

Developments In Calif.'s Energy And Climate Law: Part 2

Law360, New York (January 14, 2016, 12:01 PM EST) -- In part 1 of this two-part series, we reviewed California's bold new clean energy agenda, including preferential treatment for renewable energy and an increased focus on energy efficiency.

Part 2 reviews key legislation concerning electric vehicles, pipeline safety and climate change. This legislation went into effect Jan. 1, 2016.

This past year, California's Legislature took major actions on environmental legislation, complementing the state's energy agenda and climate change goals. Actions included supporting expanded electric and alternative-fuel vehicle deployment, reinforcing pipeline safety measures, expanding greenhouse gas emission management, and increasing state and local attention to climate change. However, other highly anticipated legislation did not emerge: aggressive new rules for the California Public Utilities Commission were vetoed by Gov. Jerry Brown, leaving the door open for new legislation in 2016.

Electric Vehicles and Alternative Fuels: Continued Support and Expanded Programmatic Efforts

The Legislature continued to promote the use of alternative fuels by expanding the regulatory authority of state agencies with respect to alternative fuels, clarifying the regulation of hydrogen retail sales, and requiring state agencies to use a designated portion of "very low carbon transportation fuels" (VLCFs). State legislation also streamlined the permitting process for EV charging stations.

AB 1236 (Chiu, Low) Local Ordinances: Electric Vehicle Charging Stations

Government Code: adds§ 65850.7

AB 1236 requires counties and cities, including charter cities, to create an expedited permitting and inspection process for electric vehicle charging stations. The bill is celebrated by the electric car industry and environmentalists for its likelihood of increasing the number of EV



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charging stations throughout the state and encouraging more competitive EV markets. In short, the bill limits the review of permit applications to health and safety requirements, limits the ability of local governments to require use permits for EV charging stations, and requires specified written findings for a local government to deny a permit application.

AB 808 (Ridley-Thomas) Automotive Fuels and Products

Business and Professions Code: amends §§ 13405, 13410, 13411, 13413, 13420, 13421, 13440, 13440.5, 13442, 13450, 13460, 13470, 13470.5, 13471, 13472, 13477, 13480, 13481, 13482, 13485, 13486, 13500, 13501, 13502, 13530, 13531, 13532, 13535, 13550, 13570, 13590, 13591, 13592, 13595, 13600, 13700, 13710, 13711, 13741; repeals §§ 13401, 13402, 13403; adds §§ 13400 and 13446

AB 808 expands the authority of the California Department of Food and Agriculture to include alternative fuels, as defined. The CDFA is the only state agency with the authority to regulate the quality of fuel and automotive products. In addition, the bill requires the method of sale for all motor vehicle fuels and lubricants to be consistent with national standards, and requires the secretary of the CDFA to establish interim standards for methods of sale if national standards do not exist.

AB 1008 (Quirk) Public Utilities: Sale of Hydrogen to Public as a Motor Vehicle Fuel

Public Utilities Code: amends § 216

AB 1008 provides that the ownership or operation of a facility that sells hydrogen at retail to the public for use only as a motor vehicle fuel does not make the corporation or person a public utility solely because of that ownership, operation or sale.

AB 692 (Quirk) Low-Carbon Transportation Fuels

Health and Safety Code: adds § 43870

AB 692 requires each state agency that is a buyer of transportation fuels to buy at least 3 percent of VLCFs beginning Jan. 1, 2017, increasing by 1 percent per year thereafter until 2024. The bill defines these fuels as "a liquid or gaseous transportation fuel having no greater than 40 percent of the carbon intensity of the closest comparable petroleum fuel for that year, as measured by the methodology in the low-carbon fuel standard regulation." AB 692 marks a strategic step toward establishing a broader market for VLCFs.

AB 1269 (Dababneh) Alternative energy

Public Resources Code: amends §§ 26003 & 26011.8; repeals § 26011.8

Revenue and Taxation Code: amends § 6010.8

AB 1269 extends the authority of the California Alternative Energy and Advanced Transportation Financing Authority to grant financial assistance in the form of a sales and use tax exclusion for projects that promote the use of advanced manufacturing until Jan. 1, 2021. The bill effectively expands projects eligible for the sales and use tax exclusion to include projects that process or utilize recycled feedstock, but does not include projects that process or utilize recycled feedstock in a manner that constitutes disposal.

A Renewed Focus on Pipeline Safety

State legislation emphasized pipeline safety in environmentally sensitive areas to reduce the frequency and impact of oil spills. This included updating regulations for small pipelines, applying best available technologies to reduce spills in coastal regions, increasing regular inspections, and submitting pipeline maps to regulators. The Legislature also streamlined the process for paying oil spill prevention and administration fees while simultaneously broadening the pool of who must pay; now those involved in import as well as export oil production are responsible for the fee.

AB 1420 (Salas) Oil and Gas: Pipelines

Health and Safety Code: adds §101042

Public Resources Code: adds §§ 3270.5 & 3270.6

AB 1420 requires the Division of Oil, Gas and Geothermal Resources to update regulations for 4-inch or smaller active gas pipelines in environmentally sensitive areas, if those pipelines are 10 years old or older. The update must take place by 2018. AB 1420 further requires operators to submit maps of these pipelines by the same date, and obliges local health officers to take action if notified of a leak.

AB 815 (Ridley-Thomas) Oil Spill Prevention and Response Fees: Collection

Government Code: amends § 8670.40

Revenue and Taxation Code: amends § 46101; adds § 46008; repeals § 46018

AB 815 modified the procedure for paying the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act fee for oil spill prevention and administration. Previously, proof that the fee had been paid was necessary whenever crude oil or other petroleum products was received at marine terminals or refineries. AB 815 allows marine terminal operators and refinery operators receiving petroleum products derived from crude oil refined in the state to presume that the oil spill prevention and administration fee has been previously collected. However, the amendment also broadens who is required to register with the board and pay the fee to include those transporting petroleum products into (not just out of) the state.

SB 414, SB 295, and AB 864 were passed in part as a response to the May 19, 2015, pipeline rupture near Refugio Beach in Santa Barbara County. The spill prompted calls for annual intrastate pipeline inspections (SB 295), technological improvements (AB 864), and improved oil spill response management (SB 414).

SB 295 (Jackson) Pipeline Safety: Inspections

Government Code: adds § 51015.1

SB 295 requires the state fire marshal to inspect intrastate pipelines annually — a shift from the marshal's former freedom to enter, inspect and examine "at reasonable times and in a reasonable manner."

AB 864 (Williams) Oil Spill Response: Environmentally and Ecologically Sensitive Areas

Government Code: adds § 51013.1

AB 864 requires new or replacement pipelines to incorporate the best available oil spill reduction technologies by 2018, while existing pipelines near sensitive coastal areas must submit, by 2018, plans to retrofit by 2020.

SB 414 (Jackson) Oil Spill Response

Government Code: amends §§ 8670.12, 8670.13, & 8670.28; adds §§ 8670.11, 8670.13.3, & 8670.55.1

SB 414 targets the Office of Spill Prevention and Response, requiring that office to bolster its oil spill preparedness and contingency plans. This legislation also eliminates the penalty reduction for spilled oil that is recovered and properly disposed of.

Oversight of Utilities and the California Public Utilities Commission

The biggest news in CPUC legislation this year is what did not happen: Gov. Brown vetoed a suite of bills aimed at reforming the CPUC. Describing the combined changes as “unworkable” as written, Gov. Brown directed his office to help rework the needed reforms. The underlying initiatives have been delayed to the 2016 legislative session.

The state Legislature passed a single bill targeting utility companies, precluding them from charging ratepayers for executive bonuses after receiving citations for safety violations.

An apparent response to major rate increases after the San Onofre nuclear power plant was shuttered, AB 1266 prevents utilities from recovering compensation of more than \$1 million from ratepayers when the utility violated federal or state safety regulations in the past five years, and where those violations placed more than \$5 million in financial responsibility on ratepayers.

Climate: GHG Emission Management

State legislation concerning greenhouse gas emissions focused both on the regulation of methane and the incorporation of emission reduction goals into public transit programs.

AB 1496 (Thurmond) Methane Emissions

Health and Safety Code: adds §39731

AB 1496 requires the California Air Resources Board (CARB) to take specified actions and conduct certain analyses with respect to methane emissions. First, the CARB must monitor high-emission methane hot spots in the state. Second, the CARB must consult with certain entities in order to gather information for the purpose of carrying out life-cycle GHG emissions analyses of natural gas imports. Third, the bill requires the CARB to update relevant policies and programs based on those updated life-cycle analyses. Lastly, AB 1496 requires the CARB to review scientific information on atmospheric reactivity of methane as a precursor to the formation of photochemical oxidants.

SB 9 (Beall) Greenhouse Gas Reduction Fund: Transit and Intercity Rail Capital Program

Public Resources Code: amends §§ 75220, 75221, and 75222; adds §§ 75223, 75224, and 75225

SB 9 provides for a multiyear planning and allocation process under the Transit and Intercity Rail Capital Program administered by the California State Transportation Agency (CSTA). In an attempt to maximize greenhouse gas reductions and meet the goals of AB 32, the bill requires the CSTA to consider the extent to which a project reduces GHG emissions when evaluating grant applications. The bill also attempts to ensure that cap and trade funding is invested so as to maximize GHG reductions.

Climate: Adaptation and Resilience

Along with a number of other coastal states, California is paying increased attention to climate adaptation strategies and resiliency goals.

AB 1482 (Gordon) Climate Adaptation

Public Resources Code: amends § 75125; adds Part 3.7 to Division 34

AB 1482 requires a myriad of California state agencies to address climate adaptation and potential vulnerabilities across the state due to changed conditions from climate change.

SB 246 (Wieckowski) Climate Change Adaptation

Public Resources Code: amends § 75123; adds Part 4.5 to Division 34

Similarly, SB 246 establishes a program through the Office of Planning and Research to coordinate regional and local adaption efforts with state climate adaption strategies.

SB 379 (Jackson) Land Use: General Plan: Safety Element

Government Code: amends § 65302

A third piece of legislation, SB 379, centers on local efforts, updating existing law to require cities and counties to review and update their general plans' safety elements to address climate adaptation and resiliency strategies applicable to the city or county.

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