Date of Hearing: June 27, 2022

ASSEMBLY COMMITTEE ON TRANSPORTATION
Laura Friedman, Chair
SB 1291 (Archuleta) – As Amended June 20, 2022

SENATE VOTE: 37-0

SUBJECT: Hydrogen-fueling stations: administrative approval

SUMMARY: Requires administrative review of applications for hydrogen-fueling stations and allows for denials based only on health or safety impacts. Specifically, **this bill**:

1) Expands aspects of permit streamlining for Electric Vehicle (EV) charging infrastructure in Planning and Zoning Law to include hydrogen-fueling stations as follows:

    a) States the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of zero-emission infrastructure and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install hydrogen-fueling stations.

    b) States that is a policy of the state to promote and encourage the use of hydrogen-fueling stations and to limit obstacles to their use.

    c) States the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of hydrogen-fueling stations by removing obstacles to, and minimizing costs of, permitting for hydrogen-fueling stations so long as the action does not supersede the building official's authority to identify and address higher priority life-safety situations.

    d) States that the provisions of this bill apply to all cities, including charter cities, because the timely and cost-effective installation of hydrogen-fueling stations is not a municipal affair, but is instead a matter of statewide concern.

    e) Requires a local government to administratively approve an application to install hydrogen fueling stations through the issuance of a building permit or similar nondiscretionary permit; only for applications that satisfy either of the following:

        i) It is zoned for industrial or commercial development and does not contain any residential units; or,

        ii) It was previously developed with service station, an establishment which offers for sale gasoline or other motor vehicle fuel to the public.

    f) Limits review of the application to install a hydrogen-fueling station to the building official's review of whether it meets all health and safety requirements of local, state, and federal law.

    g) Limits the requirements of local law to those standards and regulations necessary to ensure that the hydrogen-fueling station will not have a specific, adverse impact upon the public health or safety.

h) Authorizes the local government to require the applicant to apply for a use permit if the building official of the local government makes a finding that the hydrogen-fueling station could have a specific adverse impact upon the public health or safety.

i) Prohibits a local government from denying an application for a use permit to install a hydrogen-fueling station unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the adverse impact.

j) Authorizes the local government planning commission to appeal the decision of the building official, related to the hydrogen-fueling station application.

k) Requires any conditions imposed on an application to install a hydrogen-fueling station to be designed to mitigate the specific, adverse impact upon the public health or safety at the lowest cost possible.

l) Requires a hydrogen-fueling station to meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

m) Prohibits a local government from conditioning approval for any hydrogen-fueling station permit on the approval of the station by an association, defined as a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

n) Requires a hydrogen-fueling station to meet all applicable safety and performance standards established by:

   i) The California Electrical Code;

   ii) The Society of Automotive Engineers;

   iii) The National Electrical Manufacturers Association;

   iv) Accredited testing laboratories such as Underwriters Laboratories; and,

   v) Rules of the Public Utilities Commission regarding safety and reliability.

2) Defines "hydrogen-fueling station" as the equipment used to store and dispense hydrogen fuel to vehicles according to industry codes and standards that is open to the public.

3) Sunset provisions related to hydrogen-fueling stations on January 1, 2030, while leaving the existing law related to EV charging in place.

EXISTING LAW:

1) Requires counties and cities to administratively approve an application to install EV charging stations through the issuance of a building permit or similar nondiscretionary permit and limits review to whether the station meets all health and safety requirements of local, state, and federal law.

2) Authorizes a county or city to require an applicant to apply for a use permit if the building official makes a finding, based on substantial evidence, that the EV charging station could have a specific, adverse impact upon the public health and safety.

3) Requires the California Energy Resources Conservation and Development Commission (CEC) to allocate funds from the Clean Transportation Program to fund 100 publicly available hydrogen fueling stations, subject to specific conditions including need, and requires annual reporting on its progress.

4) Under Executive Order (EO) B-48-18, establishes a goal of 200 hydrogen fueling stations, 250,000 EV charges, and 10,000 EV fast chargers by 2025.

5) Under EO N-79-20, establishes a goal that 100% of in-state sales of new passenger cars and trucks be zero-emission by 2035 and that 100% of medium- and heavy-duty vehicles in the State be zero-emission by 2045.

6) Requires the Department of Food and Agriculture to establish standards for motor vehicle fuels, including alternative fuels such as hydrogen, which are offered for sale in the state and requires the department, through the Division of Measurement Standards to enforce regulation and standards for motor vehicle fuels and lubricants.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS: California's ambitious zero-emission vehicle (ZEV) goals rely on vehicle manufacturers to develop ZEV technology and vehicles that consumers want. So far, they have been successful, particularly with electric light duty vehicles. More work needs to be done to develop affordable medium- and heavy-duty vehicles, and in these markets, the competition between electric and hydrogen vehicles is unresolved. But it is clear that these vehicles won't be sold without an infrastructure to fuel them, so supporting infrastructure deployment is necessary to support vehicles deployment.

Existing Permit Streamlining for EV Charging: Responding to a patchwork of California's EV permitting structure and the uncertainty it posed to installers, AB 1236 (Chiu and Low), Chapter 598, Statutes of 2015, placed significant new requirements into law regarding applications to install EV charging stations to accommodate growing numbers of battery electric vehicles (BEVs). AB 1236 requires counties and cities to administratively approve an application to install EV charging stations through the issuance of a building permit or similar nondiscretionary permit. Review of an application is limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law.

Requirements of local law are limited to those standards and regulations necessary to ensure that the EV charging station will not have a specific, adverse impact upon the public health or safety. However, a county or city may require an applicant to apply for a use permit if the building official makes a finding, based on substantial evidence, that the EV charging station could have a specific, adverse impact upon the public health and safety. The decisions of the building official may be appealed to the planning commission of the local agency.

AB 1236 prohibits a local agency from denying an application for a use permit to install an EV charging station unless it makes written findings based upon substantial evidence in the record that the proposed installation will have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings must include the basis for the rejection of potential feasible alternatives of preventing the adverse impact. Any conditions imposed on an application to install an EV charging station must be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible. An EV charging station must meet specified applicable health and safety requirements and performance standards.

Progress in EV Charging Station Development: In 2018, Executive Order B-48-18 set a goal of having 250,000 chargers (including 10,000 direct current fast chargers) by 2025. As of January 4, 2021, California has installed more than 70,000 public and shared chargers, including nearly 6,000 direct current fast chargers. The AB 2127 EV Charging Infrastructure Assessment (Assessment) finds that an additional 123,000 are planned, of which about 3,600 are fast chargers, which leaves a gap of about 57,000 installations, including 430 fast chargers, from the 250,000 chargers goal.

For passenger vehicle charging in 2030, the Assessment projects over 700,000 public and shared private chargers are needed to support 5 million ZEVs, and nearly 1.2 million to support about 8 million ZEVs anticipated under Executive Order N-79-20. An additional 157,000 chargers are needed to support 180,000 medium- and heavy-duty vehicles anticipated for 2030.[1]

Progress in Hydrogen-Fueling Station Development: According to the 2021 Annual Assessment of Time and Cost Needed to Attain 100 Hydrogen Refueling Stations in California, California anticipates reaching 100 stations by the end of 2023. With CTP allocating funding to 172 stations (including 16 to be privately funded under CEC agreement) and the private sector announcing an additional seven privately funded stations, the state expects up to 179 stations by 2026. In addition, the one-time appropriation through the California Budget Act of 2021 of more than $600 million General Funds for ZEV infrastructure across light-, medium-, and heavy-duty sectors is anticipated to help the state reach the 200-station goal. When all 179 stations are open, the network will be capable of supporting about 245,000 FCEVs. CEC projects that once 200 stations are open in the state, about 290,000 FCEVs can be supported.[2]

Passenger BEV sales currently outpace FCEV sales. Cumulative sales through the first quarter (Q1) of 2022 are as follows: over 1.1 million BEVs and plug-in hybrid electric vehicles (PHEVs) and 13,000 FCEVs. For Q1 2022 sales: 80,000 BEVs/PHEVs and 826 FCEVs.

Do Hydrogen stations need streamlined permitting? The 2021 Annual Evaluation of FCEV Deployment and Hydrogen Fuel Station Network Development report notes, "in order to further accelerate the future growth of the FCEV population, multiple barriers to adoption will need to

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[1] Alexander, Matt, Noel Crisostomo, Wendell Krell, Jeffrey Lu, and Raja Ramesh. July 2021. Assembly Bill 2127 Electric Vehicle Charging Infrastructure Assessment: Analyzing Charging Needs to Support Zero-Emission Vehicles in 2030 – Commission Report. California Energy Commission. Publication Number: CEC-600-2021-001-CMR.

[2] Baronas, Jean, Belinda Chen, et al. 2021. Joint Agency Staff Report on Assembly Bill 8: 2021 Annual Assessment of Time and Cost Needed to Attain 100 Hydrogen Refueling Stations in California. California Energy Commission and California Air Resources Board. Publication Number: CEC-600-2021-040.

be overcome, including limited model availability, high FCEV prices, high hydrogen fuel prices, and limited consumer awareness." Absent from that list of challenges is the local government permitting process, although the report cites unspecified "delays in station permitting, construction, and opening caused by the COVID-19 pandemic."[3]

Hydrogen-fueling and EV charging are very different. This bill extends permit streamlining that EV charging stations enjoy to hydrogen-fueling stations. EV charging stations and hydrogen-fueling stations may provide similar environmental and clean transportation benefits, but they are fundamentally different classes of development. A single EV charger can be installed in a residential building or a bank of EV chargers can be installed at commercial or industrial properties. EV chargers are integrated into the existing electrical grid and do not require the onsite storage of combustible fuels, maintenance of storage tanks, or routine delivery of fuel. In contrast, hydrogen-fueling stations look and function more like gasoline stations than EV chargers.

Who should establish hydrogen-fueling station safety, reliability, and performance standards? As noted above, hydrogen-fueling and EV charging are not equivalent operations. Therefore certain provisions of this bill should be amended to take into consideration the unique safety, reliability, and performance standards of hydrogen-fueling stations.

The committee recommends substantive amendments to this bill as follows:

Section 65850.7 of the Government Code

(f) (2) An electric vehicle charging station ~~or hydrogen-fueling station~~ shall meet all applicable safety and performance standards established by the California Electrical Code, the Society of Automotive Engineers, the National Electrical Manufacturers Association, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(f) (3) A hydrogen-fueling station shall meet all applicable safety and performance standards established by the Society of Automotive Engineers and accredited nationally recognized testing laboratories, any applicable rules of the state Air Resources Board, Energy Commission and the Department of Food and Agriculture regarding safety, reliability, weights and measures, and guidance established by the Governor's Office of Business and Economic Development as outlined in the Hydrogen Permitting Guidebook.

The committee recommends technical amendments as follows:

Section 65850.7 of the Government Code

(a) (2) It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of zero-emission **vehicle** infrastructure and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install electric vehicle charging and hydrogen-fueling stations.

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[3] California Air Resources Board; "2021 Annual Evaluation of Fuel Cell Electric Vehicle Deployment and Hydrogen Fuel Station Network Development"; September 2021; p. ix.

According to the author, "California is a world leader when it comes to zero-emission vehicle deployment. However, California has focused primarily on plug in [EVs]. Hydrogen fuel cell vehicles are complimentary ZEVs and California needs do more to support their adoption. This bill does that by requiring local governments to expand their existing administrative approval process for the permitting of ZEV infrastructure to include hydrogen-fueling infrastructure."

In support, the California Hydrogen Coalition writes, "[This bill] will ensure hydrogen fueling station permitting is predictable and consistent for developers, thereby supporting the development of additional hydrogen fueling stations in California and supporting the fueling needs of [FCEV] drivers. The bill also provides local control flexibility in instances where conditional use permits are required to protect public safety and health."

Double referral: This bill passed out of the Assembly Local Government Committee on 6/15 with a 8-0 vote. See that policy committee analysis for additional details.

Previous legislation: AB 970 (McCarty), Chapter 710, Statutes of 2021 establishes specific time frames in which local agencies must approve permits for EV charging stations.

AB 2127 (Ting), Chapter 365, Statutes of 2018 requires CEC, working with CARB and the CPUC, to prepare a statewide assessment of the EV charging infrastructure needed to support the levels of electric vehicle adoption required for the state to meet its goals of putting at least 5 million ZEVs on California roads by 2030, and of reducing emissions of greenhouse gases (GHGs) to 40% below 1990 levels by 2030.

AB 1236 (Chiu and Low), Chapter 598, Statutes of 2015 requires counties and cities, including charter cities, to create an expedited permitting and inspection process for EV charging stations.

REGISTERED SUPPORT / OPPOSITION:

Support

California Hydrogen Coalition (sponsor)
Air Products and Chemicals, Inc.
California Hydrogen Business Council
California State Association of Electrical Workers
California State Pipe Trades Council
Coalition of California Utility Employees
Western States Council Sheet Metal, Air, Rail and Transportation

Support If Amended

Oberon Fuels

Opposition

None on file

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