

Date of Hearing: May 12, 2020

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2421 (Quirk) – As Amended March 12, 2020

SUBJECT: Land use: permitting: wireless communications.

SUMMARY: Requires expedited permitting of emergency standby generators for macro cell towers. Specifically, **this bill:**

- 1) Requires an emergency standby generator proposed to be installed within the physical footprint of a macro cell tower site to be a permitted use subject only to local agency administrative review if it meets both of the following requirements:
 - a) The emergency standby generator is rated below 50 horsepower, certified to California emission standards, has a 190-gallon double-wall storage tank, and is mounted on a concrete pad; and,
 - b) The macro cell tower site at which the emergency standby generator is proposed to be installed is an existing site that was previously permitted by the local agency.
- 2) Requires a local agency that receives a completed permit application to install an emergency standby generator that meets the requirements specified above to approve or deny the application within 60 days of submittal of the application, subject to both of the following:
 - a) If, within 10 days of submission, the local agency notifies the applicant in writing that the application is deficient, then the 60-day period shall be tolled until the applicant provides the information requested; and,
 - b) The local agency shall not require any new or different information for the permit applications than it routinely requires for applications for other emergency standby generators.
- 3) Requires a completed application that the local agency has not approved or denied within 60 days of receiving the application or upon expiration of any tolling period to be deemed approved.
- 4) Provides that, if the local agency requires more than one permit application for the installation of an emergency standby generator, all applications submitted concurrently shall be issued within the same 60-day period set forth above.
- 5) Prohibits the local agency from requiring the applicant to submit proof of consent or other authorization from an underlying property owner as part of the initial application for an emergency standby generator permit; however, the applicant shall not install the emergency standby generator until the applicant provides documentation, if required, to the local agency.
- 6) Repeals the provisions of this bill on January 1, 2024.

- 7) Provides the following definitions for the purposes of this bill:
- a) “Emergency standby generator” means a stationary generator used for the generation of electricity that meets the criteria set forth in a specified section of the California Code of Regulations that governs airborne toxic control measures for stationary compression ignition engines;
 - b) “Local agency” means a city, county, or city and county; and,
 - c) “Macro cell tower site” means the place where wireless telecommunications equipment and network components, including towers, transmitters, base stations, and emergency powers necessary for providing wide area outdoor service, are located. A macro cell tower site does not include rooftop, small cell, or outdoor and indoor distributed antenna system sites.
- 8) Finds and declares that the installation of emergency standby generators at wireless telecommunications facility sites as set forth in this bill has a significant public safety impact in California and is a matter of statewide concern and is not a municipal affair as that term is used in the California Constitution. Therefore, this bill applies to all cities, including charter cities.
- 9) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.
- 10) Makes a number of findings and declarations regarding wildfires in California, Public Safety Power Shutoffs (PSPS) as one strategy for preserving public safety and welfare, and the need to enable the rapid deployment of emergency standby generators for wireless infrastructure to ensure public safety communications during PSPS events.

EXISTING LAW:

- 1) Establishes that every county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.
- 2) Provides that a state or local government may not deny, and shall approve, any request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such a tower or base station. Under the FCC rules governing such requests, the approval must be issued within 60 days or the request shall be deemed granted.
- 3) Requires a completed permit application for a collocation or siting permit for a wireless telecommunications facility to be deemed approved if a county or city fails to approve or disapprove the application within a reasonable period of time in accordance with the time periods and procedures established by applicable FCC decisions.
- 4) Provides that the placement or installation of certain wireless facilities, including antennas and related equipment, on or immediately adjacent to a wireless telecommunications facility, is a permitted use not subject to a county or city discretionary permit.

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Bill Summary.** This bill limits permit reviews for specified emergency standby generators for macro cell towers to administrative action only, and creates a shot-clock by which permit reviews must be completed. The proposed generator must be rated below 50 horsepower and certified to California emission standards, have a 190-gallon double-wall storage tank, and be mounted on a concrete pad. The macro cell tower site at which the emergency standby generator is proposed to be installed must be an existing site that was previously permitted by the local agency.

A county or city must approve or deny an application for such a generator within 60 days. If an application is deficient, the county or city has 10 days to notify the applicant, in which case the shot-clock stops until the applicant provides the requested information. A county or city cannot require any new or different information for a permit application than it routinely requires for applications for other emergency standby generators.

If a county or city fails to approve or deny a completed application within 60 days, the application will be deemed approved. If a county or city requires more than one permit application for the installation of a generator, all applications submitted concurrently must be issued within the same 60-day period set forth above.

A county or city may not require an applicant to submit proof of consent or other authorization from an underlying property owner as part of the initial application for a generator permit. However, the applicant must not install the generator until the applicant provides documentation to the local agency, if the local agency requires it.

This bill applies to all counties and cities, including charter cities, and contains a repeal date of January 1, 2024. This bill is sponsored by the author.

- 2) **Author's Statement.** According to the author, “In order to facilitate wireless network upgrades needed to mitigate the impacts of Public Safety Power Shutoffs, this legislation will help enable the rapid deployment of emergency standby generators at macro cell sites. These resources are vital for public safety and welfare to help ensure consumers maintain access to 911 services, wireless emergency alerts, and other public safety communications.

“AB 2421 is a critical component to supporting the efforts of wireless service providers to install emergency standby generators before catastrophic events threaten Californians’ ability to stay connected to emergency services when needed most. Without the short term, narrowly crafted process prescribed in this legislation, widely differing and lengthy permitting requirements across the state could delay these public safety efforts by many months. AB 2421 is focused on improving public safety through power-resilient wireless communications networks.”

- 3) **Background.** Public Safety Power Shutoffs have been part of California’s strategy to prevent wildfires for several years. However, 2019 was a landmark year for PSPS events, which occurred from October 9 to November 1 in about 30 counties in Northern California and several in Southern California and affected all three of the state’s largest power utilities –

Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E). Over the course of the PSPS events, more than 3 million people lost power.

In the wake of tremendous public outcry over the shut-offs and their impacts, the California Public Utilities Commission (PUC) took a number of actions to “address the mistakes and operational gaps identified in the utility’s October 2019 PSPS events and to provide lessons learned to ensure they are not repeated.” These included a series of emergency meetings, investigations, re-evaluations of how utilities use PSPS, ensuring additional consumer protections, and proposing additional PSPS guidelines for utilities to follow.

Most recently, on April 29, 2020, the PUC issued for public comment a proposal that would require large electric investor-owned utilities to accelerate deployment of microgrids and resiliency projects to minimize the impacts of wildfire-caused power outages and PSPS events. The Proposed Decision orders utilities to prioritize, streamline, and expedite microgrids and resiliency projects that could be put in place by September 1, 2020, and requires collaboration with local and tribal governments. The proposal is intended to rapidly develop and deploy projects that could keep electricity on for critical facilities and other customers during power outages. Among other things, the Proposed Decision conditionally approves several resiliency proposals from two utilities. Among the proposals from PG&E is a program to procure temporary, portable generators for use at substations and other key locations of public benefit for the 2020 wildfire season.

While procuring back-up generators for use with utility infrastructure is certainly helpful and part of the solution, this bill also seeks to expedite the installation of back-up power generators for macro cell towers. Given the critical importance of uninterrupted communications during power outages, this bill seeks to protect this communications infrastructure so it will continue to operate in the event the primary source of power goes down during a PSPS event or other power interruption. AT&T reports some delays (from five to 30 months) in local jurisdictions that have required – as part of the permitting process for back-up generators – variances, substantial aesthetic structures, spec sheets and transmission details on existing equipment not affected by a generator application, and documents that the agency already has on file.

In addition to speeding up the permitting process with a shot-clock and deemed approved approach, this bill also prohibits local agencies from requiring a permit applicant to prove up-front that an underlying property owner has provided consent for the installation of a generator. This allows the applicant to pursue the permitting process concurrently with the process of obtaining permission from property owners. The applicant would still be required to provide this evidence to the local agency before installing the generator if the agency requires it as part of the permitting process.

- 4) **Arguments in Support.** The Peace Officers Research Association of California, in support, writes, “This bill would enable California to take timely steps to improve public safety communications in preparation for the coming wildfire seasons and possible power shutoffs by electric utilities. AB 2421 streamlines the local permitting process for back-up power equipment at cell sites, while safeguarding final permitting authority with the local jurisdiction. This legislation would only apply to the installation of generators that are certified to California low emission standards.

“Expediting the deployment of back-up power solutions at wireless sites is essential to public safety. During extended power outages, wildfires, and other emergencies, mobile communications are critical for our members to stay connected, as well as to share potentially life-saving information with the public. Even when commercial power is lost, Californians must be able to maintain access to 911 and receive emergency notifications, including Wireless Emergencies Alerts (WEA) broadcast by our public safety officials.

“California’s Legislature should use every tool available to rapidly prepare for the growing threat of wildfires, power outages, and other disasters. For these reasons, we strongly urge you to support AB 2421.”

- 5) **Concerns.** The Rural County Representatives of California, expressing concerns, write, “AB 2421 sets forth a streamlined local permitting process for siting backup power generators on macro cellular tower sites through January 1, 2024. While RCRC supports the intent of this bill (to expeditiously deploy backup power generation to cell towers to mitigate loss of wireless communication services during an outage), we remain concerned with the ‘deemed approved’ provision of the bill. Specifically, AB 2421 requires approval of a permit application for installing an emergency standby generator at a cell tower site if the local government fails to process (approve or deny) the application within 60 days, even if the proposed project fails to meet the health and safety requirements in current law. Therefore, RCRC requests the following amendments to AB 2421 to ensure that a project must comply with all applicable laws:

Government Code Section 65850.75 (d) A completed application that the local agency has not approved or denied within 60 days of receiving the application or upon expiration of any tolling period shall be deemed approved insofar as it complies with all applicable requirements of this section and state fire, structural, electrical, and other building codes as adopted or amended by the local agency.

“RCRC staff appreciates the ongoing efforts of your staff and the bill’s sponsors in addressing our concerns. We believe that through continued discussions in the next couple weeks, we will be able to come to an agreement that will both allow for swift deployment of backup power in preparation for the approaching fire/PSPS season, while maintaining the ability of local government to protect its residents through approving only projects that meet applicable health and safety standards.”

- 6) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

100 Black Men of Long Beach, Inc.
African American Male Education Network and Development (A2MEND)
American Indian Chamber of Commerce of California
Asian Business Association of San Diego
Asian Pacific Islander American Public Affairs Association (APAPA)
AT&T
AT&T Central Valley Veterans

Beverly Oncology & Imaging
Black Business Association
Black Chamber of Orange County
Boys & Girls Club of El Dorado County Western Slope
Brotherhood Crusade
Burbank Chamber of Commerce
Calaveras County Sheriff's Office
California Asian Pacific Chamber of Commerce
California Association of Highway Patrolmen
California Black Chamber of Commerce
California Hispanic Chambers of Commerce
California State Conference of The National Association for The Advancement of Colored People
Carlsbad Chamber of Commerce
Center for Fathers and Families
Coalition for Responsible Community Development
Community Women Vital Voices
Concerned Citizens Community Involvement
Congress of California Seniors
CTIA
El Dorado County Chamber of Commerce
El Dorado County Sheriff's Office
Escondido Chamber of Commerce
Filipina Women's Network
Fire Safe Council of San Diego County
Fresno Police Officers Association (FPOA)
Frontier Senior Center - AAASCO
Glendale Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Los Angeles African American Chamber of Commerce
Greater Riverside Chambers of Commerce
Greater Sacramento Urban League
Hispanic 100
Inland Empire Economic Partnership (IEEP)
Janet Goeske Foundation
Kheir Clinic
Kings/Tulare Homeless Alliance
Korean American Seniors Association of Orange County
La Cañada Flintridge Chamber of Commerce and Community Association
Lakeside Chamber of Commerce
Lighthouse Counseling and Family Resource Center
Long Beach Area Chamber of Commerce
Los Angeles NAACP
Madera County Sheriff's Office
Mariposa County Sheriff's Office
Meeks Bay Fire Protection District
Monterey County Sheriff's Department
Mother Lode Rehabilitation Enterprises Inc. (MORE)
NAACP

North Tahoe Fire Protection District
Oceanside Chamber of Commerce
Orange County Business Council
Orange County Hispanic Chamber of Commerce
Organization of Chinese Americans
Organization of Chinese Americans, Greater Sacramento Chapter
Oroville Rescue Mission
Pasadena Chamber of Commerce and Civic Association
Pasadena/altadena Ivy Foundation
Peace Officers Research Association of California (PORAC)
Resource Conservation District of Greater San Diego County
Sacramento Asian Pacific Chamber of Commerce
Sacramento Black Chamber of Commerce
Sacramento Hispanic Chamber of Commerce
San Diego Oasis
San Francisco Chamber of Commerce
San Gabriel Valley Economic Partnership
San Marcos Chamber of Commerce
Self-Help for the Elderly
Sf.citi
Sierra College Foundation
Slavic-American Chamber of Commerce
Society for the Blind
Southeast Community Development Corporation
Southern Border Broadband Consortium
Tahoe Prosperity Center
Technet-technology Network
The Arc and United Cerebral Palsy California Collaboration
The Arc of Butte County
The Arc San Francisco
The Village Project
Thinkwatts Foundation
UFCW Local 648
Urban Corps of San Diego County
Veterans Association of North County
Vista Chamber of Commerce
World Institute on Disability

Concerns

American Planning Association, California Chapter
League of California Cities
Rural County Representatives of California

Opposition

None on file

Analysis Prepared by: Angela Mapp / L. GOV. / (916) 319-3958