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CALIFORNIA LEGISLATURE—2001–02 FIRST EXTRAORDINARY SESSION

**SENATE BILL**

**No. 28**

**Introduced by Senator Sher**

**(Principal coauthors: Senators Battin and ~~Brulte~~, *Brulte*, and *Morrow*)**

(Principal coauthor: Assembly Member Calderon)

February 5, 2001

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An act 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 25514, 25523, 25531, and 25552 of, to add Section 25526.1 to, and to add and repeal Sections 25519.5 and 25550.5 of, the Public Resources Code, *and to add Article 3.5 (commencing with Section 353.1) to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities 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~~ *Energy Commission: powerplant siting: Public Utilities Commission: distributed energy resources.*

(1) 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 (*Energy 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 issued by an admitted surety in an amount sufficient to adequately cover the cost of required emissions offsets.

(2) 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~~ *Energy*



*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~~ *Energy 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, 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~~ *Energy Commission* within 45 days of the date the application for certification is deemed filed. The bill would require the local jurisdiction to provide a final list of those issues 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~~ *Energy 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~~ *Energy 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.

This bill would require the ~~commission~~ *Energy 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~~ *Energy Commission* are subject to judicial review by the Supreme Court of California.

(3) Existing law authorizes the ~~commission~~ *Energy 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~~ *Energy 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) *Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and other specified entities.*

*This bill would require the commission to require each electrical corporation to modify tariffs so that all customers that install new distributed energy resources, as defined, in accordance with specified criteria are served under rates, rules, and requirements identical to those of a customer within the same rate schedule that does not use distributed energy resources, and to withdraw any provisions in otherwise applicable tariffs that activate other tariffs, rates, or rules if a customer uses distributed energy resources. The bill would require the commission to require each electrical corporation, as part of its distribution planning process, to include nonutility owned distributed energy resources as a possible alternative to investments in its distribution system in order to ensure reliable electric service at the lowest possible cost. The bill would require the commission to require each electrical corporation to adopt standard contract terms, conditions, penalties, and enforcement mechanisms for distributed energy resources units providing distribution reliability services. The bill would require the commission, in establishing the rates under the provisions of the bill, to create a firewall that segregates distribution cost recovery, as described.*

*The bill would require a local publicly owned electric utility, as defined, or a local publicly owned utility otherwise providing electrical service, to undertake a review of its rates, tariffs, and rules, as prescribed, and to hold at least one noticed public meeting to solicit public comment on the review and any recommended changes.*

*The bill would require the commission to require each electrical corporation to establish new tariffs on or before January 1, 2003, for customers using distributed energy resources. The bill would continue to subject certain distributed energy resources, after January 1, 2003, to preexisting tariffs under the bill, until June 1, 2011. The bill would require the commission to prepare and submit to the Legislature, on or before June 1, 2002, a report describing its proposed methodology for determining the new rates and the process by which it will establish those rates.*



*Because a violation of a requirement of the commission is a crime, this bill would impose a state-mandated local program by creating a new crime.*

(5) The bill would appropriate not more than \$53,250,000 from the General Fund to the commission for expenditure, until January 1, 2005, in accordance with a prescribed schedule.

~~(5) 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:~~

*(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 with regard to certain mandates no reimbursement is required by this act for a specified reason.*

*With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

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

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.



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

1 SECTION 1. Chapter 7 (commencing with Section 39910) is  
2 added to Part 2 of Division 26 of the Health and Safety Code, to  
3 read:

4  
5 CHAPTER 7. EXPEDITED AIR QUALITY IMPROVEMENT PROGRAM  
6 FOR ELECTRICAL GENERATION  
7

8 39910. The Legislature finds and declares that it is in the  
9 interests of the people of the State of California to ensure that the  
10 state board establish an expedited process to assist in the  
11 permitting, retrofit, and operation of electrical generating  
12 facilities in a manner that protects public health and air quality.

13 39915. The state board, in consultation with the districts and  
14 the State Energy Resources Conservation and Development  
15 Commission, shall implement a program for the expedited retrofit  
16 of electrical generating facilities to ensure that those facilities are  
17 operated in a manner that protects and improves air quality. The  
18 state board shall consult with the owners of facilities being  
19 retrofitted, the Independent System Operator, and the Public  
20 Utilities Commission to ensure that the program is coordinated  
21 with efforts to ensure electrical grid reliability. The state board  
22 shall establish standards and timeframes in a manner consistent  
23 with existing requirements to implement this section.

24 39920. The state board shall implement an expedited  
25 statewide program for the identification and banking of emission  
26 reduction credits for electrical generating facilities and, where  
27 applicable, natural gas transmission facilities and make that  
28 information available to the public and interested parties. The  
29 board shall consult with the owners of affected facilities.

30 SEC. 2. Section 42301.15 is added to the Health and Safety  
31 Code, to read:

32 42301.15. Each district shall adopt an expedited program for  
33 the permitting of standby electrical generation facilities,  
34 distributed generation facilities, and, where applicable, natural gas  
35 transmission facilities which ensures that those facilities may  
36 operate in compliance with applicable air quality standards,  
37 statutes, and regulations.



1 SEC. 3. 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 of  
6 the facility that those offsets are not available, in lieu of obtaining  
7 emissions offsets, the applicant for a thermal powerplant may pay  
8 an air emissions mitigation fee to the appropriate air pollution  
9 control district or air quality management district for expenditure  
10 by the district. In expending mitigation fees, the district shall give  
11 first priority to securing emission reductions from comparable  
12 stationary sources and shall observe standards regarding  
13 proximity consistent with regulations and guidance adopted  
14 pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

15 To the extent cost-effective stationary source emission reductions  
16 are not available, the district may expend mitigation fees for the  
17 program established by Chapter 9 (commencing with Section  
18 44275) of Part 5 or a similar program established by the district.

19 (b) Consistent with subdivision (a), the applicant for a thermal  
20 powerplant may post a bond in an amount sufficient to adequately  
21 cover the cost of required emissions offsets. The bond shall only  
22 be issued by an admitted surety for the benefit of, and held by, the  
23 local air district. Prior to commencement of operation, the owner  
24 or operator of the thermal powerplant shall obtain the required  
25 emissions offsets, or shall obtain a portion of the required  
26 emissions offsets and forfeit a proportionate amount of the bond  
27 or letter of credit to the district sufficient to acquire the portion of  
28 the required emissions offsets that are not obtained. The district  
29 may, by regulation, establish the time period, not to exceed six  
30 months prior to commencement of operations, at which time the  
31 offsets or funds shall be provided.

32 (c) With respect to subdivisions (a) and (b), the appropriate  
33 district shall hold a public hearing before the governing board or  
34 air pollution control officer to establish the amount to be paid.  
35 Notice of the hearing shall be published at least 30 days prior to the  
36 hearing in a newspaper of general circulation in the area to be  
37 affected by the powerplant emissions. The amount shall be  
38 sufficient in the judgment of the district to obtain equivalent  
39 emission reductions as would have been provided by the otherwise  
40 required emissions offsets, and may include an additional amount



1 not to exceed 3 percent to cover the district’s administrative costs.  
2 The district shall use the funds to obtain equivalent emissions  
3 reductions as would have been provided by offsets, to the  
4 maximum extent feasible.

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

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

15 (f) This section shall remain in effect only until January 1,  
16 2004, and as of that date is repealed, unless a later enacted statute,  
17 which is enacted before January 1, 2004, deletes or extends that  
18 date.

19 SEC. 4. Section 25514 of the Public Resources Code is  
20 amended to read:

21 25514. After conclusion of the hearings held pursuant to  
22 Section 25513 and no later than 300 days after the filing of the  
23 notice, a final report shall be prepared and distributed. The final  
24 report shall include, but not be limited to, all of the following:

25 (a) The findings and conclusions of the commission regarding  
26 the conformity of alternative sites and related facilities designated  
27 in the notice or considered in the notice of intention proceeding  
28 with both of the following:

29 (1) The 12-year forecast of statewide and service area electric  
30 power demands adopted pursuant to subdivision (e) of Section  
31 25305, except as provided in Section 25514.5.

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

38 (b) Any findings and comments submitted by the California  
39 Coastal Commission pursuant to Section 25507 and subdivision  
40 (d) of Section 30413.



1 (c) Any findings and comments submitted by the San Francisco  
2 Bay Conservation and Development Commission pursuant to  
3 Section 25507 of this code and subdivision (d) of Section 66645  
4 of the Government Code.

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

14 (e) Findings and conclusions with respect to the safety and  
15 reliability of the facility or facilities at each of the sites designated  
16 in the notice, as determined by the commission pursuant to Section  
17 25511, and any conditions, modifications, or criteria proposed for  
18 any site and related facility proposal resulting from the findings  
19 and conclusions.

20 (f) Findings and conclusions as to whether increased property  
21 taxes due to the construction of the project are sufficient to support  
22 needed local improvements and public services required to serve  
23 the project.

24 SEC. 5. Section 25519.5 is added to the Public Resources  
25 Code, to read:

26 25519.5. (a) Each local government agency reviewing an  
27 application pursuant to subdivision (f) of Section 25519 shall file  
28 a preliminary list of issues regarding the design, operation,  
29 location, and financial impacts of the facility with the commission  
30 no later than 45 days after the date an application for certification  
31 is deemed filed for purposes of Section 25522 and shall provide a  
32 final list of those issues with the commission no later than 100 days  
33 after the application for certification is deemed filed.

34 (b) This section shall remain in effect only until January 1,  
35 2004, and as of that date is repealed, unless a later enacted statute,  
36 which is enacted before January 1, 2004, deletes or extends that  
37 date.

38 SEC. 6. Section 25523 of the Public Resources Code is  
39 amended to read:



1 25523. The commission shall prepare a written decision after  
2 the public hearing on an application, which includes all of the  
3 following:

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

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

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

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



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

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

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

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

26 (h) A discussion of any public benefits from the project  
27 including, but not limited to, economic benefits, environmental  
28 benefits, and electricity reliability benefits.

29 SEC. 7. Section 25526.1 is added to the Public Resources  
30 Code, to read:

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

[1]



1 including contacts between parties and commission staff, other  
2 than a commissioner, commissioner’s advisor, or hearing officer.  
3 The commission staff shall docket a written summary of the  
4 substance of any ex parte contact between staff and a party.

5 SEC. 8. Section 25531 of the Public Resources Code is  
6 amended to read:

7 25531. (a) The decisions of the commission on any  
8 application for certification of a site and related facility are subject  
9 to judicial review by the Supreme Court of California.

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

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

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

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



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

6 (e) No decision of the commission pursuant to Section 25516,  
7 25522, or 25523 shall be found to mandate a specific supply plan  
8 for any utility as prohibited by Section 25323.

9 SEC. 9. Section 25550.5 is added to the Public Resources  
10 Code, to read:

11 25550.5. (a) Notwithstanding subdivision (a) of Section  
12 25522 and Section 25540.6, the commission shall establish a  
13 process to issue its final decision on an application for certification  
14 for the repowering of a thermal powerplant and related facilities  
15 within 180 days after the filing of the application for certification  
16 that, on the basis of an initial review, shows that there is substantial  
17 evidence that the project will not cause a significant adverse  
18 impact on the environment or electrical system and that the project  
19 will comply with all applicable standards, ordinances, regulations,  
20 and statutes. For purposes of this section, filing has the same  
21 meaning as in Section 25522.

22 (b) The repowering of a thermal powerplant and related  
23 facilities reviewed under this process shall satisfy the requirements  
24 of Section 25520 and other necessary information required by the  
25 commission by regulation, including the information required for  
26 permitting by each local, state, and regional agency that would  
27 have jurisdiction over the proposed repowering of a thermal  
28 powerplant and related facilities but for the exclusive jurisdiction  
29 of the commission and the information required for permitting by  
30 each federal agency that has jurisdiction over the proposed  
31 repowering of a thermal powerplant and related facilities.

32 (c) After an application is filed under this section, the  
33 commission shall not be required to issue a final decision on the  
34 application within 180 days if it determines there is substantial  
35 evidence in the record that the thermal powerplant and related  
36 facilities may result in a significant adverse impact on the  
37 environment or electrical system or does not comply with an  
38 applicable standard, ordinance, regulation, or statute. Under this  
39 circumstance, the commission shall make its decision in



1 accordance with subdivision (a) of Section 25522 and Section  
2 25540.6, and a new application shall not be required.

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

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

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

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

30 (h) To implement this section, the commission may adopt  
31 emergency regulations in accordance with Chapter 3.5  
32 (commencing with Section 11340) of Part 1 of Division 3 of Title  
33 2 of the Government Code. For purposes of that chapter, including,  
34 without limitation, Section 11349.6 of the Government Code, the  
35 adoption of the regulations shall be considered by the Office of  
36 Administrative Law to be necessary for the immediate  
37 preservation of the public peace, health, safety, and general  
38 welfare.



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

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

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

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

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

16 (j) This section shall remain in effect only until January 1,  
17 2004, and as of that date is repealed, unless a later enacted statute,  
18 that is enacted before January 1, 2004, deletes or extends that date.

19 SEC. 10. Section 25552 of the Public Resources Code is  
20 amended to read:

21 25552. (a) The commission shall implement a procedure,  
22 consistent with Division 13 (commencing with Section 21000)  
23 and with the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.),  
24 for an expedited decision on simple cycle thermal powerplants and  
25 related facilities that can be put into service on or before December  
26 31, 2002, including a procedure for considering amendments to a  
27 pending application if the amendments specify a change from a  
28 combined cycle thermal powerplant and related facilities to a  
29 simple cycle thermal powerplant and related facilities.

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

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

34 (2) A requirement that, within 25 days of determining that an  
35 application is complete, the commission, or a committee of the  
36 commission, shall determine whether the application qualifies for  
37 an expedited decision pursuant to this section. If an application  
38 qualifies for an expedited decision pursuant to this section, the  
39 commission shall provide the notice required by Section 21092.



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

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

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

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

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

25 (e) In order to qualify for the procedure established by this  
26 section, an application shall satisfy the requirements of Section  
27 25523, and include a description of the proposed conditions of  
28 certification that will do all of the following:

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

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

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

35 (4) A reasonable demonstration that the thermal powerplant  
36 and related facilities, if licensed on the expedited schedule  
37 provided by this section, will be in service before December 31,  
38 2002.

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



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

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

10 (6) Where applicable, that the thermal powerplant will obtain  
11 offsets or, where offsets are unavailable, pay an air emissions  
12 mitigation fee to the air pollution control district or air quality  
13 management district based upon the actual emissions from the  
14 thermal powerplant, to the district for expenditure by the district  
15 pursuant to Chapter 9 (commencing with Section 44275) of Part  
16 5 of Division 26 of the Health and Safety Code, to mitigate the  
17 emissions from the plant. To the extent consistent with federal law  
18 and regulation, any offsets required pursuant to this paragraph  
19 shall be based upon a 1:1 ratio, unless, after consultation with the  
20 applicable air pollution control district or air quality management  
21 district, the commission finds that a different ratio should be  
22 required.

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

28 (f) This section shall remain in effect only until January 1,  
29 2003, and as of that date is repealed, unless a later enacted statute,  
30 that is enacted before January 1, 2003, deletes or extends that date  
31 except that the binding commitments in paragraph (5) of  
32 subdivision (e) shall remain in effect after that date.

33 SEC. 11. *Article 3.5 (commencing with Section 353.1) is*  
34 *added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities*  
35 *Code, to read:*  
36



1 Article 3.5. *Distributed Energy Resources*

2  
3 353.1. *As used in this article, “distributed energy resources”*  
4 *means any electric generation technology that meets all of the*  
5 *following criteria:*

6 (a) *Commences initial operation between May 1, 2001 and*  
7 *June 1, 2003, except that gas-fired distributed energy resources*  
8 *that are not operated in a combined heat and power application*  
9 *must commence operation no later than July 1, 2001.*

10 (b) *Is located within a single facility.*

11 (c) *Is five megawatts or smaller in aggregate capacity.*

12 (d) *Serves onsite loads or over-the-fence transactions allowed*  
13 *under Sections 216 and 218.*

14 (e) *Is powered by any fuel other than diesel.*

15 (f) *Complies with emission standards and guidance adopted by*  
16 *the State Air Resources Board pursuant to Sections 41514.9 and*  
17 *41514.10 of the Health and Safety Code. Prior to the adoption of*  
18 *those standards and guidance, for the purpose of this article,*  
19 *distributed energy resources shall meet emissions levels equivalent*  
20 *to nine parts per million oxides of nitrogen, averaged over a*  
21 *three-hour period, or best available control technology for the*  
22 *applicable air district, whichever is lower.*

23 353.3. (a) *The commission shall require each electrical*  
24 *corporation to modify its tariffs so that all customers installing*  
25 *new distributed energy resources in accordance with the criteria*  
26 *described in Section 353.1 are served under rates, rules, and*  
27 *requirements identical to those of a customer within the same rate*  
28 *schedule that does not use distributed energy resources, and to*  
29 *withdraw any provisions in otherwise applicable tariffs that*  
30 *activate other tariffs, rates, or rules if a customer uses distributed*  
31 *energy resources.*

32 (b) *To qualify for the tariffs described in subdivision (a), each*  
33 *customer shall participate in a real-time metering and pricing*  
34 *program, in which rates for any energy purchased from the*  
35 *electrical corporation reflect the actual cost to the electrical*  
36 *corporation of energy at the time it is consumed.*

37 (c) *Except as specified in Section 353.7, customers may not be*  
38 *subject to the application of additional rates or tariffs solely*  
39 *because of their use of distributed energy resources to serve onsite*



1 *loads or over-the-fence transactions allowed under Sections 216*  
2 *and 218.*

3 *353.5. The commission shall require each electrical*  
4 *corporation, as part of its distribution planning process, to include*  
5 *nonutility owned distributed energy resources as a possible*  
6 *alternative to investments in its distribution system in order to*  
7 *ensure reliable electric service at the lowest possible cost. The*  
8 *commission shall require each electrical corporation to adopt*  
9 *standard contract terms, conditions, penalties, and enforcement*  
10 *mechanisms for distributed energy resources units providing*  
11 *distribution reliability services. The commission shall review for*  
12 *the purpose of compliance with this section, on an annual basis,*  
13 *the progress of each corporation in incorporating these changes*  
14 *into their planning processes.*

15 *353.7. Notwithstanding Section 353.3, nothing in this article*  
16 *may result in any exemption from reasonable interconnection*  
17 *charges, lead to any reduction in contributions by each customer*  
18 *class to public purpose programs funded under Section 399.8, or*  
19 *relieve any customer of any obligation determined by the*  
20 *commission to result from participation in the purchase of power*  
21 *through the Department of Water Resources pursuant to Division*  
22 *27 (commencing with Section 80000) of the Water Code.*

23 *353.9. In establishing the rates required under this article, the*  
24 *commission shall create a firewall that segregates distribution cost*  
25 *recovery so that any net costs, taking into account the actual costs*  
26 *and benefits of distributed energy resources, proportional to each*  
27 *customer class, as determined by the commission, resulting from*  
28 *the tariff modifications granted to members of each customer class*  
29 *may be recovered only from that class.*

30 *353.11. A local publicly owned electric utility, as defined in*  
31 *subdivision (d) of Section 9604, or a local publicly owned utility*  
32 *otherwise providing electrical service, shall review at the earliest*  
33 *practicable date its rates, tariffs, and rules to identify barriers to*  
34 *and determine the appropriate balance of costs and benefits of*  
35 *distributed energy resources in order to facilitate the installation*  
36 *of these resources in the interests of their customer-owners and the*  
37 *state, and shall hold at least one noticed public meeting to solicit*  
38 *public comment on the review and any recommended changes.*  
39 *However, notwithstanding any other provision of this article, such*  
40 *an entity has the sole authority to undertake such a review and to*



1 *make modifications to its rates, tariffs, and rules as the governing*  
2 *body of that utility determines to be necessary.*

3 *353.13. (a) The commission shall require each electrical*  
4 *corporation to establish new tariffs on or before January 1, 2003,*  
5 *for customers using distributed energy resources, including, but*  
6 *not limited to, those which do not meet all of the criteria described*  
7 *in Section 353.1. However, after January 1, 2003, distributed*  
8 *energy resources that meet all of the criteria described in Section*  
9 *353.1 shall continue to be subject only to those tariffs in existence*  
10 *pursuant to Section 353.3, until June 1, 2011. Those tariffs*  
11 *required pursuant to this section shall ensure that all net*  
12 *distribution costs incurred to serve each customer class, taking*  
13 *into account the actual costs and benefits of distributed energy*  
14 *resources, proportional to each customer class, as determined by*  
15 *the commission, are fully recovered only from that class. The*  
16 *commission shall require each electrical corporation, in*  
17 *establishing those rates, to ensure that customers with similar load*  
18 *profiles within a customer class will, to the extent practicable, be*  
19 *subject to the same utility rates, regardless of their use of*  
20 *distributed energy resources to serve onsite loads or*  
21 *over-the-fence transactions allowed under Sections 216 and 218.*  
22 *Customers with dedicated facilities shall remain responsible for*  
23 *their obligations regarding payment for those facilities.*

24 *(b) The commission shall prepare and submit to the*  
25 *Legislature, on or before June 1, 2002, a report describing its*  
26 *proposed methodology for determining the new rates and the*  
27 *process by which it will establish those rates.*

28 *SEC. 12.* The sum of not more than fifty-three million two  
29 hundred fifty thousand dollars (\$53,250,000) is hereby  
30 appropriated from the General Fund to the State Energy Resources  
31 Conservation and Development Commission for expenditure,  
32 until January 1, 2005, for the following purposes:

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

36 (b) Three million dollars (\$3,000,000) to provide assistance to  
37 cities and counties to expedite the review and analysis of  
38 applications for electrical generating facilities which will assist the  
39 state in meeting its urgent energy needs and ensuring system  
40 reliability. The moneys available pursuant to this subdivision shall



1 not be used to supplant funding available to a city or county  
2 through the exercise of its existing fee authority.

3 (c) Not more than two hundred fifty thousand dollars  
4 (\$250,000) to contract or conduct a study, in consultation with the  
5 Orange County Sanitation District, of the remedies to mitigate  
6 effects of shoreline water contamination located in the vicinity of  
7 the City of Huntington Beach to be conducted concurrently with  
8 the Huntington Beach Shoreline Contamination Study conducted  
9 by the Orange County Sanitation District.

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

19 ~~SEC. 13.~~

20 *SEC. 13. No reimbursement is required by this act pursuant*  
21 *to Section 6 of Article XIII B of the California Constitution for*  
22 *certain costs that may be incurred by a local agency or school*  
23 *district because in that regard this act creates a new crime or*  
24 *infraction, eliminates a crime or infraction, or changes the penalty*  
25 *for a crime or infraction, within the meaning of Section 17556 of*  
26 *the Government Code, or changes the definition of a crime within*  
27 *the meaning of Section 6 of Article XIII B of the California*  
28 *Constitution.*

29 *However, notwithstanding Section 17610 of the Government*  
30 *Code, if the Commission on State Mandates determines that this*  
31 *act contains other costs mandated by the state, reimbursement to*  
32 *local agencies and school districts for those costs shall be made*  
33 *pursuant to Part 7 (commencing with Section 17500) of Division*  
34 *4 of Title 2 of the Government Code. If the statewide cost of the*  
35 *claim for reimbursement does not exceed one million dollars*  
36 *(\$1,000,000), reimbursement shall be made from the State*  
37 *Mandates Claims Fund.*

38 *SEC. 14. This act is an urgency statute necessary for the*  
39 *immediate preservation of the public peace, health, or safety*



1 within the meaning of Article IV of the Constitution and shall go  
2 into immediate effect. The facts constituting the necessity are:  
3 In order to address the rapid, unforeseen shortage of electric  
4 supply and energy available in the state, which endangers the  
5 health, welfare, and safety of the people of this state, it is necessary  
6 for this act to take effect immediately.

O

