

AMENDED IN SENATE MARCH 12, 2001

AMENDED IN SENATE MARCH 5, 2001

CALIFORNIA LEGISLATURE—2001–02 FIRST EXTRAORDINARY SESSION

SENATE BILL

No. 28

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

February 5, 2001

An act to 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 Section 25526.1 to, to add and repeal ~~Section~~ *Sections 25519.5 and 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 protects and improves air quality. The bill also would require the state board to implement an expedited statewide program for the identification and banking of emission reduction credits for electrical generating facilities, 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, distributed generation facilities, and, where applicable, natural gas transmission facilities, thereby imposing a state-mandated local program.

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. *The bill would require the district to give first priority to securing emissions reductions from comparable stationary sources and would require the district to observe proximity standards of the federal Clean Air Act. The bill would authorize the district, to the extent cost-effective stationary source emissions reductions are not available, to expend the mitigation fees 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, until January 1, 2004, each local government agency reviewing the application~~ 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~~ *date the application for certification is deemed filed*. The bill would require the local jurisdiction to provide a final list of those issues ~~within 90 days no later than 100 days after the application for certification is deemed filed~~. 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.

(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.

(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.

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

Vote: ²/₃. Appropriation: 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

1 Revenue and Taxation Code by the qualifying provisions in a
2 manner that ensures that those modifications will have no net fiscal
3 impact upon the amounts that are otherwise required to be applied
4 by the state for the support of school districts and community
5 college districts pursuant to Section 8 of Article XVI of the
6 California Constitution.

7 (2) For purposes of this section, “qualifying provisions”
8 means the following:

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

13 (B) The amendments made to Sections 97.2 and 97.3 of the
14 Revenue and Taxation Code by Chapter 1111 of the Statutes of
15 1996.

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

17 (b) Notwithstanding any other provision of law, for the
18 2002–03 fiscal year and each fiscal year thereafter, the percentage
19 of “General Fund revenues appropriated for school districts and
20 community college districts, respectively, in fiscal year
21 1986–87,” for purposes of paragraph (1) of subdivision (b) of
22 Section 8 of Article XVI of the California Constitution, shall be
23 deemed to be the percentage of General Fund revenues that would
24 have been appropriated for those entities if the amendments made
25 to Chapter 6 (commencing with Section 95) of Part 0.5 of Division
26 1 of the Revenue and Taxation Code during the 1991–92 Regular
27 Session, the amendments made to that same chapter during the
28 1993–94 Regular Session, and Section 100.8 of the Revenue and
29 Taxation Code, had been operative for the 1986–87 fiscal year.

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

39 (d) It is the intent of the Legislature to ensure the following:

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

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

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

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

CHAPTER 7. EXPEDITED AIR QUALITY IMPROVEMENT PROGRAM
FOR ELECTRICAL GENERATION

39910. The Legislature finds and declares that it is in the interests of the people of the State of California to ensure that the state board establish an expedited process to assist in the permitting, retrofit, and operation of electrical generating facilities in a manner that protects public health and air quality.

39915. The state board, in consultation with the districts and the State Energy Resources Conservation and Development Commission, shall implement a program for the expedited retrofit of electrical generating facilities to ensure that those facilities are operated in a manner that protects and improves air quality. *The state board shall consult with the owners of facilities being retrofitted, the Independent System Operator, and the Public Utilities Commission to ensure that the program is coordinated with efforts to ensure electrical grid reliability.* The state board shall establish standards and timeframes in a manner consistent with existing requirements to implement this section.

39920. The state board shall implement an expedited statewide program for the identification and banking of emission reduction credits for electrical generating facilities and, where applicable, natural gas transmission facilities and make that information available to the public and interested parties. The board shall consult with the owners of ~~facilities being retrofitted,~~

~~the Independent System Operator, the Public Utilities Commission, and the State Energy Resources Conservation and Development Commission to ensure that the program is coordinated with efforts to ensure electrical grid reliability. affected facilities.~~

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

42301.15. Each district shall adopt an expedited program for the permitting of standby electrical generation facilities , distributed generation facilities, and, where applicable, natural gas transmission facilities which ensures that those facilities may operate in compliance with applicable air quality standards, statutes, and regulations.

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

42314.3. (a) Notwithstanding any other provision of law, and to the extent permitted by the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.), and upon demonstration by the owner or operator of the facility that those offsets are not available, in lieu of obtaining emissions offsets, the applicant for a thermal powerplant may 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 district. *In expending mitigation fees, the district shall give first priority to securing emission reductions from comparable stationary sources and shall observe standards regarding proximity consistent with regulations and guidance adopted pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.). To the extent cost-effective stationary source emission reductions are not available, the district may expend mitigation fees for the program established by Chapter 9 (commencing with Section 44275) of Part 5 or a similar program established by the district.*

~~(b) Notwithstanding any other provision of law, and to the extent permitted by the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.), in lieu of obtaining emissions offsets,~~

(b) Consistent with subdivision (a), the applicant for a thermal powerplant may post a bond or letter of credit in an amount sufficient to adequately cover the cost of required emissions offsets. Prior to commencement of commercial operation, the owner or operator of the thermal powerplant shall obtain the

1 required emissions offsets, or shall obtain a portion of the required
2 emissions offsets and forfeit a proportionate amount of the bond
3 or letter of credit ~~for to the district sufficient to acquire~~ the portion
4 of the required emissions offsets that are not obtained. The district
5 may, by regulation, establish the time period, not to exceed six
6 months prior to commencement of ~~commercial~~ operations, at
7 which time the offsets or funds shall be provided.

8 (c) With respect to subdivisions (a) and (b), the appropriate
9 district shall hold a public hearing before the governing board or
10 air pollution control officer to establish the amount to be paid.
11 Notice of the hearing shall be published at least 30 days prior to the
12 hearing in a newspaper of general circulation in the area to be
13 affected by the powerplant emissions. The amount shall be
14 sufficient in the judgment of the district to obtain equivalent
15 emission reductions as would have been provided by the otherwise
16 required emissions offsets, and may include an additional amount
17 not to exceed 3 percent to cover the district's administrative costs.
18 The district shall use the funds to obtain equivalent emissions
19 reductions as would have been provided by offsets, to the
20 maximum extent feasible.

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

24 (e) The district may, by regulation, suspend or limit the
25 applicability of this section for any period of time or with respect
26 to a particular powerplant to the extent the district determines that
27 application of this section would interfere with attainment or
28 maintenance of national ambient air quality standards, or to the
29 extent it determines that adequate offsets are available at a
30 reasonable price.

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

35 ~~SEC. 6. Section 25506 of the Public Resources Code is~~
36 ~~amended to read:~~

37 ~~25506. (a) The commission shall request the appropriate~~
38 ~~local, regional, state, and federal agencies to make comments and~~
39 ~~recommendations regarding the design, operation, and location of~~
40 ~~the facilities designated in the notice, in relation to environmental~~

1 ~~quality, public health and safety, and other factors on which they~~
2 ~~may have expertise.~~

3 ~~(b) Each local jurisdiction responding to the request shall file~~
4 ~~a preliminary list of issues regarding the design, operation,~~
5 ~~location, and financial impacts of the facility with the commission~~
6 ~~no later than 45 days after the filing of an application for~~
7 ~~certification and shall provide a final list of those issues with the~~
8 ~~commission no later than 90 days after the filing of an application~~
9 ~~for certification.~~

10 ~~(c) “Local jurisdiction,” for purposes of this section, means~~
11 ~~any city, county, city and county, or regional planning agency, or~~
12 ~~any combination thereof formed for the joint exercise of any~~
13 ~~power.~~

14 ~~SEC. 7.~~

15 *SEC. 6.* Section 25514 of the Public Resources Code is
16 amended to read:

17 25514. After conclusion of the hearings held pursuant to
18 Section 25513 and no later than 300 days after the filing of the
19 notice, a final report shall be prepared and distributed. The final
20 report shall include, but not be limited to, all of the following:

21 (a) The findings and conclusions of the commission regarding
22 the conformity of alternative sites and related facilities designated
23 in the notice or considered in the notice of intention proceeding
24 with both of the following:

25 (1) The 12-year forecast of statewide and service area electric
26 power demands adopted pursuant to subdivision (e) of Section
27 25305, except as provided in Section 25514.5.

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

34 (b) Any findings and comments submitted by the California
35 Coastal Commission pursuant to Section 25507 and subdivision
36 (d) of Section 30413.

37 (c) Any findings and comments submitted by the San Francisco
38 Bay Conservation and Development Commission pursuant to
39 Section 25507 of this code and subdivision (d) of Section 66645
40 of the Government Code.

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

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

(f) 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.

SEC. 7. Section 25519.5 is added to the Public Resources Code, to read:

25519.5. (a) Each local government agency reviewing an application pursuant to subdivision (f) of Section 25519 shall file a preliminary list of issues regarding the design, operation, location, and financial impacts of the facility with the commission no later than 45 days after the date an application for certification is deemed filed for purposes of Section 25522 and shall provide a final list of those issues with the commission no later than 100 days after the application for certification is deemed filed.

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

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

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

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

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

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

(d) (1) Findings regarding the conformity of the proposed site and related facilities with standards adopted by the commission pursuant to Section 25216.3 and subdivision (d) of Section 25402, with public safety standards and the applicable air and water quality standards, and with other relevant local, regional, state, and federal standards, ordinances, or laws. If the commission finds that there is noncompliance with any state, local, or regional ordinance or regulation in the application, it shall consult and meet with the state, local, or regional governmental agency concerned to attempt to correct or eliminate the noncompliance. If the noncompliance cannot be corrected or eliminated, the commission shall inform the state, local, or regional governmental agency if it makes the findings required by Section 25525.

(2) The commission may not find that the proposed facility conforms with applicable air quality standards pursuant to paragraph (1) unless the applicable air pollution control district or air quality management district certifies that complete emissions

1 offsets for the proposed facility have been identified and will be
2 obtained by the applicant prior to the commission's licensing of the
3 project, to the extent that the proposed facility requires emission
4 offsets to comply with local, regional, state, or federal air quality
5 standards.

6 (e) Provision for restoring the site as necessary to protect the
7 environment, if the commission denies approval of the
8 application.

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

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

22 (h) A discussion of any public benefits from the project
23 including, but not limited to, economic benefits, environmental
24 benefits, and electricity reliability benefits, ~~resulting from~~
25 ~~modernization of the state's electric generation infrastructure.~~

26 SEC. 9. Section 25526.1 is added to the Public Resources
27 Code, to read:

28 25526.1. The commission shall adopt a regulation, applicable
29 to any adjudicatory proceeding before the commission, governing
30 ex parte contacts. The regulation shall provide for prompt
31 disclosure of any ex parte contact. The rule shall apply to any
32 contact regarding a substantive, nonprocedural matter at issue in
33 the adjudicatory proceeding between any party to the proceeding
34 and commission staff where the staff is acting as a party to the
35 proceeding, and any commissioner, commissioner's advisor, or
36 hearing officer. The regulation shall not restrict exchanges of
37 information among the public and any parties to the proceeding,
38 including contacts between parties and commission staff, other
39 than a commissioner, commissioner's advisor, or hearing officer.

The commission staff shall docket a written summary of the substance of any ex parte contact between staff and a party.

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

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

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

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

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

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

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

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

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

25550.5. (a) Notwithstanding subdivision (a) of Section 25522 and Section 25540.6, the commission shall establish a process to issue its final *decision on an application for* certification for the repowering of a thermal powerplant and related facilities within 180 days 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 that the project will comply with all applicable standards, ordinances, regulations, or statutes, and that electrical output from the project will be made available to serve electrical customers located within the state. For purposes of and statutes.* For purposes of this section, filing has the same meaning as in Section 25522.

(b) The repowering of a thermal powerplant 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 repowering of a 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 repowering of a thermal powerplant and related facilities.

(c) ~~After acceptance of an application~~ *an application is filed* under this section, the commission shall not be required to issue a ~~six-month~~ final decision on the application *within 180 days* 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

1 comply with an applicable standard, ordinance, regulation, or
2 statute. Under this circumstance, the commission shall make its
3 decision in accordance with subdivision (a) of Section 25522 and
4 Section 25540.6, and a new application shall not be required.

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

16 (e) The repowering of a thermal powerplant and related
17 facilities that demonstrate superior environmental or efficiency
18 performance improvement shall receive first priority in review by
19 the commission.

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

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

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

34 ~~(i)~~

35 (h) To implement this section, the commission may adopt
36 emergency regulations in accordance with Chapter 3.5
37 (commencing with Section 11340) of Part 1 of Division 3 of Title
38 2 of the Government Code. For purposes of that chapter, including,
39 without limitation, Section 11349.6 of the Government Code, the
40 adoption of the regulations shall be considered by the Office of

1 Administrative Law to be necessary for the immediate
2 preservation of the public peace, health, safety, and general
3 welfare.

4 ~~(j)~~

5 (i) For purposes of this section, “repowering” means a project
6 for the modification of an existing *generation unit of a* thermal
7 powerplant that meets all of the following criteria:

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

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

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

14 (4) The project will result in significant and substantial
15 increases in the efficiency of the production of electricity,
16 including, but not limited to, reducing the heat rate, reducing the
17 use of natural gas, reducing the use and discharge of water, and
18 reducing air pollutants emitted by the project, as measured on a per
19 kilowatthour basis.

20 ~~(k)~~

21 (j) This section shall remain in effect only until January 1,
22 2004, and as of that date is repealed, unless a later enacted statute,
23 that is enacted before January 1, 2004, deletes or extends that date.

24 SEC. 12. Section 25552 of the Public Resources Code is
25 amended to read:

26 25552. (a) The commission shall implement a procedure,
27 consistent with Division 13 (commencing with Section 21000)
28 and with the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.),
29 for an expedited decision on simple cycle thermal powerplants and
30 related facilities that can be put into service on or before December
31 31, 2002, including a procedure for considering amendments to a
32 pending application if the amendments specify a change from a
33 combined cycle thermal powerplant and related facilities to a
34 simple cycle thermal powerplant and related facilities.

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

36 (1) A requirement that, within 15 days of receiving the
37 application or amendment to a pending application, the
38 commission shall determine whether the application is complete.

39 (2) A requirement that, within ~~15~~ 25 days of determining that
40 an application is complete, the commission, or a committee of the

commission, shall determine whether the application qualifies for an expedited decision pursuant to this section. If an application qualifies for an expedited decision pursuant to this section, the commission shall provide the notice required by Section 21092.

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

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

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

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

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

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

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

(2) Assure protection of public health and safety.

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

(4) A reasonable demonstration that the thermal powerplant and related facilities, if licensed on the expedited schedule

provided by this section, will be in service before ~~August 1~~
~~December 31, 2002.~~

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

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

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

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

(7) Nothing in this section shall affect the ability of an applicant
that receives approval to install simple cycle thermal powerplants
and related facilities as an amendment to a pending application to
proceed with the original application for a combined cycle thermal
powerplant or related facilities.

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

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

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

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

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

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

(d) For purposes of this section, “new electrical generation property” means a powerplant, cogeneration facility, new generation facility, or a transmission or distribution facility, or ~~any portion thereof, completed and placed in service on or after January 1, 2001.~~ *any portion thereof, which has received all necessary pre-project approvals on or after the date of enactment of this act.*

(e) *This section shall not apply to new electrical generation property located within a redevelopment project established under the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).*

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

(a) Fifty million dollars (\$50,000,000) to increase rebates for clean, renewable ~~distributed energy systems, grid-connected distributed energy systems, including fuel cells,~~ smaller than 10 kilowatts.

(b) Three million dollars (\$3,000,000) to provide assistance to cities and counties to expedite the review and analysis of applications for electrical generating facilities which will assist the

1 state in meeting its urgent energy needs and ensuring system
2 reliability.

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

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

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

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

