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California Environmental Law & Policy
2nd Edition
Albert J. Herson
Gary A. Lucks

The 2022 Environmental Legislative Session: Raising up Climate Ambitions

Environmental Law

INTRODUCTION

CURRENT ENVIRONMENTAL LEGISLATION & REGULATORY

beyond compliance
environmental compliance & sustainability



AB 841: EV Infrastructure Cost Allocation (2022)

- **Ratepayers Funding EV Infrastructure:** Utility-side infrastructure supporting EV charging is now generally paid for via ratepayers
- Ratepayers now cover nearly the full cost of service line extensions & electrical distribution infrastructure on the utility-side of the meter
- **CPUC EV Infrastructure Rule** (12/22/Resolution E-5247) requires IOUs to energize projects with a 125-business-day average timeline

EV Infrastructure Rules
Utility-Side EV Infrastructure

Under EV Infrastructure Rule utility owns, installs, and maintains all equipment before utility meter

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SB 410: Powering Up California Act

Energization Commitments for new customers/upgrading existing:

- Increasing demand for Electricity will require additional generation, distribution & transmission infrastructure
- CPUC must establish by 9/30/24 reasonable average & maximum target energization time periods to connect customers to the grid
- Electrical corporations must take remedial actions to achieve targets
- CPUC to establish procedure for customers to report energization

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AB 50: Timely Energization for Customers

- CPUC must identify criteria for timely service for electric customers requesting new service connections or upgraded service
 - “Electrical Corporations” must collaborate with local stakeholders & the CPUC
 - Electrical Corporations must report time-of-service data to the CPUC
 - Electrical Corporations that energized <35% of customers exceeding 12 months in duration by 1/31/23, must submit a report to CEC by 12/1/24, demonstrating that the electrical corporation has energized 80% of customers with applications deemed complete as of January 31, 2023.
- Electrical Corporations must evaluate & update existing distribution planning processes
 - To improve the accuracy of projected demand and facilitate achievement of the goal of timely electric service,

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Permit Streamlining Bill Package

- Objective: To assist in accessing federal funds:
 - Infrastructure & Investment Jobs Act (IIJA)
 - Inflation Reduction Act (~ \$239 billion for energy & climate change projects)
 - CHIPS Act (Creating Helpful Incentives to Produce Semiconductors & Science Act (\$280 billion)
- Streamlining CEQA & CESA
- Incorporating labor standards
- Provisions to speed procurement process to reduce timeframes & cost.
- To maximize Federal Dollars, establishes a Green Bank Financing Program
- Infrastructure Strike Team to coordinate among California agencies to:
 - “facilitate coordinate and streamline project review and permitting processes”
 - by identifying priority infrastructure projects
 - supporting governmental coordination on review, permitting, & approvals
 - Creating working groups focused on specific project categories (e.g., transportation, energy, hydrogen, environmental remediation, broadband, water, & zero-emission vehicles. Executive Order N-8-23

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Expediting Infrastructure: CEQA & CESA

- **CEQA:** SB 149 expedite judicial review under CEQA approvals to advance energy, transportation, water, and semiconductor projects
- **CESA:** SB 147 authorizes DFW to permit the “take” of a “fully protected species” for solar, wind, specified transportation projects, and the maintenance, repair and improvement of water infrastructure projects where:
 - Impacts are minimized and fully mitigated
 - Permit applicant ensures adequate funding to implement & monitor mitigation measures
 - The issuance of the permit will not jeopardize the continued existence of the species
 - Ensuring that take is avoided to the maximum extent possible

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EV Permit Streamlining




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The License to Operate

Critical Path to Energization:

- Building Permits
- Utility-issued electrical permit



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Application Deemed Approved

AB 970


◆ **Permit Application Deemed Approved:** After a permit application is deemed complete, AHJ has ~~the authority to~~ decide for stations with fewer than 25 chargers, or ~~the authority to~~ decide for stations with 25 or more chargers.

◆ Building official may either:

- ◆ (1) Administratively approve the application;
- ◆ (2) Find, based on substantial evidence, the EV station could have a specific, adverse impact on public health or safety and thus requires a use permit; OR
- ◆ (3) Deny the application, based on finding:
 - ◆ That the proposed project would have a specific, adverse impact on public health and safety;
 - ◆ That there is no feasible method to satisfactorily mitigate or avoid the adverse impact and
 - ◆ Findings shall include the basis for the rejection of potentially feasible alternatives for preventing the adverse impact.


◆ Automatic approval if action not taken within 30 (or 40) business days of application being deemed complete. Decisions to require a use permit, or to deny the application, may be appealed.

◆ **NOTE:** AB 970 applies to smaller municipalities (<200K population) beginning January 1, 2023



Clearing Barriers to Offshore Wind: AB 525


- **AB 525** responds to barriers to developing & delivering offshore wind (OSW) power off the California coast
- Obligates CEC to evaluate constraints & develop strategies to clear them



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Incentivizing Energy Storage: AB 205


- **AB 205** (Trailer Bill) Funds for demand side grid support/Climate & Grid Funding:
 - Financial incentives for energy storage projects (at least 8 hours continuous discharge to grid)
 - CEC consolidated, expedited Opt In permitting for clean energy & storage projects
 - Overrides other state & local permitting
 - Except Coastal Commission & BDCD permits
 - Must meet Environmental Leadership criteria
- Strategic reserve and opt in permitting.



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IOU Wildfire Liability: AB 1054

- **AB 1054** establishes a liability standard allowing IOUs to recover costs for catastrophic wildfire damages
- **Limitations:**
 - Where CPUC determines costs & expenses arising from a covered wildfire are "just & reasonable based on reasonable conduct by the electrical corporation."
 - IOU's conduct with respect to the ignition must be judged to have been reasonable and "consistent with actions that a reasonable utility would have undertaken in good faith under similar circumstances."
 - IOU must demonstrate, based on a "preponderance of the evidence, that its conduct was reasonable."
 - If the electrical corporation has earned a "safety certification" from the CPUC for the time period in question, its conduct would be deemed to be "reasonable" unless there is a serious doubt as to the reasonableness of the electrical corporation's conduct."
- Creates Wildfire Fund to pay for eligible property claims linked to wildfires caused by utilities.
- IOUs may request CPUC to authorize cost recovery stemming from catastrophic wildfires by issuing revenue bonds



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Decarbonizing & Stepping Away from Natural Gas

- Berkeley adopted the first in the nation ban on natural gas infrastructure in 2019 prohibiting new natural gas appliance permits,
- The California Restaurant Association, or CRA challenge was successful:
 - The 9th Circuit appeals court held that “By completing prohibiting the installation of natural gas piping within newly constructed buildings,...Berkeley has waded into a domain preempted by Congress.”
- Oakland, San Francisco, Los Angeles and San Jose have similar ordinances

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Biomethane Financial Incentive


AB 2313 established a monetary incentive program to promote investment in biomethane projects to promote biomethane delivery to natural gas pipeline systems.



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Capping CA Oil “Windfall Profits:” SBX1-2

- Responding to high oil prices: Exceeding \$1.3/gallon over the national average.
- SBX1-2 Empowers CEC to require oil companies to share operational information & pricing
- Authorized to fine those exceeding a specified price limit




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Oil & Gas Well Buffers

SB 1137:


- **Background:**
 - ~ 5.5 million Californians live within one mile of oil & gas wells
 - Over 2 million Californians living within 3,200 ft. of an existing oil well
- **Mandates 3,200-ft. health & safety buffer zone** between new & reworked oil and gas wells & sensitive land uses
 - (i.e., schools, childcare centers, community resource centers, residential homes and live-in housing, and hospitals).
- Oil & gas facility operators in protection zones must implement strict air & water pollution controls & develop response plans



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Oil & Gas Well Financial Security: AB 1057

- **Background:** Conservative estimates, California taxpayers could be on the hook for up to \$500 million per 10,000 oil wells.
- **Premise:** Operator Indemnity bonds do not cover the cost to plug & abandon wells as oil production in California declines.
- **AB 1057** authorizes Division of Oil, Gas and Geothermal Recovery (DOGGR) to require additional security (up to \$30 million) to plug and abandon a well and decommission production facilities.




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Oil & Gas Well Compliance & End-of-Life

SB 551:

- **Oil & gas well operators Reporting:** Must report to DOGGR: Total liability associated with plugging & abandoning & decommissioning wells & their associated production facilities.
- **DOGGR Inspections:** to conduct inspections of production facilities connected to long-term idle wells to ensure compliance with applicable statutory requirements governing oil & gas wells.



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Oil & Gas Enforcement & Cleanup

AB 1167: To fund orphan well cleanup, well owners & operators to file a bond in the amount to cover costs to plug, abandon, and restore the site

AB 631:

- Increases civil & other penalties for violations of the state's governing oil & gas statutes & regulations
- Strengthens CalGEM authority to seek injunctive relief cease & desist specified activities

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Tim McRae

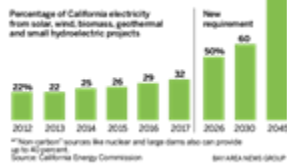
SVP for Sustainable Growth, Silicon Valley Leadership Group

Statewide Zero Carbon and Renewable Goals

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2018 - SB 100 (De Leon)

- 100% Zero carbon generation of Energy by 2045
- Builds on RPS goals set in prior legislation
 - 25% renewables by 2016
 - 33% by 2020
 - 40% by 2024
- Accelerated goals to made it 50% renewables by 2026 and 60% by 2030




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Statewide Zero Carbon and Renewable Goals

2022 - SB 1020 (Laird)

- Interim targets of **90%** zero carbon generation of electricity by **2035**
- **95%** zero carbon generation of electricity by **2040**
- Provides a ramp to SB 100's 2045 target
- Also requires all state agencies to purchase **100%** zero carbon electricity to serve their own needs by **2030**




California has already exceeded 2018's RPS goals

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Diablo Canyon Power Plant extension

2022's SB 846 (Dodd):

- Extended Diablo Canyon Power Plant by 5 years pending federal approval
- Feds subsequently approved
- 8% of CA electrical generation

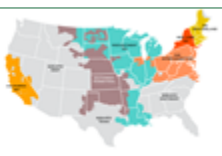


No one wanted to repeat blackouts - one of which almost happened days after the bill passed

Reliability remains California's #1 energy concern

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Western Regional Transmission Organization



2023 proposed AB 538 (Holden) - never made it beyond its first house due to labor opposition

Later has become Western Pathways Initiative - stakeholder negotiations

Not legislation (yet) this year but California government and business and labor and public interest groups discussing now

Would be biggest deal in California energy since 2018's SB 100 if it comes to fruition

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CEQA Streamlining for Energy Infrastructure Projects

2023 - Governor's SB 149 (Caballero) - part of infrastructure package streamlining CEQA for particular energy, water and transportation projects passed

2023 Efforts to streamline CPUC processes to site transmission


- SB 420 (Becker) - Vetoed
- SB 619 (Padilla) - Vetoed
- AB 914 (Friedman) - Held in Appropriations

Latest bill in saga - AB 3238 (Garcia) - implements a settlement agreement among utilities and environmental groups - currently moving through legislative process - SVLG supports



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Lab or v Rooftop Solar Saga



2021 - AB 1139 (Gonzalez) - labor effort to put thumb on scale of NEM proceeding (failed)

2022

- AB 2143 (Carrillo) - characterized rooftop solar projects as "public works project" and make them pay prevailing wage (passed)
- AB 205 (Trailer bill) - direction to CPUC to consider a fixed charge - solar folks didn't catch it in time


2024

- AB 1999 (Irwin) to limit the fixed charge
- AB 2619 (Connolly) tilts favor way on solar side (ballot measure possibility),
- AB 3260 (Essayli) Republican showing support - all in favor of solar customers - all uphill climb

Just to point out this fight has gone on for years - there was an aspect of the Diablo Canyon bill that needed clarification that impacted rooftop solar in 2022

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