

AMENDED IN SENATE MAY 9, 2002

**SENATE BILL**

**No. 1269**

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**Introduced by Senator Peace**

January 15, 2002

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An act to amend Section 25534 of the Public Resources Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1269, as amended, Peace. ~~Thermal powerplant~~ *Powerplant* site and facility certification.

~~The existing Warren-Alquist State Energy Resources Conservation and Development Act, among other things, authorizes the State Energy Resources Conservation and Development Commission to, after hearings, amend the conditions of, or revoke the certification for, any thermal powerplant facility for a material false statement set forth in the application, a significant failure to comply with the terms or conditions of approval of the application, or a violation of the act or any regulation or order issued by the commission.~~

~~This bill would make a technical nonsubstantive change.~~

*The existing Warren-Alquist State Energy Resources Conservation and Development Act requires the State Energy Resources Conservation and Development Commission to certify sufficient sites and related facilities that are required to provide a supply of electric power sufficient to accommodate projected demand for power statewide. Existing law authorizes the commission, after hearings, to amend the conditions of, or revoke the certification for, any facility for specified reasons and to administratively impose a civil penalty for specified violations of a certification of up to \$50,000 per violation, as prescribed.*

*Existing law establishes in state government the California Consumer Power and Conservation Financing Authority, with powers and responsibilities as prescribed, including the power to issue revenue bonds for the purpose of augmenting electric generating facilities and to ensure a sufficient and reliable supply of electricity, financing incentives for investment in cost-effective energy-efficient appliances and energy demand reduction, achieving a specified energy capacity reserve level, providing financing for the retrofit of inefficient electric powerplants, renewable energy and conservation, and, where appropriate, developing strategies for the authority to facilitate a dependable supply of natural gas at reasonable prices to the public.*

*This bill would authorize the commission to administratively impose a civil penalty for specified violations of up to \$75,000, as prescribed.*

*This bill would require a project owner to commence construction of a project within 12 months after the project has been certified by the commission. The bill would require a project owner to submit construction and commercial operation milestones within 30 days after project certification. The bill would specify that the failure of the project owner to meet construction or commercial operation milestones, without a finding of good cause, is cause for revocation of certification or the imposition of other penalties. The bill would authorize the commission to extend the start of construction by 12 months under certain circumstances.*

*This bill would require the commission to revoke the certification and provide immediate notice of its decision to the authority if the project owner fails to commence construction, without good cause, within 12 months after the project has been certified and the owner has not received an extension. The bill would require the authority to evaluate whether to pursue the project independently or in conjunction with any other public or private entity, including the original certificate holder. If the authority informs the commission that it will construct the project, the bill would require the commission to promptly issue a new certification for the project to the authority, unless the authority's statutory authorization to finance or approve new programs, enterprises, or projects has expired. The bill would require the commission, if it issues a new certification, to adopt new milestones for the project that allow the authority up to 12 months to start construction or to start to meet the applicable milestones. The bill would specify that those provisions do not apply to specified qualifying small power production facilities or qualifying cogeneration facilities, as provided,*



or any other generation units installed, operated, and maintained at a customer site exclusively to serve that facility's load.

The bill would authorize the commission and authority to jointly adopt emergency regulations for the purposes of the bill.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

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

1 ~~SECTION 1. Section 25534 of the Public Resources Code is~~  
2 *SECTION 1. The Legislature finds and declares all of the*  
3 *following:*

4 (a) *Reliable, reasonably priced electricity service is essential*  
5 *for California's economic growth and for the health and welfare*  
6 *of its citizens.*

7 (b) *The Legislature, through Assembly Bill 970 of the*  
8 *1999-2000 Regular Session and Senate Bill 28 of the 2001-02*  
9 *First Extraordinary Session, and the Governor, through Executive*  
10 *Orders issued pursuant to his emergency powers, have acted to*  
11 *expedite the construction of in-state electric generation facilities*  
12 *by accelerating the State Energy Resources Conservation and*  
13 *Development Commission's powerplant certification process,*  
14 *signed long-term contracts for the electricity production of*  
15 *planned facilities, and provided incentives for rapid powerplant*  
16 *construction.*

17 (c) *However, since it is critical for the welfare of the state and*  
18 *its citizens that entities that obtain certification to construct new*  
19 *powerplants and to expand or re-power existing powerplants do*  
20 *so with all due speed, it is the policy of the state to condition the*  
21 *issuance of powerplant certification to require prompt,*  
22 *continuous, good faith efforts to construct the certified project*  
23 *within its original construction schedule.*

24 (d) *It is further the policy of the state that, in the event a*  
25 *certification holder fails to demonstrate prompt, continuous, good*  
26 *faith efforts to construct new powerplants, the commission may*  
27 *revoke the certification of the original project owner and issue a*  
28 *new certification to the California Consumer Power and*  
29 *Conservation Financing Authority to construct the project if the*  
30 *authority timely informs the commission that it will construct the*



1 *project either independently or in conjunction with any other*  
2 *public or private entity, including the original licensee.*

3 *SEC. 2. Section 25534 of the Public Resources Code is*  
4 *amended to read:*

5 25534. (a) The commission may, after *one or more* hearings,  
6 amend the conditions of, or revoke the certification for, any facility  
7 for any of the following reasons:

8 (1) Any material false statement set forth in the application,  
9 presented in proceedings of the commission, or included in  
10 supplemental documentation provided by the applicant.

11 (2) Any significant failure to comply with the terms or  
12 conditions of approval of the application, as specified by the  
13 commission in its written decision.

14 (3) A violation of this division or any regulation or order issued  
15 by the commission under this division.

16 (4) *For permits issued after January 1, 2003, the project owner*  
17 *does not start construction of the project within 12 months of the*  
18 *date of certification, without good cause, and does not receive*  
19 *subsequent approval from the commission to extend the start of*  
20 *construction of the project under subdivision (f).*

21 (b) The commission may also administratively impose a civil  
22 penalty for a violation of paragraph (1) or (2) of subdivision (a).  
23 Any civil penalty shall be imposed in accordance with Section  
24 25534.1 and may not exceed ~~fifty thousand dollars (\$50,000)~~  
25 *seventy-five thousand dollars (\$75,000)* per violation, except that  
26 the civil penalty may be increased by an amount ~~not exceeding to~~  
27 *exceed one thousand five hundred dollars (\$1,000) (\$1,500)* per  
28 day for each day in which the violation occurs or persists, but the  
29 total of the per day penalties ~~shall~~ *may* not exceed fifty thousand  
30 dollars (\$50,000).

31 (c) *A project owner shall commence construction of a project*  
32 *within 12 months after the project has been certified by the*  
33 *commission. The project owner shall submit construction and*  
34 *commercial operation milestones to the commission within 30*  
35 *days after project certification. Construction milestones shall*  
36 *require the start of construction within the 12 month period*  
37 *established by this subdivision. If the 30 day deadline to submit*  
38 *construction milestones to the commission is not met, the*  
39 *commission shall establish milestones for the project.*



1 (d) *The failure of the project owner to meet construction or*  
2 *commercial operation milestones, without a finding by the*  
3 *commission of good cause, shall be cause for revocation of*  
4 *certification or the imposition of other penalties by the*  
5 *commission.*

6 (e) *A finding by the commission that there is good cause for*  
7 *failure to meet milestones shall be made if the commission*  
8 *determines that any of the following criteria are met:*

9 (1) *The change in any milestone does not change the*  
10 *established milestone for the start of commercial operation.*

11 (2) *The milestone is changed due to circumstances beyond the*  
12 *project owner's control, including, but not limited to,*  
13 *administrative and legal appeals.*

14 (3) *The milestone will be missed but the project owner*  
15 *demonstrates a good faith effort to meet the project milestone.*

16 (4) *The milestone will be missed due to unforeseen natural*  
17 *disasters or acts of God that prevent timely completion of the*  
18 *project milestone.*

19 (f) *In the absence of good cause, the commission may extend the*  
20 *start of construction by 12 months if the owner reimburses the*  
21 *commission for the commission's actual cost of licensing the*  
22 *project. For the purposes of this section, the commission's actual*  
23 *cost of licensing the project shall be based on a certified audit*  
24 *report filed by the commission staff within 180 days of the*  
25 *commission's certification of the project. The certified audit shall*  
26 *be filed and served on all parties to the proceeding, is subject to*  
27 *public review and comment, and is subject to at least one public*  
28 *hearing if requested by the project owner.*

29 (g) *If the project owner fails to commence construction, without*  
30 *good cause, within 12 months after the project has been certified*  
31 *by the commission and has not received an extension pursuant to*  
32 *subdivision (f), the commission shall provide immediate notice to*  
33 *the California Consumer Power and Conservation Financing*  
34 *Authority. The authority shall evaluate whether to pursue the*  
35 *project independently or in conjunction with any other public or*  
36 *private entity, including the original certificate holder. If the*  
37 *authority informs the commission that it will construct the project*  
38 *either independently or in conjunction with any other public or*  
39 *private entity, including the original certificate holder, the*  
40 *commission may revoke the original certification and issue a new*



1 certification for the project to the authority, unless the authority's  
2 statutory authorization to finance or approve new programs,  
3 enterprises, or projects has expired.

4 (h) If the commission issues a new certification for the project  
5 to the authority, the commission shall adopt new milestones for the  
6 project that allow the authority up to 12 months to start  
7 construction of the project or to start to meet the applicable  
8 milestones.

9 (i) (1) If the commission issues a new certification for the  
10 project to the authority and the authority pursues the project,  
11 without participation of the original certificate holder, the  
12 authority will reimburse the original certificate holder for the  
13 actual costs the original certificate holder incurred in permitting  
14 the project and in procuring assets associated with the license,  
15 including, but not limited to, major equipment and the emission  
16 offsets. In order to receive reimbursement, the original certificate  
17 holder shall provide to the commission documentation of the  
18 actual costs incurred in permitting the project. The commission  
19 shall validate those costs.

20 (2) If the authority reimburses the original certificate holder  
21 for the costs described in paragraph (1), the original certificate  
22 holder shall provide the authority with the all assets for which it  
23 received reimbursement.

24 (j) This section does not prevent the certificate holder from  
25 selling its license to construct and operate the project prior to its  
26 revocation by the commission. In the event of a sale, the  
27 commission shall adopt new milestones for the project that allow  
28 the new certificate holder up to 12 months to start construction of  
29 the project or to start to meet the applicable milestones.

30 (k) Paragraph (4) of subdivision (a) and subdivisions (c) to (j),  
31 inclusive, do not apply to licenses issued for the modernization,  
32 repowering, replacement, or refurbishment of existing facilities or  
33 to a qualifying small power production facility or a qualifying  
34 cogeneration facility within the meaning of Section 201 and 210  
35 of Title II of the federal Public Utility Regulatory Policies Act of  
36 1978 (16 U.S.C. Secs. 796(17), 796(18), and 824a-3), and the  
37 regulations adopted pursuant to those sections by the Federal  
38 Energy Regulatory Commission (18 C.F.R. Part 292.101 to  
39 292.602, inclusive), nor shall those provisions apply to any other  
40 generation units installed, operated, and maintained at a customer



1 *site exclusively to serve that facility’s load. For the purposes of this*  
2 *subdivision, “replacement” of an existing facility includes, but is*  
3 *not limited to, a project at a location different than the facility*  
4 *being replaced, provided that the new project results in the*  
5 *decommissioning of the existing facility.*

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

16 ~~amended to read:~~

17 ~~25534. (a) The commission may, after hearings, amend the~~  
18 ~~conditions of, or revoke the certification for, any facility for any~~  
19 ~~of the following reasons:~~

20 ~~(1) Any material false statement set forth in the application,~~  
21 ~~presented in proceedings of the commission, or included in~~  
22 ~~supplemental documentation provided by the applicant.~~

23 ~~(2) Any significant failure to comply with the terms or~~  
24 ~~conditions of approval of the application, as specified by the~~  
25 ~~commission in its written decision.~~

26 ~~(3) A violation of this division or any regulation or order issued~~  
27 ~~by the commission under this division.~~

28 ~~(b) The commission may also administratively impose a civil~~  
29 ~~penalty for a violation of paragraph (1) or (2) of subdivision (a).~~  
30 ~~Any civil penalty shall be imposed in accordance with Section~~  
31 ~~25534.1 and may not exceed fifty thousand dollars (\$50,000) per~~  
32 ~~violation, except that the civil penalty may be increased by an~~  
33 ~~amount not exceeding one thousand dollars (\$1,000) per day for~~  
34 ~~each day in which the violation occurs or persists, but the total of~~  
35 ~~the per day penalties may not exceed twenty five thousand dollars~~  
36 ~~(\$25,000).~~

