

Ramping Up Calif. Renewable Energy

Law360, New York (February 07, 2012, 5:01 PM ET) -- Despite the sluggish economy, the California Legislature provides hope for 2012 by supporting development of renewable energy projects and innovative environmentally green projects in California. The keystone of the Legislature's commitment to "green development" is California's Renewables Portfolio Standard (RPS), the amendment of which Governor Brown approved on April 12, 2011.

This amendment calls for 33 percent of all utility energy procured be from renewables by 2020, which is the most ambitious RPS target in the nation. Faced with this aggressive mandate, the Legislature worked to promote renewable projects that would help meet the 33 percent goal. The Legislature passed several bills, which streamlined the permitting process of several state agencies in the hopes of encouraging the development of renewable energy projects and other environmentally beneficial projects by providing more certainty for developers and investors. In addition to benefiting the environment, these projects are expected bring jobs and revenue to California.

Promoting Renewable Energy

SB X1-2 (Simitian): Energy: Renewable Energy Resources

- Adds Section 705 to the Fish and Game Code, amends Sections 25740, 25740.5, 25741, 25742, 25746, 25747, and 25751 of, adds Section 25519.5 to, adds and repeals Section 25741.5 of, the Public Resources Code, and amends Sections 399.11, 399.12, 399.20, and 454.5 of, amends, renumbers, and adds Sections 399.13 and 399.16 of, adds Sections 399.18, 399.19, 399.26, 399.30, 399.31, and 1005.1 to, adds Article 11 (commencing with Section 910) to Chapter 4 of Part 1 of Division 1 of, repeals Section 387 of, and repeals and adds Sections 399.14, 399.15, and 399.17 of the Public Utilities Code, relating to energy, and making an appropriation therefor.

This ambitious legislation amends California's existing Renewables Portfolio Standard. The RPS program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers purchase a specified minimum percentage of electricity generated by eligible "renewable energy resources" in any given year as a specified percentage of total kilowatt hours sold to retail end-use customers each calendar year.

SB X1-2 increased this required amount of electricity retail sellers need to obtain from renewable energy resources to 20 percent by Dec. 31, 2013, 25 percent by Dec. 31, 2016, and 33 percent by Dec. 31, 2020. Unlike previous versions of the RPS law, SB X1-2 now extends most RPS requirements to local publicly owned utilities.

Retail sellers will have to procure a balanced portfolio of electricity products from eligible renewable resources. SB X1-2 clarifies the two ways to transmit out-of-state renewable energy into California for RPS purposes, which are direct transmission and dynamic transfers. With direct transmission, electricity is scheduled from the eligible facility directly to a California grid balancing authority area.

With dynamic transmission, arrangements are made between a non-California balancing authority and a California balancing authority to permit interchange scheduling that transfers some or all of the electricity output of a specific generator located in the non-California balancing authority area to a California balancing authority area. Retail sellers can also satisfy their RPS requirements through "unbundled renewable energy credits," although the percentage that can be met with unbundled credits declines over time (up to 25 percent through 2013, up to 15 percent through 2016, and up to 10 percent thereafter). SB X1-2 also

clarifies that an independently owned utility can construct, own and operate new renewable facilities to meet a portion of its RPS obligations.

Under this legislation, the California Public Utilities Commission (CPUC) is required to establish a limitation for each electrical corporation on the procurement expenditures for all eligible renewable energy resources used to comply with the RPS, which replaces “market price referent” provisions under the prior RPS law. In developing each cost limitation, the CPUC would be allowed to consider only: the most recent RPS procurement plans; procurement expenditures that approximate the cost of building, owning, and operating renewable resources; and the potential of project delay or cancellation.

SB 836 (Padilla): Renewable Energy Resources / Cost Reporting

- Adds Section 911 to the Public Utilities Code, relating to energy.

To meet the procurement targets of the RPS program, electrical corporations have entered into contracts with independent producers of eligible energy resources and built utility-owned generation. These electrical corporations have submitted their costs to the CPUC for review and approval. SB 836 requires that the CPUC annually release to the Legislature all these costs approved by the CPUC.

SB 771 (Kehoe): California Alternative Energy and Advanced Transportation Financing Authority

- Amends Section 26003 of the Public Resources Code, relating to electricity.

Pursuant to existing law, the California Alternative Energy and Advanced Transportation Financing Authority is required to establish a renewable energy program to provide financial assistance to public power entities, independent generators, utilities, or business manufacturing components or systems to generate new and renewable energy sources, develop clean and efficient distributed generation, and demonstrate the economic feasibility of new technologies. SB 771 expands the definition of “renewable energy” to include energy generation based on thermal energy systems, such as (1) landfill gas turbines, engines and microturbines, and (2) digester gas turbines, engines and microturbines.

AB 1314 (Wieckowski): Air Resources / Alternative and Renewable Fuel and Vehicle Technology Program

- Amends Sections 44272 and 44272.7 of the Health and Safety Code, relating to air resources.

AB 1314 streamlines the Alternative and Renewable Fuel and Vehicle Technology program by enabling clean technology projects to be funded faster. This legislation authorizes the California Energy Commission (CEC) to delegate to the executive director or a designee the authority to approve a contract, grant, loan or other agreement or award that receives \$75,000 or less in funds from the CEC and amendments that does not increase the amount, change the scope or modify the purpose of such contracts, grants, loans or other agreement or award.

AB 982 (Skinner): Energy/ Land Exchange for Renewable Energy-Related Projects

- Repeals and adds Division 7.7 (commencing with Section 8700) of the Public Resources Code, relating to energy.

This legislation requires the California State Lands Commission, which manages thousands of acres of school lands on behalf of the State Teachers' Retirement Fund (STRS), 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 renewable energy-related projects.

Subsequent to the execution of the memorandum of agreement, the commission will prepare a proposal for appropriate land exchanges to create renewable energy parks. The intent of AB 982 is to help the state meet its renewable portfolio standard, AB 32 climate protection goals and provide jobs and revenue for California. Under this legislation, development in the newly created energy parks will be required to be consistent with the Desert Renewable Energy Conservation Plan.

SB 585 (Kehoe): Energy / Solar Energy Systems / Funding

- Amends Section 2851 of and adds Section 2851.1 to the Public Utilities Code, relating to solar energy, and declaring the urgency thereof, to take effect immediately.

The California Solar Initiative is a program adopted by the California Public Utilities Commission that provides incentives for solar systems. Under SB 585, the cost limit of this program will be increased by \$2 million. In order to make additional funding available as soon as possible for the nonresidential incentives provided under the California Solar initiative, SB 585 took effect immediately.

Streamlining the Permitting Process for Renewable Energy and Innovative Environmental Projects

SB 226 (Simitian): Environmental Quality

- Amends Section 65919.10 of the Government Code, amends Section 21083.9 and 21084 of and adds Sections 21080.35, 21094.5, 21094.5.5 and 25500.1 to the Public Resources Code, relating to environmental quality.

An omnibus California Environmental Quality Act (CEQA) bill, SB 226 exempts from the requirements of CEQA the installation of solar energy systems on the rooftops of existing buildings and parking structures, streamlines CEQA procedures for infill projects and allows public agencies to comment on planning and zoning matters concurrently with project scoping meetings under CEQA.

SB 226 provides that a project's greenhouse gas emissions are not, in and of themselves, deemed to cause the categorical exemption to be inapplicable if the project complies with regulations. SB 226 also authorizes owners of solar thermal power plants approved prior to Sept. 1, 2011, to petition the CEC for review of amendments to convert the facility from solar thermal technology to photovoltaic technology on the previously approved sites.

AB 900 (Buchanan): Jobs and Economic Improvement Through Environmental Leadership Act of 2011

- Adds and repeals Chapter 6.5 (commencing with Section 21178) of Division 13 of the Public Resources Code, relating to environmental quality.

In an effort to generate thousands of full-time jobs in California and encourage the implementation of nation-leading innovative measures to reduce significantly traffic, air quality

and other environmental impacts, AB 900 enacts the Jobs and Economic Improvement Through Environmental Leadership Act, which streamlines the CEQA process for certified projects. AB 900 repeals the act as of January 2015.

To qualify for certification under the act by the governor, a project must be (a) a residential, retail, commercial, sports, cultural, entertainment or recreational use infill project that is certified as LEED silver or better; (b) a clean renewable energy project; or (c) a clean energy manufacturing project. These projects are expected to replace old and outmoded facilities with new job-creating facilities to meet regional need while also establishing new, cutting-edge environmental benefits.

A project certified under this Act would be afforded streamlining benefits, such as the Court of Appeal with geographic jurisdiction shall have original jurisdiction over challenges brought against the land use approvals of the project and shall issue a decision within 175 days of the filing of the petition. AB 900 also provides for the preparation of the administrative record and requires the lead agency to keep the environmental documents in a readily accessible electronic format that is available to the public.

AB 900 is based upon this year's SB 292, which would give this same benefit to developers of a proposed football stadium in downtown Los Angeles.

SB 267 (Rubio): Water Supply Planning/ Renewable Energy Plants

- Amends, repeals and adds Section 10912 of the Water Code, relating to water, and declaring the urgency thereof, to take effect immediately.

This legislation reduces permitting time and fees for renewable energy projects, specifically wind and photovoltaic, that use less than 75 acre feet of water per year, but is inapplicable to solar thermal and geothermal plants. SB 267 could significantly reduce the permitting times as these projects would not have to undergo a water supply assessment under CEQA. SB 267 repeals this revision as of Jan. 1, 2017.

SB 267 took effect immediately as an urgency measure to allow for renewable energy projects to be approved in a timely manner.

AB X1-13 (Pérez): Energy / Renewable Resources/ Endangered Species / Environmental Impact Reports

- Amends Sections 2069 and 2099, and adds and repeals Section 2099.10 of the Fish and Game Code and amends Section 25524 of and adds Section 25619 to the Public Resources Code, relating to renewable energy resources, and making an appropriation therefor.

The Renewable Energy Siting Act, otherwise known as AB X1-13, streamlines the siting and permitting processes for renewable energy projects within the state's Desert Renewable Energy Conservation Plan (DRECP) by expanding the scope of a program allowing certain solar thermal and photovoltaic plants to pay California Department of Fish and Game (CDFG) mitigation fees in lieu of participating in traditional permitting processes for mitigating impacts to state-listed species.

AB X1-13 expands the definition of "eligible projects" to include wind and geothermal power plants, whose project permit application was deemed complete by Dec. 31, 2011. Thus, AB X1-13 authorizes the CDFG to design and implement endangered species mitigation actions for proposed wind and geothermal power plants in the DRECP area and requires the Department to

collect a permit application fee.

This legislation also requires the CEC to expand its process for certifying solar thermal power plants that are within the DRECP area to include all eligible renewable energy resources. Under AB X1-13, the CEC is required to provide grants to qualified counties for the development or revision of general plan elements, zoning ordinances and community conservation plans to facilitate the development of and processing of eligible renewable energy resources and their associated electric transmission facilities.

AB X1-13 was a companion bill to this year's SB 16 (discussed below) and addressed the fiscal emergency declared and reaffirmed by the Governor by proclamation on Jan. 20, 2011.

SB 16 (Rubio): Renewable Energy/ Department of Fish and Game/ Expedited Permitting

- Adds Section 2099.20 to the Fish and Game Code, relating to energy, and declaring the urgency thereof, to take effect immediately.

The processing of incidental take permits is streamlined by SB 16. This legislation requires CDFG to take prescribed procedural steps regarding applications for certain eligible renewable energy projects. "Eligible project" has the same definition as codified by AB 1X-13 (discussed above).

Under SB 16, CDFG must determine whether the incidental take permit application is complete and notify the developer within 45 days of receiving the application. If CDFG determines that the application is incomplete, it is required to concurrently identify and inform the applicant in writing of the specific information needed. Within 60 days of an application being deemed complete, CDFG must approve or reject it. SB 16 also requires CDFG to provide an accounting to the Legislature of incidental take permit applications, by Jan. 1, 2014.

SB 16 was a companion bill to this year's AB X1-13 (discussed above). This legislation took effect immediately as an urgency measure to expedite permitting of needed renewable energy projects as soon as possible.

SB 436 (Kehoe): Land Use/ Mitigation Lands/ Nonprofit Organizations

- Amends Section 65965, adds Sections 65966 and 65967, and adds and repeals Section 65968 of the Government Code, relating to land use.

Another bill that attempts to reduce delays in the permitting system, SB 436 allows state and local public agencies to authorize a nonprofit organization, a special district, a for-profit entity, a person, or other entity to hold title to and to manage an interest in property held for mitigation purposes. Under SB 436, CDFG would no longer be limited to requiring itself or the National Fish & Wildlife Foundation to serve as long-term managers and holders of mitigation projects. SB 436 provides options for a project proponent to select an endowment funding arrangement with a nonprofit organization or special district that may be more flexible than the arrangements imposed by CDFG.

Other Environmental and Land Use Legislation

SB 244 (Wolk): Local Government / Land Use / General Plan / Disadvantaged Unincorporated Communities

- Amends Sections 56375, 56425 and 56430 of, and adds Sections 53082.5, 56033.5 and 65302.10 to the Government Code, and adds Section 13481.7 to the Water Code,

relating to local government.

Now each city and county will be required to include an analysis of the presence of island, fringe or legacy unincorporated communities in its updated land use element of its general plan, on or before the next adoption of its housing element. These areas are often not annexed because they generate low tax revenues and carry high service needs.

This legislation defines a “disadvantaged unincorporated community” and requires the review and update of a sphere of influence on or after July 1, 2012, to include review of the need for public facilities and services of disadvantaged unincorporated communities. SB 244 also authorized public agencies, including counties, cities and special districts, subject to applicable constitutional restrictions, to borrow money and incur indebtedness for purposes of the State Water Pollution Control Revolving Act.

SB 244 was a companion bill to this year’s AB 54, both of which amended Sections 56375 and 56430 of the Government Code.

AB 913 (Feuer): Hazardous Waste / Source Reduction / Certified Green Business Program

- Amends Section 25244.17.2 of the Health and Safety Code, relating to hazardous waste.

Under this legislation, the Department of Toxic Substances Control will develop a California Green Business Program that provides support and assistance to local government programs that provide for the voluntary certification of small businesses that adopt environmentally preferable business practices, including practices such as increased energy efficiency, reduced greenhouse gas emissions, promotion of water conservation and reduced waste generation.

--By Ella Foley Gannon, Camarin Madigan and Sarah Barker-Ball, Bingham McCutchen LLP

Ella Foley Gannon is a partner, Camarin Madigan is a counsel, and Sarah Barker-Ball is an associate in Bingham's San Francisco office.

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