



Senate Bill No. 38

CHAPTER 377

An act to amend Section 761.3 of the Public Utilities Code, relating to energy.

[Approved by Governor October 7, 2023. Filed with Secretary of State October 7, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

SB 38, Laird. Battery energy storage facilities: emergency response and emergency action plans.

Existing law vests the Public Utilities Commission with regulatory authority over public utilities, including electrical corporations. Existing law requires the commission to implement and enforce standards for the maintenance and operation of facilities for the generation and storage of electricity owned by an electrical corporation or located in the state to ensure their reliable operation.

This bill would require each battery energy storage facility located in the state and subject to the requirement described above to have an emergency response and emergency action plan that covers the premises of the battery energy storage facility, as specified. The bill would require the owner or operator of the facility, in developing the plan, to coordinate with local emergency management agencies, unified program agencies, and local first response agencies. To the extent the bill would impose new duties on local government agencies, the bill would create a state-mandated local program. The bill would require the owner or operator of the facility to submit the plan to the county and, if applicable, the city where the facility is located.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the above provisions would be part of the act and a violation of a commission action implementing this bill's requirements would be a crime, the bill would impose a state-mandated local program.

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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 761.3 of the Public Utilities Code is amended to read:

761.3. (a) Notwithstanding subdivision (g) of Section 216 and subdivision (c) of Section 218.5, the commission shall implement and enforce standards for the maintenance and operation of facilities for the generation and storage of electricity owned by an electrical corporation or located in the state to ensure their reliable operation. The commission shall enforce the protocols for the scheduling of powerplant outages of the Independent System Operator.

(b) This section does not authorize the commission to establish rates for wholesale sales in interstate commerce from those facilities, or to approve the sale or transfer of control of facilities if an exempt wholesale generator, as defined in the federal Public Utility Holding Company Act of 2005 (42 U.S.C. Sec. 16451(6)).

(c) (1) (A) Except as otherwise provided in this subdivision, this section does not apply to nuclear powered generating facilities that are federally regulated and subject to standards developed by the Nuclear Regulatory Commission and that participate as members of the Institute of Nuclear Power Operations.

(B) The owner or operator of a nuclear powered generating facility shall file with the commission an annual schedule of maintenance, including repairs and upgrades, updated quarterly, for each generating facility. The owner or operator of a nuclear powered generating facility shall make good faith efforts to conduct its maintenance in compliance with its filed plan and shall report to the Independent System Operator any significant variations from its filed plan.

(C) The owner or operator of a nuclear powered generating facility shall report on a monthly basis to the commission all actual planned and unplanned outages of each facility during the preceding month. The owner or operator of a nuclear powered generating facility shall report on a daily basis to the Independent System Operator the daily operational status and availability of each facility.

(2) (A) Except as otherwise provided in this subdivision, this section does not apply to a qualifying small power production facility or a qualifying cogeneration facility within the meaning of Sections 201 and 210 of Title 11 of the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Secs. 796(17), 796(18), and 824a-3), and the regulations adopted pursuant to those sections by the Federal Energy Regulatory Commission (18 C.F.R. Secs. 292.101 to 292.602, inclusive), nor does this section apply to other generation units installed, operated, and maintained at a customer site exclusively to serve that customer's load.

(B) An electrical corporation that has a contract with a qualifying small power production facility, or a qualifying cogeneration facility, with a name plate rating of 10 megawatts or greater, shall report to the commission maintenance schedules for each facility, including all actual planned and

unplanned outages of the facility and the daily operational status and availability of the facility. Each facility with a name plate rating of 10 megawatts or greater shall be responsible for directly reporting to the Independent System Operator maintenance schedules for each facility, including all actual planned and unplanned outages of the facility and the daily operational status and availability of the facility, if that information is not provided to the electrical corporation pursuant to a contract.

(d) This section shall not result in the modification, delay, or abrogation of any deadline, standard, rule, or regulation adopted by a federal, state, or local agency for the purposes of protecting public health or the environment, including, but not limited to, any requirements imposed by the State Air Resources Board or by an air pollution control district or an air quality management district pursuant to Division 26 (commencing with Section 39000) of the Health and Safety Code. The Independent System Operator shall consult with the State Air Resources Board and the appropriate local air pollution control districts and air quality management districts to coordinate scheduled outages to provide for compliance with those retrofits.

(e) The Independent System Operator shall maintain records of generation and storage facility outages and shall provide those records to the commission on a daily basis. Each entity that owns or operates an electric generating unit in California with a rated maximum capacity of 10 megawatts or greater shall provide a monthly report to the Independent System Operator that identifies any periods during the preceding month when the unit was unavailable to produce electricity or was available only at reduced capacity. The report shall identify the reasons for any such unscheduled unavailability or reduced capacity. The Independent System Operator shall immediately transmit the information to the commission.

(f) This section does not apply to any of the following:

- (1) A facility owned by a local publicly owned electric utility.
- (2) A public agency that may generate electricity incidental to the provision of water or wastewater treatment.
- (3) A facility owned by a city and county operating as a public utility, furnishing electric service as provided in Section 10001.

(g) (1) In order to ensure the safety of employees, emergency responders, and surrounding communities, each battery energy storage facility located in the state and subject to subdivision (a) shall have an emergency response and emergency action plan that covers the premises of the battery energy storage facility, consistent with Sections 142.3 and 6401 of the Labor Code and any related regulations, including the regulatory requirements applicable to emergency action plans pursuant to Section 3220 of Title 8 of the California Code of Regulations.

(2) The emergency response and emergency action plan shall do all of the following:

(A) Establish response procedures for an equipment malfunction or failure.

(B) Include procedures that provide for the safety of surrounding residents, neighboring properties, emergency responders, and the

environment. These procedures shall be established in consultation with local emergency management agencies.

(C) Establish notification and communication procedures between the battery energy storage facility and local emergency management agencies.

(3) The emergency response and emergency action plan may do all of the following:

(A) Consider responses to potential offsite impacts, including, but not limited to, poor air quality, threats to municipal water supplies, water runoff, and threats to natural waterways.

(B) Include procedures for the local emergency response agency to establish shelter-in-place orders and road closure notifications when appropriate.

(4) In developing the emergency response and emergency action plan, the owner or operator of the battery energy storage facility shall coordinate with local emergency management agencies, unified program agencies, and local first response agencies.

(5) The owner or operator of each battery energy storage facility shall submit the emergency response and emergency action plan to the county and, if applicable, the city where the facility is located.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.