

California Passes Legislation to Address Safety Concerns at Battery Energy Storage Facilities

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In early October, California's governor signed into law [Senate Bill 38](#), which amends Section 761.3 of the California Public Utilities Code to address safety concerns with the booming battery energy storage (BESS) industry in the state. The new law requires that every battery energy storage facility located in California establish an emergency response and emergency action plan that covers the facility. The owner/operator of the facility must coordinate with local emergency management agencies, unified program agencies, and local first responders to develop the response and action plan and must submit the plan to the county and, if applicable, the city where the facility is located. **Specifically, under the new law, the emergency response and action plans shall:**

- Be consistent with Sections 142.3 and 6401 of the Labor Code and any related regulations;
- Be consistent with the regulatory requirements applicable to emergency action plans pursuant to Section 3220 of Title 8 and California Code of Regulations;
- Establish response procedures for an equipment malfunction or failure;
- Include procedures that provide for the safety of surrounding residents, neighboring properties, emergency responders, and the environment (procedures to be established in consultation with local emergency management agencies); and
- Establish notification and communication procedures between the battery storage facility and local emergency management agencies.

Additionally, a facility's emergency response and emergency action plan may consider responses to potential offsite impacts (e.g., poor air quality, threats to municipal water supplies, water runoff, and threats to natural waterways) and may include procedures for the local emergency response agency to establish shelter-in-place orders and road closure notifications (where appropriate).

Many local authorities already require that battery storage facilities develop emergency response and action plans. California's recent changes to the Public Utilities Code could lead to more uniformity and predictability in establishing these sorts of plans going forward. However, it may take local authorities some time to implement and adapt to these regulations, which might result in delays or other hiccups in getting plans approved. Battery storage developers and contractors should be mindful of these new requirements and plan/schedule around the need to develop and have these

plans approved by local authorities.

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National Law Review, Volume XIII, Number 292

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