

What Calif. Bill Could Mean For Battery Energy Storage

By **Chris Kolosov, Whitney Hodges and Brooke Miller** (February 7, 2025)

On Jan. 24 — a week after a large-scale fire at the Moss Landing Power Plant in Monterey County, California — California Assemblymember Dawn Addis, D-Morro Bay, introduced A.B. 303.[1]

If passed, this legislation — also referred to as the Battery Energy Safety and Accountability Act — will affect the development of large-scale battery energy storage system, or BESS, projects in California.

Intended to "improve safety standards and restore local oversight for BESS facilities in California," A.B. 303 would, among other things, limit approval authority to local governmental agencies, require local engagement in the permitting process, and establish mandatory buffer zones between BESS projects and "sensitive receptors." [2]

But A.B. 303 will be subject to review by both houses of the Legislature and the governor. As such, it will likely not be passed into law in its current form.

As currently drafted, A.B. 303 would apply to BESS facilities capable of storing 200 megawatt-hours or more of energy. For such projects, the bill includes restrictive provisions that would:

- Limit where BESS facilities can be developed in California, including on "environmentally sensitive sites";
- Prohibit BESS facilities within 3,200 feet of "sensitive receptors;"
- Exclude developers of BESS facilities — but not of energy storage facilities that use technologies other than battery storage — from applying to the California Energy Commission Opt-In Certification Program under A.B. 205 (2022); [3] and
- Mandate that the California Energy Commission deny all pending BESS projects that are currently under review as of the bill's effective date.

A.B. 303 defines "environmentally sensitive site" to include the following:

- Various areas within the coastal zone, as defined by the California Coastal Act;
- "Prime farmland" or "farmland of statewide importance," as defined by to the U.S. Department of Agriculture land inventory and monitoring criteria, as modified for California, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction;
- Wetlands;



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- Parcels in very high fire hazard severity zones;
- Hazardous waste sites;
- Parcels within a delineated earthquake fault zone;
- Parcels within a special flood hazard area or regulatory floodway;
- Parcels within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps it publishes, unless certain exceptions apply;
- Lands identified for conservation in an adopted natural community conservation plan;
- Habitat for protected species identified as candidate, sensitive or species of special status by state or federal agencies; fully protected species; or species protected by the federal Endangered Species Act, the California Endangered Species Act or the Native Plant Protection Act; and
- Lands under conservation easement.

The bill defines "sensitive receptor" to include the following:

- A residence, including a private home, condominium, apartment or living quarter;
- An education resource, including a preschool, school maintaining transitional kindergarten, kindergarten, or any of grades 1 to 12, daycare center, park, playground, university or college (universities and colleges are subject to some additional criteria);
- A community resource center, including a youth center;
- A healthcare facility, including a hospital, retirement home or nursing home;
- Live-in housing, including a long-term care hospital, hospice, prison, detention center or dormitory; and
- A building housing a business that is open to the public.

California Gov. Gavin Newsom has long been a supporter of clean energy, and ramping up battery energy storage has been a cornerstone of Newsom's energy road map toward the state's ambitious plan to achieve 100% clean electricity by 2045.

Since the beginning of Newsom's administration, the state has increased its battery capacity by 1,250% in an effort to integrate renewable energy, reduce greenhouse gas emissions and enhance grid reliability.[4]

The California Energy Storage Alliance, a group opposed to A.B. 303, has asserted that the bill undermines state-identified objectives by "severely limiting the development of large-scale battery storage projects" and "setting a precedent for exclusionary policies that could

stall innovation and investment in the energy storage sector." [5]

The alliance alleges that, as written, A.B. 303 has the potential to result in significant adverse consequences for California's aforementioned clean energy goals.

Julian Spector, a journalist at clean energy publication Canary Media, has pointed out that the "Moss Landing facility was one of a kind, conceived and designed before modern safety standards were adopted for large grid batteries. Battery safety standards have been updated multiple times since it was built." [6]

According to the American Clean Power Association, the Moss Landing battery installation was housed inside a retrofitted 1950s-era power plant structure, in contrast to nearly all grid batteries installed in the past several years in modular, purpose-built outdoor containers, making Moss Landing "an anomaly among the industry," as "[l]ess than one percent of utility-scale energy storage installations are housed indoors." [7]

According to the project owner, Vistra Corp., the fire was limited to the 300 MW battery installation within the phase 1 portion of the facility, located indoors, while phases 2 and 3, installed in modular containers, were unaffected. [8]

Energy storage fire safety specialist group Energy Safety Response Group reported that the phase 1 project was approved in 2018, before California fire codes were updated to encompass large-scale battery storage, and before today's product standards and certifications were in place for BESS equipment and installation.

For example, the International Fire Code's section on large BESS was not incorporated into the California Fire Code until 2020. Similarly, the National Fire Protection Association's safety standard for stationary battery storage, NFPA 855, was published during the 2020 calendar year. [9]

The phase 1 facility also utilized nickel manganese cobalt chemistry batteries, a high energy density battery developed for electric vehicles. The industry today has already largely moved away from nickel manganese cobalt chemistry batteries to lithium iron phosphate for stationary BESS applications.

Although lithium iron phosphate, like nickel manganese cobalt, can go into thermal runaway, it has a higher thermal runaway onset temperature, and is therefore considered a more stable chemistry. [10]

This being the case, clean energy proponents believe public safety and environmental protection should not be addressed by overly broad, reactionary legislation. [11] Instead, the concerns identified in the aftermath of the Moss Landing incident, per clean energy industry groups, should be addressed through careful regulation, in collaboration with the energy storage industry.

Proponents of the bill, of course, disagree, stating that A.B. 303 establishes reasonable limitations on where BESS facilities can be located in response to communities' distrust of battery storage technology. [12]

A.B. 303 is presently proposed as an urgency statute, meaning that it requires a two-thirds vote to pass but would take effect immediately upon passage — as opposed to taking effect on Jan. 1, 2026, or a later identified date. [13]

Despite being designated an urgency statute, A.B. 303 will be subject to legislative review by both state houses, as well as various committees, and to the governor's review and potential veto. As such, there is a high likelihood that the bill, as presently drafted, will be subjected to modification.

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[1] The fire at the Moss Landing Power Plant, one of the world's largest battery storage facilities, ignited on Jan. 16, 2025, and burned for 5 days. The fire ultimately destroyed around 80% of the batteries inside the building and resulted in evacuation orders for neighboring communities. Officials are demanding that Moss Landing remain offline until an investigation can be completed and major safety improvements implemented. Initial testing from the U.S. Environmental Protection Agency ruled that the levels of toxic gases released by the batteries, including hydrogen fluoride, did not pose a threat to public health during the fire. See Clara Harter, 'Horrible' fire at California lithium battery plant sparks calls for new clean energy rules, Los Angeles Times, Jan. 26, 2025, accessible here: <https://www.latimes.com/california/story/2025-01-26/horrifying-fire-at-california-battery-plant-sparks-call-for-new-clean-energy-rules>.

[2] See Assemblymember Addis press release, Addis Introduces Legislation to Bolster Community Choice & Environmental Protections in Battery Projects, Jan. 24, 2025, accessible here: <https://a30.asmdc.org/press-releases/20250124-addis-introduces-legislation-bolster-community-choice-environmental>.

[3] The Opt-In Certification Program is an optional permitting process through which developers can submit project applications in order to get a permit from the California Energy Commission "in lieu of any permit that would normally be required by the local land use authority and most, but not all, state permits." For a more detailed description of this program, please see a prior article here: <https://www.realestatelanduseandenvironmentallaw.com/2022-ceqa-legislative-recap.html>.

[4] See Gov. Gavin Newsom press release, California Achieves Major Clean Energy Victory: 10,000 Megawatts of Battery Storage, April 25, 2024, accessible here: <https://www.gov.ca.gov/2024/04/25/california-achieves-major-clean-energy-victory-10000-megawatts-of-battery-storage/>. California projects it will need 52,000 MW of energy storage — or 3 times what it has now — by 2045 to meet energy needs while reaching its net-zero emissions goal.

[5] California Energy Storage Alliance, Opposition to Assembly Bill 303, Jan. 24, 2025, accessible here: <https://storagealliance.org/news/opposition-to-assembly-bill-303> ("This legislation is excessive and does nothing to enhance public safety. Instead, it creates unnecessary barriers to the deployment of critical energy storage systems needed to stabilize our grid and support California's transition to a clean energy future").

[6] Julian Spector, Why we don't need to worry too much about the latest grid battery fire, Canary Media, Jan. 27, 2025, accessible here: <https://www.canarymedia.com/articles/energy-storage/moss-landing-fire-reveals-flaws-in-the-battery-industrys-early-designs> ("In this case, the lack of exact copycats is very good news: It means that the design elements that allowed Moss Landing to burn so apocalyptically are not present in newer or forthcoming battery plants").

[7] ACP, U.S. Energy Storage Industry Commitment to Safety & Reliability Summary of the Moss Landing Incident, Jan. 23, 2025.

[8] Andy Colthorpe, Fire at Moss Landing Energy Storage Facility: What we know so far, Energy Storage News, Jan. 24, 2025, accessible at: <https://www.energy-storage.news/fire-at-moss-landing-energy-storage-facility-what-we-know-so-far/>.

[9] Julian Spector, Why we don't need to worry too much about the latest grid battery fire, Canary Media.

[10] Andy Colthorpe, Fire at Moss Landing Energy Storage Facility: What we know so far, Energy Storage News.

[11] "This proposal misses the mark," ACP California executive director Alex Jackson said in a statement. "It takes an over broad approach that will make it harder to keep the lights on in California." Stephanie Zappelli, SLO County legislator pushes battery plant safety bill. Could it kill Morro Bat project?, The San Luis Obispo Tribune, Jan. 25, 2025, accessible here: <https://www.sanluisobispo.com/news/local/environment/article299043895.html>.

[12] Such safety concerns were reflected in local 2024 Morro Bay ballot measure, which intended to block Vistra from obtaining local permits for construction and operation of BESS facilities on a now-defunct power plant. Although that measure passed, it is likely to be of no impact, as the project is being processed through the California Energy Commission Opt-In Program. See Camille von Kaenel, World's largest battery storage site on fire in central California, Jan. 17, 2025, accessible here: <https://subscriber.politicopro.com/article/eenews/2025/01/17/battery-plant-fire-central-california-ee-00198913>.

[13] Urgency statutes are bills affecting the public peace, health or safety. All votes on urgency statutes require two votes — one for the bill itself and one to approve the urgency categorization.