SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 293		
Author:	Eduardo Garcia		
Version:	4/2/2019	**Hearing Date:**	6/5/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	David Ernest García		

SUBJECT: Greenhouse gases: offset protocols

DIGEST: Requires the Compliance Offsets Protocol Task Force to make recommendations related to offsets in the cap-and-trade program and to develop recommendations for the Air Resources Board on the inclusion of aggregation methodologies to allow groups of landowners to jointly develop an offset project.

ANALYSIS:

Existing law:

1) Establishes the Air Resources Board (ARB) as the air pollution control agency in California. (Health and Safety Code (HSC) §39500 et seq.)

2) Requires ARB to ensure that statewide GHG emissions are reduced to at least 40% below the 1990 level by December 31, 2030 (i.e., SB 32); and allows ARB, until December 31, 2030, to adopt regulations that utilize market-based compliance mechanisms (i.e., the cap-and-trade program) to reduce GHG emissions. (HSC §§ 38566, 38562)

3) Establishes the Compliance Offsets Protocol Task Force, with membership appointed by ARB, as specified, to provide guidance to ARB in approving new offset protocols for the cap-and-trade program for the purposes of increasing offset projects with direct environmental benefits (DEBs) in the state while prioritizing disadvantaged communities, Native American or tribal lands, and rural and agricultural regions.

4) Specifies that a covered entity's compliance obligation under the cap-and-trade program may be met by surrendering offset credits, of which no more than one-half may be sourced from projects that do not provide DEBs in state, as follows:

   a) From January 1, 2021 to December 31, 2025, a total of 4%.

b) From January 1, 2026 to December 31, 2030, a total of 6%.

This bill:

1) Requires the Compliance Offsets Protocol Task Force to consider the development of additional offset protocols, including, but not limited to, protocols for the enhanced management or conservation of agricultural and natural lands, and for the enhancement and restoration of wetlands.

2) Requires the Compliance Offsets Protocol Task Force to develop recommendations for ARB on the inclusion of methodologies to allow groups of landowners to jointly develop natural and working lands offset projects under the approved offset protocols, as specified.

Background

1) *Implementing AB 32: The California Global Warming Solutions Act of 2006.* In 2006, AB 32 (Núñez and Pavley, Chapter 488, Statutes of 2006) was signed into law, which requires ARB to determine the 1990 statewide GHG emission level and achieve a reduction in GHG emissions to that level by 2020. In addition to calling on ARB to inventory GHGs in California (including carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride) and approve the aforementioned statewide GHG emissions limit.

   AB 32 also requires ARB to (1) implement regulations that achieve the maximum technologically feasible and cost-effective reduction of GHG emissions; (2) identify and adopt regulations for discrete early-action measures; and (3) prepare and approve a scoping plan, to be updated at least once every five years, to achieve the maximum technologically feasible and cost-effective reduction of GHG emissions. Due to a variety of factors, most importantly being the great recession that started in 2008, California will achieve the goals of AB 32 in advance of the 2020 deadline.

   In 2016, the Legislature approved, and the Governor signed, SB 32 (Pavley, Chapter 249, Statutes of 2016), which requires ARB to ensure that statewide GHG emissions are reduced to at least 40% below the 1990 level by December 31, 2030. This new goal is known as the SB 32 target.

   The following year, AB 398 (E. Garcia, Chapter 135, Statutes of 2017) was enacted to extend the authority of ARB to implement a cap-and-trade program

to reduce GHG emissions throughout the state.

2) *Cap-and-Trade.* The original cap-and-trade program was recommended by ARB as a central approach to flexibly and iteratively reduce emissions over time. Pursuant to legal authority under AB 32, ARB adopted cap-and-trade regulations and those regulations were approved on December 13, 2011.

   Beginning on January 1, 2013, the cap-and-trade regulation sets a firm, declining cap on total GHG emissions from sources that make up approximately 80% of all statewide GHG emissions. Sources included under the cap are termed "covered entities." The cap is enforced by requiring each covered entity to surrender one "compliance instrument" for every emissions unit (i.e., metric ton of carbon dioxide equivalent or $MTCO_2e$) that it emits at the end of a compliance period.

   Two forms of compliance instruments are used: allowances and offsets. Allowances are generated by the state in an amount equal to the cap and may be "banked" (i.e., allowing current allowances to be used for future compliance). An offset is a credit for a real, verified, permanent, and enforceable emission reduction project from a source outside a capped sector (e.g., a certified carbon-storing forestry project). Some fraction of allowances are allocated freely to covered entities, a small portion are set aside as part of an allowance price-containment reserve (a cost-containment mechanism that releases additional allowances into the market to slow price increases), and the rest are auctioned off quarterly.

   Since November 2012, ARB has conducted eight California-only, 13 joint California-Québec, two joint California-Québec-Ontario, and then another three joint California-Québec cap-and-trade auctions (Ontario withdrew from the joint cap-and-trade program after a change in their political leadership). To date, approximately $10.3 billion has been generated by the cap-and-trade auctions and deposited into Greenhouse Gas Reduction Fund (GGRF).

3) *Offsets.* As noted, in addition to allowances, voluntary, additional emission reductions from sources that are outside the cap, called offsets, can be used to meet up to 8% of a facility's compliance obligation through 2020. AB 398 (E. Garcia, Chapter 135, Statutes of 2017) reduced offset limits to 4% from 2021 through 2025 and 6% from 2026 through 2030, and specified that no more than one-half may be sourced from projects that do not provide DEBs in state.

   The offset limits apply to total emissions, not the reduction obligation. In practice, a facility may increase its GHG emissions and purchase offsets

(and/or allowances) to cover excess emissions. Unlike allowances sold at auction, purchase of offsets generates no revenue for the state.

To assure that offsets achieve GHG reductions that are real, permanent, quantifiable, verifiable, additional, and enforceable, ARB recognizes only compliance offsets generated by sources that adhere to a compliance offset protocol adopted by ARB. To date, ARB has adopted protocols for the following six project types: livestock manure management, ozone depleting substances (ODS), urban forests, United States (U.S.) forests, mine methane capture (MMC), and rice cultivation. U.S. forests projects are the largest source of compliance offsets by far, followed by ODS, livestock, and MMC. No compliance offsets have been issued for urban forests or rice cultivation projects.

The vast majority of compliance offsets used to date have been generated by projects located outside of California. Arkansas accounts for about one-third of offsets, from large ODS projects. Another one-third are generated by forest projects in states such as Michigan, New Hampshire, and Ohio. California accounts for about a quarter of offsets, ranging from forest projects on the North Coast to appliance recycling (ODS) in Compton.

While ARB has justified the reliance on compliance offsets as an opportunity for low-cost reductions from outside the cap, others have questioned how offsets, particularly from sources outside the state, might meet the statutory statewide GHG limits or otherwise produce DEBs in California. The "cost containment" justification for the offsets is tempered by the fact that allowances continue to sell at or near the floor price and the potential glut of allowances due to over-allocation portends not only continued low allowance prices, but the risk that the 2030 GHG reduction target will not be met.

4) *Recent concern about offsets from the Legislature.* On May 8, 2019, key leaders on environmental policy in both the Senate and Assembly—including the author of AB 293 and two Members of this Committee—sent a letter to California Environmental Protection Agency (CalEPA) Secretary Jared Blumenfeld and Air Resources Board Chair Mary Nichols on offsets within the cap-and-trade program. These authors raised a "concern that methodological weaknesses in the U.S. Forest Protocol may be undermining its environmental integrity and frustrating California's progress toward its legally binding 2030 greenhouse gas emissions limit, as established by SB 32 (Pavley, Chapter 249, Statutes of 2016)."

The authors also noted that, "a number of recent criticisms suggest that the

[Forest Offset] Protocol's standards may not be consistent with [statutory] requirements. Because of the forest offset program's prominent role and the substantial criticisms that have been made about its performance, a thorough and independent review of the environmental integrity of the U.S. Forest Protocol is needed to give policymakers confidence that the credits the protocol generates are real and contribute to state climate policy goals."

Comments

1) *Purpose of Bill.* According to the author, "when AB 398 extended the Cap-and-Trade program until 2030, it made an important and new distinction between credits that provide a 'direct environmental benefit' and those that did not. This distinction is in direct result to concerns of many stakeholders that most of the offset credits were being issued to projects that did not directly help California meet our important climate targets. Many credits issued to-date may not meet this new threshold, meaning ARB must act quickly to develop new offset protocols and refine existing protocols so compliance entities have options for investment prior to the end of the fourth compliance period. AB 293 hopes to accelerate that process by giving some legislative direction regarding potential protocols that could meet the new 'direct environmental benefit' threshold while providing support to projects that are important to California."

2) *Necessity.* As noted in the background, key leaders on environmental policy in both the Senate and Assembly—including the author of AB 293 and two Members of this Committee—sent a letter to CalEPA and ARB outlining concerns about the veracity of US forest offsets. One concern was that forest projects account for approximately 80% of the offsets generated under the cap-and-trade program, but the protocol does not seem to address leakage adequately (see background for more detail). This calls into question whether the GHG emissions reductions that are assumed to occur through these offsets are being fully realized.

   Also of note, the Compliance Offsets Protocol Task Force, which ARB plans to appoint later this year, is already statutorily directed to make recommendations for more protocols for ARB to consider as a part of the cap-and-trade program. This bill purports to add recommendations for "enhanced management or conservation of agricultural and natural lands, and for the enhancement and restoration of wetlands," but those types of offsets would already have been considered by the Compliance Offsets Protocol Task Force, as would many other types of offsets, such as destroying ODSs.

   It is unclear what, if any, value the proposed language adds to statute.

Additionally, AB 293 requires the Compliance Offsets Protocol Task Force to make recommendations for the "inclusion of methodologies to allow groups of landowners to jointly develop natural and working lands offset projects under the approved offset protocols," but offset projects with multiple owners are also already permitted under the current regulations and protocols.

As such, this provision of AB 293 will result in no change to state policy on offsets.

Finally, further direction provided in the bill requires the Compliance Offsets Protocol Task Force to recommend ways to "lower project transaction costs for participants and enable a greater number of landowners to participate in those projects while protecting the integrity and transparency of those projects." This seems to imply that current costs to participants are unjustifiably high. There is no evidence that ARB has made the offset process unnecessarily expensive, and an attempt to further reduce the resources put into offset verification is worrying given the existing concerns over the veracity of the US forests offset protocol.

A question arises as to the necessity of AB 293.

SOURCE: Author

SUPPORT:

Audubon California
California Association of Resource Conservation Districts
California Climate & Agriculture Network
California Forest Carbon Coalition
Grassland Water District
Midpeninsula Regional Open Space
Planning and Conservation League
Rural County Representatives of California
The Nature Conservancy

OPPOSITION:

None received

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SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 394		
Author:	Obernolte		
Version:	4/2/2019	**Hearing Date:**	6/5/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: California Environmental Quality Act: exemption: egress route project or activity: fire safety

DIGEST: Exempts from CEQA, until January 1, 2025, egress route projects or activities undertaken by a public agency that are specifically recommended by the State Board of Forestry and Fire Protection that improve the fire safety of an existing subdivision if certain conditions are met.

ANALYSIS:

Existing law:

1) The California Environmental Quality Act (CEQA),

    a) Requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration (ND), mitigated negative declaration (MND), or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA guidelines). (Public Resources Code (PRC) §21000 et seq.).

2) Existing law, the Planning and Zoning Law,

    a) Requires cities and counties to prepare and adopt a general plan, including a safety element for the protection of the community from any unreasonable risks associated with, among other things, wildland and urban fires (Government Code (Gov. C.) §65583).

    b) Requires the safety element to address evacuation routes, military installations, peakload water supply requirements, and minimum road widths and clearances around structures as they relate to fire hazards.

3) Requires the State Board of Forestry and Fire Protection (Board), in consultation with the State Fire Marshall, to survey local governments to identify existing subdivisions located in a state responsibility area (SRA, defined as areas of the state where the financial responsibility of preventing or suppressing fires has been determined by the Board to be the responsibility of the state) or a very high fire hazard severity zone (VHFHSZ) without a secondary egress route that are at significant risk and to develop recommendations to improve the subdivision's fire safety (PRC §4290.5). Authorizes the recommendations to include, but not be limited to, the following:

    a) Creating secondary access to the subdivision.
    b) Improvements to the existing access road.
    c) Other additional fire safety measures.

This bill:

1) Exempts from CEQA, until January 1, 2025, an egress route project or activity specifically recommended by the Board that improves the fire safety of an existing subdivision if the following conditions are met:

    a) The subdivision has insufficient egress routes, as determined by the lead agency.
    b) The subdivision is located in either (1) a SRA that is classified as high or very high fire hazard severity zone or (2) locally-designated VHFHSZ.
    c) The location of the project or activity does not contain wetlands or riparian areas.
    d) The project or activity does not harm any species protected by the federal Endangered Species Act, the Native Plant Protection Act, or the California Endangered Species Act.
    e) The project or activity does not cause the destruction or removal of any species protected by an applicable local ordinance.
    f) The project is carried out by a public agency.
    g) The lead agency determines that the primary purpose of the project is fire safety egress.
    h) Any commercial timber harvest is incidental to the project's primary purpose and complies with the Forest Practice Act.
    i) The lead agency determines that the project has obtained, or is able to obtain, all necessary funding and any federal, state, and local approvals within one year of filing the notice of exemption.

j) All roads that comprise the egress route are publicly accessible to vehicular traffic at all times.

2) Requires the lead agency, before determining that a project or activity is not subject to CEQA pursuant to this bill, to hold a noticed public meeting on the project or activity to hear and respond to public comments.

3) Requires the lead agency to file a notice of exemption with OPR and the county clerk in the county in which the project or activity is located.

Background

1) Background on CEQA.

a) *Overview of CEQA Process.* CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions in the CEQA guidelines. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a ND. If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an EIR.

Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Prior to approving any project that has received environmental review, an agency must make certain findings.

b) *What is analyzed in an environmental review?* An environmental review analyzes the significant direct and indirect environmental impacts of a proposed project and may include water quality, surface and subsurface hydrology, land use and agricultural resources, transportation and circulation, air quality and greenhouse gas emissions, terrestrial and aquatic biological resources, aesthetics, geology and soils, recreation, public services and utilities such as water supply and wastewater disposal, and cultural resources. The analysis must also evaluate the cumulative impacts of any past, present, and reasonably foreseeable projects/activities within study areas that are applicable to the resources being evaluated. A study area for a proposed project must not be limited to the footprint of the

project because many environmental impacts of a development extend beyond the identified project boundary.

c) *CEQA provides a hub for multi-disciplinary regulatory process.* An environmental review provides a forum for all the described issue areas to be considered together rather than siloed from one another. It provides a comprehensive review of the project, considering all applicable environmental laws and how those laws interact with one another. For example, it would be prudent for a lead agency to know that a proposal to mitigate a significant impact (i.e. alleviate temporary traffic congestion, due to construction of a development project, by detouring traffic to an alternative route) may trigger a new significant impact (i.e. the detour may redirect the impact onto a sensitive resource, such as a habitat of an endangered species). The environmental impact caused by the proposed mitigation measure should be evaluated as well. CEQA provides the opportunity to analyze a broad spectrum of a project's potential environmental impacts and how each impact may intertwine with one another.

2) *Increasing Threat of Wildfires.* Wildfires are a significant threat in California, particularly in recent years as the landscape responds to climate change and decades of fire suppression. Over 75 percent of forested areas and other woody vegetation types are burning less frequently than historic averages, and fire sizes have increased significantly over the last 17 years. Drought conditions, low snow pack accumulation, and extreme temperature highs have also been prevalent in the last decade and are expected to worsen as climate change continues to alter landscapes and local climates.

These conditions have resulted in the largest, most destructive, and deadliest wildfires on record in California history, all occurring in 2018. Fifteen of the state's 20 largest wildfires have occurred since 2002. The 2018 Mendocino Complex, the state's largest wildfire, burned 1.5 times as many acres as the next largest fire. Fourteen of the state's 20 most destructive wildfires have occurred since 2003; the 2018 Camp Fire destroyed more than three times as many structures as the next most destructive fire. Ten of the state's 20 deadliest wildfires have occurred since 2003, and the 2018 Camp Fire resulted in more than twice as many deaths as the next deadliest fire.

Historically, California's wildfires were less severe, burning fewer acres and destroying fewer structures by factors of two and three, respectively, when compared with modern fire statistics. Additionally, fire seasons have been extending further into the winter months since 2000. The fire sieges in October

and December of 2017 serve as prime examples of the expanding fire season. As environmental conditions become more conducive to larger and more severe wildfires, development in the wildland-urban interface (WUI) is also on the rise. A 2018 study indicates that the number of houses in the WUI increased nationwide by 41 percent between 1990 and 2010.

In response to these changing environmental conditions and the increased risk to California's citizens, former Governor Brown issued EO B-52-18, which mandates an increase in the pace and scale of fire fuel treatment programs to reduce wildfire risk. On March 22, 2019, Governor Newsom proclaimed a state of emergency throughout California ahead of the coming fire season. The Governor directed his administration to immediately expedite forest management projects to protect 200 of California's most wildfire-vulnerable communities.

The emergency proclamation provides the Secretary of Natural Resources and the Secretary of CalEPA discretion to suspend state environmental permitting requirements on a case-by-case basis in order to allow projects to get underway immediately, including suspending requirements to prepare CEQA documents. For each project, CAL FIRE will follow Best Management Practices to avoid impacting any environmentally and culturally sensitive areas within these 35 project areas, including identifying and avoiding sensitive areas.

3) *Local planning.* New houses are being built fastest in the places where they are most likely to burn: the wild fringe of urban areas, where neighborhoods are surrounded by canyons, hills or other open land covered in flammable vegetation. This is especially true in Southern California. Between 1990 and 2010, new houses went up twice as fast on the edge of developed lands than in the region as a whole. Riverside County leads the area with over 190,000 more houses built in high-risk areas during that time period, an increase of about 75%. The planning of communities in a way that reduces fire risk can be achieved through ensuring evacuation routes exist, identifying locations where fire breaks can be put in, and ensuring an adequate water supply exists are important steps to protecting communities from fire risks. The fire hardening of homes with the latest fire resistant material can also mitigate the risk of development in the SRA and VHFHS zones.

Cities and counties are required to adopt a comprehensive general plan with various elements including a safety element for protection of the community from unreasonable risks associated with various hazards, including wildfires. Land use planning incorporates safety element requirements for state SRA and VHFHS zones; requires local general plan safety elements, upon the next

revision of the housing element on or after January 1, 2014, to be reviewed and updated as necessary to address the risk of fire in the SRA and VHFHS zones; requires each safety element update to take into account the most recent version of OPR's "Fire Hazard Planning" document; and requires OPR to include a reference to materials related to fire hazards or fire safety.

4) *Existing development.* Many developments in the SRA and VHFHS zones were constructed prior to building standards and the fire prevention regulations developed by the Board, including limits on dead end roads. These older nonconforming developments are not required to take proactive steps to reduce their fire risk, and could be in jeopardy because their homes are not fire resistant and do not have secondary access roads. Lack of a secondary road is a serious problem that could leave people trapped and unable to escape a wildfire.

Comments

1) *Purpose of Bill.* According to the author, "California has seen record numbers of wildfires in the past few years, which have caused mass amounts of devastation to the residents of this state. In 2017 and 2018 alone, there were over 13,000 wildfires which burned almost 1.4 million acres of the State. Additionally, according to census data, California leads the nation by large numbers when it comes to residents who are wildfire prone with 2,044,800 households at high or extreme risk from wildfires. Texas is a distant second with 715, 300 households.

   The Board of Forestry has been tasked with identifying those communities at high risk of experiencing a wildfire who also lack sufficient egress (exit) routes from their communities, and then making recommendations for how to improve egress in these communities. Given the unpredictability of wildfires, these projects identified by the Board of Forestry are of the utmost importance and must be implemented as soon as possible to prevent more destruction and save lives. People living in these communities need protection now and deserve every effort from the state to expedite these vital projects. This bill addresses this problem by exempting from the burdensome CEQA process these urgent very narrow set of projects recommended by the Board of Forestry to improve fire safety in these fire-prone subdivisions identified as lacking sufficient egress (exit) routes."

2) *Projects eligible for AB 394 exemption.* This bill would aim to fast track certain projects and activities that would improve a community's fire safety that are specifically recommended by the Board for that particular community. These

expedited projects and activities may include creating secondary access to the community, improvements to the existing access road, or additional fire safety measures.

3) *What Is Lost With An Exemption From CEQA?*

It is not unusual for some interests to assert that a particular exemption will expedite construction of a particular type of project and reduce costs. This, however, frequently overlooks the benefits of adequate environmental review where lead and responsible agencies are legally accountable for their actions: to inform decisionmakers and the public about project impacts, identify ways to avoid or significantly reduce environmental damage, prevent environmental damage by requiring feasible alternatives or mitigation measures, disclose to the public reasons why an agency approved a project if significant environmental effects are involved, involve public agencies in the process, and increase public participation in the environmental review and the planning processes.

Because adverse project impacts do not disappear when they are not identified and mitigated, does an exemption result in a direct transfer of responsibility for mitigating impacts from the applicant to the public (i.e., taxpayers) if impacts are ultimately addressed *after* completion of the project?

Despite criticisms that CEQA often results in litigation, CEQA-related litigation is relatively rare. Those citing CEQA and CEQA litigation as a problem do not indicate the result of that litigation. Were significant impacts that were not evaluated in the initial document ultimately addressed? What would have been the result if those impacts had not been mitigated (e.g., flooding, exposure of people to hazards, inadequate public services, congestion).

A lot of changes can happen in a community and environment over time. The short-term, long-term, and/or permanent consequences of a project should be known by the decisionmakers, the project proponent, and the public *before* a project is approved, and mitigated or avoided if possible before it is too late – *CEQA specifically provides for that informed and responsible decisionmaking.* Does the short-term benefit of expediency justify potentially long-term, permanent consequences/damages to the community?

SB 394 does not exempt a specific, identified project, instead exempting any project that is recommended by the Board. Without knowing the specific project, it is difficult to evaluate the potential environmental impacts that will

be unmitigated as a result of the exemption. For example, without an environmental review, how do the local governments know things such as congestion, tribal cultural resources, landslides, soil erosion, water-quality impacts from run-off, etc., have been adequately addressed?

4) *Applicable alternatives.* It should be noted that CEQA already provides alternatives to comprehensive environmental review for minor projects, including road maintenance, which could be applicable to AB 394 projects.

   a) *Statutory exemption for work to repair, maintain, or make minor alterations to existing roadways* if certain conditions are met (PRC §21080.37).

   b) *Categorical exemption for work on existing facilities* where there is negligible expansion of an existing use, specifically including "(e)xisting highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities," (CEQA Guidelines, Section 15301(c)).

   c) *Negative Declaration or Mitigated Negative Declaration May Apply..* If an exemption does not apply, then it should be noted that not all projects subject to CEQA are required to do an EIR. In fact, based on the number of documents submitted to the State Clearinghouse, data shows that most projects do not trigger an EIR.

      A lead agency could prepare an ND if the initial study shows that there would not be a significant effect on the environment. If the initial study shows potentially significant impacts but the applicant revises the project plan, which would avoid or mitigate those impacts, the lead agency could prepare a MND. These types of environmental reviews tend to be less expensive and time-consuming than an EIR.

   d) *Development projects consistent with a general plan.* A road project that has been considered in a local planning EIR would be subject to abbreviated review, or possibly exemption, depending on the project's potential to have a significant effect on the environment (PRC §21083.3).

5) *Identifying and avoiding sensitive areas.* While implementing Governor Newsom's order to expedite the specified forest management projects, CAL FIRE will take certain steps to identify and avoid sensitive natural and archaeological resources. Similar to AB 394, CAL FIRE will avoid disturbing, threatening, or damaging known sites of rare, threatened, or endangered plants

or animals. However, CAL FIRE will also take the following additional environmentally protective steps:

- Avoid damaging known archaeological or historical sites based on information available from the Information Centers of the California Historical Resources Information System within the Department of Parks and Recreation. Cal FIRE will utilize this system during project scoping to evaluate the presence of cultural resources and ensure cultural resource protection by avoiding those sites. Where unmapped resources may be, trained field crews (including but not limited to Registered Professional Foresters) will be onsite to identify possible resource issues ahead of project work as it progresses.
- Have a registered Professional Forester or designee on site during project implementation to assist with resource identification and protection as the projects progress.
- Employ standard Forest Practice Rule best management practices for projects to ensure resource protection and require environmental resource professionals early in project design, including Registered Professional Foresters, environmental scientists, archeologists, hydrologists, soil scientists, fire scientists, and other experts in natural resource protection.

AB 394 would bypass the environmental review for egress route projects and activities, which could potentially cause permanent damage to natural and archaeological resources. Without environmental review, will the Board know of unique circumstances of the area and potential impacts on the environment? While the bill does provide for a noticed public meeting before making a determination that the project is exempt from CEQA, shouldn't the project or activity, at the very least, be held to the same standards and procedures that CAL FIRE is currently employing for the implementation of Governor Newsom's expedited forest management projects?

The committee may wish to amend the bill to require the projects and activities to be subject to the same environmental considerations given to the expedited forest management projects.

Related/Prior Legislation

SB 632 (Galgiani) requires the Board of Forestry and Fire Protection to complete the CEQA review of, and certify, a specified program environmental impact report for a vegetation treatment program by June 30, 2020. SB 632 is in the Assembly pending referral.

AB 2911 (Friedman, Chapter 641, Statutes of 2018) made various changes to fire safety planning efforts, defensible space requirements, and electrical transmission or distribution lines' vegetation clearance requirements with the intent to improve the fire safety of California communities.

DOUBLE REFERRAL

If this measure if approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Natural Resources and Water Committee.

SOURCE: Author

SUPPORT:

California Chamber of Commerce
California Fire Chiefs Association (CFCA)
Civil Justice Association of California
Fire Districts Association of California (FDAC)
County of San Bernardino
Rural County Representatives of California
Southwest California Legislative Council

OPPOSITION:

None received

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SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 762		
Author:	Quirk		
Version:	3/11/2019	**Hearing Date:**	6/5/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: Public health: fish and shellfish: health advisories

DIGEST: This bill requires local health officers to conspicuously post fish and shellfish consumption advisories, issued by the Office of Environmental Health Hazard Assessment (OEHHA), at public access points to waterbodies where contaminated fish and shellfish may be caught and where recreational or subsistence fishing is known to occur. Requires OEHHA to make digital posters of the advisories available in English, Spanish, and other languages that people who commonly fish in the area will understand, and to post the digital posters on OEHHA's website for local health officers' use.

ANALYSIS:

Existing law:

1) Requires the SWRCB, in consultation with OEHHA, to develop a comprehensive coastal monitoring and assessment program for sport fish and shellfish, to be known as the Coastal Fish Contamination Program (Program), to identify and monitor chemical contamination in coastal fish and shellfish and assess the health risks of consumption of sport fish and shellfish caught by consumers. (Water Code (WC) § 13177.5 (a))

2) Requires the SWRCB to consult with DFW, OEHHA, and the Regional Water Boards with jurisdiction over territory along the coast, to determine chemicals, sampling locations, and the species to be collected under the Program. (WC § 13177.5 (b))

3) Requires the SWRCB to contract with OEHHA to prepare comprehensive health risk assessments, based on the data collected by the Program and information on fish consumption and food preparation, for sport fish and shellfish monitored in the Program. (WC § 13177.5 (d))

4) Requires OEHHA, within 18 months of the completion of a comprehensive study for each area by the SWRCB, to submit to the SWRCB a draft health risk

assessment report for that area. Requires OEHHA to update health risk assessments following the reassessment of areas by the SWRCB. (WC § 13177.5 (d))

5) Requires OEHHA to issue health advisories when it determines that consuming certain fish or shellfish presents a significant health risk. Requires the advisories to contain information for the public, and particularly the population at risk, concerning health risks from the consumption of the fish or shellfish. (WC § 13177.5 (e))

6) Requires OEHHA to notify the appropriate county health officers, CDPH, and DFW before the issuance of a health advisory. Requires the notification to provide sufficient information for the purpose of posting signage. (WC § 13177.5 (e))

7) Requires OEHHA to urge county health officers to conspicuously post health warnings in areas where contaminated fish or shellfish may be caught including piers, commercial passenger fishing vessels, and shore areas where fishing occurs. (WC 13177.5 (e))

8) Requires DFW to publish OEHHA's health warnings in its Sport Fishing Regulations Booklet. (WC § 13177.5 (e))

9) Authorizes OEHHA to enjoin and abate nuisances related to matters within its jurisdiction which are dangerous to health; to compel the performance of any act specifically enjoined upon any person, officer, or board, by any law of this state relating to matters within its jurisdiction; and, on matters within its jurisdiction, to protect and preserve the public health. (HSC) § 59009)

10) Authorizes OEHHA to advise all local health authorities, and, when in its judgment the public health is menaced by matters within its jurisdiction, requires OEHHA to control and regulate their actions. (Health and Safety Code (HSC) § 59011)

This bill:

1) Defines "local health officer" as the legally appointed health officer or director of environmental health of the city, county, or city and county, having jurisdiction over the area in which a publicly accessible body of water is located, which may include a coastal area.

2) Defines "site-specific fish or shellfish health advisory" as a consumption advisory regarding fish or shellfish in a specified body of water or area of that body of water, which may include a specified area of coastal waters.

3) Requires, upon issuance by OEHHA of a site-specific fish or shellfish health advisory, a local health officer to conspicuously post health warnings at public access points to locations where contaminated fish or shellfish may be caught, including piers, jetties, lakes, reservoirs, and other areas where recreational or subsistence fishing is known to occur.

4) Requires the local health officer to coordinate with OEHHA, the State Department of Public Health (CDPH), the Department of Fish and Wildlife (DFW), and the appropriate Regional Water Quality Control Board (Regional Water Board) to identify appropriate posting locations and signage.

5) Requires the local health officer to be responsible for maintaining the signage until OEHHA rescinds or revises the relevant site-specific fish or shellfish health advisory.

6) Requires local health officers, for site-specific fish or shellfish health advisories that are issued by OEHHA before January 1, 2020, to post health warnings on or before March 30, 2020.

7) Requires local health officers, for site-specific fish or shellfish health advisories issued by OEHHA after January 1, 2020, to post health warnings within 30 days of notification by OEHHA that a health advisory has been issued.

8) Requires, at a minimum, the health warnings to contain information on the contaminants of concern and consumption guidelines issued by OEHHA.

9) Requires OEHHA to make available on its internet website digital posters of health warnings for each site-specific fish or shellfish health advisory that local health officers may use in meeting their responsibilities under this bill.

10) Requires OEHHA to make the digital posters available in English, Spanish, and other languages that persons who commonly fish in the area will understand, as determined by OEHHA in consultation with the local health officer.

11) Adds the State Water Resources Control Board (SWRCB) and appropriate Regional Water Boards to the list of entities that OEHHA must notify prior to the issuance of a fish or shellfish health advisory.

12) Deletes statute that requires OEHHA to, "urge county health officers to conspicuously post health warnings in areas where contaminated fish or shellfish may be caught including piers, commercial passenger fishing vessels, and shore areas where fishing occurs."

13) Provides that a duty imposed on a local agency pursuant to this bill is mandatory only during a fiscal year in which the Legislature has appropriated sufficient funds, as determined by the Executive Director of the SWRCB, in the annual Budget Act or otherwise, to cover a local agency's costs associated with the performance of the duties imposed by this bill.

Background

1) *Benefits and risks of eating fish.* Fish are an important part of a healthy, well-balanced diet. They provide a good source of protein and vitamins, and are a primary dietary source of heart-healthy omega-3 fatty acids. Omega-3 fatty acids can lower risk of heart disease and may also provide health benefits to developing babies. While eating fish has nutritional benefits, it also has potential risks. Fish can take in harmful chemicals from the water and the food they eat. Chemicals like mercury and PCBs can bioaccumulate in shellfish and fish, and therefore in the people who eat those animals. According to OEHHA, high levels of mercury and PCBs can harm the brain and nervous system. Mercury can be especially harmful to fetuses, infants, and children because their bodies are still developing. PCBs can cause cancer and other harmful health effects.

2) *Current fish advisory program.* The SWRCB and Regional Water Boards are responsible for conducting water quality monitoring in the ocean, bays, estuaries, rivers, lakes, and reservoirs throughout California. Through the Surface Water Ambient Monitoring Program (SWAMP), the SWRCB provides resource managers, decision makers, and the public with information to evaluate the condition of all waters throughout California. This program includes the sampling and collection of fish and shellfish tissue for analysis of constituents of concern that could impact human health through consumption.

   OEHHA evaluates the collected tissue and other data and develops both site-specific and statewide fish and shellfish consumption health advisories. Site-

specific advisories contain recommended safe eating guidelines based on actual chemical concentrations in the fish and shellfish species found in that specific waterbody. Statewide advisories contain general safe-eating guidelines for fish found throughout the state. Both the site-specific and state-wide advisories contain specific consumption guidelines, one for each of the following populations: women 18 - 49 years and children 1 - 17 years; and, women 50 years and older and men 18 years and older. The advisories contain guidelines for consumption of the specific species of fish or shellfish found in that water body.

3) *Fish consumption advisories.* To date, OEHHA has issued fish and shellfish consumption advisories for about 100 waterbodies throughout the state, as well as statewide advisories. The majority of fish consumption advisories in California are issued because of mercury, followed by PCBs, and in a few cases, selenium, polybrominated diphenyl ethers (PBDEs), or some legacy pesticides (pesticides that are no longer used but remain in the environment), such as DDT.

   In 2008, OEHHA published fish contaminant goals (FCGs) and advisory tissue levels (ATLs) for seven common fish contaminants (chlordane, DDTs, dieldrin, methylmercury, PCBs, selenium, and toxaphene). In 2011, OEHHA developed an FCG and ATLs for PBDEs. FCGs and ATLs inform the development of fish and shellfish consumption advisories.

4) *Are fish advisories currently being posted?* Despite the resources expended by the state to collect data and develop the advisories, there is no requirement for posting them. Under current law, OEHHA "urges" local health officers to post the fish consumption advisories it develops, but local health officers decide whether or not to post. An informal survey of local environmental health officers around the state found widely varying posting practices, with some officers posting and actively maintaining durable advisories at the water bodies within their jurisdiction, others posting at some water bodies or with some level of maintenance, and still others not posting at all. The reasons for not posting varied, but included lack of clarity or guidance on the postings and lack of funding. The lack of posting of fish consumption advisories, which provide the public with the most effective "on-the-water" information about the potential human health impacts of eating local fish and shellfish, leaves members of the fishing community vulnerable to contaminants they could avoid.

Comments

1) *Purpose of Bill.* According to the author, "While fish and shellfish can be part of a healthy diet, many fish and shellfish in California's rivers, lakes, and streams are contaminated with high levels of mercury, polychlorinated biphenyl chemicals (PCBs), the pesticide DDT, and other contaminants, making them unsafe to eat in certain quantities. The risks associated with the consumption of fish and shellfish containing chemical contaminants include cancer, neurological damage, and developmental impairment in young children.

   "OEHHA analyzes fish and shellfish tissues in California water bodies, and creates fish and shellfish consumption advisories, or guidelines, that recommend how often people can safely eat the fish or shellfish caught in those water bodies and throughout the state. Unfortunately, these advisories are not always posted, leaving the public unaware of the risks of consuming the fish or shellfish they have caught, even though the state has produced meaningful advisories. This bill requires local health officers to post the fish and shellfish consumption advisories OEHHA has created. It also requires OEHHA to make digital posters of the advisories available in English, Spanish, and other languages that people who commonly fish in the area will understand, and to post the digital posters on OEHHA's website for the use of local health officers and the public. These measures will protect public health by enabling people to make informed decisions about consuming fish they have caught."

2) *Increasing access to critical information on health risks.* AB 762 requires local health officers to conspicuously post fish and shellfish consumption advisories issued by OEHHA at public access points to waterbodies where contaminated fish and shellfish may be caught, including piers, jetties, lakes, reservoirs, the ocean, and other areas where recreational or subsistence fishing is known to occur. Additionally, this bill will require OEHHA to make the digital posters of the advisories available in English, Spanish, and other languages that people who commonly fish in the area will understand, and to post the digital posters on OEHHA's website for local health officers' use.

   This bill will provide members of the recreational and subsistence fishing community with critical information on the health risks associated with fish and shellfish consumption so that they can make informed decisions about the amount of fish and shellfish that they and their families consume.

SOURCE: Author

SUPPORT:

Breast Cancer Prevention Partners
Clean Water Action
Environmental Justice Coalition for Water
Environmental Working Group
Greenaction for Health and Environmental Justice
Natural Resources Defense Council
San Francisco Bay Area Chapter Physicians for Social Responsibility
San Francisco Baykeeper
Sierra Club California
The Sierra Fund

OPPOSITION:

None received

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SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 782		
Author:	Berman		
Version:	5/28/2019	**Hearing Date:**	6/5/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: California Environmental Quality Act: exemption: public agencies: land transfers

DIGEST: Codifies the California Environmental Quality Act (CEQA) categorical exemption for transfers of ownership of interests in land in order to preserve open space, habitat, or historical resources, thereby eliminating the exceptions for project-specific effects which apply to a categorical exemption.

ANALYSIS:

Existing law:

1) Under CEQA, requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration (ND), mitigated negative declaration (MND), or environmental impact report (EIR) for this action, unless the project is exempt from CEQA. (Public Resources Code §21000 et seq.). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the lead agency must prepare a draft EIR. (CEQA Guidelines §15064(a)(1), (f)(1)).

2) Requires the Office of Planning and Research (OPR) to prepare and develop proposed guidelines for the implementation of CEQA by public agencies, then transmit those guidelines to the Secretary of Natural Resources Agency, who must certify and adopt the guidelines. Requires OPR to, at least once every two years, review the guidelines and recommend proposed changes or amendments to the Secretary of the Natural Resources Agency (PRC §21082.4).

3) Requires the guidelines to include a list of classes of projects that have been determined not to have a significant effect on the environment and that are exempt from CEQA (PRC §21084).

4) Includes a categorical exemption for transfers of ownership of interests in land in order to preserve open space, habitat, or historical resources (Guidelines

§15325).

5) Does not make CEQA categorical exemptions absolute and subjects the exemptions to exceptions that ensure the project does not have a significant effect on the environment, including when cumulative impacts of successive projects of the same type and same place over time may be significant or if there is a reasonable possibility that a project will have a significant environmental effect due to unusual circumstances (Guidelines §15300.2).

This bill:

1) Exempts from CEQA all of the following:

   a) The acquisition, sale, or other transfer of interest in land by a public agency for any of the following purposes:

      i) Preservation of natural conditions existing at the time of transfer, including plant and animal habitats.
      ii) Restoration of natural conditions, including plants and animal habitats.
      iii) Continuing agricultural use of the land.
      iv) Prevention of encroachment of development into flood plains.
      v) Preservation of historical resources.
      vi) Preservation of open space or lands for park purposes.

   b) The granting or acceptance of funding by a public agency for these purposes.

2) Specifies that this exemption applies even if physical changes to the environment or changes in the use of the land are reasonably foreseeable consequences of the acquisition, sale, or other transfer of the interests in land, or if the granting or acceptance of funding, provided that environmental review otherwise required by this division occurs before any project approval that would authorize physical changes being made to that land.

3) Requires the lead agency to file a notice with OPR and with the county clerk in the county in which the land is located if the lead agency determines that the activity is not subject to CEQA and the lead agency determines to approve or carry out the activity.

4) Declares that the intent of this bill is to clarify the timing of the environmental review required under CEQA where a public agency is involved in the funding,

acquisition, sale, or other transfer of interests in land for purposes specified in the bill. Declares that it is not the intent to otherwise alter the applicability of CEQA to an action that may cause physical change in the environment.

Background

1) Background on CEQA.

   a) *Overview of CEQA Process.* CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions in the CEQA guidelines. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a negative declaration. If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an EIR.

   Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Prior to approving any project that has received environmental review, an agency must make certain findings. If mitigation measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

   If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the proposed project, the effects of the mitigation measure must be discussed but in less detail than the significant effects of the proposed project.

   b) *What is analyzed in an environmental review?* An environmental review analyzes the significant direct and indirect environmental impacts of a proposed project and may include water quality, surface and subsurface hydrology, land use and agricultural resources, transportation and circulation, air quality and greenhouse gas emissions, terrestrial and aquatic biological resources, aesthetics, geology and soils, recreation, public services and utilities such as water supply and wastewater disposal, and cultural resources. The analysis must also evaluate the cumulative impacts of any past, present, and reasonably foreseeable projects/activities within

study areas that are applicable to the resources being evaluated. A study area for a proposed project must not be limited to the footprint of the project because many environmental impacts of a development extend beyond the identified project boundary. Also, CEQA stipulates that the environmental impacts must be measured against existing physical conditions within the project area, not future, allowable conditions.

c) *CEQA provides hub for multi-disciplinary regulatory process.* An environmental review provides a forum for all the described issue areas to be considered together rather than siloed from one another. It provides a comprehensive review of the project, considering all applicable environmental laws and how those laws interact with one another. For example, it would be prudent for a lead agency to know that a proposal to mitigate a significant impact (i.e. alleviate temporary traffic congestion, due to construction of a development project, by detouring traffic to an alternative route) may trigger a new significant impact (i.e. the detour may redirect the impact onto a sensitive resource, such as a habitat of an endangered species). The environmental impact caused by the proposed mitigation measure should be evaluated as well. CEQA provides the opportunity to analyze a broad spectrum of a project's potential environmental impacts and how each impact may intertwine with one another.

2) *CEQA Guidelines.* The fundamental purpose of the CEQA Guidelines (California Code of Regulations Title 14, §15000 et seq.) is to make the environmental review process comprehensible to the public agencies that administer it, those who are subject to it, and to those for whose benefit it exists. The Guidelines provide objectives, criteria, and procedures for the orderly evaluation of projects and the preparation of Negative Declarations, Mitigated Negative Declarations, and EIRs by public agencies. Also, interpretation of statutory changes and principles advanced by judicial decisions may become incorporated into the Guidelines.

   OPR prepares and develops proposed amendments to the Guidelines at least every two years and transmits them to the Secretary of the Natural Resources Agency. The Secretary is responsible for certification and adoption of, amendments to, the Guidelines.

3) *What is a categorical exemption?* A categorical exemption is different than other exemptions (e.g. statutory or emergency) because if an exception to a categorical exemption applies, then the project cannot be exempt. Exceptions

to a categorical exemption include:

a) *Location.* Consideration of where the project is located – a project that is ordinarily insignificant in its impact to the environment may be significant in a particularly sensitive environment.

b) *Cumulative impact.* Although a particular project may not have a significant impact, the impact of successive projects, of the same type, in the same place, over time is significant.

c) *Unique circumstances.* Although a project may otherwise be exempt, there is a reasonable possibility that the project will have a significant effect due to unusual circumstances (e.g. historical or scenic resource).

4) *Existing Categorical Exemption.* Class 25 of the categorical exemptions consists of transfers of ownership of interests in land in order to preserve open space, habitat, or historical resources (Guidelines Sec. 15325), including, but not limited to:

a) Acquisition sale, or other transfer of areas to preserve the existing natural conditions, including plant or animal habitats.
b) Acquisition, sale, or other transfer of areas to allow continued agricultural use of the areas.
c) Acquisition, sale, or other transfer of areas to allow restoration of natural conditions, including plant or animal habitats.
d) Acquisition, sale, or other transfer to prevent encroachment of development into flood plains.
e) Acquisition, sale, or other transfer to preserve historic resources.
f) Acquisition, sale, or other transfer to preserve open space or lands for park purposes.

Comments

1) *Purpose of Bill.* According to the author,

"California has made preservation and conservation of natural and working lands a high priority to ensure our future water supply and water quality, habitat, and climate goals. However, the lack of certainty regarding the application of CEQA is putting at risk efforts to preserve such lands. Accordingly, AB 782 would codify a CEQA exemption for the transfer of ownership, or funding thereof, of property by a public agency in order to preserve open space, habitat, or historical resources. The proposed exemption

would be conditioned on any future physical changes to the land complying with CEQA. The proposed exemption under this bill is based on the existing CEQA Guidelines and the effect of the change would not reduce the environmental review of physical changes to land, but rather clarify the timing of environmental review."

2) *Need for the bill.* According to the sponsor, while the existing categorical exemption for transfers of ownership interests in land to preserve open space, agriculture, habitat, or historical resources has made it possible to conserve and protect valuable resource lands, recent lawsuits have created hurdles and uncertainty for public agencies seeking to acquire sensitive and threatened lands for open space and other conservation purposes. Some courts have held that public agencies have violated CEQA by simply agreeing to purchase, or applying to financing to purchase, property without analyzing the environmental impacts of potential future preservation, restoration, and public park activities. According to the sponsor, courts have used the agencies' applications for grant funding, which must specify the purposes of the funding, as evidence that the agency already committed to specific restoration and preservation activities that could affect the environment. In actuality, the agencies typically have not committed to any particular restoration activities and do not yet have sufficiently detailed restoration plans to allow for meaningful CEQA review.

   AB 782 would help address this uncertainty by clarifying that public agencies may acquire land for conservation purposes without first conducting an environmental review, even if the acquisition could reasonably result in physical changes to the environment or changes in the use of the land, as long as environmental review otherwise required occurs before project approval.

SOURCE: California Council of Land Trust

SUPPORT:

California Council of Land Trust (sponsor)
American Farmland Trust
American Planning Association California
Audubon California
Bay Area Open Space Council
Bear Yuba Land Trust
Big Sur Land Trust
Bolsa Chica Land Trust
California Climate & Agriculture Network

California Greenworks
California League of Conservation Voters
California ReLeaf
California State Parks Foundation
California Waterfowl
California Wilderness Coalition
Civil Justice Association of California
Community Alliance with Family Farmers
Eastern Sierra Land Trust
EcoFarm
Endangered Habitats League
Friends of the LA River
Grasslands Water District
Hills for Everyone
Land Trust of Santa Cruz County
Los Angeles County Business Federation (BizFed)
Los Angeles Waterkeeper
Madera Coalition for Community Justice
Midpeninsula Open Space District
Mountains Recreation & Conservation Authority
Napa Open Space District
National Parks Conservation Association
North East Trees
Occidental Arts & Ecology Center
Our City Forest
Pacific Forest Trust
Peninsula Open Space Trust
Placer Land Trust
Planning and Conservation League
Public Health Advocates
San Francisco Parks Alliance
Santa Clara Open Space Authority
Save Mount Diablo
Save The Redwoods League
Sierra Business Council
Sierra Club California
Sierra County Land Trust
Sierra Foothill Conservancy
Sierra Nevada Alliance
South Yuba River Citizens League
The Nature Conservancy
The River Project

The Trust for Public Land
Tree People
Trout Unlimited
Truckee Donner Land Trust
Wild Farm Alliance

OPPOSITION:

None received

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SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 827		
Author:	McCarty		
Version:	5/23/2019	**Hearing Date:**	6/5/2019
Urgency:	No	**Fiscal:**	No
Consultant:	Genevieve M. Wong		

SUBJECT: Solid waste: commercial and organic waste: recycling bins

DIGEST: Requires commercial waste generators and organics waste generators that provide customers access to the business to provide customers with a recycling bin to collect materials purchased on the premises that are visible, easily accessible, and clearly marked.

ANALYSIS:

Existing law, the Integrated Waste Management Act (IWMA):

1) Establishes a state recycling goal of 75% of solid waste generated by diverting from landfill disposal by 2020 through source reduction, recycling, and composting (Public Resources Code (PRC) § 41780.01).

2) Requires each local jurisdiction to divert 50% of solid waste from landfill disposal through source reduction, recycling, and composting (PRC §41780).

3) Requires commercial waste generators, including multi-family dwellings, to arrange for recycling services and requires local governments to implement commercial solid waste recycling programs designed to divert solid waste from businesses (PRC §§42649.2, 42649.3).

4) Requires generators of specified amounts of organic waste (food waste and yard waste) to arrange for recycling services for that material and requires local governments to implement organic waste recycling programs designed to divert organic waste from those businesses generating organic waste (PRC §§42649.81, 42649.82).

5) Establishes methane emission reduction goals that include targets to reduce the landfill disposal of organic waste by 50% by 2020 and 75% by 2025 from the 2014 level to reduce greenhouse gas (GHG) emissions. Requires the Department of Resources Recycling and Recovery (CalRecycle), in consultation with the Air Resources Board (ARB), to adopt regualtions to

achieve the organics reduction targets, which go into effect in 2022 (Health & Safety Code §39730.6, PRC §42652.5).

6) Requires each local jurisdiction to prepare and adopt a source reduction and recycling element (SRRE) with primary emphasis on implementation of all feasible source reduction, recycling, and composting programs while identifying the amount of landfill and transformation capacity that will be needed for solid waste that cannot be reduced at the source, recycled, or composted. (PRC §§41000 et seq, 41300 et seq).

7) Requires each jurisdiction to submit a report, as specified, to CalRecycle summarizing its progress in reducing solid waste (PRC §41821).

This bill:

1) Requires commercial waste generators and organics waste generators that provide customers access to the business to provide customers with a recycling bin to collect materials purchased on the premises that are visible, easily accessible, and clearly marked with educational signage indicating what is appropriate to place in the bin.

2) Excludes full-service restaurants.

Background

1) *Solid waste in California.* For three decades, the Department of Resources Recycling and Recovery (CalRecycle) has been tasked with reducing disposal of municipal solid waste and promoting recycling in California through the IWMA. Under IWMA, the state has established a statewide 75 percent source reduction, recycling, and composting goal by 2020 and over the years the Legislature has enacted various laws relating to increasing the amount of waste that is diverted from landfills (see Related/Prior legislation below). According to CalRecycle's State of Disposal and Recycling in California 2017 Update, 42.7 million tons of material were disposed into landfills in 2016.

Comments

1) *Purpose of Bill.* According to the author,

"California has set the ambitious goal of diverting 75% of organic waste from landfills by 2025. In practical terms, this will mean that in 5 years Californians will have to learn how to properly sort their waste and understand what is and

isn't compostable. This is no easy task. Given how often we eat out of the home, restaurants are a great place to start. AB 827 is a win-win, it will reduce GHGs, and help Californians learn how to properly sort their waste, and allow all of us to make climate smart choices."

2) *Ensuring statewide consistency.* Although it is within each local jurisdiction's discretion on how it wishes to implement its integrated waste management plan, and recyclability of specific materials varies between jurisdictions, it may serve the public to maintain some level of consistency between cities and counties. Consistency between businesses will help avoid consumer confusion and hopefully increase the amount of waste that is properly disposed of and diverted from landfills.

   The committee may wish to amend the bill to require CalRecycle to develop, by January 1, 2021, recycling bin and educational signage guidelines that a commercial waste generator or organics waste generator may choose to utilize in implementing the requirements of the bill.

Related/Prior Legislation

AB 901 (Gordon, Chapter 746, Statutes of 2016) updates recycling and composting reporting requirements and streamlines diversion and disposal reporting requirements.

SB 1383 (Lara, Chapter 395, Statutes of 2016) established targets to achieve a 50% reduction in statewide disposal of organic waste by 2020 and a 75% reduction by 2025. SB 1383 also requires CalRecycle to adopt regulations to achieve those organic waste targets and to recover no less than 20% of currently disposed edible food for human consumption by 2025.

AB 1826 (Chesbro, Chapter 727, Statutes of 2014) requires businesses and multi-family residences to recycle their organic waste and requires local jurisdictions to implement organic waste recycling programs to divert organic material away from landfills.

AB 341 (Chesbro, Chapter 476, Statutes of 2011) established the statewide 75% recycling goal by 2020, requires local jurisdictions to implement commercial recycling programs to divert recyclable material away from landfills and requires commercial generators and multi-family residences to arrange for recycling services.

SOURCE: Californians Against Waste

SUPPORT:

Californians Against Waste (sponsor)
Association of Compost Producers
Recology
RecycleSmart
Republic Services, Inc.

OPPOSITION:

California Restaurant Association

ARGUMENTS IN SUPPORT: According to the bill's sponsor, Californians Against Waste,

California's tapestry of newly-enacted recycling laws will expand recycling and composting statewide, and, if successful, are projected to create over a hundred thousand new jobs in the state. However, this all hinges on convenience and consistent access to recycling where people live, work, and play. Consumers should come to expect that an aluminum can goes into a recycling bin and a banana peel goes into a compost bin anywhere they go. These practices becoming second nature is crucial to reducing contamination and maximizing participation.

"Additionally, California's recycling industry faces an existential crisis because of the loss of many overseas markets for recyclables. The days of shipping mixed materials overseas for sorting are numbered, and the ongoing viability of the recycling industry will rely on the production of cleaner feedstocks with fewer contaminants. The clear and consistent consumer-facing signage proposed in this bill is an important part of keeping our recyclable clean (and ultimately valuable).

ARGUMENTS IN OPPOSITION: According to the California Restaurant Association,

"We are concerned with our members ability to comply with AB 827 given the space limitations restaurants have. Restaurants have a limited amount of physical space and extremely little, if any, is not already being utilized in the kitchen or for customer dining. There would be a cost impact, possible construction needs, and logistical hurdles upon our members to redesign their individual waste receptacle systems to comply with AB 827."

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SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 1180		
Author:	Friedman		
Version:	3/28/2019	**Hearing Date:**	6/5/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: Water: recycled water

DIGEST: This bill requires the State Water Resources Control Board (SWRCB) to update by January 1, 2023, the uniform statewide criteria for nonpotable recycled water uses established in Title 22 of the California Code of Regulations.

ANALYSIS:

Existing law:

1) Defines "recycled water" as water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource. (Water Code (WC) § 13050(n))

2) Makes legislative findings that a substantial portion of the future water requirements of this state may be economically met by beneficial use of recycled water. Finds that the utilization of recycled water by local communities for domestic, agricultural, industrial, recreational, and fish and wildlife purposes will contribute to the peace, health, safety and welfare of the people of the state. States that the use of recycled water constitutes the development of "new basic water supplies," as defined. (WC § 13511)

3) Requires the SWRCB to establish uniform statewide recycling criteria for each varying type of use of recycled water where the use involves the protection of public health. (WC § 13521)

4) Makes legislative findings that the use of potable domestic water for nonpotable uses, including, but not limited to, cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses, is a waste or an unreasonable use of the water if recycled water is available. (WC § 13550)

5) Requires the SWRCB, on or before December 31, 2023, to adopt uniform water recycling criteria for direct potable reuse through raw water augmentation. (WC § 13561.2)

6) Requires the SWRCB, on or before December 31, 2013, to adopt uniform water recycling criteria for indirect potable reuse for groundwater recharge. (WC § 13562 (a)(1))

7) Requires the SWRCB, on or before December 31, 2016, to develop and adopt uniform water recycling criteria for surface water augmentation. (WC § 13562 (2) (A))

8) Requires the SWRCB, no later than June 30, 2014, to adopt, by emergency regulations, requirements for groundwater replenishment using recycled water. (WC § 13562.5)

9) Requires the SWRCB, on or before January 1, 2020, to adopt standards for backflow protection and cross-connection control. (Health and Safety Code (HSC) § 116407 (a))

10) Authorizes the SWRCB to adopt standards for backflow protection and cross-connection control through the adoption of a policy handbook that is not subject to the Administrative Procedures Act. (HSC § 116407 (b))

11) Requires the water supplier to protect the public water supply from contamination by implementation of a cross-connection control program. (California Code of Regulations (CCR), Title 17, §7584)

12) Establishes uniform statewide criteria for recycled water. (CCR, Title 22, § 60301 et seq)

This bill:

1) Requires the SWRCB to update by January 1, 2023, the uniform statewide criteria for nonpotable recycled water uses established in Title 22 of the California Code of Regulations.

2) Provides the January 1, 2023 deadline is only mandatory if the Legislature appropriates sufficient funds, as determined by the executive director of the SWRCB.

3) Requires the SWRCB, if it adopts standards for backflow protection and cross-connection control through the adoption of a policy handbook, to include provisions for the use of a swivel or changeover device to supply potable water to a dual-plumbed system during an interruption in recycled water service.

4) Requires the allowable use of a swivel or changeover device to be consistent with any notification and backflow protection provisions contained in the policy handbook.

5) Makes legislative findings about the benefits of, and state law regarding, recycled water and backflow protection and cross-connection control.

Background

1) *Recycled water*. Water recycling, also known as reclamation or reuse, is an umbrella term encompassing the process of treating wastewater and storing, distributing and using recycled water. Recycled water means water that, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource.

   Recycled water is most commonly used for nonpotable (not for drinking) purposes, such as agriculture, landscape, public parks and golf course irrigation. Other nonpotable applications include cooling water for power plants and oil refineries; water for industrial processes for facilities such as paper mills and carpet dyers; toilet flushing; dust control; construction activities; concrete mixing; and artificial lakes.

   On December 11, 2018, the SWRCB adopted Resolution No. 2018-0057, amending the Recycled Water Policy. The Amendment will take effect once approved by the Office of Administrative Law. The amendment sets the goal of increasing the use of recycled water from 714,000 acre-feet per year in 2015 to 1.5 million acre-feet per by 2020 and to 2.5 million acre-feet per by 2030. It also sets a goal of maximizing the use of recycled water in areas where groundwater supplies are in a state of overdraft, to the extent that downstream water rights, instream flow requirements, and public trust resources are protected.

2) *Recycled water regulation in California,* The Uniform Statewide Recycling Criteria includes requirements for recycled water quality and wastewater treatment for the various types of allowed recycled water uses in California.

For nonpotable reuse applications, there are four types of recycled water based on levels of treatment. The level of treatment used is based on the intended use of the recycled water. Non-disinfected secondary recycled water is water with the lowest level of treatment, suitable for applications that have minimal public exposure levels, such as irrigation for fodder crops. Disinfected tertiary recycled water is treated to higher levels sufficient for applications with more public exposure, such as the irrigation of parks, use in decorative fountains, or artificial snowmaking for commercial outdoor use. The regulatory requirements for nonpotable uses of recycled water have not been updated since 2000.

According to the author, some examples of needed non-potable Title 22 updates include:

a) Revising "outdoor eating area" restrictions to clarify that recycled water can be used in parks with picnic tables, etc.;
b) Revising dual plumbing requirements so food processing or beverage facilities (such as breweries) or buildings with cafeterias can have their restrooms dual plumbed. Continue prohibition on use in the food processing area;
c) Adding additional allowable recycled water uses such as for ponds, vehicle washing, pressure testing, and approved fill stations; and
d) Clarifying that the use of recycled water for homeowner's association common areas where potable water is used for irrigation of individual residences does not constitute a dual plumbed site.

3) *Backflow.* Backflow is the undesirable reversal of the flow of liquid, gas, or solid into the potable water supply. Drinking water distribution systems contain points called cross-connections where nonpotable water can be connected to potable sources. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices, or any other temporary or permanent connecting arrangements through which backflow may occur are considered to be cross-connections.

Water supply systems are maintained at a pressure significant enough to enable water to flow from the tap; however, when pressure fails or is reduced, which may happen if a water main bursts, pipes freeze, or there is unexpectedly high demand on the water system such as an emergency firefighting water drawdown, water or substances from the ground, storage, or other sources may be drawn up into the system. Additionally, nonpotable substances may be pushed into a potable water supply if the pressure in the downstream piping system exceeds the pressure in the potable water system. Either of these backflow conditions can enable contaminated water or substances to enter the

potable water distribution system, potentially endangering public health and safety.

4) *Cross-connection control and backflow regulation in California.* The California Code of Regulations, Title 17, contains the fundamental components of California's regulatory requirements for cross-connections and backflow prevention. The Department of Health Services promulgated the existing cross-connection and backflow regulations in Title 17 in 1987, when that department administered the state's drinking water program. The cross-connection and backflow regulations have not been updated since 1987.

   In 2017 the legislature passed and Governor Brown signed AB 1671 (Caballero, Chapter 533, Statutes of 2017), which requires the SWRCB to, on or before January 1, 2020, adopt standards for backflow protection and cross-connection control. AB 1671 authorizes the SWRCB to adopt standards for backflow protection and cross-connection control through the adoption of a policy handbook that is not subject to the requirements of the Administrative Procedure Act.

   The SWRCB indicates that it is on track to adopt standards, through the adoption of a policy handbook, for backflow protection and cross-connection control by January 1, 2020. AB 1180 requires the SWRCB, if it adopts standards for backflow protection and cross-connection control through the adoption of a policy handbook, to include provisions for the use of a swivel or changeover device to supply potable water to a dual-plumbed system during an interruption in recycled water service.

   The SWRCB relays that it is including the use of swivel or changeover devices in its upcoming backflow protection and cross-connection control standards, on track to be adopted by January, 2020.

Comments

1) *Purpose of Bill.* According to the author, "The California Code of Regulations, Title 22 regulates the use of recycled water in California. The regulations for California's vast network of purple pipes, which provide recycled water for non-potable uses in every county in the state, have not been updated for 19 years. An update to these regulations, incorporating the knowledge and lessons learned from nearly two decades of non-potable water recycling, will help the state to achieve its ambitious goals for recycled water use.

"It also promotes recycled water for dual plumbed buildings and CII uses by specifically allowing for a changeover device, or "swivel ell," so that building owners can easily switch back and forth between potable and non-potable water when required for testing or other recycled water shutdowns. The ability to easily and cost-effectively make the switch to potable water will eliminate a barrier for building owners to bring recycled water used for landscape irrigation inside their buildings. Currently, Title 17 of the California Code of Regulations requires an air gap assembly for this purpose, which is costly and generally impractical for use in a building."

Related/Prior Legislation

SB 966 (Weiner, Chapter 890, Chapters of 2018). Requires the SWRCB to develop standards for onsite nonpotable water treatment and reuse and authorizes local jurisdictions to adopt programs to permit onsite nonpotable water treatment and reuse using those standards.

AB 574 (Quirk, Chapter 528, Statutes of 2017). Requires the SWRCB to, on or before December 31, 2023, adopt uniform water recycling criteria for potable reuse through raw water augmentation.

AB 1671 (Caballero, Chapter 533, Statutes of 2017). Requires the SWRCB to, on or before January 1, 2020, adopt standards for backflow protection and cross-connection control.

SB 740 (Weiner, 2017). Would have required the SWRCB, on or before December 1, 2018, and in consultation with other state agencies, to adopt regulations to provide comprehensive risk-based standards for local permitting programs for onsite water recycling. This bill was held in the Senate Appropriations Committee.

SB 163 (Hertzberg, 2016). Would have required, by January 1, 2023, holders of National Pollutant Discharge Elimination Systems permits to submit a plan to the SWRCB for the beneficial reuse of treated wastewater that would otherwise be discharged through ocean or bay outfalls. Would have required, by January 1, 2033, NPDES permit holders to beneficially reuse at least 50% of treated wastewater that would otherwise be discharged through ocean or bay outfalls. This bill was held in the Assembly Environmental Safety and Toxic Materials Committee.

SB 322 (Hueso, Chapter 637, Statutes of 2013). Adds additional requirements to the investigation and expert panel requirements in SB 918 (Pavley, Chapter 700, Statutes of 2010).

SB 918 (Pavley, Chapter 700, Statutes of 2010). Requires the Department of Public Health (the responsibility for recycled water has since been transferred to the SWRCB) to adopt uniform water recycling criteria for indirect potable water reuse for groundwater recharge by December 31, 2013; to develop and adopt uniform water recycling criteria for surface water augmentation by December 31, 2016; and, to investigate and report on the feasibility of developing uniform water recycling criteria for direct potable reuse.

SOURCE: WateReuse California

SUPPORT:

Association of California Water Agencies
California Municipal Utilities Association
California Special Districts Association
East Bay Municipal Utility District
Las Virgenes - Triunfo Joint Powers Authority
Las Virgenes Municipal Water District
Natural Systems Utilities
Orange County Water District
Russian River Brewing Company
San Diego Water Authority
Santa Clara Valley Water District
Triunfo Sanitation District
Upper San Gabriel Valley Municipal Water District
WateReuse Association
Windsor Town Council

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: According to the Association of California Water Agencies (ACWA), "This bill would provide a more cost-effective option to incentivize building owners to use recycled water in dual plumbed buildings, and for commercial, industrial, and institutional water uses. Specifically, the bill would promote an exemption for a "swivel ell" device so that building owners could

easily switch back and forth between potable and non-potable water when required for testing and other recycled water shutdowns.

"The ability to quickly and cost-effectively make the switch to potable water would eliminate a barrier for building owners to bring recycled water used for landscap irrigation inside their buildings. The bill would also require the State Water Resources Control Board to update the Title 22 regulations by January 1, 2023 to reflect and promote this effort, if funding is available.

"ACWA supports affordable and flexible standards for recycled water use to make compliance with current water conservation mandates more feasible. A uniform statewide criterion for nonpotable recycled water uses would aid local efforts to achieve the state's ambitious goals for recycled water use."

-- END --

SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 1237		
Author:	Aguiar-Curry		
Version:	2/21/2019	**Hearing Date:**	6/5/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	David Ernest García		

SUBJECT: Greenhouse Gas Reduction Fund: guidelines

DIGEST: This bill requires an agency that receives an appropriation from the greenhouse gas reduction fund to post on its website the agency's guidelines for how moneys from the fund are allocated, including: clear and accessible eligibility criteria for award opportunities, application timelines for receiving awards, information on technical assistance, and contact information for the agency.

ANALYSIS:

Existing law:

1) Establishes the Air Resources Board (ARB) as the air pollution control agency in California and requires ARB, among other things, to control emissions from a wide array of mobile sources and coordinate, encourage, and review the efforts of all levels of government as they affect air quality. (Health and Safety Code (HSC) §39500 et seq.)

2) Requires, under the California Global Warming Solutions Act of 2006 (also known as AB 32), ARB to (1) determine the 1990 statewide greenhouse gas (GHG) emissions level and approve a statewide GHG emissions limit that is equivalent to that level to be achieved by 2020; (2) ensure that statewide GHG emissions are reduced to at least 40% below the 1990 level by December 31, 2030 (i.e., SB 32); and (3) adopt regulations, until December 31, 2030, that utilize market-based compliance mechanisms to reduce GHG emissions (i.e., the cap-and-trade program). (HSC §38500 et seq.)

3) Establishes the Greenhouse Gas Reduction Fund (GGRF) in the State Treasury, requires all moneys, except for fines and penalties, collected pursuant to a market-based mechanism be deposited in the fund. (Government Code §16428.8)

This bill: requires an agency that receives an appropriation from GGRF to post on its website the agency's guidelines for how moneys from the fund are allocated,

including: clear and accessible eligibility criteria for award opportunities, application timelines for receiving awards, information on technical assistance, and contact information for the agency.

Background

1) *Implementing AB 32: The California Global Warming Solutions Act of 2006.* In 2006, AB 32 (Núñez and Pavley, Chapter 488, Statutes of 2006) was signed into law, which requires ARB to determine the 1990 statewide GHG emission level and achieve a reduction in GHG emissions to that level by 2020. In addition to calling on ARB to inventory GHGs in California (including carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride) and approve the aforementioned statewide GHG emissions limit.

   AB 32 also requires ARB to (1) implement regulations that achieve the maximum technologically feasible and cost-effective reduction of GHG emissions; (2) identify and adopt regulations for discrete early-action measures; and (3) prepare and approve a scoping plan, to be updated at least once every five years, to achieve the maximum technologically feasible and cost-effective reduction of GHG emissions. Due to a variety of factors, most importantly being the great recession that started in 2008, California will achieve the goals of AB 32 in advance of the 2020 deadline.

   In 2016, the Legislature approved, and the Governor signed, SB 32 (Pavley, Chapter 249, Statutes of 2016), which requires ARB to ensure that statewide GHG emissions are reduced to at least 40% below the 1990 level by December 31, 2030. This new goal is known as the SB 32 target.

   The following year, AB 398 (E. Garcia, Chapter 135, Statutes of 2017) was enacted to extend the authority of ARB to implement a cap-and-trade program to reduce GHG emissions throughout the state. AB 398 specified a variety of requirements for the post-2020 cap-and-trade program, most notable are (1) requiring the banking of allowances from the current cap-and-trade program into the post-2020 program; (2) requiring ARB to evaluate and address concerns related to the overallocation of available allowances in the program for years 2021 to 2030; and (3) the adoption of a price ceiling in the program, at which point an unlimited number of allowances must be made available for purchase.

2) *Cap-and-Trade.* The original cap-and-trade program was recommended by ARB as a central approach to flexibly and iteratively reduce emissions over

time. Pursuant to legal authority under AB 32, ARB adopted cap-and-trade regulations and those regulations were approved on December 13, 2011.

Beginning on January 1, 2013, the cap-and-trade regulation sets a firm, declining cap on total GHG emissions from sources that make up approximately 80% of all statewide GHG emissions. Sources included under the cap are termed "covered entities." The cap is enforced by requiring each covered entity to surrender one "compliance instrument" for every emissions unit (i.e., metric ton of carbon dioxide equivalent or $MTCO_2e$) that it emits at the end of a compliance period.

Two forms of compliance instruments are used: allowances and offsets. Allowances are generated by the state in an amount equal to the cap and may be "banked" (i.e., allowing current allowances to be used for future compliance). An offset is a credit for a real, verified, permanent, and enforceable emission reduction project from a source outside a capped sector (e.g., a certified carbon-storing forestry project). Some fraction of allowances are allocated freely to covered entities, a small portion are set aside as part of an allowance price-containment reserve (a cost-containment mechanism that releases additional allowances into the market to slow price increases), and the rest are auctioned off quarterly.

Since November 2012, ARB has conducted eight California-only, 13 joint California-Québec, two joint California-Québec-Ontario, and then another three joint California-Québec cap-and-trade auctions (Ontario withdrew from the joint cap-and-trade program after a change in their political leadership). To date, approximately $10.3 billion has been generated by the cap-and-trade auctions and deposited into GGRF.

Comments

1) *Purpose of Bill.* According to the author, "AB 1237 requires competitive financing opportunities funded by the Greenhouse Gas Reduction Fund (GGRF) to post information online about award application timelines, eligibility criteria, technical assistance, and agency staff contacts. Providing this information clearly online will make the application process easier to navigate and more transparent, thereby increasing the number and diversity of applicants. It will also help policymakers and the public better understand how these programs are being administered to achieve the state's climate and air quality goals."

SOURCE: Author

SUPPORT:

CalChamber
Rural County Representatives of California

OPPOSITION:

None received

-- END --

SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 1252		
Author:	Robert Rivas		
Version:	5/2/2019	**Hearing Date:**	6/5/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: Environmental Justice Small Grant Program: advance payments

DIGEST: Authorizes the California Environmental Protection Agency (CalEPA) to distribute advance payments to nonprofit entities or federally recognized tribal governments for projects providing service to or benefitting disadvantaged or low-income communities for grants awarded under the Environmental Justice Small Grant Program (Program).

ANALYSIS:

Existing law: Establishes the Program under the jurisdiction of the CalEPA to provide grants to eligible community groups that are located in areas adversely affected by environmental pollution and hazards that are involved in work to address environmental justice issues. (Public Resources Code (PRC) § 71116, et seq.):

1) Specifies that nonprofit entities and federally recognized tribal governments are eligible for grants. Defines "nonprofit entity" as any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or other similar purposes in the public interest; is not organized primarily for profit; uses its net proceeds to maintain, improve, or expand its operations; is a Section 501(c)(3) tax-exempt organization; and, is not a 501(c)(4) tax-exempt organization.

2) Requires CalEPA to adopt regulations to govern the Program, including:
   a) Specific criteria and procedures for implementation;
   b) A requirement that each grant recipient submit a written report; documenting its expenditures of the grant funds and the results of the funded project; and,
   c) Provisions promoting the equitable distribution of grant funds throughout the state, with the goal of making grants available to organizations that will attempt to address environmental justice issues.

3) Requires grants be awarded on a competitive basis for projects based in communities with the most significant exposure to pollution, and limits grants to projects that:
   a) Resolve environmental problems through the distribution of information;
   b) Identify improvements in communication and coordination among agencies and stakeholders in order to address the most significant exposure to pollution;
   c) Expand the understanding of a community about the environmental issues that affect their community;
   d) Develop guidance on the relative significance of various environmental risks;
   e) Promote community involvement in the decision-making process that affects the environment of the community; and,
   f) Present environmental data for purposes of enhancing community understanding of environmental information systems and environmental information.

4) Specifies that the maximum grant award is $50,000 and limits total funding to $1.5 million per year.

This bill:

1) Authorizes CalEPA to distribute advance payments to nonprofit entities or federally recognized tribal governments and nonfederally recognized California Native American tribes, as specified, for projects providing service to or benefitting disadvantaged or low-income communities for grants awarded under the Program.

2) Specifies that the first advance payment may equal up to 50% of the total award and shall be spent within 8 months of receipt unless CalEPA establishes a different timeline. Establishes related requirements for the other payments.

3) Requires a recipient of an advance award to keep the funds in a noninterest-bearing account until expended.

4) Authorizes CalEPA to request an accountability report or impost any other requirements regarding the use of advance payments to ensure they are used properly.

Background

1) *Environmental justice.* The principles of environmental justice call for fairness, regardless of race, color, national origin or income, in the development of laws and regulations that affect every community's natural surroundings, and the places people live, work, play, and learn.

   California was one of the first states in the nation to codify environmental justice in statute. Beyond the fair treatment called for in code, leaders in the environmental justice movement work to include those individuals disproportionately impacted by pollution in decision making processes. The aim is to lift the unfair burden of pollution from those most vulnerable to its effects.

2) *Environmental Justice Task Force.* The Environmental Justice Task Force coordinates the compliance and enforcement work of CalEPA's boards, departments, and office in areas of California that are burdened by multiple sources of pollution and are disproportionately vulnerable to its effects. The Task Force's mission is to facilitate the use of environmental justice considerations in compliance and enforcement programs and enhance communications with community members to maximize benefits in disproportionately impacted areas.

   The Task Force has conducted separate initiatives in parts of Fresno and Los Angeles with the goal of increasing compliance with environmental laws in these areas. These initiatives demonstrated the value of an approach that combines community consultation with compliance assistance for regulated businesses and coordinated, multi-agency enforcement sweeps to address environmental concerns.

   In 2016, the success of these pilot initiatives helped to earn the Task Force permanent funding through the 2016 Budget Act. The law created a mandate for CalEPA to continue its multi-agency compliance and enforcement approach and to give priority to disadvantaged communities. The funding will ensure that the Task Force develops new initiatives in areas where increased compliance has the potential to have the greatest impact.

3) *Environmental Justice Small Grant Program.* The Program was established by AB 2312 (Statutes of 2002, Chapter 994) to provide funding opportunities to help eligible nonprofit community organizations and tribal governments address environmental justice issues in areas disproportionately affected by pollution. Since its inception, the Program has awarded 118 grants totaling

$2.8 million. In 2018, the Program awarded 28 grants totaling just under $1.1 million. Funds for this program are provided by the boards, departments, and office within CalEPA.

The grants are competitive and limited to a maximum award of $50,000. Projects that address the most significant exposure to pollution receive priority. The current grant cycle's program goals focusing on addressing cumulative health and pollution burdens, socioeconomic vulnerabilities, and improving access to state resources, programs, and decision-making processes. The 2019 grant cycle asks applicants to demonstrate how their projects will address one or more of the following priorities:

a) Improve access to safe and clean water;
b) Address climate change impacts through community led solutions;
c) Reduce the potential for exposure to pesticides and toxic chemicals;
d) Promote community capacity building;
e) Promote the development of community-based research that protects and enhances public health and the environment;
f) Address cumulative impacts through collaboration between community-based organizations and local governments;
g) Promote pollution prevention and resource conservation; and,
h) Develop effective partnerships with schools.

Below are three examples of projects that received funding in 2018:

- $30,000 to the Coalition for Humane Immigrant Rights to organize a 21-member Pesticide Protection Leadership Committee in Tulare County to teach over 1,000 community members about how to prevent exposure to pesticides, recognize symptoms of pesticide exposure, access local health resources, and participate in their community's environmental decision-making processes.
- $40,000 to the Central California Environmental Justice Network to strengthen reporting networks in Fresno and Kern Counties in the use of the Identifying Violations Affecting Neighborhoods (IVAN) reporting network. IVAN is a community-monitoring and community-led environmental pollution online reporting system that promotes collaboration between grassroots groups, regulatory agencies, and academia to address community issues.
- $20,000 to Tri-Valley Communities Against a Radioactive Environment to conduct extensive outreach and four workshops in Tracy on the Lawrence Livermore Lab Site 300 Superfund cleanup process. The organization will develop bilingual factsheets that inform and encourage

Currently, grant funds are awarded as reimbursement for approved projects, rather than in advance. This creates a burden on small organizations with limited capital available to fund a project prior to receiving grant funds. This bill would authorize CalEPA to provide grant funding in advance, which is intended to make the Program more accessible to smaller organizations.

Comments

1) *Purpose of Bill.* According to the author, "The lack of clarity surrounding CalEPA's ability to issue advance payments for their EJ Small Grants Program leaves nonprofits that are selected for funding responsible for carrying the full cost of completing a project before they can be reimbursed. This is typically not a problem for larger organizations, but for smaller nonprofits that are often cash-strapped, it can be a large barrier and discourage applications for the program in the first place.

   "AB 1252 would provide CalEPA with the authority to provide advance payments for grants administered through the [Environmental Justice] Small Grants Program. By allowing CalEPA to offer funds needed to complete a project to awardees of the program up front, AB 1252 would meaningfully relieve financial pressure on smaller nonprofit organizations and allow more groups to participate."

Related/Prior Legislation

SB 535 (de León, Chapter 830, Statutes of 2012) requires the Cap and Trade Proceeds Investment Plan to direct a minimum of 25% of the available moneys in the fund to projects that provide benefits to identified disadvantaged communities; and, a minimum of 10% of the available moneys in the fund to projects located within identified disadvantaged communities. SB 535 also requires CalEPA to identify disadvantaged communities (i.e., environmental justice communities).

SB 828 (Alarcon, Chapter 765, Statutes of 2001) establishes a timeline for these requirements and requires CalEPA to update its report to the Legislature every three years.

SB 89 (Escutia, Chapter 728, Statutes of 2000) required CalEPA to convene the Environmental Justice Working Group and develop an agency-wide environmental justice strategy.

SOURCE: Author

SUPPORT:

Amigos de los Rios
Audubon California
Azul
Balboa Park Conservancy
Bay Area Urban Forest Ecosystem Council
Benecia Tree Foundation
California Bicycle Coalition
California Environmental Justice Alliance
California Releaf
California Urban Forests Council
Central Coast Urban Forests Council
Climate Action Now!
Common Vision
Davey Resource Group
Del Paso Heights Growers' Alliance
Earth Team
From Lot to Spot
Green Technical Education and Employment
Greenlining Institute
Huntington Beach Tree Society
Inland Urban Forest Council
International Society of Arboriculture, Western Chapter
Just One Tree
Keep Eureka Beautiful
LumberCycle
Madera Coalition for Community Justice
Move LA
North East Trees
Our City Forests
Regional Urban Forest Council, Los Angeles/Orange Counties
Richmond Trees
Roseville Urban Forest Foundation
Sacramento Tree Foundation
Sacramento Urban Forest Council
Safe Routes to Schools National Partnership
San Diego Regional Urban Forests Council

San Joaquin Urban Forest Council
Save Our Forest/Fallbrook Land Conservancy
Sunnyvale Urban Forest Advocates
The Trust for Public Land
TransForm
Tree Davis
Tree Foundation of Kern
Tree Fresno
TreePeople
Trust for Public Land
Urban Tree Foundation
Valley Water
Victoria Avenue Forever
West Coast Arborists
Your Children's Trees

OPPOSITION:

None received

-- END --

SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 1429		
Author:	Chen		
Version:	5/22/2019	**Hearing Date:**	6/5/2019
Urgency:	No	**Fiscal:**	No
Consultant:	Gabrielle Meindl		

SUBJECT: Hazardous materials: business plans

DIGEST: Authorizes a business that handles hazardous materials to submit their Hazardous Materials Business Plan (HMBP) to the California Environmental Reporting System (CERS) once every three years, instead of annually, if that business is not required to submit Tier II chemical inventory information under the federal Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986.

ANALYSIS:

Existing law:

1) Requires a business to establish and implement a business plan for emergency response to a release or threatened release of a hazardous material if the business meets specified criteria. (Health and Safety Code (HSC) § 25507 (a))

2) Defines "handler" as a business that handles hazardous material. (HSC § 25501 (m))

3) Requires the owner or operator of a facility that is required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical under the Occupational Safety and Health Act of 1970 (29 United States Code (U.S.C.) § 651 et seq.) to prepare and submit an emergency hazardous chemical inventory form to the appropriate local emergency planning committee; the state emergency response commission; and, the fire department with jurisdiction over the facility. (42 U.S.C. § 11022)

4) Enacts the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 which was created to help communities plan for chemical emergencies. It also requires industry to report on the storage, use, and releases of hazardous substances to federal, state, and local governments. EPCRA requires state and local governments, and Indian tribes to use this information to prepare their community for potential risks. (42 U.S.C. § 11001 et seq).

This bill:

1) Authorizes a business that handles hazardous materials to submit their Hazardous Materials Business Plan (HMBP) to the California Environmental Reporting System (CERS) once every three years, instead of annually, if that business is not required to submit Tier II chemical inventory information under the federal Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986.

2) Specifies that where substantial changes necessitate an update to the HMBP, the business would be required to update the information on CERS within 30 days of the change per existing statute.

Background

1) *Certified Unified Program Agencies (CUPAs)*: The Secretary of the California Environmental Protection Agency (CalEPA) oversees the "unified hazardous waste and hazardous materials management" regulatory program (Unified Program). Currently, there are 81 CUPAs in California. The Unified Program consolidates, coordinates the following six existing programs:

    1) Hazardous Materials Release Response Plans and Inventories (Business Plans);
    2) California Accidental Release Prevention (CalARP) Program;
    3) Underground Storage Tank Program;
    4) Aboveground Petroleum Storage Act;
    5) Hazardous Waste Generator and Onsite Hazardous Waste Treatment Programs; and,
    6) California Uniform Fire Code: Hazardous Material Management Plans and Hazardous Material Inventory Statements.

    State agencies involved in the implementation of the Unified Program are responsible for setting program element standards, working with the CalEPA to ensure program consistency, and providing technical assistance to the CUPAs. The following state agencies are involved with the Unified Program:

    1) CalEPA: The Secretary of the CalEPA is directly responsible for coordinating and evaluating the administration of the Unified Program and certifying Unified Program Agencies (UPAs). CUPAs are accountable for

carrying out responsibilities previously handled by approximately 1,300 different state and local agencies.

2) Governor's Office of Emergency Services (Cal OES): The Cal OES evaluates and provides technical assistance for the Business Plan and the Area Plan Programs.

2) *Hazardous Materials Business Plan (HMBP) program*: The HMBP was established in 1986. Its purpose is to prevent or minimize the damage to public health, public safety, and the environment from a release or threatened release of hazardous materials. It also satisfies community right-to-know laws. This is accomplished by requiring businesses that handle hazardous materials in quantities equal to or greater than 55 gallons of a liquid, 500 pounds of a solid, or 200 cubic feet of compressed gas, or extremely hazardous substances above the threshold planning quantity to: inventory their hazardous materials, develop a site map, develop an emergency plan, and implement a training program for employees.

   Businesses must submit this information electronically to the statewide information management system, the CERS. Once the submittal of the HMBP has been made to CERS, the CUPA will verify the information and provide it to agencies responsible for the protection of public health, public safety, and the environment. These agencies include fire departments, hazardous materials response teams, and local environmental regulatory groups.

3) *Electronic Reporting*: AB 2286 (Feuer, Chapter 571, Statutes of 2008) requires all regulated businesses and all CUPAs to use the internet to electronically report and submit required Unified Program information previously recorded on paper forms. This includes facility data regarding hazardous material regulatory activities, chemical inventories, underground and aboveground storage tanks, and hazardous waste generation. It also includes CUPA data such as inspections and enforcement actions. All businesses must submit and report Unified Program related information to either the statewide CERS, or to the local CUPA's reporting web portal.

4) *The Emergency Planning and Community Right-to-Know Act (EPCRA)*: EPCRA was passed in 1986 in response to concerns regarding the environmental and safety hazards posed by the storage and handling of toxic chemicals. These concerns were triggered by the 1984 disaster in Bhopal, India, caused by an accidental release of methylisocyanate. The release killed or severely injured more than 2,000 people. To reduce the likelihood of such a disaster in the United States, Congress imposed requirements for federal, state

and local governments, tribes, and industry. These requirements covered emergency planning and "Community Right-to-Know" reporting on hazardous and toxic chemicals. The Community Right-to-Know provisions help increase the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment. States and communities, working with facilities, can use the information to improve chemical safety and protect public health and the environment.

5) *Federal Tier II Inventory Form*: The EPCRA requires the owner or operator of specified facilities to submit an emergency and hazardous chemical inventory form by March 1 of each calendar year to the State Emergency Response Commission, the Local Emergency Planning Committee, and the local fire department. EPCRA describes two reporting "tiers" for providing information on hazardous chemicals at a facility. The United States Environmental Protection Agency published two emergency and hazardous chemical inventory forms, Tier I and Tier II, for facilities to report information on hazardous chemicals. The Tier I form contains general information on hazardous chemicals at the facility. The Tier II form contains specific information on hazardous chemicals present at the facility. The requirement for the Tier II Inventory form applies to the owner or operator of any facility that is required under regulations implementing the Occupational Safety and Health Act of 1970, to prepare or have available a MSDS for a hazardous chemical present at the facility. EPCRA has several minimum thresholds that if exceeded trigger the requirement for a facility to report using the Tier II Inventory form. These thresholds are set in federal regulation (40 Code of Federal Regulation part 370) for extremely hazardous substances, gasoline, diesel fuel, and all other hazardous chemicals which require the preparation of a MSDS.

   AB 1429 is designed to provide some regulatory flexibility for businesses with smaller quantities of certain hazardous materials that do not have to complete the Tier II form under federal law, by allowing them to report the HMBP once every three years instead of once every year.

Comments

1) *Purpose of Bill.* According to the author, "Under current law, a facility handling hazardous materials, as defined, must electronically submit its HMBP annually to CERS, whether there have been changes to the facility or not. Upon submitting the plans, the Certified Unified Program Agency (CUPA) must review and approve the plan, verifying the information and providing it to

local and state agencies responsible for the protection of public health and safety and the environment. Unfortunately, in some counties CUPAs may be significantly delayed in reviewing and approving the plans, which can lead to facility information being out of date and unavailable to first responders in cases of emergency.

AB 1429 would allow those facilities that fall above the California thresholds but below the federal thresholds to submit the plan one time every three years. Annual reporting would be mandatory for those facilities that exceed federal reporting thresholds. Where significant changes necessitate an update to the plan, the facility would be required to update the information in CERS within 30 days of the change."

Related/Prior Legislation

AB 1689 (ESTM Committee, Chapter 159, Statutes of 2017). Adds combustible metals or metal alloy to the list of materials a business must include in its hazardous materials business plan.

AB 2286 (Feuer, Chapter 571, Statutes of 2008). Set a deadline of January 1, 2010, for the Secretary of the CalEPA to establish a statewide information management system for the CUPA program. Requires the Secretary of CalEPA to increase the annual surcharge on regulated businesses by no more than $25 for three years in order to fund these system enhancements.

SOURCE: Author

SUPPORT:

California Council for Environmental & Economic Balance (CCEEB) (Sponsor)
BNSF Railway
California Association of Environmental Health Administrators (CAEHA)
California Chamber of Commerce
California Manufacturers & Technology Associates
California Short Line Railroad Association
Chemical Industry Council of California
Genesee & Wyoming Railroad Services, Inc.
Union Pacific Railroad

OPPOSITION:

None received

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SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 1597		
Author:	Committee on Environmental Safety and Toxic Materials		
Version:	5/14/2019	**Hearing Date:**	6/5/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: Hazardous waste: transportation: electronic manifests

DIGEST: This bill makes changes to the hazardous waste control law to conform the provisions to the United States Environmental Protection Agency (US EPA) regulations implementing the electronic manifest (e-manifest) system, and deletes obsolete provisions.

ANALYSIS:

Existing law:

1) Under hazardous waste control law (HWCL), requires any person who generates, transports, or receives hazardous waste in California to use the Uniform Hazardous Waste Manifest. (Health and Safety Code (HSC) § 25100, et seq.)

2) Defines "manifest" as a shipping document originated and signed by a generator of hazardous waste that contains all of the information required by the Department of Toxic Substances Control (DTSC) and that complies with all applicable federal and state regulations. (HSC § 25160)

3) Requires anyone who submits incomplete or erroneous information on a completed manifest to correct the information and to submit a $20 fee to DTSC. (HSC § 25160.5)

4) Authorizes the US EPA to implement a national electronic manifest system under the Hazardous Waste Electronic Manifest Establishment Act. (42 United States Code § 6921 et seq)

This bill:

1) Authorizes a generator, transporter, facility operator, or anyone who is required to submit a copy of a manifest to DTSC, or store manifest information

electronically, to use the e-manifest system developed and implemented by the US EPA to satisfy those manifest requirements.

2) Defines "e-manifest" as the electronic format of a hazardous waste manifest, that is obtained from the US EPA e-manifest system and transmitted electronically to the system, and that is the legal equivalent of US EPA Forms 8700-22 (Manifest) and 8700-22A (Manifest Continuation Sheet).

3) Defines "e-manifest system" as the US EPA's national information technology system through which an electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest, and to regulatory agencies.

4) Includes in the definition of "manifest" an e-manifest, a paper copy from the e-manifest system, and other specified federal forms.

5) Provides that e-manifests that are obtained, completed, and transmitted in accordance with specified federal regulations are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfies, for all purposes, any requirement to obtain, complete, sign, provide, use, or retain a manifest.

6) Specifies that e-manifest signatures shall meet the criteria described in specified federal regulations.

7) States that US EPA charges fees for the e-manifest system and that those fees may be updated by US EPA from time to time to cover the cost of the e-manifest system.

8) Makes other minor changes related to hazardous waste transportation manifest laws and deletes obsolete provisions.

Background

1) *Uniform hazardous waste manifest.* The Uniform Hazardous Waste Manifest is the shipping document that travels with hazardous waste from the point of generation, through transportation, to the final treatment, storage, and disposal facility. Each party in the chain of shipping hazardous waste, including the generator, signs and keeps one of the manifest copies, creating a "cradle-to-grave" tracking of the hazardous waste.

Current state law stipulates that the manifest is a paper document containing multiple copies of a single form. When completed, the form contains information on the type and quantity of the waste being transported, instructions for handling the waste, and signature lines for all parties involved in the disposal process. Each party that handles the waste signs the manifest and retains a copy for themselves. This ensures critical accountability in the transportation and disposal processes. Once the hazardous waste reaches its destination, the receiving facility returns a signed copy of the manifest to the generator, confirming that the waste has been received by the designated facility.

2) *The Hazardous Waste Electronic Manifest Establishment Act.* The Hazardous Waste Electronic Manifest Establishment Act, signed into law by President Obama on October 5, 2012, authorizes the US EPA to implement a national electronic manifest system. The US EPA worked with states, industry, and related stakeholders to develop a national electronic manifest system to facilitate the electronic transmission of the uniform manifest form and make the use of the manifest much more effective and convenient for users. The e-manifest extends to all federally and state-regulated wastes requiring manifests.

   The US EPA fully implemented the e-manifest system on June 30, 2018. California law needs to be updated to allow the use of the federal e-manifest system in order to ensure that the state and those that ship hazardous waste in California remain in compliance with federal hazardous waste laws and regulations. Therefore, it is important that the statutory changes in AB 1597, authorizing the use of the e-manifest, move forward.

Comments

1) *Purpose of Bill.* According to the Environmental Safety and Toxic Materials Committee, "Current state law requires the use of a paper hazardous waste manifest to track the management of hazardous waste. The law also requires the use of a handwritten signature on the manifest. The US EPA recently developed and implemented an e-manifest system that shifted the hazardous waste manifest system from a paper system to an electronic system. However, current state law does not authorize the use of electronic manifests or electronic signatures. AB 1597 authorizes anyone in California that generates, treats, stores, or manages hazardous waste, and is required to use a hazardous waste manifest, to meet those manifest requirements with the use of the federal e-manifest system developed by the US EPA."

Related/Prior Legislation

AB 1441(Committee on Environmental Safety and Toxic Materials, 2017) would have authorized the state's hazardous waste management manifest requirements to be satisfied through the use of the US EPA e-manifest system, once it comes online. This bill died on the Senate inactive file.

SOURCE: Committee on Environmental Safety and Toxic Materials

SUPPORT:

None received

OPPOSITION:

None received

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SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 1628		
Author:	Robert Rivas		
Version:	2/22/2019	**Hearing Date:**	6/5/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: Environmental justice: Attorney General: Bureau of Environmental Justice: Office of Planning and Research

DIGEST: This bill requires the director of the Governor's Office of Planning and Research (OPR) to consult with the Attorney General and the Bureau of Environmental Justice (Bureau) when coordinating environmental justice programs.

ANALYSIS:

Existing law:

1) Establishes the Office of Planning and Research within the Governor's Office. (Government Code Section 65037)

2) Provides that the Office of Planning and Research constitutes the comprehensive state planning agency. (Government Code Section 65040)

3) Provides that the Office of Planning and Research is the coordinating agency in state government for environmental justice programs, and accordingly shall do the following:
   a) Consult with the Secretaries of California Environmental Protection, Natural Resources, Transportation, and Business, Consumer Services, and Housing, the Working Group on Environmental Justice, any other appropriate state agencies, and all other interested members of the public and private sectors in the state;
   b) Coordinate efforts and share information regarding environmental justice programs with the Council on Environmental Quality, the United States Environmental Protection Agency, the General Accounting Office, the Office of Management and Budget, and other federal agencies; and
   c) Review and evaluate any information from federal agencies that is obtained as a result of their respective regulatory activities and the Working Group on Environmental Justice. (Government Code Section 65040.12)
4) Defines "environmental justice," for the purpose of the Governor's Office of Planning and Research's coordination of state agency programs, as the fair

treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. (Government Code Section 65040.12)

5) Provides that the Attorney General has charge of all legal matters in which the state is interested, except the business of The Regents of the University of California and of such boards or officers that are by law authorized to employ attorneys. (Government Code Section 12511)

6) States that it is in the public interest to provide the people of the State of California through the Attorney General the ability to protect the natural resources of the State of California from pollution, impairment, or destruction. (Government Code Section 12600 (b))

This bill:

1) Requires the director of OPR to consult with the Attorney General and the Bureau when coordinating environmental justice programs.

2) Revises the definition of "environmental justice" to include the meaningful engagement of people of all races, cultures, and incomes.

3) States related legislative findings.

Background

1) *The environmental justice movement.* The environmental justice movement seeks to ensure fair outcomes in environmental protection and enforcement in communities across California. Too frequently California's lower-income communities of color experience far greater impacts from pollution, toxic contamination, and the effects of global warming than richer areas of the state.

   One of the leading factors behind the disparity in environmental impacts across California is the degree to which communities can access government services and advocate for their needs. Due to their economic status, many environmental justice communities have been unable to garner the attention of state policy makers at the same level as their richer neighbors. Due to the lack of engagement with environmental justice communities, too frequently, local planners opted to site environmentally damaging facilities in these communities. An overwhelming number of California's waste disposal sites, heavy manufacturing facilities, and trade corridors are in close proximity with

environmental justice communities. This in turn, degrades the quality of life in these areas and exposes local residents to greater risks of health impacts stemming from pollution and other environmental hazards.

2) *Office of Planning and Research role in assisting environmental justice communities.* The state has attempted to better assist environmental justice communities by seeking to coordinate state environmental programs to ensure that these communities are not left behind as California aggressively seeks to remediate past environmental harms and proactively mitigate the impacts of global climate change. To that end, as a part of the Budget Act of 2004, the Legislature required OPR to coordinate environmental justice programs across the state. (SB 1097 (Committee on Budget and Fiscal Review) Chap. 225, Stats. 2004.)

   As a result of California's historic leadership on environmental and climate related policies, state agencies now manage dozens of programs designed to assist low-income communities of color to mitigate the impacts of pollution and climate change at the local level. However, prior to the enactment of SB 1097, too frequently state agencies failed to properly coordinate their activities designed to help environmental justice communities.

   Although the OPR is directly responsible for ensuring that local planning agencies properly address the unique needs of environmental justice communities, OPR does not directly oversee many of the programs designed to assist communities. Rather, recognizing the need to coordinate the activities of California's large administrative state, existing law vests OPR with the responsibility for coordinating the activities of other state agencies. Accordingly, the existing law requires OPR to coordinate between the Natural Resources Agency, California Environmental Protection Agency, the California State Transportation Agency, and the California Business, Consumer Services and Housing Agency. While these agencies all operate several programs seeking to promote clean transportation, affordable housing, toxic clean-up, and energy efficiency, none of the agencies directly prosecute actions against polluters on the behalf of environmental justice communities. Much of this enforcement is left to the Attorney General and the Department of Justice.

3) *Environmental justice enforcement.* In 1998, CalEPA, the California District Attorneys Association (CDAA), the Department of Fish & Game, and the United States Environmental Protection Agency established the Environmental Circuit Prosecutor Project (ECPP) to fill a gap in the enforcement of water, air, and other environmental laws, especially in rural counties in California where the local district attorney may not have the resources or expertise to prosecute

environmental laws. The ECPP provides environmental prosecutors to counties that lack expertise and resources to prosecute environmental crimes. Circuit prosecutors are employed by CDAA but are deputized by the elected District Attorney in each county where they work.

Funding for the ECPP has been provided by various sources including federal funds, CalEPA, the Environmental Enforcement and Training Account, and participating district attorney offices. However, federal funding was withdrawn from the ECPP and state funding has dwindled, resulting in the ECPP being unable to provide as many support services to assist in the prosecution of environmental crimes.

4) *Bureau of Environmental Justice.* To facilitate improved enforcement of environmental laws in environmental justice communities, in 2018, Attorney General Xavier Becerra established the Bureau within the Environment Section of the Department of Justice. The Bureau is tasked with protecting people and communities that endure a disproportionate share of environmental pollution and public health hazards through oversight, investigation, and enforcement of the law. The Bureau's attorneys primarily work with attorneys in the Environment Section who handle environmental enforcement matters; however, they also benefit from the expertise of other sections within the Attorney General's office. According to the Attorney General's Office, the Bureau will focus on: 1) Ensuring compliance with the California Environmental Quality Act and land use planning laws; 2) Remediating contaminated drinking water; 3) Eliminating or reducing exposure to lead and other toxins in the environment and consumer products; 4) Challenging the federal government's actions that repeal or reduce public health and environmental protections; and, 5) Penalizing and preventing illegal discharges to air and water from facilities located in communities already burdened disproportionally with pollution.

Comments

1) *Purpose of Bill.* According to the author, "Research shows that poor people and people of color endure a disproportionate share of environmental pollution and public health hazards where they live, work, and go to school. These frontline communities often lack resources and opportunities to combat environmental harms and are denied a voice in key decisions that impact their health.

"AB 1628 supports the Attorney General's Bureau of Environmental Justice in its efforts to protect these vulnerable communities from environmental hazards

and adds "meaningful engagement" to the definition of environmental justice to ensure all voices are heard."

2) *Improved coordination and engagement.* AB 1628 seeks to improve the coordination of California's efforts to protect environmental justice communities by adding the Attorney General and the Department of Justice's Bureau of Environmental Justice to the list of agencies that OPR must coordinate with regarding the state's environmental justice programs. Additionally, this bill strengthens the definition of environmental justice to ensure that community engagement is at the forefront of any state efforts.

DOUBLE REFERRAL:

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Judiciary Committee.

SOURCE: California Environmental Justice Alliance

SUPPORT:

California Environmental Justice Alliance
Center for Community Action and Environmental Justice
Center of Race, Poverty, and the Environment
Communities for a Better Environment
Communities for a Better Environment
County of Santa Cruz
Leadership Counsel for Justice and Accountability
Physicians for Social Responsibility- Los Angeles
PODER

OPPOSITION:

None received

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SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2019 - 2020 Regular

Bill No:	AB 1824		
Author:	Committee on Natural Resources		
Version:	3/12/2019	**Hearing Date:**	6/5/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: California Environmental Quality Act

DIGEST: Makes various technical corrections, updates, and minor amendments to the California Environmental Quality Act (CEQA) and related provisions of law.

ANALYSIS:

Existing law, the California Environmental Quality Act:

1) Vests lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report for the project unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines).

2) Authorizes judicial review of CEQA actions taken by public agencies, following the agency's decision to carry out or approve the project. Challenges alleging improper determination that a project may have a significant effect on the environment, or alleging an environmental impact report (EIR) doesn't comply with CEQA, must be filed in the Superior Court within 30 days of filing of the notice of approval. The courts are required to give CEQA actions preference over all other civil actions.

3) Pursuant to AB 900 (Buchanan), Chapter 354, Statutes of 2011, establishes procedures for expedited judicial review (i.e., requiring the courts to resolve lawsuits within 270 days, to the extent feasible) for "environmental leadership" projects certified by the Governor and meeting specified conditions, including LEED gold-certified infill site projects achieving transportation efficiency 15 percent greater than comparable projects and zero net additional greenhouse gas (GHG) emissions. AB 900 sunsets January 1, 2021.

This bill:

1) Corrects a reference to CEQA in state surplus property exemption.

2) Corrects reference to CEQA in housing element law.

3) Reenacts prior exemption for closure of railroad grade crossing ordered by the Public Utilities Commission, with a sunset of January 1, 2025.

4) Strikes obsolete operative dates from exemption for small pipeline projects and litigation standing requirements.

5) Updates reference to transportation plans for purposes of transit priority area streamlining.

6) Updates terms in Notice of Determination, Notice of Exemption, and Notice of Completion filing requirements.

7) Provides that if the Joint Legislative Budget Committee nonconcurs in the certification of an environmental leadership project pursuant to AB 900, the project is not certified.

Background

1) Background on CEQA.

   a) *Overview of CEQA Process*. CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions in the CEQA guidelines. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a negative declaration. If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an EIR.

   Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Prior to approving any project that has received

environmental review, an agency must make certain findings. If mitigation measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

Comments

1) *Re-upping an expired CEQA exemption.* In 2012, AB 1665 (Galgiani, Chap. 721, Statutes of 2012) exempted from CEQA the closure of a railroad grade crossing by order of the Public Utilities Commission (PUC) when the PUC has found the crossing to present a threat to public safety. In 2015, the sunset was extended by SB 348 (Galgiani, Chapter 143, Statutes of 2015) until 2019 and expired earlier this year. This bill re-enacts that exemption until 2025.

2) *Technical corrections and other minor amendments.* As a committee bill for Assembly Natural Resources, AB 1824 is a vehicle for technical corrections and non-controversial amendments to CEQA and related statutes.

SOURCE: Author

SUPPORT:

None received

OPPOSITION:

None received

-- END --