

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: June 7, 2011

To: The Commission
(Meeting of June 9, 2011)

From: Edward Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 982 (Skinner) - Energy: School lands**
As amended: May 10, 2011

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT

SUMMARY OF BILL:

AB 982 requires the State Lands Commission (SLC) to make “best efforts” to enter into a memorandum of agreement by April 1, 2012, with the U.S. Secretary of the Interior to facilitate land exchanges that consolidate school land parcels into contiguous holdings that are suitable for large-scale, commercial renewable energy-related projects.

ANALYSIS (Energy Division):

School Lands

In 1983, Congress granted California the 16th and 36th section of each township in California (over five million acres of lands) for public school purposes. A township is 36 square miles, containing 36 sections, and each section is one square mile or 640 acres. Accordingly, California’s school lands are generally scattered throughout the state in a checkerboard pattern. Unfortunately, most of the state’s valuable school lands have been sold leaving mostly desert and forest lands with little value for revenue generating purposes. The state retains surface and mineral ownership to approximately 468,600 acres of school lands; approximately 370,000 acres of school lands are located in the California desert and are landlocked, remote, and non-revenue generating.

Bill could help state achieve 33% Renewable Portfolio Standard sooner

The bill would generally support the goals of the Renewables Portfolio Standard (RPS) program, which requires CPUC-jurisdictional utilities to serve 33% of their load with renewable energy by 2020. CPUC staff estimates that the 33% RPS might require

development of about 20,000 MW of new renewable generation. The bill may not be necessary to achieve the RPS target, since the CPUC forecasts that the 33% RPS could be achieved by resources not on in school lands, but if implemented effectively, it could speed development of large solar projects and help the state achieve its RPS goals earlier. No large solar projects have been developed in California in more than 20 years because of financing, site control, permitting and other difficulties, but several projects received permits from the Energy Commission last year and hope to begin construction soon.

As currently drafted, this bill would have little effect on the core functions and responsibilities of the Public Utilities Commission (CPUC), and would not bind the CPUC to any particular RPS resource mix, procurement strategy, or infrastructure investment. In the long run, the bill could streamline siting and permitting of solar generation, concentrate solar development in areas of least environmental harm, and achieve efficiencies through the development of transmission to the parks. On the other hand, the CPUC questions whether the Department of the Interior will be willing to trade prime solar resources, and their rental income, for state lands of presumably lesser value.

CPUC transmission permitting responsibilities

The bill requires SLC, in preparing the land exchange proposal, to consult with the Energy Commission to identify areas that are best suited for renewable energy projects because of access to transmission lines, renewable energy resources, and any other relevant factors. The CPUC is responsible for permitting electric transmission lines for California's investor-owned utilities (IOUs) pursuant to Pub. Util. Code §1001 *et seq.*, and can permit transmission specifically to access renewable generation if it finds the project "necessary to facilitate achievement" of the RPS program pursuant to Pub Util Code §399.2.5.

In order to achieve consistency with the CPUC's oversight of utilities' resource planning efforts, the CPUC works closely with the California Independent System Operator, which is responsible for operating and planning most of the electric grid in California, to ensure that transmission is available to priority resource areas. If identified school lands become such a priority, the CPUC will work to incorporate them into the IOUs' resource planning processes and the ISO's transmission planning process. Absent this coordination or a change in the authorities for transmission planning (ISO) and permitting (CPUC) for IOUs, however, an identification of transmission by the Energy Commission will not result in the construction of new transmission infrastructure by the IOUs.

PROGRAM BACKGROUND:

The RPS program was adopted in SB 1078 (2002), and subsequently modified by SB 107 (2006), SB 1036 (2007), and SBx1 2 (2011). The CPUC is statutorily responsible for 1) requiring each utility to submit an RPS Procurement Plan, 2) adopting a process

that utilities must use to evaluate renewable energy projects bid into their solicitations, 3) adopting RPS compliance rules, 4) reviewing and approving or rejecting utilities' RPS contracts, and 5) reporting to the Legislature, on a quarterly basis, on the RPS program. To date, the CPUC has adopted approximately 40 decisions to implement these aspects of the RPS program and has approved over 180 RPS contracts for over 16,000 megawatts.

The CPUC oversees long-term planning for all IOU procurement, including RPS, through a biannual Long-Term Procurement Plan proceeding. The CPUC also permits transmission pursuant to Public Utilities Code Sections 1001 et seq, can permit transmission specifically to access renewable generation if it finds the project "necessary to facilitate achievement" of the RPS program pursuant to Pub Util Code §399.2.5.

STATUS:

AB 982 passed the Assembly 78-0 and is in the Senate awaiting committee assignment.

SUPPORT/OPPOSITION:

Support: Brightsource Energy (sponsor)

Opposition: none

STAFF CONTACT:

Dan Chia, Deputy Director-OGA (916) 324-5945

dc2@cpuc.ca.gov

June 7, 2011

BILL LANGUAGE:

BILL NUMBER: AB 982 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY MAY 10, 2011
AMENDED IN ASSEMBLY APRIL 26, 2011

INTRODUCED BY Assembly Member Skinner

FEBRUARY 18, 2011

An act to repeal and add Division 7.7 (commencing with Section 8700) of the Public Resources Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 982, as amended, Skinner. Energy: land exchange for renewable energy-related projects.

The School Land Bank Act vests the State Lands Commission, as a trustee, with the exclusive jurisdiction and authority the School Land Bank Fund and interest in land acquired pursuant to that act. The act authorizes the commission, acting as a trustee, to acquire interest in real property for the purposes of facilitating the management of school lands to generate income.

This bill would require the commission to make best efforts to enter into a memorandum of agreement by April 1, 2012, with the United States Secretary of the Interior to facilitate land exchanges consolidating school land parcels into contiguous holdings *that are suitable* for renewable energy-related projects. The bill would require the commission, by January 1 of each year, to report to the Legislature on the status of the memorandum of agreement and school land consolidation efforts for renewable energy-related projects.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Division 7.7 (commencing with Section 8700) of the Public Resources Code is repealed.

SEC. 2. Division 7.7 (commencing with Section 8700) is added to the Public Resources Code, to read:

DIVISION 7.7. School Lands

CHAPTER 1. SCHOOL LAND BANK ACT

8700. This division shall be known and may be cited as the School Land Bank Act.

8701. The Legislature finds and declares as follows:

(a) Past policies of the state have resulted in significant depletion of the inventory of lands granted by the federal government to provide fiscal support for the public school system.

(b) It is essential that all remaining school lands and attendant interests be managed and enhanced to provide an economic base for support of the public school system.

(c) The commission shall plan and implement all transactions, including exchanges, sales, and acquisitions which would facilitate the management of school land interests for revenue generating purposes.

(d) The state, through the commission, shall take all action necessary to fully develop school lands, indemnity interests, and attendant mineral interests into a permanent and productive resource base.

(e) It is in the best interest of the state that school lands be managed as a revenue source and it is the intent of the Legislature that fair market value be a primary criterion in determining if proposed uses or dispositions of land should be approved.

(f) The consolidation of school land parcels into contiguous holdings is essential to sound and effective management and the power to acquire lands by exchange or purchase is elemental to the consolidation process.

8702. Unless the context otherwise requires, the definitions in this section govern the construction of this division.

(a) "Commission" means the State Lands Commission.

(b) "Fund" means the School Land Bank Fund.

~~—(c) "Trustee" means the State Lands Commission acting in its role as trustee for the School Land Bank Fund.~~

~~—(d) "School land" means land or interests in land granted to the state by an Act of Congress March 3, 1853 (Ch. 145, 10 Stat. 244), for the specific purpose of providing support for the public schools.~~

(c) "School land" means land or interests in land granted to the state by an Act of Congress March 3, 1853 (Ch. 145, 10 Stat. 244), for the specific purpose of providing support for the public schools.

(d) "Trustee" means the State Lands Commission acting in its role as trustee for the School Land Bank Fund.

8703. Acquisitions may be made by negotiated agreement with, or purchase from, the owners of the outstanding interests. Nothing in this division confers any authority to exercise the power of eminent domain for the purposes of this division, although that power is statutorily vested in the commission.

8704. The trustee shall make all reasonable attempts to acquire the mineral and other subsurface rights in any acquisition pursuant to this division. If the trustee is unable to acquire the mineral and other subsurface rights, the trustee may purchase real property upon the trustee expressly finding that the benefits to be derived from the acquisition are substantial and that acquisition of the property without the subsurface rights is in the best interests of the state for the purposes set forth in this division.

8705. The trustee has the exclusive jurisdiction and authority to administer the fund and the interest in real property acquired pursuant to this division, including the selection, acquisition, and conveyance of real property by the trustee as provided in this division.

8706. The state, in its sovereign capacity, shall accept any

conveyance, and the land shall thereafter be held by the state as land of the legal character of school lands subject to the school land trust under the jurisdiction of the commission pursuant to Division 6 (commencing with Section 6001).

8707. The commission shall accept the conveyances on the part of the state and shall authorize their acknowledgment and recordation.

8708. Until expended for acquisitions in accordance with this division, moneys in the fund shall be deposited in the Pooled Money Investment Fund and the interest deposited in the fund.

8709. In addition to the purchase price to be paid, the costs and expenses attributable to the acquisition may be payable from the fund, provided that those costs shall not exceed 5 percent of the expended funds.

8709.5. Expenses attributable to management and remediation efforts on state school lands are payable from the fund.

8710. An action under this division is not subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000)), the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), or the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code).

8711. There is in the State Treasury the School Land Bank Fund, which is hereby created. Notwithstanding Section 13340 of the Government Code, all moneys in the fund are appropriated to the commission for expenditure, without regard to fiscal years, for the purposes of this division. When performing the powers and duties set forth in this division, the commission shall be known as the School Land Bank Trustee.

8712. The trustee may acquire real property or any interest in real property with the objective of facilitating management of school lands for the purpose of generating revenue.

8713. The trustee shall act only at an open, scheduled public meeting, subject to all provisions of Division 6 (commencing with Section 6001) relating to meetings of the commission. The trustee may combine its meeting with the meetings of the commission.

8715. The provisions of this division are not intended as exclusive, and shall not restrict the commission in otherwise meeting any other responsibilities and jurisdiction the commission presently has by law.

8716. The trustee may accept gifts of real property or money for the purposes of this division.

CHAPTER 2. LAND EXCHANGES FOR RENEWABLE ENERGY-RELATED PROJECTS

8720. The Legislature finds and declares all of the ~~follows~~ following :

(a) The high cost of energy is taking a financial toll on California's citizens and economy, as well as making the state more dependent on foreign oil.

~~—(b) The use of fossil fueled energy sources has caused detrimental effects on the environment and human health by polluting the air, soil, and water, as well as contributing to climate change.~~

~~—(c)~~

(b) California is home to abundant renewable energy resources, such as solar, wind, geothermal, and biomass.

—(d)—

(c) The State Lands Commission manages on behalf of the State Teachers' Retirement Fund (STRS) hundreds of thousands of acres of school lands, a great deal of which have significant potential for siting *large-scale commercial* renewable energy projects.

—(e)—

(d) The State Lands Commission has a duty pursuant to the School Land Bank Act (Chapter 1 (commencing with Section 8700)) to take all action necessary to fully develop school lands into a permanent and productive resource base for the benefit of STRS.

—(f)—

(e) A significant amount of school lands are not producing revenue because they are isolated, landlocked parcels, the majority of which are remote desert lands. The consolidation of school land parcels into contiguous holdings would facilitate the sound and effective management of these lands.

—(g)—

(f) On October 16, 2008, the State Lands Commission adopted a resolution supporting the environmentally responsible development of school lands for renewable energy-related projects.

—(h)—

(g) If school lands are leased for ~~commercial~~, ~~large-scale~~ *large-scale commercial* renewable energy projects, the state will benefit in the form of reduced carbon emissions, a cleaner and healthier environment, affordable energy, stronger national security, new jobs, and more funding for STRS.

—(i)—

(h) It is the policy of the state to promote the advancement, development, assessment, and installation of ~~renewable energy systems~~ *large-scale commercial renewable energy projects* on school lands. Any consolidation and development of school lands for renewable energy should be done with assurances that the state's unique and sensitive environment will be protected.

8721. For the purposes of this chapter, "California desert" means the California Desert Conservation Area as described in Section 1781 of Title 43 of the United States Code.

8722. (a) The commission shall make best efforts to enter into a memorandum of agreement by April 1, 2012 , with the United States Secretary of the Interior to facilitate land exchanges that consolidate school land parcels into contiguous holdings *that are suitable for renewable energy-related projects. The memorandum of agreement shall be tailored, to the extent feasible, to prioritize land exchanges that are best suited for large-scale commercial renewable energy projects.*

(b) If a memorandum of agreement is entered into, the commission shall make best efforts to consolidate all school land parcels in the California desert into contiguous holdings for renewable energy-related projects.

(c) The commission shall report to the Legislature by January 1 of each year on the status of the memorandum of agreement and school land consolidation efforts in the California desert.

8724. (a) Within 240 days of the execution of the memorandum of

agreement, the commission shall prepare and submit to the United States Secretary of the Interior a proposal for land exchanges that consolidate all school land parcels in the California desert into contiguous holdings *that are suitable* for renewable energy-related projects. In developing the proposal, the commission shall give priority to land exchanges that will facilitate the development of large-scale commercial renewable energy projects.

(b) The commission's proposal shall be based on an acre-for-acre exchange with the United States.

(c) Notwithstanding subdivision (b), the commission may withhold a school land parcel from an exchange proposal or request additional consideration from the United States Secretary of the Interior if the commission reasonably believes, based on existing and reliable information, that an acre-for-acre exchange would not provide the state with compensation that is equal to or greater than the fair market value of the school land parcel. For the ~~purpose~~ *purposes* of this subdivision, the commission shall consider the potential renewable energy value of a parcel the commission would receive in the exchange.

(d) In preparing the land exchange proposal, the commission shall do both of the following:

(1) Consult with the State Energy Resources Conservation and Development Commission to identify areas that are best suited for renewable energy projects because of access to transmission lines, renewable energy resources, and any other relevant factors.

(2) Consult with the Department of Fish and Game to identify areas in the California desert meeting ~~both~~ *either* of the following criteria:

~~—(i)~~

(A) It is not likely that a renewable energy project would have a significant effect on sensitive environmental habitat or migratory birds in the area.

~~—(ii)~~

(B) The area would serve as a potential mitigation area to offset the impacts that renewable energy-related projects may have on the environment.

(e) The commission's costs and expenses attributable to the land exchange process may be payable from the fund.

(f) The commission may consider counter land exchange proposals from the United States Secretary of the Interior and make additional proposals to the extent that the additional proposals achieve the goals set forth in this chapter.

(g) Final approval of a land exchange proposed pursuant to this chapter shall be made by the commission at a properly noticed commission meeting.