shall be made pursuant  
15 to Part 7 (commencing with Section 17500) of Division 4 of Title  
16 2 of the Government Code. If the statewide cost of the claim for  
17 reimbursement does not exceed one million dollars (\$1,000,000),  
18 reimbursement shall be made from the State Mandates Claims  
19 Fund.

20 ~~SEC. 12.~~

21 SEC. 16. This act is an urgency statute necessary for the  
22 immediate preservation of the public peace, health, or safety  
23 within the meaning of Article IV of the Constitution and shall go  
24 into immediate effect. The facts constituting the necessity are:

25 In order to address the rapid, unforeseen shortage of electric  
26 supply and energy available in the state, which endangers the  
27 health, welfare, and safety of the people of this state, it is necessary  
28 for this act to take effect immediately.

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