

Client Alert

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California's New Climate Era: SB 350 and Beyond

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Two out of three ain't bad.

Climate change policy advocates may find themselves quoting Meat Loaf with the enactment of Senate Bill (SB) 350, which California's Legislature passed last month and which Governor Jerry Brown signed into law on October 7. SB 350, also called the Clean Energy and Pollution Reduction Act of 2015, requires an increase in California's Renewables Portfolio Standard (RPS) to 50 percent and a doubling of building energy efficiency, both by 2030. The Legislature dropped from the bill a third component, which would have mandated the powerful California Air Resources Board (CARB) to cut petroleum use from transportation in half by 2030, after months of intense opposition from the oil industry.

Although the failure of the petroleum piece marked a (rare) setback for the Governor's energy and climate change agenda, SB 350 nonetheless continues California's leadership in the field. The enactment of SB 350, coming on the heels of President Obama's Clean Power Plan roll out, and a month before international climate talks start in Paris at the end of November, reflects a dynamic state, national, and international energy regulatory ecosystem that businesses in California and beyond must navigate as they seek to seize the opportunities and mitigate the risks presented by a new era of climate regulation.

This alert examines the results of the recently concluded California legislative session, and what it means for energy policy in California.

SB 350: RENEWABLES AND EFFICIENCY

Introduced by Senate President pro tem Kevin de León, D-Los Angeles, SB 350 advances greenhouse gas (GHG) reduction through two measures, that help to implement Governor Brown's Executive Order on climate policy issued in April.

First, the law increases the RPS goal from 33 percent renewables by 2020 to 50 percent by 2030. Although renewables projects are already coming online quickly in California, this mandate still provides a welcome boost to renewable energy developers, including solar and wind developers.

Second, the law requires the California Energy Commission (CEC) to establish annual targets to double energy efficiency in buildings by 2030. To achieve this goal, the CEC will likely implement a series of incentives and other educational policies targeted at property owners. The law also requires the California Public Utilities Commission (CPUC) to direct electric utilities to establish annual efficiency targets and implement demand-reduction measures to achieve this goal.

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The failure of the third set of provisions that would have mandated reductions in petroleum use in the transportation sector should be viewed in the context of an ongoing battle regarding the strength and reach of CARB. In the fight for SB 350, supporters of the bill faced off with not only petroleum industry backers, but also legislators uncomfortable granting more authority to the already-powerful CARB to implement measures they believed would inevitably lead to higher fuel costs that would disproportionately impact low-income communities and constituents.

Although CARB was not given the statutory authority to set policies to reduce transportation-related emissions by 50 percent by 2030, it still wields a tremendous amount of power over GHG-reduction policies. For example, CARB recently voted to restore its low-carbon fuel standard (LCFS), which was originally approved in 2009 but, until recently, had been entangled in litigation. The LCFS requires a more modest 10 percent reduction in transportation fuel emissions by 2020, pursuant to AB 32, the California Global Warming Solutions Act of 2006. By raising the standards for traditional fuels, the program is intended to encourage the use of biofuels and electric vehicles.

SB 32: REDUCTIONS-IN-WAITING

Environmentalists had high hopes for SB 32, the California Global Warming Solutions Act of 2015, but its progress stalled in the last days of the legislative session. It would have built upon the historic passage of AB 32 in 2006, the landmark law that facilitated the establishment of the state's cap-and-trade program. SB 32 would deepen and extend AB 32's goals, requiring a 40 percent reduction in carbon emissions below 1990 levels by 2030, and an 80 percent reduction by 2050. Both bills were introduced by outgoing State Senator Fran Pavley (D-Agoura Hills), a climate policy veteran who may yet see SB 32's passage, because it was converted to a two-year bill (meaning that it can be considered again in January of next year).

SB 286: THE QUIET DIRECT ACCESS REVOLUTION

Although not accompanied by the same fanfare as SB 32 and SB 350, SB 286 would play an important role in moving California toward meeting its climate goals. Sponsored by State Senator Robert Hertzberg (D-Van Nuys), the bill would allow large power consumers to purchase 100 percent renewable energy directly from producers, sidestepping investor-owned utilities (IOUs) such as PG&E. This expansion of direct access by up to 8,000 gigawatt-hours (GWh) would be welcomed by many large power purchasers, including tech companies, hospitals, and universities seeking to deepen their sustainability commitments by using only electricity generated by renewable sources. Expanding direct access will boost demand for solar, wind, and other renewable energy sources, as well as spur innovation and competition among producers.

Unsurprisingly, this measure faces opposition from IOUs, who stand to lose business from large customers, and who have raised concerns about grid reliability and the ability to balance the supply and demand of electricity in the state. If more end users purchase electricity directly from renewable sources, this will make the grid more complex, and make maintaining a balanced grid more challenging. As the energy infrastructure continues to evolve, it will be important for the CPUC and the Legislature to keep up with these changes.

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CALIFORNIA'S INFLUENCE OUTSIDE THE STATE . . . AND CHALLENGES WITHIN

Despite the elimination of the petroleum provision, Governor Brown's signing of SB 350 demonstrates yet again that California is on the leading edge of climate policy in the U.S. (along with Hawaii, which recently mandated a transition to 100 percent renewable energy by 2045). Other states are sure to follow, especially where mandates and incentives are needed to shift the market and spur demand. However, renewables are also growing in some states due to a number of non-regulatory factors. For example, Texas is enjoying a solar development boom without major state mandates or incentives because of the falling cost of solar photovoltaic (PV) panels, the state's ongoing investment in transmission line infrastructure, and the ability of the solar industry to complement the state's already strong wind industry.

Texas' investment in transmission stands in contrast to California's grid, which is outdated and overburdened. Especially with the increased RPS, it will take major investments of capital and political will to update the transmission system so that California is ready to handle the new renewables that quickly will be coming online.

Another key to meeting the state's climate goals will be reform of the California Environmental Quality Act (CEQA). Renewable energy project opponents have wielded CEQA as an effective tool for creating expensive delays and, in some cases, blocking projects entirely. Similarly, state and federal endangered species laws can also pose traps for the unwary. While the goals of these laws are laudable, the laws themselves are in great need of reform so they can no longer be used by renewable energy project opponents to make development infeasible. In the meantime, renewable energy developers need to carefully evaluate and understand CEQA and species risks during every stage of the project.

REGIONAL INNOVATION DRIVING CHANGE

While California faces serious challenges to readying its infrastructure to meet its new climate goals, it also benefits from robust energy and technology sectors that are rapidly developing decarbonization technology, especially in Silicon Valley. Companies large and small are focusing on developing and taking to market a broad range of new products and services that are not only improving existing renewable generation such as wind and solar, but also enhancing energy efficiency and conservation (especially at the retail customer level) and addressing transmission and grid reliability challenges.

California needs to continue its "all of the above" approach to meet its ambitious GHG-reduction goals. While the legislative and regulatory paths to achieving those goals are sure to remain bumpy, it is equally certain that California's innovation economy will continue to drive the state forward.

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