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# Environmental Protection

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# Environmental Protection

## Environmental Protection; California Wilderness Act

Public Resources Code Chapter 1.3 (commencing with §5093.30) (new); §5001.5 (amended).

SB 1498; STATS 1974, Ch 1196

Support: Sierra Club; Planning and Conservation League; Audubon Society; Forest Service

Opposition: State Chamber of Commerce; Farm Bureau; Department of Parks and Recreation

Chapter 1196 establishes the California wilderness preservation system. The system is patterned after the National Wilderness Preservation System and will be comprised of units of the state park system hitherto classified as *state wilderness*, and those areas specifically designated by the legislature as wilderness areas. State wilderness areas are defined in section 5001.5 of the Public Resources Code and include only roadless areas (as defined in §5093.32) without permanent improvements or human habitation. The intent of this act is to preserve a maximum of undeveloped wilderness land for study and recreation, and accordingly certain areas have been set aside for that purpose. The bill also creates a framework within which additional areas can be assigned to the system and thus be protected from short-term exploitation.

In section 5093.34 certain specific areas are designated as wilderness areas, and they will constitute the system until more areas can be added. The guidelines for adding areas are set out in section 5093.55 and include periodic review of state-owned roadless areas by the Secretary of the Resources Agency and public hearings on potential inclusions. Although a particular area may be designated as a wilderness area, the area nonetheless remains subject to the jurisdiction of the state agency or agencies having jurisdiction prior to its inclusion in the system (§5093.33(b)). The agency involved must adopt regulations for the management of the area consistent with the guidelines of the system.

Under prior law, although certain parts of the state park system were designated *state wilderness*, specific guidelines for their use and manage-

ment had not been established. Chapter 1196 now provides an initial set of guidelines including prohibitions of motor vehicles, commercial enterprises, and permanent roads.

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**See Generally:**

- 1) 16 U.S.C. §1311 *et seq.* (National Wilderness Preservation System).

**Environmental Protection; energy conservation**

Health and Safety Code Chapter 11 (commencing with §19870) (repealed); Public Resources Code §21100 (amended); Division 15 (commencing with §25000) (new).

AB 1575 (Warren); STATS 1974, Ch 276

(Effective January 7, 1975)

Support: Sierra Club

Opposition: California Manufacturing Association; General Electric

*Establishes the State Energy Resources Conservation and Re-development Commission; grants the Commission authority over power plant sitings, building insulation standards, energy consumption standards of appliances, and other related matters; requires the Commission to recommend pricing policies and rate schedules for utilities to the PUC; requires all environmental impact reports to include a statement of proposed measures to reduce energy consumption.*

Chapter 276 has amended section 21100 of the Public Resources Code to require that all environmental impact reports which are prepared pursuant to the California Environmental Quality Act of 1970 [CAL. PUB. RES. CODE §21000 *et seq.*] set forth mitigation measures proposed to reduce wasteful, inefficient, and unnecessary consumption of energy. This chapter also enacts the Warren-Alquist State Agency Resources Conservation and Development Act, which is codified in division 15 (commencing with §25000) of the Public Resources Code. Division 15 establishes the State Energy Resources Conservation and Development Commission and prescribes its membership, powers, and duties. The Commission is given varied and far-reaching duties and authority involving the state's energy uses, particularly relating to energy planning and forecasting, conservation, and power plant sitings. Emphasis is placed on a Commission membership which will not have any conflict of interest with the industries to be regulated.

Sections 25300 through 25309 specify duties given to the Commission relating to planning and forecasting. The Commission is required

to use designated methods to develop forecasts and assessments of the state's energy supply and demand needs. Section 25300 requires every utility in the state to prepare and transmit to the Commission reports specifying five, ten, and twenty year forecasts or assessments of loads, resources, and reserve margins for its service area. The Commission is then to use these reports and other information gathered in its research in developing its comprehensive report. Such reports will recommend state policies to make optimum use of the state's energy resources.

Sections 25400 through 25405 delineate general duties for the Commission relating to the conservation of energy. The Commission is required to make general recommendations in its reports pertaining to such energy saving measures as building design, electricity pricing, and others. Section 25402 details some of the important new duties given to the Commission to regulate energy wastage. Subsection (a) authorizes the Commission to prescribe lighting, insulation, climate control systems, and other building design and construction standards which increase the efficient use of energy. In subsection (c) the Commission is given the authority to determine which appliances require a significant amount of energy, and to then prescribe standards for minimum levels of operating efficiency for those appliances as a prerequisite to their sale in California. Section 25403 requires the Commission to submit recommendations concerning energy pricing policies and rate structures to the Public Utilities Commission and to any publicly owned electric utility for use in its decisions.

Authority over the siting of power plant facilities is given to the Commission in sections 25500 through 25542. Under these sections, all future power plant facilities, with certain named exceptions, must first receive certification from the Commission before any new construction or modification can be commenced. The issuance of the certification is in lieu of all permits, certificates, or similar documents formerly required by any state, local or regional agency, or federal agency to the extent permitted by federal law. Specific steps for application and approval are established in this chapter.

The Commission is further required, in sections 25600 through 25705, to develop and coordinate a program of research and development in energy supply, consumption and conservation, and the technology of siting power plant facilities, as well as to develop contingency plans to deal with possible future shortages of fuel or electrical energy.

**COMMENT**

Prior to chapter 276, the state's energy matters were handled by various state and local commissions and agencies. This chapter attempts to centralize control in the State Energy Resources Conservation and Development Commission. An example of this centralization of control is the so-called "one stop siting" of power plants, which represents a drastic change from prior law by reducing the number of agencies required to approve sitings from more than thirty to no more than three.

Section 25402(a), which grants the Commission authority to prescribe insulation standards on residential housing, together with newly enacted section 19878.2(a) of the Health and Safety Code, which gives the Department of Housing and Community Development authority to set insulation standards on nonresidential buildings, means that insulation standards will be prescribed for all new construction starting in late 1975.

The authority to determine which appliances require significant amounts of energy, and to prescribe standards for minimum levels of operating efficiency is also a major new regulatory power. Since California consumers buy about 12 percent of the nation's electrical appliances, it is believed that manufacturers will recognize California's leadership in this area and conform their entire output to California's standards. This bill appears to give broad and sweeping powers to the Commission, and the full range of the activity and authority of the Commission, including a resolution of areas of possible conflict with other agencies, will not be known for some time.

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**See Generally:**

- 1) Comment, *The Compatibility of Economic and Environmental Objectives in Governmental Decision Making*, 5 PAC. L.J. 92 (1974).

**Environmental Protection; challenging CEQA decisions**

Public Resources Code §§21108, 21152, 21167 (amended).

AB 2338 (Knox); STATS 1974, Ch 56

(Effective March 4, 1974)

Support: Association of California Water Agencies; California Business Properties, Inc.

Although the requirements of the California Environmental Quality Act of 1970 (CEQA) encompass most projects conducted within California, certain projects are not within the purview of CEQA. The

exempt projects are those which: (1) are ministerial in nature [CAL. PUB. RES. CODE §21080]; (2) are categorically exempted (§21085); (3) constitute a necessary emergency repair to public service facilities (§21085); or (4) constitute a project undertaken to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster (§21172).

Chapter 56 has been enacted to provide for public notice of the determination by a public agency that a specific project is outside the scope of CEQA, and to establish a statute of limitations for challenging such a determination. Section 21108(b) of the Public Resources Code, as added by chapter 56, provides that if a state agency, board, or commission determines that a project is outside the scope of CEQA and approves or decides to carry out the project, it *may* then file a notice of such determination with the Secretary of the Resources Agency. The individual undertaking such a project, where he meets the requirements of section 21065(b) or section 21065(c), may also file such a notice. Sections 21108(b) and 21152(c) require that the notices filed in accordance with the above statutes must be available for public inspection, and a list of all such notices must be posted in the offices of the place of filing for a period of 30 days.

Specific statutes of limitations for challenging the determination that a project is exempt from the requirements of CEQA are set forth in section 21167(d). If the particular notice has been properly filed, actions or proceedings alleging that a public agency has improperly made a determination of exemption must be commenced within 35 days after the filing of the notice. If no notice has been filed, the action must be commenced within 180 days of the agency's decision to carry out or approve the project or, where a project is undertaken without a formal agency decision, within 180 days after commencement of the project. Prior to chapter 56, the CEQA provided for public notice as well as a statute of limitations for filing challenges in all categories of projects except those which were ministerial, emergency, or disaster related. Thus, in those areas challenges could have been made at any time in the future.

Chapter 56 has also added section 21167(e), which provides that any action or proceeding alleging that any other act or omission of a public agency does not comply with the provisions of the CEQA must be commenced within 30 days after the required filing of notice by the public agency. This appears to be a catch-all statute of limitations

enacted to guarantee that challenges of any kind not specifically mentioned elsewhere will come within a 30 day period.

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**See Generally:**

- 1) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 484 (1973).
- 2) Comment, *California's Environmental Quality Act—A Significant Effect Or Paper Pollution?*, 5 PAC. L.J. 26 (1974).

**Environmental Protection; air pollution—  
stationary source monitoring**

Health and Safety Code §§39052.11, 39052.12 (new).  
AB 2317 (Ingalls); STATS 1974, Ch 1353

Chapter 1353 has been enacted to encourage the control of certain air contaminants in California. In section 39052.11, which has been added to the Health and Safety Code, the legislature declares as a finding that “although air pollution control districts are authorized under sections 24269, 24362.4, 39079, and 39464 to require stationary sources of air contaminants [such as refineries and electric generating stations] to install and operate monitoring devices to measure and record continuously the emissions concentration and amount of any specified pollutant, many air pollution control districts have failed to exercise such authority.” The section then strongly encourages the air pollution control districts to require the monitoring systems on certain sources of air pollution, and further supports this by allocating funds to the Air Resources Board for development and testing of monitoring devices to measure and record the emissions of certain delineated pollutants by stationary sources. Section 39052.12 places some specific requirements on stationary sources which *are* required by local districts to maintain monitoring systems. Included in these are retention of monitoring records for at least two years, reporting of violations of emission standards within 96 hours, and periodic inspections of systems by air pollution control officers.

*COMMENT*

Although chapter 1353 leaves the decision to require monitoring systems up to the local districts, earlier versions of the bill would have made the systems mandatory on a statewide basis. This, along with the further centralization of requirements set forth in section 39052.12, would seem to indicate that unless the local districts take the encouraged actions in a timely manner, the legislature is prepared to make the monitoring devices mandatory throughout the state.

**Environmental Protection; gas appliances**

Public Resources Code Chapter 11 (commencing with §25950) (new).

SB 1521 (Alquist); STATS 1974, Ch 1411

Support: Attorney General; Public Utilities Commission

Because of the growing shortage of natural gas, the legislature has enacted chapter 1411, which adds sections 25950 through 25968 to the Public Resources Code, to forbid the sale or installation of any new residential-type gas appliance that is equipped with a pilot light. This provision becomes effective either on January 1, 1977, or 24 months after the newly established State Energy Resources Conservation and Development Commission certifies an intermittent ignition device as an alternative means to the pilot light, whichever date is later (§25960). If the Commission never certifies an alternative, the prohibition will never become effective. Section 25950 excludes from the definition of *gas appliance* any water heater, while section 25952 defines *intermittent ignition device* as an ignition device which is actuated only when the gas appliance is in operation. Proponents of this measure indicate that pilot lights consume over seventy billion cubic feet of gas each year, or 16 percent of all natural gas used in homes, and hence this chapter potentially will save a considerable amount of this natural energy resource.

The State Energy Resources Conservation and Development Commission is to notify all gas appliance manufacturers doing business in the state of the provisions of this article within 90 days of the effective date of the Department's regulations and inform them of the alternative certified devices which are available for their use (§25962). The Commission is also required to make periodic inspections of manufacturers and distributors, and is authorized to make inspections of retail outlets to determine if chapter 1411 is being complied with, and is required by section 25963 to create a seal of certification to be affixed to every new appliance sold in the state which complies with these provisions. Any inspector appointed or authorized by the Commission is to be given access to the premises, equipment, materials, articles, and records of any person subject to chapter 1411, pursuant to section 25968. Section 25964 makes it unlawful for any person to cause to be sold, distributed, or installed in California any new gas appliance after the effective date of the Department's regulations, without first obtaining such seal from the Commission, unless the Commission otherwise authorizes such action.

Any person who violates or proposes to violate any provision of chapter 1411 may be enjoined by any court of competent jurisdiction. Section 25966 of the Public Resources Code also permits the court to make any orders or judgments necessary to prevent a violation of this chapter or restore to any person any money or property acquired by means of any practice which violates a provision of this chapter. Each willful violation of this article is punishable by a fine of up to \$2,500, which is to be assessed in a civil action.

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**See Generally:**

- 1) REVIEW OF SELECTED 1974 CALIFORNIA LEGISLATION, this volume at 329 (Environmental Protection; energy conservation).