

AMENDED IN ASSEMBLY MARCH 1, 2010
AMENDED IN SENATE FEBRUARY 18, 2010
AMENDED IN SENATE FEBRUARY 17, 2010

CALIFORNIA LEGISLATURE—2009—10 EIGHTH EXTRAORDINARY SESSION

SENATE BILL

No. 34

Introduced by Senator Padilla

February 5, 2010

An act to add Sections 2069 and 2099 to the Fish and Game Code, to amend Sections 11430.30, 11430.70, and 11430.80 of the Government Code, and to add Section 25524 to the Public Resources Code, relating to energy, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 34, as amended, Padilla. Energy: solar thermal ~~powerplant~~ and photovoltaic powerplants: siting: California Endangered Species Act: mitigation measures.

(1) Existing law vests exclusive power to certify a thermal powerplant with the State Energy Resources Conservation and Development Commission (Energy Commission). Existing law requires a person to obtain a certification from the commission prior to commencing the construction of a thermal powerplant, *as defined*.

This bill would require the Energy Commission to establish a process for certain applicants for certification of a solar thermal powerplant that allows the applicant to elect to pay additional fees to be used by the Energy Commission to contract with 3rd parties to assist Energy Commission staff in performing the analysis otherwise performed by staff in determining whether or not to issue a certification. The Energy

Commission would retain discretion as to when this option will be offered to qualified applicants.

(2) The California Endangered Species Act (CESA) requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species and requires the Department of Fish and Game to recommend, and the commission to adopt, criteria for determining if a species is endangered or threatened. CESA states that state agencies should not approve projects, as defined, that would jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of the species if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat that would prevent jeopardy. CESA further declares that in the event specific economic, social, or other conditions make infeasible these alternatives, individual projects may be approved if appropriate mitigation and enhancement measures are provided. *CESA authorizes the department to authorize the take of threatened species, endangered species, or candidate species by permit if the take is incidental to an otherwise lawful activity, the impacts of the authorized take are minimized and fully mitigated, the permit is consistent with specified regulations, and the applicant ensures adequate funding to implement the minimization of mitigation measures and monitors compliance with, and effectiveness of, those measures.*

This bill would ~~require~~ *authorize* the department, in consultation with the Energy Commission, ~~to develop and implement an interim strategy for mitigation measures pursuant to CESA for the construction of certain solar thermal powerplants. The bill would condition this requirement upon a developer or owner of a proposed solar thermal powerplant agreeing to reimburse the department and the Energy Commission for all state costs associated with the development and implementation of the interim strategy and, to the extent practicable, the United States Fish and Wildlife Service and United States Bureau of Land Management, to design and implement actions to protect, restore, or enhance the habitat of plants and wildlife that can be used to fully mitigate the impacts of the take of endangered, threatened, or candidate species (mitigation actions) resulting from certain solar thermal and photovoltaic powerplants in the planning area of the Desert Renewable Energy Conservation Plan, as defined.~~ The bill would establish the Renewable Energy Resources Development ~~Mitigation Fee~~ Trust Fund as a continuously appropriated fund in the State Treasury to serve, and

be managed, as an optional, voluntary method for developers or owners of solar thermal powerplant *eligible* projects, as defined, to deposit fees sufficient to complete mitigation and enhancement measures pursuant to the interim strategy adopted by the department *actions established by the department* and thereby meet their requirements pursuant to CESA or the certification authority of the Energy Commission. The bill would require that the fund be managed by the California Wildlife Foundation or the National Fish and Wildlife Foundation as determined, and subject to oversight, by the department and would prohibit any expenditure from being made from the fund except as authorized by the department *loan \$10,000,000 from the Renewable Resources Trust Fund to the fund, to be repaid no later than December 31, 2012, to be used by the department to purchase mitigation lands in advance of the receipt of fees and to cover the department's administrative costs for the program.*

(3) Existing law, the Administrative Procedure Act, provides for the conduct of administrative adjudication proceedings of state agencies. Existing law generally prohibits during a pending proceeding, communication, regarding any issue in the proceeding, with the presiding officer from an employee or representative of the agency without notice and opportunity for all parties to participate, except as specified.

This bill would except from this general prohibition specified communications relating to determinations of applications for site certification that are before the Energy Commission and are made by ~~certain employees of the commission~~ *employees of another state agency* for the purpose of enabling the presiding officer to effectively manage the proceeding.

(4) Existing law generally requires the Department of Personnel Administration to establish and adjust salary ranges for each class of position in the state civil service subject to any constitutional merit limits. Existing law requires the salary range to be based on the principle that like salaries shall be paid for comparable duties and responsibilities. Existing law prohibits the department from making any adjustments that require expenditures in excess of existing appropriations that may be used for salary increase purposes.

This bill would approve the recruitment and retention differentials of the Department of Personnel Administration for specified employees in State Bargaining Units 1 and 10 employed by the Energy Commission covered by the October 29, 2009, letter from the Director of the

Department of Personnel Administration to the Chairperson of the Joint Legislative Budget Committee.

The bill would specify that those differentials that require the expenditure of funds would not take effect unless funds for these provisions are specifically appropriated by the Legislature or already exist within available appropriations. The bill would authorize either party to reopen negotiations on all or part of the addendum if the Legislature does not approve or fully fund any addendum included in this measure.

(5) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 8, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 8, 2010, pursuant to the California Constitution.

Vote: ~~majority~~^{2/3}. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

- 1 SECTION 1. Section 2069 is added to the Fish and Game Code,
- 2 to read:
- 3 2069. (a) For purposes of this section, the following terms
- 4 have the following meanings:
- 5 (1) "Desert Renewable Energy Conservation Plan" means the
- 6 completed conservation plan for portions of the Mojave and
- 7 Colorado Desert regions adopted pursuant to the Natural
- 8 Community Conservation Planning Act (Chapter 10 (commencing
- 9 with Section 2800)), in response to Executive Order S-14-08 issued
- 10 November 17, 2008.
- 11 ~~(2) "Eligible renewable energy resource" has the same meaning~~
- 12 ~~as in the California Renewables Portfolio Standard Program~~
- 13 ~~(Article 16 (commencing with Section 399.11) of Chapter 2.3 of~~
- 14 ~~Part 1 of Division 1 of the Public Utilities Code).~~
- 15 ~~(3)~~
- 16 (2) "Energy Commission" means the State Energy Resources
- 17 Conservation and Development Commission.

1 ~~(b) (1) If the developer or owner of a proposed solar thermal~~
 2 ~~powerplant has agreed to reimburse the department and the Energy~~
 3 ~~Commission for all state costs, the department, in consultation~~
 4 ~~with the Energy Commission, shall develop and implement an~~
 5 ~~interim strategy for mitigation measures pursuant to this chapter~~
 6 ~~for the construction of solar thermal powerplants~~

7 *(b) The department, in consultation with the Energy Commission*
 8 *and, to the extent practicable, the United States Fish and Wildlife*
 9 *Service and the United States Bureau of Land Management, may*
 10 *design and implement actions, including the purchase of land and*
 11 *conservation easements, to protect, restore, or enhance the habitat*
 12 *of plants and wildlife that can be used to fully mitigate the impacts*
 13 *of the take of endangered species, threatened species, or candidate*
 14 *species, for purposes of paragraph (2) of subdivision (b) of Section*
 15 *2081 and Chapter 6 (commencing with Section 25500) of Division*
 16 *15 of the Public Resources Code, resulting from solar thermal and*
 17 *photovoltaic powerplants in the Desert Renewable Energy*
 18 *Conservation Plan planning area that meet each of the following*
 19 *requirements:*

20 ~~(A) The Energy Commission has determined~~

21 *(1) Either the department receives a complete application for*
 22 *an incidental take permit pursuant to Section 2081 by February*
 23 *1, 2010, or the Energy Commission determines that the application*
 24 *for certification was complete by February 1, 2010.*

25 ~~(B) The solar thermal powerplant is proposed to be constructed~~
 26 ~~in the Mojave or Colorado Desert regions.~~

27 ~~(C) The developer or owner of the proposed solar thermal~~
 28 ~~powerplant has applied for, and will receive, funding under the~~
 29 ~~federal American Recovery and Reinvestment Act of 2009 (Public~~
 30 ~~Law 111-5) if construction begins by December 31, 2010. For~~

31 *(2) The developer or owner of the proposed powerplant or*
 32 *generation facility has applied for, and would qualify for, funding*
 33 *under the federal American Recovery and Reinvestment Act of*
 34 *2009 (Public Law 111-5). For purposes of this subparagraph,*
 35 *“funding” means a loan guarantee made pursuant to Section 406*
 36 *of the act (42 U.S.C. Sec. 16516) and or a grant for specified*
 37 *energy property in lieu of a tax credit provided pursuant to Section*
 38 *1603 of Division B of the act, which division is titled the American*
 39 *Recovery and Reinvestment Tax Act of 2009.*

1 ~~(2) The interim strategy for mitigation measures pursuant to~~
2 ~~this chapter shall include the following:~~

3 (c) A mitigation action may only be used for the mitigation
4 purposes described in subdivision (b) if it meets one of the
5 following conditions:

6 (1) The department has implemented the mitigation action and
7 determined that the action has resulted in the protection,
8 restoration, or enhancement of the habitat of one or more species
9 that are proposed to be covered by the Desert Renewable Energy
10 Conservation Plan and, based upon that determination, can be
11 used, for purposes of paragraph (2) of subdivision (b) of Section
12 2081, to fully mitigate the impacts of the take from one or more
13 projects identified in subdivision (b).

14 (2) The mitigation action is included in an interim mitigation
15 strategy for projects identified in subdivision (b). An interim
16 mitigation strategy pursuant to this paragraph shall be developed
17 by the department, in consultation with the Energy Commission
18 and, to the extent practicable, the United States Fish and Wildlife
19 Service and the United States Bureau of Land Management, and
20 shall include all of the following:

21 (A) A description of specific mitigation areas and specific
22 actions on public or private land within the *Desert Renewable*
23 *Energy Conservation Plan* planning area that are to be
24 implemented, including a focus on habitat preservation, while also
25 including enhancement or restoration actions that will do all of the
26 following:

27 (i) Contribute to the conservation of each candidate species,
28 threatened species, or endangered species for which a permit is
29 issued.

30 (ii) Adopt a regional planning perspective that provides a
31 foundation for, or that will complement, any conservation strategy
32 to be developed for the Desert Renewable Energy Conservation
33 Plan.

34 (iii) Implement mitigation actions within a reasonable period
35 of time relative to the impact to the affected candidate species,
36 threatened species, or endangered species, including, where
37 feasible, ~~advanced mitigation~~. *advance mitigation*. For purposes
38 of this clause, “*advance mitigation*” means *compensatory*
39 *mitigation implemented before, and in anticipation of, future*
40 *impacts to natural resources*.

1 (iv) *Include a description of the species that would be benefited*
2 *by each mitigation action and how it would be benefited.*

3 (B) A cost estimate for each action, whether on public or private
4 land, using total cost accounting, including, as applicable, land
5 acquisition or conservation easement costs, transaction costs,
6 restoration costs, the amount of a nonwasting endowment account
7 for land management or easement stewardship costs by the
8 department or other management entity, and administrative costs.

9 ~~(C) A preliminary estimate of the time required to implement~~
10 ~~each action.~~

11 (d) *The interim mitigation strategy shall be based in science*
12 *and shall be reviewed by the Desert Renewable Energy*
13 *Conservation Plan independent science advisors. The department*
14 *shall seek and consider comments from the Desert Renewable*
15 *Energy Conservation Plan independent science advisors in the*
16 *design and location of each mitigation action implemented*
17 *pursuant to this section.*

18 (e) *The interim mitigation strategy shall be completed by the*
19 *department no later than 60 days following the operative date of*
20 *the act adding this section.*

21 (f) (1) *Nothing in this section shall modify the requirements of*
22 *Section 2081, the requirements of Division 13 (commencing with*
23 *Section 21000) of, or the requirements of Chapter 6 (commencing*
24 *with Section 25500) of Division 15 of, the Public Resources Code,*
25 *or affect the existing authority of the department to authorize*
26 *mitigation actions to comply with this chapter.*

27 (2) *Prior to the Energy Commission granting an application*
28 *for certification for a solar thermal power plant pursuant to*
29 *Chapter 6 (commencing with Section 25500) of Division 15 of the*
30 *Public Resources Code, or a lead agency, as defined in Section*
31 *21067 of the Public Resources Code, approving a photovoltaic*
32 *powerplant, that proposes to use a mitigation action under this*
33 *section, the Energy Commission or lead agency must find all of*
34 *the following:*

35 (A) _____.

36 (B) _____.

37 (g) *The mitigation actions implemented pursuant to this section*
38 *shall be incorporated into the Desert Renewable Energy*
39 *Conservation Plan upon the finalization of the plan, to the extent*

1 *the mitigation actions are consistent with the plan's conservation*
 2 *strategy.*

3 SEC. 2. Section 2099 is added to the Fish and Game Code, to
 4 read:

5 2099. (a) For purposes of this section, ~~“solar thermal~~
 6 ~~powerplant project” means a project to build a solar thermal~~
 7 ~~powerplant that meets the requirements of paragraph (1) of~~
 8 ~~subdivision (b) of Section 2069.~~ *the following terms have the*
 9 *following meanings:*

10 (1) *“Eligible project” means a solar thermal powerplant or*
 11 *photovoltaic powerplant meeting the requirements of paragraphs*
 12 *(1) and (2) of subdivision (b) of Section 2069.*

13 (2) *“Energy Commission” means the State Energy Resources*
 14 *Conservation and Development Commission.*

15 (b) (1) The Renewable Energy Resources Development
 16 ~~Mitigation Fee~~ Trust Fund is hereby established in the State
 17 Treasury. All moneys received for purposes of mitigation ~~and~~
 18 ~~enhancement measures~~ actions pursuant to Section 2069 shall be
 19 deposited in the fund and ~~may only be used consistent with the~~
 20 ~~purposes and restrictions of that section and any contractual~~
 21 ~~agreement between the department and the developer or owner of~~
 22 ~~a solar thermal powerplant project.~~ *shall be held in trust and be*
 23 *expended solely for the purposes of, and in conformity with, that*
 24 *section, applicable permit or certification requirements for eligible*
 25 *projects, and any contractual agreement between the Energy*
 26 *Commission or department and the owner or developer of an*
 27 *eligible project. The department may contract with, or award*
 28 *grants to, third parties to implement mitigation actions in*
 29 *conformity with Section 2069 and this section.*

30 (2) *Upon direction by the department, the Controller shall create*
 31 *any accounts or subaccounts within the fund that the department*
 32 *determines are necessary or convenient to facilitate management*
 33 *of the fund.*

34 (2)
 35 (3) The fund shall serve, and be managed, as an optional,
 36 voluntary method for developers or owners of ~~solar thermal~~
 37 ~~powerplant projects to deposit fees sufficient to complete mitigation~~
 38 ~~and enhancement measures and thereby meet their requirements~~
 39 ~~pursuant to this chapter. The fund shall be managed by the~~
 40 ~~California Wildlife Foundation or the National Fish and Wildlife~~

1 ~~Foundation as determined, and subject to oversight, by the~~
2 ~~department. eligible projects to deposit fees to complete mitigation~~
3 ~~actions meeting the conditions of subdivision (c) of Section 2069~~
4 ~~and for the purpose of meeting the requirements of this chapter~~
5 ~~or the requirements of Chapter 6 (commencing with Section 25500)~~
6 ~~of Division 15 of the Public Resources Code. Notwithstanding~~
7 ~~Section 13340 of the Government Code, the money in the fund is~~
8 ~~hereby continuously appropriated to the department, without regard~~
9 ~~to fiscal years, for the purposes enumerated in this section and~~
10 ~~Section 2069. An expenditure shall not be made from the fund~~
11 ~~except as authorized by the department.~~

12 ~~(3) All funds in the fund shall be wholly derived from the solar~~
13 ~~thermal powerplant projects that use the interim mitigation strategy~~
14 ~~developed and implemented by the department pursuant to Section~~
15 ~~2069. A solar thermal powerplant project developer or owner~~
16 ~~electing to participate shall deposit funds into the fund, in an~~
17 ~~amount that reflects the estimate by the department and the~~
18 ~~commission of specific habitat and wildlife costs attributable to~~
19 ~~the project that meets the fully mitigated standard of this chapter.~~
20 ~~The amount of funding required by a solar thermal powerplant~~
21 ~~project developer or owner to meet the fully mitigated standard~~
22 ~~through the deposits to the fund shall be calculated on a per acre~~
23 ~~basis that reflects the full cost per-acre of providing compensatory~~
24 ~~mitigation, including land acquisition costs, initial habitat~~
25 ~~improvement funds, and long-term management endowment funds.~~

26 ~~(4) The sum of ten million dollars (\$10,000,000) is hereby~~
27 ~~transferred, as a loan, from the Renewable Resource Trust Fund~~
28 ~~to the fund. This loan shall be repaid from the fund to the~~
29 ~~Renewable Resource Trust Fund no later than December 31, 2012.~~
30 ~~The department shall use these funds, pursuant to paragraph (1)~~
31 ~~of subdivision (c) of Section 2069, to purchase mitigation lands~~
32 ~~in advance of the receipt of fees pursuant to paragraph (5) and to~~
33 ~~cover the department's administrative costs for the program.~~

34 ~~(5) A developer or owner of an eligible project electing to~~
35 ~~deposit fees into the fund for mitigation actions pursuant to Section~~
36 ~~2069, shall deposit moneys into the fund in an amount that reflects~~
37 ~~the determination by the Energy Commission, with respect to a~~
38 ~~solar thermal powerplant, or the department, with respect to a~~
39 ~~solar photovoltaic powerplant, of the costs attributable to the~~
40 ~~mitigation actions that meet the standards of this chapter. The~~

1 amount of fees to be paid by a developer or owner of an eligible
2 project to meet the standards of this chapter shall be calculated
3 on a per acre basis, using total cost accounting, and shall include,
4 as applicable, land acquisition or conservation easement costs,
5 restoration costs, transaction costs, the amount of a nonwasting
6 endowment account for land management or easement stewardship
7 costs by the department or other management entity, and
8 administrative costs and funds sufficient to repay any expenditure
9 of state funds made pursuant to paragraph (4). To ensure the funds
10 deposited pursuant to this section are sufficient to meet the
11 standards of this chapter, the project developer or owner, in
12 addition to payment of those funds, shall provide security, in a
13 form and amount, not to exceed 5 percent of the amount of the
14 funds, excluding any portion of the funds to be used for a
15 nonwasting endowment, to be determined by the Energy
16 Commission, with respect to a solar thermal powerplant, or to be
17 determined by the department, with respect to a solar photovoltaic
18 powerplant.

19 (c) The department shall monitor the implementation of the
20 mitigation actions and the progress of the construction of the
21 eligible projects. The department shall provide regular updates on
22 its Internet Web site relative to implementation and monitoring of
23 all approved interim mitigation actions and of all expenditures
24 from the fund and the relationship of the expenditures to the
25 impacts of ~~certificated solar thermal powerplant projects.~~ eligible
26 projects that have used mitigation actions implemented pursuant
27 to Section 2069 for the purpose of meeting the requirements of
28 this chapter or the requirements of Chapter 6 (commencing with
29 Section 25500) of Division 15 of the Public Resources Code.
30 Mitigation actions implemented pursuant to Section 2069 shall
31 create mitigation credits that do not exceed a one credit-per-acre
32 basis. The Energy Commission, with respect to a solar thermal
33 powerplant, and the department, with respect to a solar
34 photovoltaic powerplant, shall not allow or approve the
35 double-counting of mitigation actions implemented, or mitigation
36 credits created, pursuant to Section 2069. The department shall
37 maintain the internal accountability necessary to ensure
38 compliance with the collection, deposit, and expenditure of funds
39 pursuant to this section.

1 (d) *The department and the Energy Commission shall not allow*
2 *any new eligible projects to use the interim mitigation strategy if*
3 *the department determines that the time and extent of mitigation*
4 *actions are not being implemented in rough proportion to the*
5 *impacts of those projects. The department shall reinstitute the use*
6 *of the interim mitigation strategy when the department determines*
7 *the rough proportionality between mitigation actions and impacts*
8 *of eligible projects has been reestablished by the completion of*
9 *additional mitigation actions.*

10 SEC. 3. Section 11430.30 of the Government Code is amended
11 to read:

12 11430.30. A communication otherwise prohibited by Section
13 11430.10 from an employee or representative of an agency that is
14 a party to the presiding officer is permissible in any of the
15 following circumstances:

16 (a) The communication is for the purpose of assistance and
17 advice to the presiding officer from a person who has not served
18 as investigator, prosecutor, or advocate in the proceeding or its
19 preadjudicative stage. An assistant or advisor may evaluate the
20 evidence in the record but shall not furnish, augment, diminish, or
21 modify the evidence in the record.

22 (b) The communication is for the purpose of advising the
23 presiding officer concerning a settlement proposal advocated by
24 the advisor.

25 (c) The communication is for the purpose of advising the
26 presiding officer concerning any of the following matters in an
27 adjudicative proceeding that is nonprosecutorial in character:

28 (1) The advice involves a technical issue in the proceeding and
29 the advice is necessary for, and is not otherwise reasonably
30 available to, the presiding officer, provided the content of the
31 advice is disclosed on the record and all parties are given an
32 opportunity to address it in the manner provided in Section
33 11430.50.

34 (2) The advice involves an issue in a proceeding of the San
35 Francisco Bay Conservation and Development Commission,
36 California Tahoe Regional Planning Agency, Delta Protection
37 Commission, Water Resources Control Board, or a regional water
38 quality control board.

39 (d) (1) The communication is made to the presiding officer by
40 an employee of ~~the Siting, Transmission, and Environmental~~

1 ~~Protection Division of the State Energy Resources Conservation~~
 2 ~~and Development Commission, if another state agency and the~~
 3 communication is made for the purpose of enabling the presiding
 4 officer to effectively manage a proceeding regarding an application
 5 for site certification pursuant to Chapter 6 (commencing with
 6 Section 25500) of Division 1 of the Public Resources Code.

7 (2) *The addition of this subdivision does not constitute a change*
 8 *in, but is declaratory of, existing law.*

9 SEC. 4. Section 11430.70 of the Government Code is amended
 10 to read:

11 11430.70. (a) Subject to subdivisions (b) and (c), the provisions
 12 of this article governing ex parte communications to the presiding
 13 officer also govern ex parte communications in an adjudicative
 14 proceeding to the agency head or other person or body to which
 15 the power to hear or decide in the proceeding is delegated.

16 (b) An ex parte communication to the agency head or other
 17 person or body to which the power to hear or decide in the
 18 proceeding is delegated is permissible in an individualized
 19 ratemaking proceeding if the content of the communication is
 20 disclosed on the record and all parties are given an opportunity to
 21 address it in the manner provided in Section 11430.50.

22 (c) An ex parte communication to the agency head or other
 23 person or body to which the power to hear or decide in the
 24 proceeding is delegated is permissible in an individualized
 25 determination of an application for site certification pursuant to
 26 Chapter 6 (commencing with Section 25500) of Division 15 of the
 27 Public Resources Code, that is before the State Energy Resources
 28 Conservation and Development Commission, if the communication
 29 is made by an employee of ~~the Siting, Transmission, and~~
 30 ~~Environmental Protection Division of the commission~~ *another*
 31 *state agency* and is made for the purpose of enabling the presiding
 32 officer to effectively manage the proceeding.

33 SEC. 5. Section 11430.80 of the Government Code is amended
 34 to read:

35 11430.80. (a) There shall be no communication, direct or
 36 indirect, while a proceeding is pending regarding the merits of any
 37 issue in the proceeding, between the presiding officer and the
 38 agency head or other person or body to which the power to hear
 39 or decide in the proceeding is delegated.

1 (b) This section does not apply where the agency head or other
2 person or body to which the power to hear or decide in the
3 proceeding is delegated serves as both presiding officer and agency
4 head, or where the presiding officer does not issue a decision in
5 the proceeding.

6 (c) This section does not apply to the determination of an
7 application for site certification pursuant to Chapter 6 (commencing
8 with Section 25500) of Division 15 of the Public Resources Code,
9 that is before the State Energy Resources Conservation and
10 Development Commission where the communication is between
11 the presiding officer and a commissioner and the communication
12 is made for the purpose of enabling the presiding officer to
13 effectively manage the proceeding.

14 SEC. 6. Section 25524 is added to the Public Resources Code,
15 to read:

16 25524. (a) “Qualified applicant” means an applicant for
17 certification of a solar thermal powerplant that meets each of the
18 following requirements:

19 (1) The commission has determined that the application for
20 certification was completed by February 1, 2010.

21 (2) The solar thermal powerplant is proposed to be constructed
22 in the ~~Mojave or Colorado Desert regions~~ *planning area for the*
23 *Desert Renewable Energy Conservation Plan, as defined in Section*
24 *2069 of the Fish and Game Code.*

25 (3) The developer or owner of the proposed solar thermal
26 powerplant has applied for, and ~~will receive,~~ *would qualify for*
27 funding under the federal American Recovery and Reinvestment
28 Act of 2009 (Public Law 111-5) ~~if construction begins by~~
29 ~~December 31, 2010.~~ For purposes of this paragraph, “funding”
30 includes a loan guarantee made pursuant to Section 406 of the act
31 (42 U.S.C. Sec. 16516) ~~and~~ *or* a grant for specified energy property
32 in lieu of a tax credit provided pursuant to Section 1603 of Division
33 B of the act, which division is titled the American Recovery and
34 Reinvestment Tax Act of 2009.

35 (b) The commission shall establish a process to allow a qualified
36 applicant to elect to pay additional fees to be used by the
37 commission to contract with a third party, or more than one third
38 party, to assist commission staff in performing the analysis
39 otherwise performed by commission staff in determining whether
40 or not to issue a certification. The commission shall retain

1 discretion as to when this option will be offered to a qualified
2 applicant.

3 (c) The amount of the fees charged by the commission pursuant
4 to this section shall be conditioned upon the qualified applicant
5 agreeing to that amount and electing to proceed with the retention
6 of the third party or parties pursuant to subdivision (b).

7 (d) All fees paid by a qualified applicant shall be used
8 exclusively for analysis of that applicant’s application for
9 certification.

10 SEC. 7. (a) The Legislature finds and declares that the purpose
11 of this section is to approve recruitment and retention differentials
12 for specified employees in State Bargaining Units 1 and 10 that
13 require the expenditure of funds, consistent with the state
14 employer’s memoranda of understanding with those bargaining
15 units and the Joint Legislative Budget Committee’s determination
16 that those differentials require legislative approval.

17 (b) The recruitment and retention differentials specified in
18 subdivision (c) that are consistent with the memoranda of
19 understanding with State Bargaining Units 1 and 10 that require
20 the expenditure of funds are hereby approved for the purposes of
21 Section 3517.63 of the Government Code.

22 (c) The recruitment and retention differentials for certain
23 members of State Bargaining Units 1 and 10 employed at the State
24 Energy Resources Conservation and Development Commission
25 that were described in the attachment to the letter, dated October
26 29, 2009, from the Director of the Department of Personnel
27 Administration to the Chairperson of the Joint Legislative Budget
28 Committee shall be approved.

29 (d) The recruitment and retention differentials approved by
30 subdivisions (b) and (c) and that require the expenditure of funds
31 shall not take effect unless funds for these provisions are
32 specifically appropriated by the Legislature or already exist within
33 available appropriations. If the Legislature does not approve or
34 fully fund any addendum included in this section, either party may
35 reopen negotiations on all or part of the addendum.

36 SEC. 8. This act addresses the fiscal emergency declared by
37 the Governor by proclamation on January 8, 2010, pursuant to

1 subdivision (f) of Section 10 of Article IV of the California
2 Constitution.

O