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Energy

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Energy

Energy; liquified natural gas terminal

Public Resources Code §30261 (amended);
Public Utilities Code Chapter 10 (commencing with §5550) (new).
SB 1081 (Alquist); STATS 1977, Ch 855
(Effective September 17, 1977)
Support: Public Utilities Commission; California Coastal Commission
Opposition: League of California Cities; Sierra Club

Enacts the Liquified Natural Gas Terminal Act of 1977; grants the Public Utilities Commission the power to grant a permit for one liquified natural gas terminal; establishes permit application criteria and procedures; requires studies and reports by various state agencies; grants applicants the power of eminent domain and provides for the leasing of certain state lands; specifies size, type and capacity for the permitted terminal; restricts population density in the terminal site vicinity; allows terminal to process gas originating in Indonesia and south Alaska only; makes necessary appropriations.

Finding that an adequate supply of natural gas is essential to the economy of California and to the health and welfare of its residents [CAL. PUB. UTIL. CODE §5551(a)] and that the importation of liquified natural gas [hereinafter referred to as LNG] from south Alaska and Indonesia may be a significant means for assuring an adequate supply of natural gas [CAL. PUB. UTIL. CODE §5551(b)], the California Legislature has enacted the Liquified Natural Gas Terminal Act of 1977 [CAL. PUB. UTIL. CODE §§5550-5650]. The legislature has further found that an LNG terminal may be currently needed to prevent predicted shortages of natural gas in the early 1980's [CAL. PUB. UTIL. CODE §5551(c)]. In order to prevent such shortages and expedite the siting, construction, and operation of an LNG terminal [CAL. PUB. UTIL. CODE §5551(d)] the legislature has given the Public Utilities Commission [hereinafter referred to as the PUC] the sole and exclusive authority, to the extent permitted by federal statute or regulation or any federal-state agreements relating to water discharge permits, to permit the location of one such facility [CAL. PUB. UTIL. CODE §5581. See generally CAL. PUB. RES. CODE §§5557, 30261(b)].

After September 17, 1977, the effective date of this Act, the construction or operation of an LNG terminal is prohibited to all persons except holders of a permit issued by the PUC [CAL. PUB. UTIL. CODE §5580]. Any application for such a permit must have been filed with the PUC by October

17, 1977 [CAL. PUB. UTIL. CODE §5600]. Applications for this permit must have contained specified information including engineering, construction, operation, safety, and cost data, proposed source of LNG, proposed natural gas transmission facilities, and other relevant data [CAL. PUB. UTIL. CODE §5601]. Furthermore, the PUC must issue its decision whether to grant a permit before July 31, 1978 [CAL. PUB. UTIL. CODE §5580].

Further to assist the PUC in its decision to issue a permit, Chapter 855 requires the State Energy Resources Conservation and Development Commission to undertake a study of natural gas supplies and demands in California [CAL. PUB. UTIL. CODE §5587]. The California Coastal Commission is required to provide a study evaluating and ranking any site proposed in an application or by any person for inclusion as an alternate site in the environmental impact report to be prepared by the Coastal Commission on this project [CAL. PUB. UTIL. CODE §§5611-5612]. The PUC, in turn, may not issue a permit for a site not evaluated and ranked by the Coastal Commission [CAL. PUB. UTIL. CODE §5631(a)]. The PUC must base its selection upon the Coastal Commission's ranking and must choose the highest ranked site unless such site selection would be inconsistent with the goals of the Act [*See* CAL. PUB. UTIL. CODE §5631(b)] or inconsistent with public health, safety, or welfare [*See* CAL. PUB. UTIL. CODE §5632]. The Coastal Commission is also required to complete a final study of potential offshore sites and types of terminals for such sites [CAL. PUB. UTIL. CODE §5650].

Chapter 855 requires the PUC to hold at least one public hearing prior to the issuance of a permit in the city or county in which the terminal is proposed to be located [CAL. PUB. UTIL. CODE §5636(a)] and to cooperate with the city or county by providing information concerning the proposed facility [CAL. PUB. UTIL. CODE §5636(b)]. Such city or county may hold public hearings on the proposed terminal siting [CAL. PUB. UTIL. CODE §5636(c)] and may submit to the PUC, no later than May 15, 1978, appropriate recommendations concerning the issuance of a permit [CAL. PUB. UTIL. CODE §5636(d)]. The PUC must also contract with the State Energy Resources Conservation and Development Commission, and consult with the Division of Industrial Safety of the Department of Industrial Relations, and any other relevant state or federal agency to develop and adopt regulations governing the safety and construction of the terminal [CAL. PUB. UTIL. CODE §5637]. Chapter 855 further requires the PUC to monitor terminal construction costs, including costs of construction preparation, to determine if such costs are in the best interest of the ratepayers [CAL. PUB. UTIL. CODE §5638].

The legislature has also declared that the construction and operation of an

LNG terminal and related facilities, as well as the maintenance of low population density in the vicinity of the terminal, are public uses [CAL. PUB. UTIL. CODE §5590]. Consequently, Chapter 855 grants the power of eminent domain for the above purposes to any person who has an application on file with the PUC or who holds such a permit [CAL. PUB. UTIL. CODE §5590]. The legislature has also found that the leasing of state lands for the construction and operation of an LNG terminal is in the public interest [CAL. PUB. UTIL. CODE §5595(a)] and has directed the State Lands Commission to issue leases where needed for such purposes [CAL. PUB. UTIL. CODE §5595(a)].

To assure expeditious review of applications, the activities of the PUC and California Coastal Commission that are required by Chapter 855 are not subject to the requirements of Government Code Section 11042 (that no state agency employ legal counsel other than from the Attorney General's office), Government Code Sections 13070 and 14615 (that general powers of supervision over all financial and business matters concerning the state are vested in the Departments of Finance and General Services), Government Code Sections 14780 and 14782 (that state contracts, specifications, and bids must be approved by the Department of General Services), and for the purpose of making temporary appointments, Government Code Section 19050 (that all state appointments be made pursuant to Article 1, commencing with Section 19050, of the Government Code) [CAL. PUB. UTIL. CODE §5591]. Further, all state agencies are directed to cooperate with and assist the PUC and Coastal Commission in the evaluation of potential LNG terminal sites [CAL. PUB. UTIL. CODE §5592].

The legislature has also found and declared that uncertainties about the safety of LNG necessitate the limiting of this enactment to authorizing no more than one LNG terminal and that such terminal shall be located at a site remote from human population [CAL. PUB. UTIL. CODE §5552]. Chapter 855 specifically requires that the terminal storage and regasification facilities be located onshore [CAL. PUB. UTIL. CODE §5584] and that average daily input capacity of the terminal may not exceed the gaseous equivalent of 1.3 billion cubic feet nor may its storage capacity exceed 1.65 million barrels [CAL. PUB. UTIL. CODE §5585]. Furthermore, Chapter 855 authorizes a permit only for an LNG terminal to receive and process LNG derived from natural gas produced in south Alaska and Indonesia [CAL. PUB. UTIL. CODE §5585]. California utility companies support the importation of LNG from these areas [Sacramento Bee, Apr. 21, 1977, §B, at 13, col. 7], but Indonesia has given California only until October 6, 1977, to make a firm decision on an LNG facility [S.F. Chronicle, May 18, 1977, at 6, col. 5].

Past tragedies such as the explosion of an LNG storage tank in Cleveland

in 1944, which claimed 133 lives and devastated nearby residential and industrial areas [Weinberg, *Cargo of Fire: A Call for Stricter Regulation of Liquefied Natural Gas Shipment and Storage*, 4 FORDHAM URBAN L.J. 495 (1976)], and the LNG tank explosion on Staten Island in 1973 which resulted in the deaths of 40 workers [*Id.* at 496] apparently have prompted the legislature to include certain safeguards in the new law to protect the public health and welfare [*Compare* CAL. PUB. UTIL. CODE §5552 with CAL. PUB. UTIL. CODE §§5582-5585]. Specifically, population density must not exceed an average of ten persons per square mile within one mile of the perimeter of the terminal site [CAL. PUB. UTIL. CODE §5582(a)(1)], nor may it exceed 60 persons per square mile within four miles of the site perimeter [CAL. PUB. UTIL. CODE §5582(a)(2)]. Furthermore, the additional risks inherent in marine importation of LNG [*See* Weinberg, *Cargo of Fire: A Call for Stricter Regulation of Liquefied Natural Gas Shipment and Storage*, 4 FORDHAM URBAN L.J. 495, at 496-97 (1976)] also seem to have been considered by the legislature and resulted in the proscription of any terminal site which, in the normal course of marine operations, would allow vessels transporting LNG to pass closer to areas of population density than the terminal itself [*See* CAL. PUB. UTIL. CODE §5582(a)(3)]. As a safeguard against later increases in population density in the vicinity of the LNG terminal, Chapter 855 prohibits the state and local governments from undertaking or granting any permit for development that would not conform to the density and distance requirements of Section 5582 for the site for which the PUC has issued the permit [CAL. PUB. UTIL. CODE §5583(a)]. Chapter 855 also directs local governments and the California Coastal Commission to undertake appropriate planning measures to ensure orderly and effective implementation of this development restriction [CAL. PUB. UTIL. CODE §5583(b)]. Finally, over \$2.8 million have been appropriated to the PUC and California Coastal Commission to accomplish the purposes of this act [CAL. STATS. 1977, c. 855, §4, at —].

COMMENT

Notwithstanding the declared legislative objective of Chapter 855 to expedite siting, construction, and operation of an LNG terminal [*See* CAL. PUB. UTIL. CODE §5551(d)], California's efforts toward the use of imported LNG have been slow in comparison with those made by the Japanese, who are now receiving regular shipments of Indonesian LNG, despite the fact that the Japanese contracts were signed after California utility companies had secured their commitments from the Indonesian exporters [Burt, *LNG Sites Needed Now!*, SACRAMENTO REPORT, May 27, 1977, at 6]. Further delays in the construction of an LNG terminal, however, may be precipitated by possible challenges to the constitutionality of the provisions of

Chapter 855 that extend to applicants and the permittee, the power of eminent domain [*See generally* CAL. PUB. UTIL. CODE §5590].

Article 4, Section 8(d) of the California Constitution states, in part, that an urgency statute may not grant any franchise or special privilege. Chapter 855 is an urgency statute [CAL. STATS. 1977, c. 855, §6, at —] that purports to grant the power of eminent domain [CAL. PUB. UTIL. CODE §5590]. A franchise is a special privilege conferred by the government on an individual or corporation that does not belong to the citizens in general [City of Oakland v. Hogan, 41 Cal. App. 2d 333, 346-47, 106 P.2d 987, 994 (1940); People v. Willert, 37 Cal. App. 2d 729, 741, 93 P.2d 872, 879 (1939)], and the power of eminent domain apparently is such a privilege [*See* CAL. CIV. PROC. CODE §§1230.010-1273.050]. Thus, Chapter 855 has apparently granted a franchise (the power of eminent domain) through legislation that is an urgency measure, which is arguably inconsistent with the California Constitution [*See* CAL. CONST. art. 4, §8(d)].

Generally, California courts will, through construction or severance, avoid declaring a statute unconstitutional [*E.g.*, Blair v. Pitchess, 5 Cal. 3d 258, 282, 486 P.2d 1242, 1259, 96 Cal. Rptr. 42, 59 (1971); Layton v. Merit System Comm'n, 60 Cal. App. 3d 58, 64, 131 Cal. Rptr. 318, 322 (1976)]. The new LNG siting legislation specifically provides for the severance of any provisions that are held to be invalid [CAL. PUB. UTIL. CODE §5593]. Therefore, based on this principle of statutory construction, it would seem that the courts, in attempting to preserve the constitutionality of Chapter 855, would prefer severing the section that grants the power of eminent domain [*See* CAL. PUB. UTIL. CODE §5590] or the section that designates Chapter 855 an urgency measure [*See* CAL. STATS. 1977, c. 855, §6, at —], rather than to adjudge the entire act to be unconstitutional. It is arguable, however, that the language of the California Constitution, which states that “[a]n urgency statute may not . . . grant any franchise or special privilege,” does not warrant severance of the urgency clause language. Prior to 1966, the California Constitution specifically provided that no grant of a franchise or special privilege “shall be construed to be an urgency measure.” [CAL. CONST. art. 4, §1 (amended 1938, repealed 1966) (emphasis added)]. It would appear, therefore, that the prior version of this constitutional provision was conducive to a construction that would result in the severance of the urgency clause. On the other hand, it would seem arguable that under the operative version of the constitution, the grant of the franchise or special privilege extended by the new siting law would be void, and that those provisions would be severed [*Compare* CAL. CONST. art. 4, §8(d) with CAL. CONST. art. 4, §1 (amended 1938, repealed 1966)]. If the clause extending eminent domain power to applicants and the permittee was severed, it would effectively prevent the legislature from granting the power

of eminent domain for the prescribed public uses until January 1, 1978 [See CAL. CONST. art. 4, §8(c)]. Since it appears to be unlikely that any applicant will have attempted to invoke the power of eminent domain before January 1, 1978, it is also arguable that a court might determine that the issue has become moot because of the passing of the date upon which the statute would have taken effect had it not been an urgency statute. In this event, all of the provisions of Chapter 855 would be constitutionally valid, and the California Legislature will have provided a foundation for the establishment of an essential access point for the importation of liquified natural gas.

See Generally:

- 1) Balzar, *Liquified Natural Gas Safety, the State's Latest Energy Conflict*, 8 CAL. J. 220 (1977).

Energy; nuclear power plant siting

Public Resources Code §25524.25 (new).

AB 1852 (McAlister); STATS 1977, Ch 1144

Support: Association of California Water Agencies; California Manufacturers Association; San Diego Gas and Electric Company

Opposition: State Energy Resources Conservation and Development Commission

Sections 25524.1 and 25524.2 of the Public Resources Code impose conditions on the siting and certification of new nuclear power plants in the state. Prior to the siting and certification of any new nuclear facility that requires the reprocessing of fuel rods, the State Energy Resources Conservation and Development Commission [hereinafter referred to as the ERCDC] must make a finding that the proper United States agency has "identified and approved" an existing technology for nuclear fuel reprocessing and must report such finding to the legislature [CAL. PUB. RES. CODE §25524.1(a)]. As a further precondition to any nuclear power plant siting and certification, the Commission must make a similar finding and reporting that there exists an approved, permanent and terminal method of disposing of high-level nuclear wastes [CAL. PUB. RES. CODE §25524.2(a)-(b)].

Notwithstanding the 1976 enactment of Sections 25524.1 and 25524.2, which apparently were intended to provide a cautious approach to nuclear power development in California [See Comment, *Slaying the Nuclear Giants: Is California's New Nuclear Power Plant Siting Legislation Shielded Against the Attack of Federal Preemption?*, 8 PAC. L.J. 741, 742 (1977)], the legislature has apparently now taken the position that the ERCDC should be allowed to perform its power plant certification function to "avoid injuriously delaying needed [nuclear] power plants, risking

statewide energy shortages, and thereby disrupting rational planning to meet state energy needs" [See CAL. STATS. 1977, c. 1144, §2, at —].

For new nuclear power plant construction to commence, the ERCDC must make affirmative findings pursuant to Sections 25524.1 and 25524.2 [CAL. PUB. RES. CODE §§25524.1(a), 25524.2(a)-(b)]. The legislature has found, however, that uncertainty exists whether the ERCDC can make these required findings to allow for the siting and certification of new power plants [CAL. STATS. 1977, c. 1144, §2, at —]. In response to this potential moratorium on the construction of new nuclear power plants, Chapter 1144 requires the ERCDC to submit to the legislature by January 16, 1978, the Commission's determination of whether all the findings required by Sections 25524.1 and 25524.2 can be made at that time [*Compare* CAL. PUB. RES. CODE §25524.25(a) with CAL. STATS. 1977, c. 1144, §2, at —]. If any of the required findings cannot be made, the ERCDC must include in its determination a recommendation as to whether any power plant for which a notice of intention has been filed prior to January 1, 1977, should be exempted from the requirements of the 1976 siting law [CAL. PUB. RES. CODE §25524.25(a). See generally CAL. PUB. RES. CODE §25502 (filing of notice of intention)]. Because of the narrowly drawn time limits for recommended exemptions, it appears that the legislature is attempting to exempt from the requirements of Sections 25524.1 and 25524.2, the San Diego Gas and Electric Company Sundersert Nuclear Project, for which a notice of intention was filed on June 25, 1976 [*Compare* CAL. PUB. RES. CODE §25524.25(a) with Letter from Loyd H. Forrest, Executive Director, Energy Resources Conservation and Development Commission to Jack E. Thomas, Vice President, Power Plant Engineering and Construction, San Diego Gas and Electric Co., Jul. 22, 1976 (copy on file at the *Pacific Law Journal*)]. When making its recommendations, the ERCDC is required to consider: (1) at the time of the commission's recommendations, the most recent energy and demand forecast for the area of the proposed power plant and the capacity and supply of the proposed facility for that area as identified in the notice of intention; (2) the extent to which nongenerational alternatives or reasonable conservation measures, or both, can alternatively meet the energy needs of the area; and (3) after consideration of these nongenerational and conservation alternatives, whether any "practical alternative technology" is or will be available to meet the remaining energy needs of the area [CAL. PUB. RES. CODE §25524.25]. For the purposes of Chapter 1144, "practical alternative technology" is defined as "a facility which uses a form of primary energy for generation other than that proposed for use in the facilities which are the subject of [the] notice of intention, which . . . is or will be economically comparable, for which technology is or will be available, which is environmentally acceptable, and which, in prudent judgment,

could be certified and constructed in sufficient time to meet the [remaining energy] need . . . or within the same time period as the [nuclear] facilities . . . whichever is longer” [CAL. PUB. RES. CODE §25524.25(a)(3)].

Any findings made pursuant to Chapter 1144 must consider, among other things, the record of the proceedings on the notice of intention for the facilities under consideration and the ERCDC is required to hold hearings that it deems necessary [CAL. PUB. RES. CODE §25524.25(a)]. Finally, if the commission recommends an exemption for any facility, the legislature is required to act upon the recommendation within 90 days after receipt of the findings required by Chapter 1144 [See CAL. PUB. RES. CODE §25524.25(b)]. Thus, it appears that the legislature has sanctioned a modest retreat from its cautious approach to nuclear power development within the state, by allowing for the possible exemption from the 1976 siting laws of at least one additional nuclear power plant.

See Generally:

- 1) 8 PAC. L.J., REVIEW OF SELECTED 1976 CALIFORNIA LEGISLATION 338 (nuclear safety) (1977).
- 2) Comment, *Slaying the Nuclear Giants: Is California's New Nuclear Power Plant Siting Legislation Shielded Against the Attack of Federal Preemption?*, 8 PAC. L.J. 741 (1977).

Energy; indemnity bonds—oil, gas, and geothermal wells

Public Resources Code §§3206, 3208.5 (repealed); §§3205.1, 3725.5 (new); §§3204, 3205, 3205.5, 3207, 3208, 3250, 3251, 3410, 3412, 3723.5, 3726 (amended).

AB 566 (W. Thomas); STATS 1977, Ch 122
(Effective June 28, 1977)

Support: California Independent Producers' Association; Office of the Governor of California; State Department of Conservation, Division of Oil and Gas

California law requires anyone wishing to drill or deepen oil or gas wells to file an indemnity bond with the State Oil and Gas Supervisor [*E.g.*, CAL. PUB. RES. CODE §§3204, 3205]. In 1976, the amount required for an individual indemnity bond, which is required for drilling or deepening a single oil or gas well, was increased from \$5,000 to \$25,000 [*Compare* CAL. STATS. 1973, c. 743, §1, at 1342 *with* CAL. STATS. 1976, c. 794, §1, at —]; the amount required for a blanket indemnity bond, which may cover drilling or deepening of one or more wells, was increased from \$25,000 to \$250,000 [*Compare* CAL. STATS. 1972, c. 898, §15, at 1597 *with* CAL. STATS. 1976, c. 794, §2, at —]. Further, provisions that permitted cancellation of indemnity bonds for wells that were completed were deleted by this 1976 law [*Compare* CAL. STATS. 1955, c. 1670, §7, at 3003 *and* CAL.

STATS. 1972, c. 898, §17, at 1597 *with* CAL. STATS 1976, c. 794, §4, at —]).

The legislature has enacted Chapter 112 in an apparent attempt to alleviate the industry-wide crisis created by the enactment of these 1976 changes; specifically, the inability of small operators to find bonding companies willing to provide larger bonds for greater durations [Sacramento Bee, March 13, 1977, §A, at 4, col. 1]. The new law ties the required amount for individual indemnity bonds to well depth: \$10,000 for each well less than 5,000 feet deep; \$15,000 for each well between 5,000 and 10,000 feet deep; and \$25,000 for each well 10,000 or more feet deep [CAL. PUB. RES. CODE §3204]. The required amount for a blanket indemnity bond has been reduced to \$100,000 for onshore wells [CAL. PUB. RES. CODE §3205], but is to be \$250,000 for a blanket indemnity bond for any wells on submerged lands under ocean waters [CAL. PUB. RES. CODE §3205.1]. Amounts identical to those required for individual and blanket indemnity bonds for oil and gas wells are now required for individual indemnity bonds for single geothermal wells [CAL. PUB. RES. CODE §3725.5] and for blanket indemnity bonds for multiple geothermal wells [CAL. PUB. RES. CODE §3726]. Furthermore, prior law allowed for the filing of a cash bond in lieu of an indemnity bond for oil and gas wells for a sum twenty percent greater than the corresponding indemnity bond [CAL. STATS. 1976, c. 794, §3, at —]. Chapter 112 amends Section 3205.5 of the Public Resources Code to meet this criteria with the new indemnity bond amounts and extends the same criteria for geothermal wells [*Compare* CAL. PUB. RES. CODE §3728.5 *with* CAL. PUB. RES. CODE §3205.5].

Chapter 112 is also responsive to the 1976 legislative change that, in effect, required oil and gas companies to obtain bonds for the entire life of a well [*Compare* CAL. PUB. RES. CODE §3207 *with* CAL. STATS. 1976, c. 794, §5, at —], which for a producing well can be ten years or more [Sacramento Bee, March 22, 1977, §A, at 3, col. 1 (the effective date of this 1976 change was postponed until January 1, 1978, by Chapter 13 of the Statutes of 1977)]. This problem apparently was caused by the 1976 amendments to Sections 3207 and 3208 of the Public Resources Code, which allowed the State Oil and Gas Supervisor to terminate indemnity bonds only when a covered well was abandoned, and not when such a well was completed [*Compare* CAL. STATS. 1976, c. 794, §4, at — *with* CAL. PUB. RES. CODE §§3207, 3208]. Chapter 112 restores the provisions of Section 3207 that allow the termination and cancellation of individual and blanket indemnity bonds upon proper completion of a well or wells. For the purpose of Chapter 112, a well is properly completed when it has been shown to the satisfaction of the state supervisor that the manner of oil or gas production is

satisfactory and that the well has produced oil or gas continuously for six months [CAL. PUB. RES. CODE §3208].

In 1976 the legislature classified certain hazardous wells as public nuisances and allowed for state financed abatement of these nuisances [CAL. STATS. 1976, c. 1090, §1, at —]. Chapter 112 expands the category of public nuisance wells to include certain idle, deserted wells [CAL. PUB. RES. CODE §3250] defined as those incapable of regulatory abatement [CAL. PUB. RES. CODE §3251(a)], or those from which the owners derive no substantial financial gain [CAL. PUB. RES. CODE §3251(b)]. Chapter 112 also makes technical changes regarding reports by the Department of Conservation to the Department of Finance [CAL. PUB. RES. CODE §3412]. Thus, it appears that the legislature, by lowering required indemnity bond amounts and by altering the manner by which indemnity bonds may be terminated, has responded to the problems of small well operators who have apparently found it difficult to obtain bonds subsequent to the 1976 legislative changes.

See Generally:

- 1) 11 CAL. ADM. CODE §54 (Attorney General Approved Bond Forms; updated forms are available from the Division of Oil and Gas, Department of Conservation, State of California).

Energy; solar energy system tax credits

Health and Safety Code §44541.2 (amended);

Revenue and Taxation Code §§17052.5, 23601 (amended); Statutes 1976, Chapter 168, §4 (repealed).

AB 1558 (Hart); STATS 1977, Ch 1082

In 1976 the California Legislature added provisions to the Personal Income Tax Law [CAL. REV. & TAX. CODE §§17001- 19452] and the Bank and Corporation Tax Law [CAL. REV. & TAX. CODE §§23001-26481] to allow a tax credit for taxpayers who installed solar energy devices designed to produce heat or electricity [CAL. STATS. 1976, c. 886, §§2, 11, at —]. The amount of the credit against “net tax” was to equal ten percent of the acquisition and installation costs or \$1000, whichever was less [CAL. STATS. 1976, c. 886, §§2, 11, at —]. Chapter 1082 increases the amount of this tax credit to 55 percent of the cost of any solar energy system on premises in California owned and controlled by the taxpayer at the time of installation, not to exceed \$3,000 [CAL. REV. & TAX. CODE §§17052.5(a)(2), 23601(a)(2)]. For taxpayer owned and controlled premises, other than single family dwellings, on which the solar energy system acquisition and installation costs exceed \$6,000, the credit may be for an amount equal to 25 percent of such costs or \$3,000, whichever is less [CAL. REV. & TAX. CODE §§17052.5(a)(3), 23601(a)(3)]. The new law also

provides for proportionate credit to condominium owners who collectively install solar energy systems [CAL. REV. & TAX. CODE §§17052.5(a)(4), 23601(a)(4)] and allows taxpayers to include costs of energy conservation measures applied in conjunction with the solar energy system in computing acquisition and installation costs [CAL. REV. & TAX. CODE §§17052.5(a)(5), 23601(a)(5)]. In addition, the new law allows the tax credit to be carried over to succeeding tax years if the credit amount exceeds the net tax for the year of installation [CAL. REV. & TAX. CODE §§17052.5(f), 23601(h)]. In the event that a federal income tax credit is enacted to cover solar energy system installation costs, the state credit will be reduced so that the combined state and federal tax credits do not exceed 55 percent of such costs [CAL. REV. & TAX. CODE §§17052.5(h), 23601(j)].

Under the prior law, the solar tax credit applied only to systems on premises owned and controlled by the taxpayer at the time of installation *and* the original use of which commenced with the taxpayer [*Compare* CAL. REV. & TAX. CODE §§17052.5(a)(2) *and* 23601(a)(2) *with* CAL. STATS. 1976, c. 886, §§2, 11, at —]. This prior dual requirement apparently meant that a person who installed a solar device and subsequently sold his or her property to another person, could not take the credit since the “original use” did not begin with the installer [*See* CAL. STATS. 1976, c. 886, §§2, 11, at —]. By deleting the “original use” requirement, Chapter 1082 now provides a tax credit for taxpayers who install such devices and subsequently sell their property to another person prior to occupancy, which would appear to broaden the incentive for installation of such solar energy systems [*Compare* CAL. REV. & TAX. CODE §§17052.5(a)(2) *and* 23601(a)(2) *with* CAL. REV. & TAX. CODE §§17052.5(g) *and* 23601(g)]. Chapter 1082 also requires the Energy Resources Conservation and Development Commission, after one or more public hearings, to establish guidelines and criteria on or before January 1, 1978 for solar energy systems that will be eligible for such tax credits [CAL. REV. & TAX. CODE §§17052.5(i), 23601(g)]. Finally, the new law provides that Sections 17052.5 and 23601 of the Revenue and Taxation Code will be automatically repealed on January 1, 1981, and will not apply to tax years beginning after December 31, 1980, except as to any unused credits earned prior to January 1, 1981 [CAL. STATS. 1977, c. 1082, §4, at —].

COMMENT

As a result of an inadvertent deletion of language in Chapter 1082 that specifically identified the new law as a tax levy, which would have given the legislation immediate effect, the technical effective date of the law is January 1, 1978 [OP. CAL. LEGIS. COUNSEL No. 15991 (Sept. 22, 1977) Tax Credits: Solar Energy and Antipollution Devices (A.B. 1558) at 2]. Argu-

ably, this omission could have prevented the application of these tax credits to the 1977 taxable year [*See* CAL. REV. & TAX. CODE §§17034, 23058; *Sacramento Bee*, Sept. 27, 1977, §A, at 1, col. 4]. It is the opinion of the California Legislative Counsel, however, that the effective date and the enactment date of a law are not the same, and since Chapter 1082 was enacted prior to December 31, 1977 (Chapter 1082 was enacted on September 27, 1977), the new law must apply in the computation of taxes for the taxable years and income years beginning after December 31, 1976 [OP. CAL. LEGIS. COUNSEL No. 15991 (Sept. 22, 1977) *Tax Credits: Solar Energy and Antipollution Devices* (A.B. 1558) at 4. *See generally* CAL. REV. & TAX. CODE §§17034, 23058]. Although this opinion is not binding on the State Franchise Tax Board, the Board has agreed to abide by the Legislative Counsel's findings [Memorandum from Martin Huff, Franchise Tax Board, to Assemblyman Gary K. Hart, Sept. 23, 1977 (copy on file at the *Pacific Law Journal*)]. Thus, applicable to the 1977 taxable year, it appears that California has a significantly expanded solar energy tax credit system, which should provide a broader incentive for the installation and use of such systems.

See Generally:

- 1) Duffie & Beckmon, *Solar Heating and Cooling*, 191 *SCIENCE* 143 (Jan. 16, 1976).
- 2) Comment, *Tax Incentives as State Action*, 122 *U.P.A. L. REV.* 414 (1973).