

Date of Hearing: June 15, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 1291 (Archuleta) – As Amended April 5, 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) Requires a city or county to administratively approve an application for a hydrogen-fueling station through the issuance of a building permit or similar nondiscretionary permit.
 - b) Limits review of an application to the building official's review of whether it meets all health and safety requirements of local, state, and federal law.
 - c) Limits the requirements that may be included in local laws to standards and regulations necessary to ensure that the hydrogen-fueling station will not have a specific, adverse impact upon the public health or safety.
 - d) Allows a city or county to require an applicant to apply for a use permit if the building official makes a finding, based on substantial evidence, that the hydrogen-fueling station could have a specific, adverse impact upon the public health and safety.
 - e) Prohibits a local agency 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 will have a specific, adverse impact upon public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. Specifies that the findings must include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.
 - f) Allows a developer to appeal the permitting decision of a local building official to the planning commission of the city or county.
 - g) Specifies that any conditions imposed on an application to install a hydrogen-fueling station must be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.
 - h) Requires that a hydrogen-fueling station must meet all applicable health and safety standards and requirements imposed by state and local permitting authorities and applicable safety and performance standards established by:
 - i) The California Electrical Code.

- ii) The Society of Automotive Engineers.
 - iii) The National Electric Manufacturers Association.
 - iv) Accredited testing laboratories such as Underwriters Laboratories.
 - v) The Public Utilities Commission.
- i) Prohibits a city or county from conditioning approval for a hydrogen-fueling station permit on the approval of a homeowners association.
- 2) Defines “hydrogen-fueling station” to be the equipment used to store and dispense hydrogen fuel to vehicles according to industry codes and standards that is open to the public.
 - 3) Provides that no reimbursement is required by this bill, pursuant to Section 6 of Article XIII B of the California Constitution, because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this bill.

EXISTING LAW:

- 1) Allows a city or a county to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public, including land use authority.
- 2) Requires, pursuant to Planning and Zoning Law, every city and county to adopt a general plan that sets out planned uses for all of the area covered by the plan, and requires the general plan to include seven mandatory elements, including a land use element.
- 3) Requires major land use decisions by cities and counties, such as development permitting and subdivisions of land, to be consistent with their adopted general plans.
- 4) 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.
- 5) 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.
- 6) Requires the California Energy 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.
- 7) Establishes, under Executive Order B-48-18 a goal of 200 hydrogen-fueling stations, 250,000 EV chargers, and 10,000 EV fast chargers by 2025.

- 8) Establishes, under Executive Order N-79-20 a goal that 100 percent of in-state sales of new passenger cars and trucks be zero-emission by 2035 and that 100 percent of medium- and heavy-duty vehicles in the State be zero-emission by 2045.

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

COMMENTS:

- 1) **Bill Summary and Author’s Statement.** 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 zero emission vehicles 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 zero emission vehicle infrastructure to include hydrogen-fueling infrastructure.”

This bill adds hydrogen-fueling stations to the provisions of existing law that require administrative approvals of EV charging stations and allow for denials only based on health or safety impacts.

This bill is sponsored by the California Hydrogen Coalition.

- 2) **Background.** As an alternative to gasoline-based vehicles, California has more fuel cell electric vehicles (FCEVs)—and the hydrogen-fueling stations necessary to fuel them—than any other state in the nation. In January 2018, Governor Brown signed Executive Order B-48-18, setting targets of 200 hydrogen-fueling stations and 250,000 EV chargers to support 1.5 million zero-emission vehicles (ZEVs) on California roads by 2025. The 2025 target is an interim goal on the state’s path to 5 million ZEVs by 2030 and 100 percent of in-state sales of new passenger cars and trucks as ZEVs by 2035. Although the vast majority of those vehicles are projected to be battery EVs supported by EV chargers, the state currently has approximately 8,000 FCEVs on the roads and 61 hydrogen-fueling stations, according to the CEC’s Zero Emission Vehicle and Infrastructure Statistics dashboard.

FCEVs contain a fuel cell, which converts energy stored as hydrogen to electricity to power the vehicle. Similar to refueling a conventional internal combustion engine, a FCEV can be refueled in less than four minutes and have a range of around 300 miles. These characteristics create the potential for FCEVs to replace conventional medium- and heavy-duty trucks and complement battery EVs by providing vehicles that have advantages pertaining to long-range travel.

The numbers of FCEVs and hydrogen stations have grown in recent years due to various state policies that support the adoption of FCEV technology and infrastructure, beginning with rebates for purchasing FCEVs. Additionally, AB 8 (Perea) Chapter 401, Statutes of 2013, requires the CEC to allocate \$20 million annually, as specified, until there are at least 100 publicly available hydrogen-fueling stations in California. The bill also requires the CEC and the California Air Resources Board (CARB) to annually review and report on progress toward establishing a hydrogen-fueling network that provides the coverage and capacity to fuel vehicles requiring hydrogen fuel that are being placed into operation in the state.

- 3) **Battery EV Charging.** Currently, the dominant type of ZEV is battery-powered EVs, which are refueled at EV charging stations. Responding to the patchwork of California’s EV permitting structure and the uncertainty it posed to installers, AB 1236 (Chiu) Chapter 598, Statutes of 2015, placed significant new requirements into law regarding applications to install EV charging stations. AB 1236 requires, with certain exceptions, 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.

AB 1236 also required, on or before September 30, 2016, every local agency with a population of 200,000 or more, and on or before September 30, 2017, every local agency with a population of less than 200,000, to adopt an ordinance that creates an expedited, streamlined permitting process for EV charging stations.

- 4) **Hydrogen-fueling Stations in California.** As of January 2022, there were about 8,000 FCEVs on the road and 61 hydrogen-fueling stations. This bill requires local governments to expedite hydrogen-fueling stations permits and limits their ability to regulate these stations before the vast majority of jurisdictions in the state have seen a single application—of the 61 stations currently open, almost all are in four counties: Los Angeles (18), Orange (10), Santa Clara (7), and Alameda (6). CEC and CARB’s 2021 AB 8 report goes on to note that “most of the planned development continues to focus on areas where stations have been under development in prior years.”
- 5) **Hydrogen-fueling Station Permitting.** Local governments use their police power to enact zoning ordinances that shape development, such as setting maximum heights for structures, minimum numbers of required parking spaces, setbacks from property lines, traffic flow requirements, and others. These ordinances can include conditions on development to address aesthetics, community impacts, or other particular project- or site-specific considerations. Local governments have broad authority to define the specific approval processes needed to satisfy these considerations. Some projects can be permitted by city or county planning staff “ministerially” or administratively—without further approval from elected officials. But many projects require “discretionary” approvals from local governments, such as a conditional use permit or a change in zoning laws. This process requires hearings by the local planning commission and public notice and may require additional approvals.

Hydrogen-fueling stations must meet state building code, electrical code, energy code, and fire code standards. However, local governments can adopt local building code requirements to address specific climatic, geological, or topographical conditions that are more restrictive than state standards. These requirements are enforced by local building officials and fire authorities. Additionally, hydrogen-fueling stations must comply with local zoning requirements and processes. These requirements can include design review for aesthetics, planning commission hearings, or analysis under the California Environmental Quality Act to identify environmental impacts. The electrical utility, whether private or public, must also approve the project to provide power to the site. Finally, other construction-related permits may be required, such as demolition permits, encroachment permits for operating in the city or county right-of-way, or excavation permits.

- 6) **Policy Consideration.** The Committee may wish to consider the following: 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. From a facilities and permitting perspective, hydrogen-fueling stations look and function more like gasoline stations than EV chargers. In contrast to EV charging stations, which number more than 12,000 in California, only a handful of local agencies have any experience permitting hydrogen-fueling stations.
- 7) **Committee Amendments.** To address the policy considerations noted above, the Committee may wish to amend the bill as follows:
- a) Limit the areas eligible for streamlined permitting for hydrogen-fueling stations to the following locations:
 - i) Parcels that are zoned for industrial or commercial development that do not contain residential units.
 - ii) Parcels that were previously developed with a fueling station.
 - b) Add a sunset date of January 1, 2030 for the provisions related to hydrogen-fueling stations.
- 8) **Previous Legislation.** AB 1236 (Chiu) Chapter 598, Statutes of 2015, requires, with certain exceptions, 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.
- 9) **Double-Referral.** This bill is double-referred to the Transportation Committee.
- 10) **Arguments in Support.** The California Hydrogen Coalition writes in support, “SB 1291 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.”
- 11) **Arguments in Opposition.** None on file.

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

Analysis Prepared by: Hank Brady / L. GOV. / (916) 319-3958