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## SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Anna M. Caballero, Chair

2021 - 2022 Regular

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**Bill No:** SB 1266  
**Author:** Borgeas  
**Version:** 4/28/22  
**Consultant:** Deitchman

**Hearing Date:** 5/4/22  
**Tax Levy:** Yes  
**Fiscal:** Yes

### ***INCOME TAXES: CREDITS: DESIGNATED WILDFIRE ZONES***

*Creates a tax credit equal to 50 percent of the cost of a qualified generator or a solar battery for qualified taxpayers in designated wildfire zones.*

#### **Background**

**Tax expenditures.** California law allows various income tax credits, deductions, exemptions, and exclusions. The Legislature enacts such tax incentives either to compensate taxpayers for incurring certain expenses, such as child adoption, or to influence certain behavior, such as charitable giving. The Legislature uses tax incentives to encourage taxpayers to do something that but for the tax credit, they would otherwise not do. The Department of Finance is required annually to publish a list of state tax expenditures, currently totaling around \$81.1 billion per year.

**California Fires.** In recent years, California has seen many devastating fires. Over the last decade, California has experienced increased, intense, and record-breaking wildfires throughout the state. These fires have resulted in devastating loss of life and billions of dollars in damage to property and infrastructure. Fires attributed to power lines and electrical equipment comprise nine of the 20 most destructive fires in California history. According to Cal Fire in 2021 alone there were over 8,000 incidents and over 2.5 million acres of scorched land, in 2020 4.5 million acres of land were destroyed.<sup>1</sup>

In November 2018, PG&E was sued by multiple victims of the Camp Fire. In January 2019, PG&E declared bankruptcy resulting from investigative findings that the company's equipment sparked a number of wildfires, including the Camp Fire. On June 20, 2020, the United States Bankruptcy Court for the Northern District of California approved PG&E's bankruptcy plan, which established a Trust and authorized \$13.5 billion in compensation to victims of the 2015 Butte Fire, the 2017 North Bay Fires, and the 2018 Camp Fire.

Although the company has not admitted guilt, Southern California Edison agreed to more than a half-billion dollars in penalties as punishment for its equipment potentially contributing to starting five fires in 2017 and 2018, including the Thomas and Woolsey fires. The Thomas fire, which occurred in December 2017, burned a total of 281,893 acres, destroyed 1,063 structures, and resulted in two fatalities. The total property damage is estimated to be approximately \$2.2 billion. The Woolsey fire, started in November 2018, burned a total of 96,949 acres of land,

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<sup>1</sup> <https://www.fire.ca.gov/incidents/2021/>

destroyed 1,643 structures, and caused three fatalities. The total damage to property is estimated to be approximately \$6 billion. Through mediation, a final settlement was reached on December 22, 2021, and Southern California Edison agreed to pay \$2.2 billion to fire victims<sup>2</sup>.

**Public Safety Power Shutoffs.** To protect the public from potential wildfires, investor-owned utilities have taken extra precautions by implementing Public Safety Power Shutoffs (PSPS) in certain regions. A PSPS, also referred to as de-energization, is a last resort preventative measure designed to reduce the risk of utility infrastructure starting wildfires when the electric utility turns off power to distribution lines. No single factor determines whether an electric utility indicates a PSPS; instead, each electric utility reviews a combination of criteria when determining if power should be turned off. Factors that may determine if power should be turned off for public safety include, but are not limited to:

- High and sustained winds, including red flag warnings issued by the National Weather Service to inform the public, firefighters, and land management agencies that conditions are ideal for wildland fire combustion and rapid spread;
- Low humidity levels and dry vegetation that could serve as fuel;
- Fire threats from electric infrastructure; and,
- On-the-ground observations from the electrical utilities' safety operation center, field crews, and drones.

However, power loss negatively affects communities, with especially serious consequences for vulnerable populations that rely on medical devices powered by electricity and important emergency and public services such as fire departments and water agencies. To prepare for such disruptions, some businesses and community members purchase portable or backup electric generators, which are propane, solar, or diesel-powered devices that provides temporary electrical power.

Backup generators are often subject to air district and state requirements, which vary among California's 35 air districts and the California Air Resource Board (CARB). CARB allows Californians to register their backup generator with the Portable Equipment Registration Program (PERP), a voluntary statewide program, in lieu of obtaining an air district permit. Any machine, including portable generators that utilize internal combustion engines must be certified as "CARB compliant" before sold or used in California meaning that it complies with the air pollution standards set. Such generators run cleaner than non-CARB compliant generators. However, CARB compliant generators still emit pollutants. Following PSPS events last year, CARB determined that PSPS are emergency events, thus allowing Californians to utilize unpermitted and/or unregistered backup generators during a PSPS so long as certain conditions are met (e.g. owner or operator notifies CARB within 24 hours of commencing operation).

Another alternative for use in a power outage is in home batteries. These batteries are charged using solar panels connected to one's home. Most battery storage systems are capable of providing backup power. The length of time that you can power your appliances will depend on the size and rating of the battery and on the amount of power your appliances draw. Although generally viewed as a cleaner source of alternative energy, these battery systems can be costly to install with some costing over \$20,000.

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<sup>2</sup> [SoCal Edison to pay \\$2B settlement in deadly Woolsey Fire | KTLA](#)

The author wants to ease the financial burden on California residents and small businesses who purchase portable or backup electrical generators or solar powered batteries to respond to PSPS events in wildfire zones.

### **Proposed Law**

Senate Bill 1266 creates a tax credit for qualified taxpayers for the purchase of qualified generators or solar batteries in designated wildfire zones. The tax credit is operative for the 2023 – 2028 taxable years.

The bill provides a credit equal to 50 percent of the amounts paid or incurred by a qualified taxpayer in a designated wildfire zone during the taxable year for a qualified expenditure. The total amount of credit allowed per taxable year is limited to either of the following:

- For the purchase of a backup electricity generator, \$3,500 per residence or commercial property;
- For the purchase of a solar battery, \$5,000 per residence or commercial property.

The measure defines the following terms:

“Backup electricity generator” means a standby or portable device that meets all of the following:

- The device can generate at least 10 kilowatts;
- The device is designed and manufactured exclusively for the generation of electricity; and
- The device meets and complies with the State Air Resources Board’s air quality standards for use in California.

“Qualified taxpayer” means a natural person or a small business that incurs qualified expenditure.

“Qualified expenditure” means the purchase of one of the following:

- A backup electricity generator for use in a residence or commercial property in a designated wildfire zone;
- A solar battery for use in a residence or commercial property in a designated wildfire zone.

“Designated wildfire zone” means a territory within a high fire-threat district designated a Tier 3 fire-threat area, as determined by the Public Utilities Commission.

“Small business” means a business that has average annual gross receipts of \$15 Million or less for the previous three taxable years.

The measure allows any unused credits to be carried over for up to seven years, or until the credit is exhausted.

The bill states that the Franchise Tax Board (FTB) must annually report to the Legislature on the number of tax returns claiming the credit and the total amount of credits claimed through the 2028 taxable year.

### **State Revenue Impact**

Pending.

### **Comments**

1. **Purpose of the bill.** According to the author, “To mitigate the loss of power during Public Safety Power Shut-off events, individuals can utilize sources for back up generation such as generators or batteries. These backup sources of power provide individuals and small businesses the ability to meet specific power needs during de-energization events. Although backup generation and batteries are effective tools to mitigate the loss of power, the issue presented is the cost of these items. Backup generators can cost anywhere from \$2,000 to \$7,000 while back up batteries can range from \$10,000 to \$20,000.

“SB 1266 strives to relieve individuals and small businesses in Tier 3 of the Fire Threat Districts of the financial burden associated with purchasing these forms of backup generation. Specifically this bill would create a tax credit not to exceed \$3,500 for the purchase of backup generators and a tax credit not to exceed \$5,000 for batteries for an individual or small business located within Tier 3 of the CPUC Fire Threat Map.”

2. **Windfall.** Tax expenditures produce two different outcomes. First, they reward behavior that would have occurred without the tax benefit, referred to as windfall benefit. Second, they generate certain activity that would not have occurred but for the tax benefit. SB 1266 reduces the effective cost to qualified taxpayers of acquiring portable generators. Some of these taxpayers who would have purchased generators and solar batteries anyway will receive a windfall benefit, and the state will have contributed funding. On the other hand, taxpayers and small businesses who may have not been able to afford or replace backup generators or solar batteries, can now purchase the product at a lower cost due to the credit. However, regardless of whether it is a windfall benefit or if the bill generates the energy resiliency benefit, SB 1266 still has a General Fund impact to the state. The Committee may wish to consider whether enacting a tax credit for qualified taxpayers to purchase backup generators and solar charged batteries will outweigh the cost to the state.

3. **Prior Legislation.** SB 952 (Nielsen, 2020), would have exempted local jurisdictions from state and local sales and use tax for the purchase of backup generators for use during deenergization events. SB 952 was held in the Assembly Revenue and Taxation Committee.

### **Support and Opposition** (5/2/22)

**Support:** Rural County Representatives of California (RCRC)

**Opposition:** California Teachers Association

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