

HALFTIME IN CALIFORNIA — WHICH CLIMATE AND ENVIRONMENTAL BILLS ARE ON THE BOARD?

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The California legislature conducts its business in two-year sessions starting on the first Monday in December following an election. Last Friday, September 15, 2017, marked the last day for the California legislature to pass bills before a long interim recess lasting until January 3, 2018. Over the past nine months, the first half of the 2017–2018 legislative session saw a flurry of bills fueled by climate goals and the speculation of eroding federal support for environmental regulation.

Below is a summary of the primary successful and not-so-successful climate and environmental bills that were debated right down to the halftime whistle. On the whole, California made incremental progress in funding clean transportation efforts and incentivizing the deployment of energy storage systems, distributed energy resources, and energy efficiency strategies. While some of California's grander schemes like the 100% Renewable Portfolio Standard (RPS) and California Independent System Operator (CAISO) regionalization fell short, Senate President Pro Tem Kevin de León has vowed to carry those efforts into the second half of the 2017–2018 session. K&L Gates' energy and environmental attorneys will continue to monitor California's progress toward its bold climate and environmental goals.

CALIFORNIA'S BUDGET SETS ASIDE SIGNIFICANT CAP-AND-TRADE FUNDS FOR RENEWABLE AND ELECTRIFICATION PROJECTS

In July 2017, [AB 398](#) extended California's signature cap-and-trade program to 2030. The law was passed with two-thirds majorities in the Assembly and Senate, a show of strength required to dilute long-running challenges that the existing cap-and-trade program was an unconstitutional "tax" levied on California citizens by a simple majority of legislators. [\[1\]](#) AB 398's passage stabilized and strengthened the California Air Resources Board's quarterly auctions for greenhouse gas emissions allowances, with the [August 2017 auction](#) completely selling out of allowances and raising an estimated record \$640 million for the state.

A 2017–2018 budget bill passed at the deadline outlines where the discretionary portion of the cap-and-trade auction monies will be spent. According to budget summaries prepared by the [Los Angeles Times](#) and [The Mercury News](#):

- \$895 million is directed at programs to replace gas and diesel-burning vehicles, with special earmarks for the state's ports, farm vehicles, and electric car rebates;
- \$225 million will go toward fire prevention and response;

- \$165 million will be directed toward agriculture programs, including \$99 million to curb methane emissions;
- \$61 million will be budgeted for urban forestry, healthy forests, and wetlands restoration;
- \$44 million will be spent for programs promoting energy efficiency;
- \$40 million will be aimed at improving the state's recycling infrastructure; and
- \$11 million will be directed to the University of California for energy research.

The budgeting of cap-and-trade monies reflects certain compromises between Republicans and Democrats as well as compromises between different factions of left-leaning legislators. For instance, the \$225 million for fire prevention was seen to comfort Assembly Republicans who provided Democrats with the supermajority required to pass cap-and-trade with a two-thirds vote. Additionally, California will only provide clean vehicle rebates for electric cars manufactured by companies that are "fair and responsible in the treatment of their workers," a requirement that some see as putting pressure on electric car manufacturers not to obstruct efforts to unionize their employees.

SEVERAL ENERGY STORAGE AND DISTRIBUTED ENERGY RESOURCE BILLS AWAIT GOVERNOR BROWN'S SIGNATURE

[SB 338](#), passed by the California Senate on September 6, would require the California Public Utilities Commission and the governing boards of local publicly-owned electric utilities to consider how energy storage, energy efficiency strategies, and distributed energy resources can help utilities meet peak demand electricity needs while reducing the need for new electricity generation and transmission facilities.

Although California has plenty of renewable energy resources, it experiences a deep drop in solar electricity production in the late afternoon and early evening just as people are returning home from work and causing energy demand to spike (i.e., the "duck curve"). This sudden surge in demand is met currently by gas-fired generation, which can be expensive to run in short bursts and does not advance California's clean energy goals. SB 338 would require utilities to consider how this period of peak demand could be met instead by resources that align more closely with California's climate and renewable energy goals, such as fast-ramping energy storage resources and efficiency and demand response strategies. SB 338 is on Governor Brown's desk awaiting signature.

The Assembly passed another storage-oriented bill, AB 546, on September 7. [AB 546](#) will require all local governments to make available online all permitting applications for behind-the-meter advanced energy storage systems, and to accept such applications electronically. The law is meant to reduce the burden and costs on residential customers and prompt greater deployment of customer-sited energy storage systems. Like SB 338, AB 546 is enrolled and awaiting Governor Brown's signature.

Finally, [SB 801](#), passed by the Senate on September 13, is the latest legislative effort to increase the deployment of energy storage and distributed energy resources to mitigate potential energy shortages caused by the Aliso Canyon gas leak. SB 801 specifically requires the "local publicly owned electric utility that provides electric service to 250,000 or more customers within the Los Angeles Basin" (i.e., the Los Angeles Department of Water and

Power, or LADWP) to do three things. First, LADWP must share electrical grid data with any persons interested in greater deployment of distributed energy resources. Second, SB 801 requires LADWP to undertake load reduction measures by favoring demand response, renewable energy resources, and energy efficiency strategies over simply meeting demand with increased gas-fired generation. Third, LADWP must determine by June 1, 2018, the cost-effectiveness and feasibility of deploying 100 MW of energy storage in the Los Angeles Basin. SB 801 also requires any private utility serving the Los Angeles Basin (e.g., Southern California Edison) to deploy at least 20 MW of energy storage "to the extent that doing so is cost effective and feasible and necessary to meet . . . reliability requirements."

CALIFORNIA SAYS "NOT SO FAST" TO 100% RPS TARGET

One of the higher-profile bills to fall short was Senate President Pro Tem Kevin de León's [SB 100](#), which would have required California to procure 100% of its energy from carbon-free sources by 2045 and would have accelerated California's current 50% RPS target from 2030 to 2026. In the waning days of the session, SB 100 faced opposition from [energy companies and unions](#) worried about the bill's effect on jobs, and it did not have the full support of Governor Brown. Senator de León has committed to continuing to fight for a 100% RPS in the second half of the 2017–2018 legislative session.

EFFORT TO ACCELERATE RENEWABLE ENERGY PROCUREMENT AND EXPAND CAISO REGIONALIZATION DELAYED

The last days of the legislative session also saw the introduction of two bills, [AB 726](#) and [AB 813](#), proposing to transition CAISO's governance structure from a board appointed entirely by the California governor to a new, independent board. Having an independent board would allow CAISO to move towards the model used by other regional transmission operators and pave the way for greater regionalization, i.e., expanding CAISO from what is now essentially a one-state wholesale electricity market to a market covering California, the Pacific Northwest, and perhaps the Mountain and Interior West states.

The bills would have also required certain utilities to procure "tax-advantaged renewable resources" over and above those resources necessary to meet the minimum renewable procurement requirements for RPS compliance. Tax-advantaged renewable resources would have included resources that achieve commercial operation after January 1, 2019, and are eligible for the federal investment tax credit or the federal production tax credit available for wind, solar, and certain other renewable generation. The law's stated goal was to reduce the long-term costs of procuring renewable energy by taking advantage of available federal incentives before they expire.

Neither bill passed. Regionalization opponents argued that CAISO board independence would result in California relinquishing control over its resource planning and potentially lead to greater imports of coal-fired generation outside of California. Supporters of regionalization respond that a more integrated grid and regional energy market would provide for greater cost savings, and would allow California to more efficiently dispatch and export excess solar production that occasionally faces negative pricing conditions in the middle of the day.

Despite legislative delays in regionalizing a fully-functional day-ahead market, since 2014 CAISO's Energy Imbalance Market (EIM) has successfully integrated four western utilities into CAISO's real-time market, achieving over \$170 million in cost savings. Seven more western utilities are scheduled to join the EIM over the next three years.

AB 726 and AB 813 are not California's first attempts at regionalizing CAISO and reforming its governance structure — California legislative efforts also stalled in 2016. While the bills did not move forward, the bills' supporters have pledged to revisit the proposals in 2018.

EXISTING FEDERAL ENVIRONMENTAL PROTECTIONS FAIL WILL NOT BE ENSHRINED IN CALIFORNIA LAW

SB 49 was introduced to preserve existing air, water quality, drinking water, worker safety, and species protection laws if the Trump Administration rolls back such protections at the federal level. In the event of a federal retreat from existing standards, SB 49's anti-backsliding proposals would have allowed California agencies to quickly pass "emergency regulations" without the need for the normal notice and environmental review processes. SB 49 was ultimately amended and re-referred to committee on September 12, where it stalled.

[1] See *Cal. Chamber of Commerce v. State Air Res. Bd.*, 10 Cal. App. 5th 604, 649 (2017) (summarizing cap-and-trade challenges and ruling that an emissions allowance is not a tax but "a payment for the privilege to pollute the air in California.").

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