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California Expands Energy Commission's Jurisdiction to Bolster Clean Energy Development



Governor Gavin Newsom signed AB 205 into law on June 30, 2022. This legislative effort significantly expands the California Energy Commission (CEC)'s jurisdiction and encourages the development of new clean energy projects. In short, AB 205 allows developers to opt in to a new streamlined environmental review and authorization process for certain solar, wind, and other qualifying clean energy projects under exclusive state jurisdiction. The law also provides new funding for qualifying generation and energy storage facilities.

The summary below touches on three aspects of AB 205: (1) CEC's new Siting Certification Process, (2) the Long-Duration Storage Program, and (3) the Strategic Reliability Reserve Fund.

Expansion of CEC Siting Authority to Non-Thermal Generating Facilities

Before AB 205, the CEC's siting authority was limited to thermal power plants with capacities of 50 megawatts (MW) or more. AB 205 expands CEC's siting authority to include non-thermal generating facilities and establishes a new siting certification process for the following eligible facilities:

- Solar photovoltaic (PV) and onshore wind generating facilities with capacities of 50 MW or more.
- Energy storage facilities capable of storing at least 200 MWh of energy.
- Facilities for the manufacture, production, or assembly of energy storage systems, wind systems, solar PV systems, or the components of those systems if the developer certifies the project will require a capital investment of \$250 million over a period of five years.
- Transmission lines from the above-mentioned generating or storage facilities to the first point of interconnection.

- Thermal generation facilities with capacities of 50 MW or more that are not powered by fossil or nuclear fuels.

AB 205 gives CEC exclusive siting authority over these eligible projects if a developer submits an application to CEC under this certification process instead of an application for entitlements from the jurisdiction in which the project is located. CEC's siting certification is in lieu of any permit, certificate, or similar document required by any state, local, or regional agency, or federal agency to the extent permitted by federal law. It also supersedes any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law, with limited exceptions. AB 205 specifically provides that the certification does not supersede the authority of an exclusive list of agencies: the California State Lands Commission, the California Coastal Commission (CCC), the San Francisco Bay Conservation and Development Commission (BCDC), the California State Water Resources Control Board (SWRCB) or the applicable regional water quality control boards, local air quality management districts, or the California Department of Toxic Substances Control (DTSC).

Expedited Environmental Review of Eligible Projects

AB 205 requires CEC to serve as the lead agency for purposes of the California Environmental Quality Act (CEQA) when developers file an application for certification with the CEC before July 1, 2029. Within 30 days of the submission of the application, CEC must review the application and make a determination of completeness. Environmental review must be completed within 270 days after the application is deemed complete, subject to certain limited extensions. CEC must also develop plans for timely consultations with relevant state and local agencies. A certificate issued pursuant to this streamlined process shall be valid for a period not to exceed five years from the date of issuance.

CEC cannot approve a qualifying project without first finding that the facility will have an overall net positive economic benefit to the local government that would have had permitting authority for the site and related facility. Such economic benefits include but are not limited to employment growth, housing development, infrastructure and environmental improvements, and property taxes and sales and use tax revenues.

Other Application Requirements

To qualify, developers must meet certain prevailing wage and skilled and trained workforce requirements in construction contracts. Developers must also secure contracts with community-based organizations—such as workforce development and training organizations, labor unions, social justice advocates, local government entities, and California Native American tribes—where there is mutual benefit to the parties to the agreement.

An application for certification must be accompanied by a fee of \$250,000 plus \$500 per MW of gross generating capacity or per MW of gross energy storage capacity, as applicable, or \$0.70 per square foot for a thermal generation plant not powered by fossil fuels, subject to a total cap of \$750,000.

Projects that receive certification are subject to an annual fee of \$25,000, with payments due by July 1 of each year in which the facility retains its certification. Petitions to amend an existing project that previously received certification shall be accompanied by a fee of \$5,000.

Long-Duration Storage Program

AB 205 requires CEC to establish and implement the Long-Duration Energy Storage Program to provide financial incentives for projects that have power ratings of at least one MW and are capable of reaching a target of at least eight hours of continuous discharge of electricity "in order to deploy innovative energy storage systems to the electrical grid for purposes of providing critical capacity and grid services." The program authorizes CEC to provide funding to eligible projects. Eligible projects include, but are not limited to, storage facilities that include any of the following:

- Compressed air or liquid air technologies.
- Flow batteries, advanced chemistry batteries, or mechanical energy storage.
- Thermal storage or aqueous battery systems.
- A hydrogen demonstration project.

Pumped storage projects or lithium-ion-based storage technologies are not eligible.

Strategic Reliability Reserve Fund

AB 205 creates the Strategic Reliability Reserve Fund. The fund supports the Distributed Electricity Backup Assets Program, which incentivizes the construction of distributed energy assets to serve as on-call emergency supply or load reduction during extreme events, and the Demand Side Grid Support Program, which incentivizes dispatchable customer load reduction and backup generation operations.

Under AB 205, the California Department of Water Resources (DWR), in consultation with CEC, California Independent System Operator (CAISO), California Public Utilities Commission (CPUC), and California Air Resources Board (CARB), is required to implement projects, purchases, and contracts to support the above-mentioned programs. The bill establishes the DWR Electricity Supply Reliability Reserve Fund to cover these costs. Eligible facilities include the following:

- New emergency and temporary power generators of 5 MW or more.
- New energy storage systems of 20 MW or more that are capable of discharging for at least two hours.
- Generation facilities using clean, zero-emission fuel technology of any size to produce electricity.
- Development of zero-emission generation technologies that can provide at least 50% of their capacity after 8:00 p.m. (after sundown) with an operational date no later than December 31, 2026.

CEC would retain exclusive jurisdiction to certify sites on which facilities for actions undertaken by DWR are proposed to be located. Certification of a site and facilities related to the Strategic Reliability Reserve would be exempt from CEQA. The siting application would undergo expedited review, with the CEC determining whether

to issue a certification no later than 180 days after the application is deemed complete.

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