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Can Calif.'s Gov. Still Hit His Climate Change Goals?


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Law360, New York (October 6, 2015, 11:30 AM ET) -- The end of the California Legislature's regular session for the year culminated in a frenzy of action, with Assembly members scrambling to pass dozens of bills before midnight on Sept. 12, 2015. The California Legislature voted on a package of 12 bills addressing environmental and health concerns, such as offshore drilling, divestment of investment funding from coal companies, water quality, energy efficiency in disadvantaged communities and increased public transportation. This post analyzes three of the more significant and controversial bills proposed this year, including last-minute changes to each during the final week of the session: S.B. 350, S.B. 32 and A.B. 1288.

S.B. 350 (De Leon): The Clean Energy and Pollution Reduction Act of 2015

The most far-reaching climate change goals of the climate bill package were enshrined in S.B. 350. The proposed bill, authored by Senate President Pro Tempore Kevin de Leon and Sen. Mark Leno, D-San Francisco, originally called for a 50 percent reduction in petroleum use in cars and trucks, a 50 percent increase in energy efficiency in buildings and for 50 percent of the state's utility power to be derived from renewable energy, all by 2030; termed the "50-50-50" formula.

These standards paralleled Gov. Jerry Brown's climate change agenda for the year, which was first announced during his inaugural address in January. Following a failure to garner the necessary votes amid resistance from moderate Democrats, state legislative leaders amended S.B. 350 to drop requirements for a 50 percent reduction in petroleum use for cars and trucks. As modified, the bill passed on a 52-27 vote.

Despite the removal of the petroleum reduction provision, which garnered headlines, S.B. 350 represents a sweeping expansion of renewable energy and energy efficiency mandates. The bill requires the state to double energy efficiency savings in electricity and natural gas by retail customers by 2030 and increases the Renewables Portfolio Standards so that half of the state's electricity must be procured from renewable sources by 2030, which remain groundbreaking measures in themselves.

California's RPS was originally established in 2002 under S.B. 1078. In 2011, Gov. Brown signed legislation to increase the RPS to 33 percent by the year 2020 (S.B. 2-1X Chapter 1 Statutes of 2011). Currently, most energy utilities have bought or have built enough energy resources to meet the 33 percent RPS before the target year. S.B. 350 continues the effort to boost renewable energy use by increasing the RPS to 50 percent by the year 2030. As per current law, the 50 percent renewable energy standard will be implemented by the California Public Utilities Commission for investor-owned utilities and other retail sellers subject to CPUC jurisdiction, and by the California Energy Commission for publicly owned utilities.

S.B. 350 is fairly comprehensive in setting forth a regime to implement and evaluate procurement plans, including a renewable energy procurement plan, that each retailer of electricity (IOUs, POUs, community choice aggregation and energy service providers) must provide on an annual basis. In addition, they each must regularly file an integrated resource plan for approval. Other than for POUs, these IRPs will be reviewed by CPUC. The governing body of the POU will approve the IRP subject to review by the CEC.

S.B. 350 is quite specific as to what factors must be considered in proposed procurement plans and provides (in a nod to the challenges presented when attempting to integrate intermittent energy sources) that the goals must be balanced by the need to have just and reasonable rates, to ensure system and local reliability, to preserve the resilience of the electric grid and to enhance distribution system management. Those goals are exemplified by a provision that requires the CPUC to identify a "balanced portfolio of resources" to ensure "reliability" and "optimal integration" of renewables, and requires that utilities include in their procurement plans a "strategy for procuring best-fit and least cost resources" to meet the portfolio needs CPUC identifies. The review of CPUC's balanced portfolio and of the utilities' proposed strategies will be battlegrounds in which any entity that has an economic interest in the transformation of the grid will have a stake in the outcome.

Notably, transportation electrification must be addressed in the IRPs. Indeed, widespread transportation electrification is now "the policy of the state" and a legislatively recognized means to achieve both ambient air quality standards and the state's climate goals. S.B. 350 implicitly acknowledges the uncertainty in how rapidly and how extensively the transportation system will be electrified, as well as the potential increase in retail sales and related greenhouse gas emissions. Accordingly, S.B. 350 provides that RPS enforcement can be waived if a retail seller demonstrates that it missed its RPS target due to transportation electrification exceeding demand forecasts. Similarly, S.B. 350 lays the groundwork for retail sellers to receive an additional allocation of cap-and-trade program allowances from the California Air Resources Board.

Under S.B. 350, beginning in 2021, at least 65 percent of power purchase contracts must be at least 10 years or longer, giving regulated entities added flexibility to enter into a combination of long-term and short-term contracts. Also, after 2021, regulated entities can bank the top-tier renewable energy credits (so-called "Bucket 1" resources) if there is excess procurement in a given year. Although "Bucket 2 or 3" resources cannot be banked, they can be used in calculating excess procurement to support the banking of Bucket 1 resources.

S.B. 350 requires the doubling of energy efficiency but, in doing so, tries to bring some coherence to the concept of "energy efficiency savings." It provides guidance as to what measures qualify and requires an evaluation of feasibility and cost-effectiveness in setting annual targets for those savings. S.B. 350 also requires the CEC to adopt a responsible contractor policy and establish consumer protection guidelines.

The bill expands the mandate of the California Independent System Operator to permit it to enter into compacts with states within the Western Electricity Coordinating Council and to, thereby, become a regional system operator along the lines of the PJM.[1] This will ultimately require further legislation once CAISO develops new bylaws and will require the willingness of other states to participate in the new organization, which could result in

a new grid operator/ISO to manage the flow of electricity for portions of the Pacific/Western region. This is consistent with the ambitions of CAISO, but also provides another tool for California to minimize the cost of an abundance of renewable power during times of the day when it is not needed. CAISO demonstrated with its recently implemented Energy Imbalance Market that utilities who are not under the jurisdiction of CAISO see an economic benefit in selling into and buying from the California energy market. With the passage of S.B. 350, utilities can now count renewable resources toward their RPS requirements purchased from within the area governed by WECC that have a connection to CAISO. This greatly expands access of California electricity service providers to eligible renewable resources. It is not surprising that several more northwest utilities have recently announced that they are abandoning alternatives to focus on evaluating the benefits of their participation in CAISO's Energy Imbalance Market. Such participation might be a precursor to joining a CAISO recast as a regional system operator and market maker.

S.B. 32 (Pavley): California Global Warming Solutions Act of 2006: Emissions Limit

On Sept. 8, members of the California Assembly rejected a bill that would have amended A.B. 32, the Global Warming Solutions to Act, to codify GHG emissions reduction targets for 2030 and 2050. Passed in 2006, A.B. 32 requires the state to reduce GHG emissions to 1990 levels by 2020. Two executive orders set emissions reduction targets for subsequent years — Gov. Brown's Executive Order B-30-15 requires reduction of GHG emissions levels to 40 percent below 1990 levels by 2030, and former Gov. Arnold Schwarzenegger's Executive Order S-3-05 requires a reduction of GHG emissions to 80 percent below 1990 levels by 2050.

In June, the Senate passed a version of S.B. 32, introduced by Sen. Fran Pavley, D-Agoura Hills, which would have codified the executive orders' 2030 and 2050 GHG emissions reduction targets, and would have authorized ARB to set an interim target for 2040. However, S.B. 32 failed to pass in the Assembly in a 35-30 vote. The bill was amended later in the week to remove the 2050 target and authorization for ARB to set a 2040 standard. Despite the amendment, the Assembly shelved the revised bill, though it may take it up again next year.

Although S.B. 32 failed in the Assembly, the California Environmental Quality Act may nonetheless require GHG sections of EIRs to analyze a project's consistency with Executive Order B-30-15's 2030 emissions reduction target and Executive Order S-3-05's 2050 target. As discussed in a previous post, late last year the court of appeal struck down San Diego County's Climate Action Plan, in part for failing to analyze post-2020 GHG reductions targets.[2] In addition, the Supreme Court is currently considering a similar issue in Cleveland National Forest Foundation v. San Diego Association of Governments, in which the court of appeal held that SANDAG violated CEQA by failing to discuss the proposed regional transportation plan's consistency with state climate policy, as reflected by Executive Order S-3-05, and related mitigation measures.[3]

A.B. 1288 (Atkins): California Global Warming Solutions Act of 2006: Regulations

The Legislature passed a significantly scaled down version of A.B. 1288, which adds two new members to the ARB. Pursuant to the new bill, the Senate Committee on Rules and the speaker of the assembly will each appoint one member to work with communities that are significantly burdened by, and vulnerable to, high levels of pollution, including communities with diverse racial and ethnic populations and communities with low-income populations.

As passed, A.B. 1288 looks little like the original version, which was introduced by Sen. Toni Atkins, D-San Diego. Sen. Atkins' proposed bill would have removed the sunset date for further GHG reductions in California's cap-and-trade program. Although this measure was stricken from the final bill, ARB has long expressed its intention to extend the cap-and-trade program beyond 2020.

Summary

The California Legislature's failure to pass S.B. 32 and the amendments made to S.B. 350 and A.B. 1288 have been noted by some political commentators as significant setbacks for Gov. Brown's ambitious climate and energy agenda. At a press conference following the news that the 50 percent target for reduction in petroleum use would be dropped from S.B. 350, Gov. Brown appeared defiant. He promised to use ARB's existing authority to achieve both the 50 percent petroleum reduction goal proposed by S.B. 350 and the GHG emissions reduction targets proposed by S.B. 32, which he believes can be implemented through the low-carbon fuel standard, zero-emission vehicle program, as well as the cap-and-trade program.

Since they would not be codified under state law, however, the petroleum and GHG emissions reduction targets could later be rescinded or changed by a future governor who disagrees with Gov. Brown's executive orders. Moreover, regulated parties and other affected industry groups may not share the governor's perspective on the extent of ARB's existing authority, leading to potential administrative and judicial challenges should ARB press forward without the state legislature's blessing.

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[1] The PJM is the regional transmission organization that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia.

[2] Sierra Club v. County of San Diego, 231 Cal. App. 4th 1152 (2014), petition for review denied, No. S223591 (Cal. Mar. 11, 2015).

[3] See 231 Cal.App.4th 1056 (2014).
