

California Legislature Passes Four Aggressive Climate Bills and Authorizes Extension of Diablo Canyon

The climate bills championed by Governor Newsom stand to alter the state's climate policy for years to come.

On August 31, 2022, the last day of its 2021-2022 session, the California Legislature passed four climate bills that are part of an ambitious and aggressive climate policy agenda advocated by Governor Gavin Newsom. Together, the bills codify a 2045 statewide carbon-neutrality target, establish a 3,200-foot setback for oil and gas wells, set clean electricity milestones, and adopt new requirements for carbon capture, storage, and utilization (CCUS) projects. The Legislature also passed a separate bill aimed at extending the life of the Diablo Canyon nuclear power plant to secure the state's electricity supply during this decade. The Legislature declined to advance a fifth climate bill proposed by Governor Newsom that would have set a 55% greenhouse gas (GHG) reduction target by 2030 and a separate bill that would have established stringent corporate climate disclosure obligations.

These actions took place against the backdrop of a State of Emergency proclaimed by Governor Newsom on August 31¹ in response to surging, triple-digit temperatures leading into a record-setting heat wave for Labor Day weekend — straining the state's electrical grid and exacerbating already-high fire risks. Governor Newsom proclaimed an additional State of Emergency on September 2² to support the response to a rapidly spreading fire in Siskiyou County, which reached over 4,000 acres in size.³

This Client Alert provides an overview of the bills championed by Governor Newsom and discusses the climate-related bills that did not pass through the Legislature.

Background on the Five Climate Proposals

On July 22, 2022, Governor Newsom issued a letter to the California Air Resources Board (CARB) urging more ambitious climate goals in the agency's 2022 Climate Change Scoping Plan,⁴ which Latham outlined in a [four-part blog series](#). The letter also indicated that the Governor planned to invest an additional \$54 billion into "California's Climate Commitment."

On August 12, 2022, Governor Newsom unveiled [five climate proposals](#) (the Climate Proposals) — which built on the July 22 letter — in the waning days of California's legislative cycle with the objective of incorporating the Climate Proposals into bills before the end of the cycle.

The Climate Proposals addressed a range of issues, including carbon neutrality (AB 1279), GHG emission reductions (AB 2133), clean electricity (SB 1020), setback distances for oil and gas wells (SB 1137), and CCUS (SB 905). In order to become law, each Climate Proposal had to be incorporated into a bill and passed by the Legislature. By August 28, 2022, each Climate Proposal had been incorporated into a proposed bill. However, only four Climate Proposals (AB 1279, SB 1020, SB 1137, and SB 905) passed the Senate and Assembly, along with a separate climate bill (SB 846) to extend the life of Diablo Canyon.

Bills Adopted by the Legislature

1. Carbon Neutrality ([AB 1279](#))

AB 1279 requires California to achieve “net zero greenhouse gas emissions”⁵ as soon as possible, but no later than 2045, and to achieve and maintain net negative GHG emissions thereafter. It also requires that statewide anthropogenic GHG emissions be reduced to at least 85% below 1990 levels. The bill directs CARB to ensure that its scoping plan identifies and recommends measures to achieve these policy goals. It also directs CARB to identify policies and strategies to enable CCUS and CO2 removal technologies to complement emission reductions to achieve the bill’s neutrality goals. The Legislative Analyst’s Office will be required to conduct an independent assessment of progress toward the bill’s objectives every two years and make its findings available to the public. The success of AB 1279 was contingent on that of SB 905, which is described below. The objective of “linking” AB 1279 with SB 905 is not entirely clear, though some believe that environmental justice advocates who oppose CCUS generally would not have supported the CCUS bill without the accompanying neutrality goal.

2. Clean Electricity ([SB 1020](#))

SB 1020 codifies into law a state policy that eligible renewable energy resources and zero-carbon resources supply:

- 90% of all retail sales of electricity to California end-use customers by December 31, 2035, 95% by December 31, 2040, and 100% by December 31, 2045; and
- 100% of electricity procured to serve all state agencies by December 31, 2035.

To achieve these objectives, SB 1020 requires that CARB and the California Energy Commission use unspecified programs authorized under existing statutes and employ measures to ensure that implementation of the policy does not cause increases in GHG emissions elsewhere, a concept also known as leakage.

3. CCUS Program ([SB 905](#))

SB 905 instructs CARB to create a “Carbon Capture, Removal, Utilization, and Storage Program” to evaluate the efficacy, safety, and viability of CCUS and carbon dioxide removal (CDR) technologies; facilitate capture and sequestration of carbon dioxide using these technologies; and develop monitoring and reporting frameworks to enforce the proper implementation of these activities. The bill mandates that all CCUS and CDR activities be carried out in a way that seeks to minimize adverse effects on the environment and public health, promote workforce development and employment opportunities, and reduce fossil fuel production in the state, among other goals.

Notably, SB 905 prohibits the use of pipelines to transport carbon dioxide to or from a carbon dioxide capture, removal, or sequestration project until the federal Pipeline and Hazardous Materials Safety

Administration (PHMSA) concludes its rulemaking on this subject regarding minimum federal safety standards for transporting carbon dioxide by pipeline. While PHMSA has reportedly initiated this rulemaking, PHMSA has indicated that it does not anticipate to issue a notice of proposed rulemaking until October 2024. The state's interim prohibition against the transport of carbon dioxide by pipeline could become a major barrier to large-scale CCUS deployment.

SB 905 also prohibits the injection of concentrated carbon dioxide fluid obtained through the carbon capture process into a Class II well to enhance oil recovery.

SB 905 requires CARB to adopt implementing regulations on or before January 1, 2025, including regulations for (i) a unified permit application for the construction and operation of carbon dioxide capture, removal or sequestration projects, with the objective of expediting permits or other authorizations required for such projects; and (ii) financial responsibility for these projects for at least 100 years (versus 50 years under the federal Underground Injection Control rules for Class VI wells) after the last date of injection of carbon dioxide into a geologic storage reservoir. By January 25, 2025, the state Secretary of Natural Resources, in consultation with CARB, must publish a framework governing agreement regarding two or more tracts of land overlying the same geologic storage reservoir or reservoirs for purposes of managing, developing, and operating CCUS and CDR projects. Finally, the bill requires operators of CCUS projects to undertake a number of measures relating to environmental justice, including creating air monitoring and mitigation plans, avoiding significant impacts on residents in communities affected by "a high-cumulative exposure burden," and mitigating unavoidable increases in air pollution.

4. Oil and Gas Geographic Setbacks ([SB 1137](#))

SB 1137 establishes a "health protection zone" of 3,200 feet between oil and gas wells and "sensitive receptors" defined broadly to include residences, schools, healthcare facilities, and any building housing a business that is open to the public.

SB 1137 prohibits the Geologic Energy Management Division (CalGEM) from approving any notice of intention after January 1, 2023, to drill a new well within a health protection zone, except under limited circumstances, including when it is for the purposes of plugging and abandoning a well. SB 1137 includes exemptions for developing residential, commercial, and other non-fossil fuel production uses on property with previously plugged and abandoned wells or wells that require re-abandonment. If a notice of intention is approved, SB 1137 requires that operators provide an individual indemnity bond sufficient to pay for the full cost of properly plugging and abandoning the operator's well or wells, and decommissioning any attendant production facilities in the health protection zone.

As of January 1, 2023, *all* operators of oil and gas wellheads and production facilities must submit sensitive receptor inventory maps that identify sensitive receptors within 3,200 feet of the operator's wellheads and production facilities. Health and safety requirements kick in after January 1, 2025, for oil and gas wellheads and production facilities currently located within a health protection zone, including compliance mechanisms, noise and light restrictions, measures to prevent off-site migration of dust and particulates, and chemical analyses of all produced water transported away from the oil field where it was produced. Operators with oil and gas production facilities located in a health protection zone must develop a leak detection and response plan subject to review by CalGEM and public comment.

5. Extension of Diablo Canyon ([SB 846](#))

The Legislature passed SB 846 to extend the life of the Diablo Canyon nuclear power plant, which supplies nearly 10% of the state's electricity. Diablo Canyon's two nuclear reactors were scheduled to close in 2024 and 2025, but SB 846 delays this timeline by five years, to 2029 and 2030, by enabling the

United States Nuclear Regulatory Commission and any other state and federal authorities to renew the operator's license for an additional five years. The bill similarly mandates the California Public Utilities Commission, the regulatory body with authority over electrical corporations, to direct the operator to "take all actions that would be necessary to operate the power plant beyond the current expiration dates." The bill further authorizes a \$1.4 billion loan from the General Fund to the Department of Water Resources to enable the operator to extend operations. The Diablo Canyon extension vote represented a balance between stabilizing California's electricity supply — which is increasingly precarious in the face of the state's severe heat waves — and the state policy dictating the closure of coastal power plants relying on once-through cooling. Notably, the license extension currently does not go beyond 2030.

Other Bills Considered but Not Adopted by the Legislature

55% GHG Reduction by 2030 ([AB 2133](#))

Section 38566 of the Health and Safety Code requires the reduction of California statewide GHG emissions to at least 40% below 1990 levels no later than December 31, 2030. By comparison, President Biden has set a [50%-52% reduction](#) target from 2005 levels by 2030, and the European Union has a [55% reduction](#) target below 1990 levels by 2030.

AB 2133 would have increased California's climate reduction targets to at least 55% below 1990 levels no later than December 31, 2030. Although this bill was a central component of the Climate Proposals, it did not receive a majority vote in the Legislature, making it the only Climate Proposal not codified into law. This bill may have failed to move forward as a result of CARB's August 29, 2022, letter to Governor Newsom, discussed below.

Modifications to Cap-and-Trade ([SB 1391](#))

The California Global Warming Solutions Act of 2006 (AB 32) authorized the creation of the state's Cap-and-Trade Program (the Program), which came into effect in 2012 and was subsequently extended through 2030 by AB 398.

SB 1391 would have required CARB, the Program's administrator, to conduct triennial reviews of the Program to (i) evaluate and address concerns related to allowance over-allocation and the use of carbon offsets to meet compliance obligations, (ii) determine whether to reduce the supply of allowances by the number of offsets issued or retired on an ongoing and historical basis, and (iii) determine whether to establish direct emission reduction requirements for specific facilities covered by the Program to reduce pollution disparities in disadvantaged communities.

SB 1391 directly addressed recent criticisms of Program, but ultimately failed to garner the required number of votes to pass through the Legislature. Factors that may have contributed to the bill's failure include (i) a recognition that the modified Program authorized under AB 398 is only in its first year of operation, (ii) the ongoing Scoping Plan process (discussed below), which requires CARB to undertake a similar review of the Program, and (iii) the expectation that, following the publication of the Final Scoping Plan, CARB may initiate a rulemaking process in 2023 that could address some of these concerns.

Corporate Sustainability Disclosure ([SB 260](#))

SB 260 sought to impose corporate sustainability reporting requirements that would substantially expand corporate greenhouse gas emissions reporting obligations. Specifically, the bill, which passed through the Senate but not the Assembly, would have required regulated entities to report on their Scope 1, 2, and 3 emissions using the standards and guidance set out under the Greenhouse Gas Protocol. The bill's

failure may have been related to the US Securities and Exchange Commission's (SEC's) ongoing process to develop similar and potentially overlapping disclosure obligations. To read more about SB 260, see this Latham [blog post](#). To read more about the SEC's proposed climate disclosure rules, see this Latham [Client Alert](#). State Senator Scott Wiener has signaled an intent to reintroduce the bill in the next legislative cycle.

Potential Impacts of Enacted Legislation

The debates on the State Senate and Assembly floors reflected uncertainty regarding the feasibility, impacts, costs, and implementation of the Climate Proposals. Ultimately, however, the Legislature's competing priorities gave way to compromises that will require close attention going forward, particularly in the case of the more complex bills. For example, the Governor's July 22, 2022, letter emphasized the importance of CCUS (SB 905) for achieving more aggressive climate targets (AB 1279). However, SB 905 as adopted contains a number of provisions that could make developing CCUS projects in California more difficult and costly, for example by prohibiting pipeline transport of carbon dioxide. Additionally, the prohibition on CCUS projects injecting carbon dioxide for enhanced oil recovery could limit the state's options for reducing and injecting CO₂ emissions in a cost-efficient manner.

The four enacted climate bills will likely also impact CARB's ongoing Scoping Plan process. The Draft Scoping Plan, released in May 2022, identified CARB's proposed path for how California can reach an interim goal of reducing GHG emissions by at least 40% below 1990 levels by 2030. It also identified how the state can reach the ultimate goal of carbon neutrality by 2045, along with accelerated options to achieve carbon neutrality by 2035. The passage of AB 1279 means that the 2045 carbon-neutrality target will now be codified into law, but it is unclear whether CARB will still model achieving carbon neutrality by 2035 in the Final Scoping Plan. CARB will likely have to account for the measures contained in the remaining successful Climate Proposals when determining how to achieve the emission-reduction targets.

CARB appears to have already begun accounting for these changes, as described in an August 29, 2022, letter submitted by CARB Chair Liane Randolph to Governor Newsom. In the letter, Chair Randolph responded to the Governor's July 2022 letter, which served as a precursor to the Climate Proposals. According to the letter, CARB's modeling has projected that the enhanced ambition outlined in the Governor's letter would achieve emission reductions of 50% below 1990 levels by 2030. Whether the new climate legislation enacted on August 31, 2022, has an impact on CARB's modeling will likely be clarified in the Final Scoping Plan, which is expected to be published in December 2022.

Next Steps

Governor Newsom has until September 30, 2022, to sign or veto the four climate bills. Since the Governor advocated for adoption of the bills, he is likely to sign them into law.

Latham & Watkins will continue to monitor and report on climate policy developments in California.

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Endnotes

¹ Office of Governor Gavin Newsom, "Proclamation of a State of Emergency," (August 31, 2022) <https://www.gov.ca.gov/wp-content/uploads/2022/08/8.31.22-Heat-Proclamation.pdf?emrc=78e3fc>

² Office of Governor Gavin Newsom, "Proclamation of a State of Emergency," (September 2, 2022) <https://www.gov.ca.gov/wp-content/uploads/2022/09/9.2.22-Mill-Fire-State-of-Emergency.pdf?emrc=5341a8>

³ California Department of Forestry and Fire Protection, "Mill Fire Incident," <https://www.fire.ca.gov/incidents/2022/9/2/mill-fire/>

⁴ Office of Governor Gavin Newsom, Letter to California Air Resources Board (July 22, 2022), <https://www.gov.ca.gov/wp-content/uploads/2022/07/07.22.2022-Governors-Letter-to-CARB.pdf?emrc=1054d6>

⁵ AB 1279 defines "net zero greenhouse gas emissions as "emissions of greenhouse gases, as defined in subdivision (g) of Section 38505, to the atmosphere are balanced by removals of greenhouse gas emissions over a period of time, as determined by the state board."