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**SB-1420 Hydrogen production facilities: certification and environmental review.** (2023-2024)

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**Senate Bill No. 1420**

**CHAPTER 608**

An act to amend Sections 21189.81 and 25545 of the Public Resources Code, relating to energy.

[ Approved by Governor September 25, 2024. Filed with Secretary of State September 25, 2024. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1420, Caballero. Hydrogen production facilities: certification and environmental review.

(1) The California Environmental Quality Act (CEQA) requires preparation of specified documentation before a public agency approves or carries out certain projects. Existing law authorizes the Governor to certify energy infrastructure projects meeting specified requirements for streamlining benefits related to CEQA. Existing law defines "energy infrastructure project" for these purposes to include eligible renewable energy resources under the California Renewables Portfolio Standard Program, excluding resources that use biomass fuels. Existing law also expressly excludes from that definition of "energy infrastructure project" any project using hydrogen as a fuel.

This bill would instead exclude eligible renewable energy resources under the California Renewables Portfolio Standard Program that combust, rather than use, biomass fuels from the definition of "energy infrastructure project" for purposes of the above-described CEQA benefits. The bill would include hydrogen production facilities and associated onsite storage and processing facilities that do not derive hydrogen from a fossil fuel feedstock and that receive funding from specified state and federal programs within the definition of "energy infrastructure project." Because the bill would authorize the Governor to certify additional projects, thereby increasing the duties on lead agencies in conducting the environmental review of energy infrastructure projects certified by the Governor, this bill would impose a state-mandated local program.

(2) Existing law authorizes persons proposing specified electrical generation, electrical transmission, and energy storage projects to apply, on or before June 30, 2029, to the State Energy Resources Conservation and Development Commission (Energy Commission) to certify sites and related facilities as environmental leadership development projects, as specified. Existing law makes a site and related facility certified by the Energy Commission subject to streamlining benefits related to CEQA with no further action by the applicant or the Governor. Under existing law, the Energy Commission's certification is in lieu of any permit, certificate, or similar document required by any governmental agency and supersedes any applicable statute, ordinance, or regulation, except as specified.

This bill would expand the types of facilities eligible to be certified as environmental leadership development projects by the Energy Commission to include hydrogen production facilities and associated onsite storage and processing facilities that do not derive hydrogen from a fossil fuel feedstock and that receive funding from specified state and federal programs.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 21189.81 of the Public Resources Code is amended to read:

**21189.81.** For purposes of this chapter, the following definitions apply:

(a) "Applicant" means a public or private entity or its affiliates, or a person or entity that undertakes a public works project, that proposes a project and its successors, heirs, and assignees.

(b) "Disadvantaged community" means an area identified by the California Environmental Protection Agency pursuant to Section 39711 of the Health and Safety Code or an area identified as a disadvantaged unincorporated community pursuant to Section 65302.10 of the Government Code.

(c) "Electrical transmission facility project" means a project for the construction and operation of an electrical transmission facility that meets either of the following:

(1) An electrical transmission facility project identified by the Independent System Operator in its annual transmission planning process that meets either of the following criteria:

(A) The project will facilitate delivery of electricity from renewable energy resources or zero-carbon resources.

(B) The project will facilitate delivery of electricity from energy storage projects.

(2) An electrical transmission facility project identified by a local publicly owned electric utility that would satisfy a transmission expansion need approved by the governing body of the local publicly owned electric utility and that meets either of the following criteria:

(A) The project will facilitate delivery of electricity from renewable energy resources or zero-carbon resources.

(B) The project will facilitate delivery of electricity from energy storage projects.

(d) (1) "Energy infrastructure project" means any of the following:

(A) An eligible renewable energy resource, as defined in Section 399.12 of the Public Utilities Code, excluding resources that combust biomass fuels.

(B) New energy storage systems of 20 megawatts or more, that are capable of discharging for at least two hours, provided that a pumped hydro facility may qualify only if it is less than or equal to 500 megawatts and has been directly appropriated funding by the state before January 1, 2023.

(C) A project for which the applicant has certified that a capital investment of at least two hundred fifty million dollars (\$250,000,000) made over a period of five years and the project is for either of the following:

(i) The manufacture, production, or assembly of an energy storage system or component manufacturing, wind system or component manufacturing, and solar photovoltaic energy system or component manufacturing.

(ii) The manufacture, production, or assembly of specialized products, components, or systems that are integral to renewable energy or energy storage technologies.

(D) An electrical transmission facility project, provided that nothing in this chapter affects the jurisdiction of the California Coastal Commission pursuant to Division 20 (commencing with Section 30000) to regulate such projects if located in the coastal zone.

(E) A hydrogen production facility and associated onsite storage and processing facilities that do not derive hydrogen from a fossil fuel feedstock and that receive funding from any of the following:

(i) The Hydrogen Program established pursuant to Section 25664.1.

(ii) Section 91530, as added by the Safe Drinking Water, Wildfire Prevention, Drought Preparedness, and Clean Air Bond Act of 2024 (Section 2 of Chapter 83 of the Statutes of 2024 (Senate Bill No. 867)), if that act is approved by the voters at the November 5, 2024, statewide general election.

(iii) The Alliance for Renewable Clean Hydrogen Energy Systems (ARCHES) authorized by Article 15 (commencing with Section 12100.160) of Chapter 1.6 of Part 2 of Division 3 of Title 2 of the Government Code, as awarded by the United States Department of Energy Office of Clean Energy Demonstrations.

(2) Any project to develop a facility within the meaning of subdivision (b) of Section 25545 shall meet the requirements of Sections 25545.3.3 and 25545.3.5, except that those requirements shall also apply to solar photovoltaic and terrestrial wind electrical generating power plants with a generating capacity of between 20 and 50 megawatts and energy storage projects capable of storing between 80 and 200 megawatt hours of electrical energy.

(e) "Infrastructure project" means a project that is certified pursuant to Sections 21189.82 and 21189.83 as any of the following:

- (1) An energy infrastructure project.
- (2) A semiconductor or microelectronic project.
- (3) A transportation-related project.
- (4) A water-related project.

(f) "Semiconductor or microelectronic project" means a project that meets the requirements related to investment in new or expanded facilities and is awarded funds under the federal Creating Helpful Incentives to Produce Semiconductors Act of 2022 (Public Law 117-167), commonly known as the CHIPS Act of 2022, and the requirements of Section 21183.5.

(g) (1) "Transportation-related project" means a transportation infrastructure project that advances one or more of, and does not conflict with, the following goals related to the Climate Action Plan for Transportation Infrastructure adopted by the Transportation Agency:

- (A) Build toward an integrated, statewide rail and transit network.
- (B) Invest in networks of safe and accessible bicycle and pedestrian infrastructure.
- (C) Include investments in light-, medium-, and heavy-duty zero-emission vehicle infrastructure.
- (D) Develop a zero-emission freight transportation system.
- (E) Reduce public health and economic harms and maximize community benefits.
- (F) Make safety improvements to reduce fatalities and severe injuries of all users towards zero.
- (G) Assess and integrate assessments of physical climate risk.
- (H) Promote projects that do not significantly increase passenger vehicle travel.
- (I) Promote compact infill development while protecting residents and businesses from displacement.
- (J) Protect natural and working lands.

(2) Transportation-related projects are public works for the purposes of Section 1720 of the Labor Code and shall comply with the applicable provisions of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(h) (1) "Water-related project" means any of the following:

(A) A project that is approved to implement a groundwater sustainability plan that the Department of Water Resources has determined is in compliance with Sections 10727.2 and 10727.4 of the Water Code or to implement an interim groundwater sustainability plan adopted pursuant to Section 10735.6 of the Water Code.

(B) (i) A water storage project funded by the California Water Commission pursuant to Chapter 8 (commencing with Section 79750) of Division 26.7 of the Water Code.

(ii) In addition to clause (i), the applicant shall demonstrate that the project will minimize the intake or diversion of water except during times of surplus water and prioritizes the discharge of water for ecological benefits or to mitigate an emergency, including, but not limited to, dam repair, levee repair, wetland restoration, marshland restoration, or habitat preservation, or other public benefits described in Section 79753 of the Water Code.

(C) Projects for the development of recycled water, as defined in Section 13050 of the Water Code.

(D) Contaminant and salt removal projects, including groundwater desalination and associated treatment, storage, conveyance, and distribution facilities. This shall not include seawater desalination.

(E) Projects exclusively for canal or other conveyance maintenance and repair.

(2) Water-related projects are public works for purposes of Section 1720 of the Labor Code and shall comply with the applicable provisions of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(3) "Water-related project" does not include the design or construction of through-Delta conveyance facilities of the Sacramento-San Joaquin Delta.

**SEC. 2.** Section 25545 of the Public Resources Code is amended to read:

**25545.** For purposes of this chapter, the following definitions apply:

(a) "California Native American tribe" has the same meaning as set forth in Section 21073.

(b) "Facility" means any of the following:

(1) A solar photovoltaic or terrestrial wind electrical generating powerplant with a generating capacity of 50 megawatts or more and any facilities appurtenant thereto.

(2) An energy storage system as defined in Section 2835 of the Public Utilities Code that is capable of storing 200 megawatthours or more of energy.

(3) A stationary electrical generating powerplant using any source of thermal energy, with a generating capacity of 50 megawatts or more, excluding any powerplant that burns, uses, or relies on fossil or nuclear fuels.

(4) A discretionary project as described in Section 21080 for which the applicant has certified that a capital investment of at least two hundred fifty million dollars (\$250,000,000) will be made over a period of five years and the discretionary project is for (A) the manufacture, production, or assembly of an energy storage system or component manufacturing, wind system or component manufacturing, and solar photovoltaic energy system or component manufacturing, or (B) the manufacture, production, or assembly of specialized products, components, or systems that are integral to renewable energy or energy storage technologies.

(5) An electrical transmission line carrying electricity from a facility described in paragraph (1), (2), or (3) that is located in the state to a point of junction with any interconnected electrical transmission system.

(6) A hydrogen production facility and associated onsite storage and processing facilities that do not derive hydrogen from a fossil fuel feedstock and that receive funding from any of the following:

(A) The Hydrogen Program established pursuant to Section 25664.1.

(B) Section 91530, as added by the Safe Drinking Water, Wildfire Prevention, Drought Preparedness, and Clean Air Bond Act of 2024 (Section 2 of Chapter 83 of the Statutes of 2024 (Senate Bill No. 867)), if that act is approved by the voters at the November 5, 2024, statewide general election.

(C) The Alliance for Renewable Clean Hydrogen Energy Systems (ARCHES) authorized by Article 15 (commencing with Section 12100.160) of Chapter 1.6 of Part 2 of Division 3 of Title 2 of the Government Code, as awarded by the United States Department of Energy Office of Clean Energy Demonstrations.

(c) "Site" means any location on which an eligible facility is constructed or is proposed to be constructed.

**SEC. 3.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.