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

Bill No: SR 47
Author: Wieckowski
Version: 6/5/2019 **Hearing Date:** 7/3/2019
Urgency: No **Fiscal:**
Consultant: Eric Walters

SUBJECT: The Basel Convention

DIGEST: This resolution describes the challenges California has faced in achieving its ambitious solid waste reduction goals in the context of changing international agreements. SR 47 states how those efforts may be advanced by the United States ratifying the Basel Convention, and resolves that the State Senate urge the United States Congress to take the needed actions to ratify the Convention.

ANALYSIS:

Existing law:

1) Under the Integrated Waste Management Act of 1989 (IWMA), establishes a state recycling goal of 75% of solid waste generated to be diverted from landfill disposal through source reduction, recycling, and composting by 2020. Requires each state agency and each large state facility to divert at least 50% of all solid waste through source reduction, recycling, and composting activities. (Public Resource Code § 41780.01, 42921, 42924.5).

This resolution:

1) Describes the role of the Basel Convention internationally and what the United States has lost by not ratifying it.

2) States that California has established and innovated towards ambitious goals for waste reduction, recycling, and composting.

3) Recognizes that California, struggling in the face of several specific classes of materials, has relied on foreign markets that it no longer can to process its recyclable waste.

4) Identifies ways in which the United States' participation in the Basel Convention will address and alleviate these struggles.

5) Resolves that the State Senate urge the United States Congress to take the needed actions to ratify the Convention

Background

1) *Solid waste in California.* For three decades, 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. 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.

2) *Market challenges for recyclable materials.* The US has not developed significant markets for recycled content materials, including plastic and mixed paper. Historically, China, a party to the Basel Convention, has been the largest importer of recycled materials. According to the International Solid Waste Association, China accepted 56% by weight of global recycled plastic exports. In California, approximately one-third of recycled material is exported; and, until recently, 85% of the state's recycled mixed paper has been exported to China.

   In an effort to improve the quality of the materials it accepts and to combat the country's significant environmental challenges, China enacted Operation Green Fence in 2013, under which it increased inspections of imported bales of recyclables and returned bales that did not meet specified requirements at the exporters' expense. In 2017, China established Operation National Sword, which included additional inspections of imported recycled materials and a filing with the World Trade Organization (WTO) indicating its intent to ban the import of 24 types of scrap, including mixed paper and paperboard, polyethylene terephthalate (PET), polyethylene (PE), polyvinyl chloride (PVC), and polystyrene (PS) beginning January 1, 2018. In November 2017, China announced that imports of recycled materials that are not banned will be required to include no more than 0.5% contamination.

   In January of this year, China announced that it would be expanding its ban even further – to encompass 32 types of scraps for recycling and reuse, including post-consumer plastics such as shampoo and soda bottles.

In March, the Indian government announced that it will ban scrap plastic imports, a move that threatens to further disrupt the state's recycling industry. It is presumed that these changes to policy took effect March 1, and, while the release did not specify the specific plastic resins that will be covered, it is speculated that the ban will apply to most plastics including PET, PE, PS, polypropylene (PS), and more. After China's implementation of National Sword policy, India, also a party to the Basel Convention became one of the top importers of US plastic. US year-end trade figures for 2018 show that India imported 294 million pounds of scrap plastic from the US in that year. That was up from 271 million pounds in 2017 and 203 million pounds in 2016.

3) *Plastic pollution.* Plastics are estimated to comprise 60-80% of all marine debris and 90% of all floating debris. According to the California Coastal Commission (Commission), the primary source of marine debris is urban runoff (i.e., litter). By 2050, by weight there will be more plastic than fish in the ocean if we keep producing (and failing to properly manage) plastics at predicted rates, according to The New Plastics Economy: Rethinking the Future of Plastics, a January 2016 report by the World Economic Forum.

   Due to the interplay of ocean currents, marine debris preferentially accumulates in certain areas throughout the ocean. According to Eriksen et al. (2014), 24 expeditions from 2007-2013 estimated that there are approximately 96,400 metric tons of floating plastic in the Northern Pacific Ocean. The North Pacific Central Gyre is the ultimate destination for much of the marine debris originating from the California coast. A study by the Algalita Marine Research Foundation found an average of more than 300,000 plastic pieces per square mile of the Gyre and that the mass of plastic was six times greater than zooplankton floating on the water's surface.

4) *The Basel Convention.* The Basel Convention in an international treaty, opened for signature in 1989, which limits the international transfer of hazardous waste. For the 187 parties of the Convention (to which the United States and Haiti are the sole absentees), there are obligations to, among other specifications, prohibit both the import and export of hazardous waste without prior informed consent, to reduce and appropriately dispose domestic hazardous waste, to consider and appropriately enforce non-compliant hazardous waste trafficking as illegal, and to make other efforts to ensure waste is disposed only in environmentally sound ways. Recently, as part of the Fourteenth Meeting of the Conference of the Parties to the Basel Convention in May 2019, an amendment to classify plastic as a hazardous waste under the treaty was adopted.

Although the United States signed the treaty in 1989, the necessary legislative actions needed to ratify the Convention were never taken.

Comments

1) *Purpose of resolution.* According to the author, "The proliferating, negative impacts of plastic pollution around the globe are startling. By 2050, the ratio of plastics to fish in the ocean, by weight, will be equal. And our national recycling rate for plastics are in the single-digits.

"The Basel Convention is an international treaty that regulates movement of hazardous materials from one country to another. Recently, 187 countries agreed to add plastic to the list of materials in a global effort to combat the dangerous effects of plastic pollution around the world. Sadly, the U.S. was not one of signatories. In fact, we are only one of two countries who have not ratified the Convention.

"SR 47 calls on Congress and the President to re-assert the nation's environmental leadership. It says the California Senate urges the U.S. Congress to ratify the Basel Convention take legislative action mandated by the convention to restrict the import and export of hazardous wastes covered by the agreement."

SOURCE: Author

SUPPORT:

California Product Stewardship Council
National Stewardship Action Council
StopWaste
TOMRA Americas

OPPOSITION:

None received

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

Bill No:	AB 68		
Author:	Ting		
Version:	6/12/2019	**Hearing Date:**	7/3/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: Land use: accessory dwelling units

DIGEST: Expands ministerial approval provisions to include multiple accessory dwelling units (ADUs) in existing multifamily dwellings, multiple detached ADUs on the same lot as a multifamily dwelling, and an ADU and a junior ADU on one lot, under specified conditions.

ANALYSIS:

Existing law:

1) Under the Land Use and Zoning Law:

   a) Establishes requirements and standards for ADUs (Government Code (Gov. C.) §65852.2)

   b) Allows a local agency to, by ordinance, provide for the creation of ADUs in areas zoned for single-family or multifamily use and requires the ordinance to contain certain requirements relating to, among others, lot coverage, parking, height restrictions, minimum and maximum unit size, setbacks, and zoning (Gov. C. §65852.2(a)).

      i) Allows a local agency up to 120 days to ministerially consider an ADU permit application (Gov. C. §65852.2(a)(3)).

         a) Prohibits another local ordinance, policy, or regulation from being the basis for the denial of an ADU permit (Gov. C. §65852.2 (a)(5)).

   c) If a local agency has not adopted an ordinance for ADUs, requires the local agency to ministerially approve an ADU permit application within 120 days (Gov. C. §65852.2(b)).

d) Authorizes a local agency, by ordinance, to provide for the creation of junior ADUs (JADUs) in single-family residential zones, as specified (Gov. C. §65852.22).

2) Pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code (PRC) §21000 et seq.):

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 §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)).

This bill:

1) Makes various changes to provisions governing ADUs relating to prohibiting minimum lot size requirements, changing total floor area restrictions, changing the setback requirements, authorizing ADUs to be attached or located within an accessory structure, changing offstreet parking requirements, and requiring the permits be ministerially approved within certain timeframes.

2) Prohibits a local ordinance, policy, or regulation from being the basis for a delay of an ADU permit.

3) Expands the applicability of the ministerial approval provisions to apply to ADUs and JADUs in residential or mixed-use zones as follows:

a) On a lot with a proposed or existing single-family home, allow:

i) One ADU and one JADU if the ADU or JADU is within a proposed or existing structure; and may include an expansion, limited to accommodating ingress and egress, of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure; or

ii) One detached ADU that may be combined with a JADU.

b) On a lot with multi-family dwelling structures, allow:

   i) Multiple ADUs within portions of an existing structure that are not used as livable space (storage rooms, boiler rooms, passageways, attics, and garages), limited to 1 ADU within an existing multifamily dwelling structure and up to 25% of existing units thereafter; and
   ii) Two detached ADUs.

4) Authorizes a local agency to require as a part of the application for a permit of an ADU connected to an onsite water treatment system, a percolation test completed within the last 5 years, and if the percolation has been recertified, within the last 10 years.

5) Only requires an ADU to be considered by a local agency, special district, or water corporation to be a new residential use for purposes of connection fees or capacity charges for utilities if the ADU is constructed with a new single-family dwelling.

6) Only requires ADUs that are on a lot with a proposed or existing single-family home to install a new or separate utility connection directly between the ADU and the utility; or be subject to a related connection fee or capacity charge if the ADU is constructed with a new single-family home.

7) After the local agency has submitted a copy of its local ordinance to the Department of Housing and Community Development (HCD), requires HCD to notify the local agency if it does not comply with these requirements.

8) Requires the local agency to consider HCD's findings and either (1) amend its ordinance to comply or (2) adopt a resolution explaining why the ordinance does comply and addressing HCD's findings. Authorizes HCD to notify the Attorney General if the local agency does not do either of these things.

9) Revises JADU local ordinance requirements to allow one JADU to be on a lot zoned for single-family residences with a proposed single-family residence and makes other changes relating to the requirements of interior entries and efficiency kitchens.

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. 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.

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 proposalto 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) *Land use planning and permitting.* The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include seven mandatory elements, including a housing element that establishes the locations and densities of housing, among other requirements, and must incorporate environmental justice concerns. Cities' and counties' major land use decisions—including most zoning ordinances and other aspects of development permitting— must be consistent with their general plans. In this way, the general plan is a blueprint for future development.

   The Planning and Zoning Law also establishes a planning agency in each city and county, which may be a separate planning commission, administrative body, or the legislative body of the city or county itself. Public notice must be given at least 10 days in advance of hearings where most permitting decisions will be made. The law also allows residents to appeal permitting decisions and other actions to either a board of appeals or the legislative body of the city or county. Cities and counties may adopt ordinances governing the appeals process, which can entail appeals of decisions by planning officials to the planning commission and the city council or county board of supervisors.

3) *Ministerial and by-right approvals.* Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. Some local ordinances provide "ministerial" processes for approving projects – the zoning ordinance clearly states that a particular use is allowable, and local government does not have any discretion regarding approval of the permit if the application is complete. Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meeting standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review.

   Ministerial and use by right approvals remove a project from all discretionary decisions of a local government, including an environmental review under

CEQA. Thus, establishing processes to approve certain types of projects ministerially, also creates exemptions from CEQA. If the scope of the project category is expanded to additionally exclude projects that would have otherwise been subject to CEQA, it is expanding the scope of the "ministerial project" exemption.

4) *California's housing shortage.* California is in the midst of a serious housing crisis. California is home to 21 of the 30 most expensive rental housing markets in the country, which has had a disproportionate impact on the middle class and the working poor. Housing units affordable to low-income earners, if available, are often in serious states of disrepair. A person earing minimum wage must work three jobs on average to pay the rent for a two-bedroom unit. The Department of Housing and Community Development (HCD) estimates that approximately 2.7 million lower-income households are rent-burdened (meaning they spend at least 30 percent of their income rent), 1.7 million of which are severely rent-burdened (spending at least 50% of their income on rent). Not a single county in the state has an adequate supply of affordable homes. According to a 2015 study by the California Housing Partnership Corporation, California has a shortfall of 1.5 million affordable homes and 13 of the 14 least affordable metropolitan areas in the country.

   A major factor in this crisis is the state's housing shortage. From 1954-1989, California constructed an average of more than 200,000 new homes annually, with multifamily housing accounting for the largest share of housing production. Since then, however, construction has dropped significantly. HCD estimates that approximately 1.8 million new housing units – 180,000 new homes per year, are needed to meet the state's projected population and housing growth by 2025. Even when housing production rose in the mid-2000's, it never reached the 180,000 mark, and over the last 10 years, construction averaged just 80,000 new homes per year.

5) *Accessory Dwelling Units.* ADUs are additional living quarters that are independent of the primary dwelling unit on the same lot. ADUs are either attached or detached to the primary dwelling unit, and provide complete independent living facilities for one or more persons, including separate access from the property's primary unit. This includes permanent provisions for living, sleeping, eating, cooking, and sanitation. JADUs are ADUs that are no more than 500 square feet and exist within single-family homes and have cooking facilities including a sink and stove but are not required to have a bathroom.

ADUs have been identified as an important piece of the solution to California's housing crisis. According to the Terner Center for Housing Innovation at UC Berkeley, the average cost to build an ADU is relatively inexpensive at $156,000. Because of their size and lower cost to construct, the Terner Center found that 58% of ADUs are rented out at below market rate.

Over the past few years, the legislature has passed a number of bills to ease zoning restrictions and expedite approval processes at the local level, which has contributed to the increased supply of ADUs throughout the state. For example, in the city of Los Angeles, since 2017 a total of 9,247 applications have been received for ADUs. This represents an approximate 30-fold increase as compared to the citywide average in the many years before the state law changed to reduce barriers to ADUs. Similarly, the city of Santa Rosa received 118 applications for ADUs in 2018, compared to 54 total from 2008-2016.

Comments

1) *Purpose of Bill.* According to the author, "Accessory Dwelling Units (ADUs) have surged in popularity as a way to address California's housing crisis as demand outpaces supply. AB 68 will remove remaining barriers to the widespread adoption of ADUs as low-cost, energy efficient, affordable housing that can go from policy to permit in 12 months."

2) *More flexibility for ADUs.* AB 68 would significantly increase the number of ADUs that would be eligible for a ministerial approval process; expanding the applicability of the ministerial approval to all of the following:

   - One ADU and one JADU per lot with a proposed or existing single-family dwelling in a residential or mixed-use zone.
   - One detached, new construction, single-story ADU that conforms with certain setback requirements for a lot with a proposed or existing single-family dwelling in a residential or mixed-use zone.
   - Multiple ADUs within the portion of an existing multifamily dwelling structure, limited based on the number of existing units that are not used as livable space, in a residential or mixed-use zone.
   - Up to two ADUs that are located on a lot with an existing multifamily dwelling in a residential or mixed-use zone, that are detached from the multifamily dwelling, and that conform to certain height limitations and setback requirements.

   Because ADUs are subject to a ministerial approval process, they are also exempt from environmental review under CEQA.

3) *Increased density without the environmental review.* It is not unusual for certain interests to assert that CEQA impedes a project or that a particular exemption will expedite construction of a particular type of project and reduce costs. This, however, frequently overlooks the benefits of environmental review: 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.

   Even though the ultimate goal is to provide a low-cost, energy-efficient, affording housing option during the state's housing crisis, the environmental review of CEQA ensures that projects are approved in accordance with informed and responsible decisionmaking. It allows for the decisionmakers, project proponents, and the public to know of the potential short-term, long-term, and maybe permanent environmental consequences of a particular project but also the cumulative impacts of multiple projects.

   In the context of allowing for more ADUs to be approved ministerially, relevant considerations may include whether, on a cumulative scale, there are sufficient water supplies available, whether there would be an increase in the generation of solid waste in excess of the capacity of local infrastructure, or whether there would be an increase in greenhouse gas emissions that would significantly impact the environment.

   Take, for example, a 200-unit development. Although highly unlikely, but possible under the provisions of AB 68, if half of the parcels were to apply for, and ministerially receive, an ADU permit, that could easily add 100 people to the density of that area. What would those additional 100 people mean to the underlying infrastructure of the area? What if it is a community that already has water quality supply issues? Will the area be able to provide safe drinking water to those additional people? What does that mean for the traffic impacts on the community? According to information provided by the sponsor, a study on ADUs (Peterson, Kol. *Backdoor Revolution: The Definitive Guide to ADU Development. Portland: Accessory Dwelling Strategies, LLC, 2018)* found that in 2013, of the 800 ADUs in Portland, ADUs contributed 0.93 cars per ADU on average. Could the increased amount of cars affect emergency access? Will the jurisdiction be able to provide for the basic necessities of the community? Admittedly, it is highly speculative how many additional ADUs AB 68 would

additionally permit and the presence of ADUs are not spread throughout cities uniformly, but substantial population growth is not outside the realm of possibility. It is also noted that the Governor's Budget includes $500 million for the Infill Infrastructure Grant Program, in which developers and local governments can apply for infrastructure funding. This funding, unlike the ministerial approval of ADUs, is not guaranteed.

These considerations, and more, are typically covered by an environmental review. Although AB 68 incorporates considerations of infrastructure capacity for ADUs individually, it only comes into consideration when a new single-family dwelling is being constructed. AB 68 could significantly increase the number of ADUs permitted in any particular area, all of which would be exempt from the environmental review process; denying local governments the ability to consider, and hopefully mitigate or avoid, any environmental impacts that these units may have individually, and cumulatively.

4) *Cumulative impacts*. Many see ADUs as an opportunity to address the state's housing shortage; it can provide below-market alternatives to standard rentals and capitalizes on the use of residential lots that have already been built on, thereby conserving land for other purposes. Currently law permits one ADU per single-family lots in single-family zoned areas; but a local ordinance may provide for an ADU on a single-family lot in an area zoned for multifamily use. As such, the state has provided for ministerial approval of ADUs under limited circumstances; a type of approval that is typically reserved for simple, small-scale development projects. This bill would significantly expand where and how ADUs can be built, significantly increasing the cumulative impact of these units.

   Generally, CEQA Guidelines §15064(h)(1) provides that a project may have a significant impact if (1) cumulative impacts maybe significant and (2) the project's effects are "cumulatively considerable." Cumulatively considerable means that incremental effects are considerable when viewed together the effects of past, current, and probably future projects. CEQA Guidelines §15130(b)(1) also requires consideration of "probable future projects" in pending applications. If a cumulative impact was adequately addressed in a prior EIR for a community plan, zoning action, or general plan, then an EIR for a current project need not further analyze the cumulative impact.

   By expanding the ministerial approval for ADUs, AB 68 would deny local governments the ability to consider the cumulative impacts of the ADUs being built within their jurisdiction.

Related/Prior Legislation

AB 69 (Ting) facilitates the creation of new Building Code standards for ADUs and other small homes. This bill is referred to the Senate Appropriations Committee.

AB 670 (Friedman) makes it illegal for new or amended governing documents of common interest developments to prohibit the construction of ADUs or JADUs. This bill is on the Senate Floor.

AB 671 (Friedman) requires local jurisdictions to require in their Housing Elements a plan that incentivizes and promotes production of ADUs for very-low, low-, and moderate-income households. Requires the Department of Housing and Community Development to develop and post to its website a list of state programs that could help subsidize ADUs for very-low, low-, and moderate-income households. This bill is referred to the Senate Appropriations Committee.

AB 881 (Bloom) makes several changes to further reduce barriers to production of ADUs. It would remove the ability for local jurisdictions to create owner occupancy requirements for ADUs. This bill is referred to the Senate Governance and Finance Committee.

SB 13 (Wieckowski) makes several changes to further reduce barriers to production of ADUs. It would remove the ability for local jurisdictions to create owner occupancy requirements for ADUs. This bill is referred to the Assembly Committee on Local Government.

SB 1069 (Wieckowski, Chapter 720, Statutes of 2016) made several changes to reduce the barriers to the development of ADUs and expanded capacity for their development, including changes to parking, fees, fire requirements, and process.

AB 2299 (Bloom, Chapter 735, Statutes of 2016) requires a local government to ministerially approve ADUs if the unit complies with certain parking requirements, the maximum allowable size of an attached ADU, and setback requirements.

SOURCE: California YIMBY

TRIPLE REFERRAL

This measure was heard in the Senate Housing Committee on June 18, 2019, and passed out of committee with a vote of 9 - 2. 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 Governance and Finance Committee.

SUPPORT:

California YIMBY (sponsor)
AARP California
ADU Task Force, East Bay
American Planning Association, California
Association of Bay Area Governments
Bay Area Council
Bay Area Housing Advocacy Coalition
Bay Area Regional Health Inequities Initiative
Board of Supervisor Keith Carson, Alameda County
Bridge Housing
Building Industry Association of the Bay Area
California Apartment Association
California Association of Realtors
California Community Builders
California Forward Action Fund
California Teamsters
Casita Coalition
Chan Zuckerberg Initiative
cityLAB-UCLA
City of Oakland
Community Legal Services in East Palo Alto
EAH Housing
East Bay Housing Organizations
Eden Housing
Emerald Fund, Inc.
Enterprise Community Partners
Eric Garcetti, City of Los Angeles, Mayor
Facebook
Greenbelt Alliance
Habitat for Humanity California
Habitat for Humanity East Bay/Silicon Valley
Hamilton Families
Hello Housing
Inspired Independence
LA-Mas
League of Women Voters California
Metropolitan Transportation Commission
MidPen Housing
Mikiten Architecture
Natural Resources Defense Council

Non-profit Housing Association of Northern California
North Bay Leadership Council
Northern California Carpenters Regional Council
Oakland Chamber of Commerce
OpenScope Studio
PICO California
prefabADU
Related California
Santa Cruz YIMBY
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco Foundation
San Francisco Housing Action Coalition
Silicon Valley at Home (SV@Home)
Silicon Valley Community Foundation
Southern California Rental Housing Association
Terner Center for Housing Innovation
TentMakers Inc.
TMG Partners
TransForm
The Two Hundred
Urban Displacement Project
United Dwelling
Unite Here, AFL-CIO
Valley Industry and Commerce Association
Working Partnerships USA
9 individuals

OPPOSITION:

Cities Association of Santa Clara County
City of Burbank
City of Camarillo
City of La Palma
City of Los Alamitos
City of Manhattan Beach
City of Novato
City of Rancho Cucamonga
City of San Dimas
City of San Marcos
City of Santa Clarita
League of California Cities
Marin County Council of Mayors and Councilmembers

South Bay Cities Council of Governments

ARGUMENTS IN SUPPORT: According to the Natural Resources Defense Council, "AB 68 will remove remaining barriers to the widespread production of much-needed accessory dwelling units (ADUs) as low-cost, energy efficient, affordable housing that can go from policy to permit in 12 months. ADUs can serve as a smart-growth tool by decreasing household energy use; reducing building materials, carbon emissions, and criteria pollutants; combatting displacement and urban sprawl; decreasing vehicle emissions, traffic and commute times; and affording families more flexibility while saving them money on rent and utility bills.

"AB 68 will help create tens of thousands of new and reasonably-priced homes each year while offering communities a useful tool in the fight against climate change."

ARGUMENTS IN OPPOSITION: According to the League of California Cities, "Section 1 of the bill amends Government Code Section 65852.2(e), thereby circumventing local ordinances that may exclude ADUs for criteria based on health and safety. Specifically, up to two new-construction ADUs on a parcel with a multifamily dwelling, ... a new-construction ADU on a parcel with a single family home, and conversions of existing space to create an ADU and JADU within a single family home or associated accessory structure would have to be allowed on any residential or mixed use parcel, irrespective of a local ordinance adopted pursuant to Government Code Section 65852.2(a)(1)(A).

"AB 68 would prohibit a local jurisdiction form requiring a property owner live in the main house or one of the accessory structures. This would incentivize operating the property as a commercial enterprise and could have unintended effect of large-scale investors purchasing many single-family homes and adding ADUs, thus operating more like a property management company, not a homeowner seeking some additional income. Additionally, owner occupancy requirements could provide greater oversight and an opportunity to provide more affordable rents as a homeowner is less likely to be profit driven.

"When a garage, carport, or covered parking structure is demolished or converted into an ADU, AB 68 would prohibit a city from requiring replacement parking. This would only exacerbate existing parking conflicts because cities are currently prohibited from imposing parking requirements on new ADUs if they are within one-half mile of transit."

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

Bill No:	AB 161		
Author:	Ting		
Version:	6/27/2019	**Hearing Date:**	7/3/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: Solid waste: paper waste: proofs of purchase

DIGEST: Commencing January 1, 2022, prohibits businesses from providing paper receipts to consumers except upon request.

ANALYSIS:

Existing law:

1) Requires that local governments divert at least 50% of solid waste from landfill disposal and establishes a statewide goal that 75% of solid waste be diverted from landfill disposal by 2020 (Public Resources Code (PRC) §§41780, 41780.01).

2) 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).

3) Requires generators of specified amounts of organic waste to arrange for recycling services for that material (PRC §42649.81).

4) Requires retailers that are required to collect use tax from purchasers (including lessees) must give a receipt to each purchaser for the amount of the tax collected. The receipt does not need to be "in any particular form," but must include specified information including the name and place of business, the name and address of the purchaser, a description of the property sold or leased, and the date on which the property was sold or leased (Revenue and Taxation Code §§6001, et seq.).

This bill:

1) On and after January 1, 2022, requires a business that accepts payment through credit or debit transactions to only provide a proof of purchase (i.e., a receipt)

to a customer at the customer's option (i.e., upon request) unless a proof of purchase is otherwise required to be given to the customer by state or federal law.

2) On and after January 1, 2022, prohibits a business from printing a paper proof of purchase if the customer opts to not receive the proof of purchase, unless otherwise required by state or federal law.

3) A paper proof of purchase shall not:

   a) Contain bisphenol A or bisphenol S.
   b) Include printouts of items nonessential to the transaction if those nonessential items (such as coupons or advertisements) make the paper proof of purchase longer than necessary to provide the consumer with the essential items to the transaction.

4) Authorizes the Attorney General, district attorney or city attorney to enforce the provisions of the bill. Establishes that the first and second violation shall result in a notice of violation, and any subsequent violation is an infraction punishable by $25 per day, not to exceed $300 annually.

5) Defines "business" as a person that accepts payment through cash, credit, or debit transactions. Specifies that "business" does not include any of the following:

   a) A healthcare provider;
   b) A small business, as specified; or
   c) An entity organized as a nonprofit that has an annual gross sales receipt of less than $2,000,000.

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.

2) *Market challenges.* The US has not developed significant markets for recycled content materials, including plastic and mixed paper. Historically, China has been the largest importer of recycled materials. According to the International Solid Waste Association, China accepted 56% by weight of global recycled plastic exports. In California, approximately one-third of recycled material is exported; 85% of the state's recycled mixed paper has been exported to China in recent years.

   In an effort to improve the quality of the materials it accepts and to combat the country's significant environmental challenges, China enacted Operation Green Fence in 2013, under which it increased inspections of imported bales of recyclables and returned bales that did not meet specified requirements at the exporters' expense. In 2017, China established Operation National Sword, which included additional inspections of imported recycled materials and a filing with the World Trade Organization indicating its intent to ban the import of 24 types of scrap, including mixed paper and paperboard, polyethylene terephthalate (PET), polyethylene (PE), polyvinyl chloride (PVC), and polystyrene (PS) beginning January 1, 2018. In November 2017, China announced that imports of recycled materials that are not banned will be required to include no more than 0.5% contamination. Some market experts are hopeful that cleaner plastic materials, including those included in the ban, may be allowed in the future.

   Following China's actions, other Southeast Asian countries have enacted policies limiting or banning the importation of recycled materials, primarily plastic and mixed paper. Last year, Malaysia and Vietnam implemented import restrictions. In March India announced that it will ban scrap plastic imports. Thailand has announced a ban that will go into effect in 2021. These policies create serious challenges for recyclers. Recycling requires markets to create new products and close the loop. This challenge also provides an opportunity for California to improve its efforts to reduce the amount of waste it generates and expand its efforts to develop recycling manufacturing infrastructure, which has been shown to provide jobs, economic, and environmental benefits.

3) *Receipts*. Point-of-sale receipts in California are generally printed on white thermal paper, which is very thin, lightweight paper coated with a material that changes color when heated. Generally, this coating contains either Bisphenol A (BPA) or Bisphenol S (BPS). According to the American Forest and Paper Association (AFPA), receipt paper used in California uses BPS almost exclusively. Because thermal paper is so thin, it generally contains no recycled content. According to the United States Environmental Protection Agency (US EPA), exposure to BPA [and BPS] may occur during manufacture and use of

thermal paper and at its end-of-life (i.e., recycling, composting, landfilling, or incineration). In one 2010 study, BPA was detected at levels between 0.8 percent and 2.8 percent of the total weight of the receipts tested. Bisphenols are endocrine disrupters that are associated with possible cancer and reproductive risks. While paper is 17% of the state's disposed waste stream, receipts make up a small percentage of the total paper disposed in California. Estimates vary on the amount of receipt paper used in the US. According to the AFPA, the US annually uses approximately 180,000 tons of paper receipts. Grand View Research, which provides market information, estimates that 282,500 tons of thermal paper is used in the US each year for receipts. No California specific data is available.

Comments

1) *Purpose of Bill.* According to the author, "With the increasing adoption of e-receipts, paper receipts have become unnecessary and antiquated. Yet many businesses are still providing paper receipts, generating millions of pounds in waste every year and consuming valuable resources. Reducing the number of paper receipts that are printed through AB 161 will not only vastly cut down the amount of waste that we produce, it will also save thousands of trees and gallons of water each year."

2) *Available alternatives.* Earlier versions of the bill required businesses to provide an electronic receipt from customers, which would be the most obvious alternative to paper receipts. However, those provisions were taken out due to privacy considerations.

3) *But aren't receipts recyclable or compostable*? This bill is focused on source-reduction. California's solid waste hierarchy places source reduction at the top of the hierarchy, followed by reuse and then recycling. Disposal should be the last resort. While recycling and composting are environmentally preferable to disposal, the volume of single-use materials generated in California far exceed our capacity to recycle or compost those materials.

   Requiring consumers to request a paper receipt is intended to reduce the number of paper receipts generated, which will conserve the resources needed to make the receipts and reduce the generation of waste receipts.

   According to the AFPA, receipts are recyclable. While this may be technically true, CalRecycle indicates that receipts are highly discouraged from entering the recycling stream due to BPA or BPS coatings that are contaminants in the recycling stream. They are viewed by the waste industry as contaminants in the

paper recycling stream, but given their small size they are impossible to remove during the sorting process. Their small size and light weight also make them prone to becoming contaminants in the plastic recycling stream.

Similarly, they are technically compostable, in that they will break down in an industrial compost facility. However, the BPA and BPS coatings are also a contaminant in compost.

4) *Exempt parties.* AB 161 excludes health care providers, small businesses, and nonprofit entities with annual gross sales of $2,000,000 or less. To be considered a "small business" is a low threshold – that it has annual gross receipts less than $2,000,000, it is independently owned and operated, and is not dominant in its field of operation. This would exclude a large number of businesses in the state.

   This exemption was likely to accommodate those businesses that do not have the financial means to switch to an electronic receipts point-of-sale system, however that portion has been struck from the bill. AB 161 has since been significantly scaled back to only permit businesses to provide consumers with a receipt upon request.

   Some have argued that these exemptions are still needed due to the prohibition of the receipts containing bisphenol A or bisphenol S. Another argument is that some older point-of-sale systems automatically generate receipts. These considerations, it is argued, would require businesses to switch their point-of-sale systems, causing a disproportionate financial burden. It is unclear if requiring a different type of paper or having a system that does not automatically generate a receipt would require a new point-of-sale system to be purchased. Even still, should a small business be allowed to not comply with the law because it would cost them money? *Given the new direction of the bill, does it make sense to still exclude these parties from compliance? Is this an example of the exception swallowing the rule?*

5) *Actual deterrence.* As currently written, AB 161 imposes minimal penalties on a business that violates its provisions. Specifically, the first and second violations result in a *notice of violation*, and any subsequent violation is civil penalty of $25 for each day the business is in violation, not to exceed $300 annually.

   The enforcement provisions provided for under this bill are identical to last year's AB 1884 (Calderon, Chapter 576, Statutes of 2018) which prohibited sit down restaurants from providing a single-use plastic straw to a customer unless

requested. The same enforcement considerations and concerns that were discussed in that bill are present in this bill. Since its enactment, some restaurants comply with AB 1884's "only upon request" mandate, some do not. Those restaurants continue to give out single-use plastic straws automatically, knowing that (1) the odds of being caught are low and (2) if caught, the consequences are minimal. For many restaurants, the maximum $300 penalty is a drop in the bucket.

Before AB 1884, the state had enacted various other programs geared to changing consumer behavior and reducing the amount of plastic that is disposed of. SB 270's plastic bag ban imposes civil liability on a person or entity in the amount of $1,000 per day for the first violation, $2,000 per day for the second violation, and $5,000 per day for the third and subsequent violations. In the case of plastic ring devices, the state imposes an infraction and a fine not to exceed $1,000 on any person who sells at wholesale or distributes to a retailer containers that are connected to each other by means of a plastic ring or similar plastic devise that is not degradable.

The enforcement mechanisms for the state programs relating to the management of plastic are varied and depend on each programs unique circumstances and potential violators involved. Although the purpose of AB 161 is to reduce the amount of paper our society consumes, and AB 1884's focus was on plastic, the overarching intent is the same – to cut down on the amount of waste we use.

The businesses that are subject to the provision of AB 161 are the larger, more profitable businesses who are not only owned by larger corporations but also likely the biggest contributors of paper receipt generation. These businesses would likely not be deterred by such a minimal penalty. *If this bill is to have a meaningful impact on the standard operations of businesses and discourage the default practice of providing paper receipts for each transaction, a penalty that would actually deter businesses from violations should be included. A $25 penalty would not even cover the cost of having government enforce this law.*

6) *Overall impact of the bill.* While the elimination of BPA and BPS from receipts may help with the recyclability to a degree, the focus of the bill is supposed to be source reduction. And requiring a consumer to ask for a receipt may help address that issue, but exempting a large group of businesses from having to comply may be the exception that swallows the rule. Given the number of businesses that would be permanently exempt from the bill and the minimal penalties imposed on the larger companies that are still subject to the

bill, will this bill have a substantial impact on the state's waste reduction efforts?

Related/Prior Legislation

AB 1884 (Calderon, Chapter 576, Statutes of 2018) only allows full service restaurants to provide a single-use plastic straw to a consumer upon request.

SB 270 (Padilla, Chapter 850, Statutes of 2014) prohibits stores from distributing single-use carryout plastic bags and established requirements for reusable bags.

DOUBLE REFERRAL

This measure was heard in Senate Judiciary Committee on June 25, 2019, and passed out of committee with a vote of 7-2.

SOURCE: Author

SUPPORT:

350 Silicon Valley
American Sustainable Business Council
Azul
Breast Cancer Prevention Partners
Californians Against Waste
California Coastkeeper Alliance
City of Berkeley
Clean Water Action
Digital Receipt Coalition
Educate. Advocate.
Endangered Habitats League
Empower Family California
Environmental Working Group
Defenders of Wildlife
Green America
Green Business Network
Heal the Bay
Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force
Northern California Recycling Association
Ocean Conservancy
Older Women's League

Plastic Pollution Coalition
RethinkWaste
Save Our Shores
Save the Redwoods League
Seventh Generation Advisors
Sierra Club California
SoCal 350
South Bay 350 Los Angeles
Surfrider Foundation
The Center for Oceanic Awareness, Research, and Education
The 5 Gyres Institute
The Story of Stuff*
UPSTREAM
Wishtoyo Chumash Foundation
Zero Waste USA

OPPOSITION:

American Chemistry Council
American Forest & Paper Association
Appvion Holding Corp./Appvion Operations, Inc.
Bakersfield Chamber of Commerce
BizFed – Los Angeles County Business Federation
BP America
CalAsian Chamber of Commerce
California Attractions and Parks Association
California Chamber of Commerce
California Food Producers
California Fuels and Convenience Alliance
California Grocers Association
California Landscape Contractors Association
California Manufacturers & Technology Association
California Pharmacists Association
California Restaurant Association
California Retailers Association
California Travel Association
Camarillo Chamber of Commerce
Cerritos Regional Chamber of Commerce
Chico Chamber of Commerce
Chino Valley Chamber of Commerce
Costco Wholesale
Domtar

Downey Chamber of Commerce
Family Winemakers of California
Folsom Chamber of Commerce
Fontana Chamber of Commerce
Gateway Chambers Alliance
General Credit Forms Inc.
Greater Coachella Valley Chamber of Commerce
Greater Ontario Business Council
Greater San Fernando Valley Chamber of Commerce
Hansol America, Inc.
Hesperia Chamber of Commerce
Iconex
Inland Empire Economic Partnership
International Franchise Association
Kanzaki Specialty Papers
Koehler Paper Group
Liberty Greenleaf
Long Beach Chamber of Commerce
Los Angeles County Business Federation
Murrieta/Wildomar Chamber of Commerce
National Federation of Independent Business
North Pacific Paper Company, LLC
Orange County Business Council
Oxnard Chamber of Commerce
Paperboard Packaging Council
Pleasanton Chamber of Commerce
Printing Industries of California
Printing Industry Midwest
Rancho Cucamonga Chamber of Commerce
Redlands Chamber of Commerce
Resolute Forest Products
San Gabriel Valley Economic Partnership
Santa Clarita Valley Chamber of Commerce
Santa Maria Chamber of Commerce
Small Business California
Specialty Roll Products, Inc.
Specialty Graphic Imaging Association
Southwest California Legislative Council
TST IMPRESO
Twin Rivers Paper Company
United Chamber Advocacy Network
Victor Valley Chamber of Commerce

West Coast Lumber & Building Material Association
Western Carwash Association
Western Wood Preservers Institute
Westside Council of Chambers of Commerce

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

Bill No:	AB 168		
Author:	Aguiar-Curry		
Version:	7/1/2019	**Hearing Date:**	7/3/2019
Urgency:	No	**Fiscal:**	No
Consultant:	Genevieve M. Wong		

SUBJECT: Housing: streamlined approvals

DIGEST: Requires a local government to engage in a scoping consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of a development before deeming the development's application submitted for purposes of a streamlined, ministerial approval process.

ANALYSIS:

Existing law:

1) Defines a "California Native American tribe" to mean a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004 (Public Resources Code (PRC) §21073).

2) Defines "Tribal cultural resources" to mean either of the following:

   a) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:

      i) Included or determined to be eligible for inclusion in the California Register of Historical Resources; or,
      ii) Included in a local register of historical resources, as defined.

   b) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be a significant resource to a California Native American tribe.

   c) A cultural landscape, to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.

3) Requires the lead agency responsible for reviewing a project under the California Environmental Quality Act (CEQA), prior to the release of certain CEQA reports for a project, to consult with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, as requested by the tribe. As a part of this consultation, the parties may propose mitigation measures capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource or alternatives that would avoid significant impacts to a tribal cultural resource. Requires any mitigation measures agreed upon in this consultation be in an adopted mitigation monitoring and reporting program (PRC §§21080.3.1 – 21080.3.2, 21082.3).

4) Declares that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment, and that public agencies must, when feasible, avoid damaging effects to any tribal cultural resource (PRC §§21084.2, 21084.3).

5) Allows a development proponent to submit an application for a development that is subject to a streamlined, ministerial approval process, and not subject to a conditional use permit, provided that:

   a) The development contains two or more residential units and satisfies specified objective planning standards, including being located on an urban infill site that is zoned for residential or residential mixed-use, with at least two-thirds of the square footage designated for residential use (Government Code (Gov. C) §§65913.4(a)(1), (2)).
   b) If the development includes units that are subsidized, the development proponent must record a long-term affordability covenant on the units, as specified (Gov. C. §64913.4(a)(3)).
   c) The development is located in a jurisdiction that has been determined by the state Department of Housing and Community Development (HCD) to have issued insufficient building permits to meet its share of the regional housing need assessment (RHNA), and the development is subject to a requirement mandating a minimum percentage of below market rate housing, as specified (Gov. C. §65913.4(a)(4)).
   d) The development proponent has certified to the locality that either the entirety of the development is a public work, or that all construction workers employed by the project will be paid at least prevailing wage, as specified. For specified developments, a skilled and trained workforce must be used (Gov. C. §65914.3(a)(8)).

e) The development is not located in environmentally unsafe or sensitive areas, including a coastal zone, prime farmland, wetlands, a high or very high fire severity zone, a hazardous waste site, an earthquake fault zone, a flood plain or floodway, lands identified for conservation in an adopted natural community conservation plan, habitats for protected species, and lands under conservation easement (Gov. C. §65913.4(a)(6)).

This bill:

1) Requires a local government to engage in a scoping consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of a development before deeming the development's application submitted for purposes of a streamlined, ministerial approval process.

   a) If a potential tribal cultural resource is located on the development site, prohibits the local government from approving the application until the local government has consulted with a California Native American tribe in accordance with specified provisions intended to avoid or minimize impacts to tribal cultural resources.

   b) If no potential tribal cultural resource is located on the development site, allows the local government to review and approve the application for the development.

2) Requires the scoping consultation to be conducted in a way that is mutually respectful of each party's sovereignty, and recognizes that California Native American tribes traditionally and culturally affiliated with a geographic area have knowledge and expertise concerning the resources at issue.

3) Defines "scoping consultation" as the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values, with the goal of determining whether a tribal cultural resource is located on the development site. Requires the scoping consultation to be conducted in a way that is mutually respectful of each party's sovereignty.

4) Prohibits these provisions from being construed to apply any provisions of CEQA, except as specifically indicated under this bill, to a development eligible for the streamlined, ministerial approval process.

5) Makes certain findings and declarations regarding

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.

   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 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) *Land use planning and permitting.* The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include seven mandatory elements, including a housing element that establishes the locations and densities of housing, among other requirements, and must incorporate environmental justice concerns. Cities' and counties' major land use decisions—including most zoning ordinances and other aspects of development permitting— must be consistent with their general plans. In this way, the general plan is a blueprint for future development.

   The Planning and Zoning Law also establishes a planning agency in each city and county, which may be a separate planning commission, administrative body, or the legislative body of the city or county itself. Public notice must be given at least 10 days in advance of hearings where most permitting decisions will be made. The law also allows residents to appeal permitting decisions and other actions to either a board of appeals or the legislative body of the city or county. Cities and counties may adopt ordinances governing the appeals process, which can entail appeals of decisions by planning officials to the planning commission and the city council or county board of supervisors.

3) *Ministerial approvals.* Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. Some local ordinances provide "ministerial" processes for approving projects. Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with the existing general plan and zoning rules, as well as meeting standards for building quality, health, and safety.

Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review.

Ministerial approvals remove a project from all discretionary decisions of a local government, including an environmental review under CEQA. Thus, establishing processes to approve certain types of projects ministerially, also creates exemptions from CEQA.

4) *Senate Bill 35.* In 2017, SB 35 (Wiener), Chapter 366, created a streamlined, ministerial approval process for infill developments in localities that have failed to meet their regional housing needs assessment (RHNA) numbers. A number of lands were exempted from this streamlined development process, including lands located in a coastal zone, wetlands, a high or very high fire severity zone, a hazardous waste site, an earthquake fault zone, a flood plain or floodway, lands identified for conservation in an adopted natural community conservation plan, and lands under conservation easement.

5) *Tribal Cultural Resources.* According to the 2010 Census, California has the highest Native American population in the country, with approximately 720,000 people in the state who identify as Native American. There are currently 109 federally recognized Indian tribes in California and 78 entities petitioning for recognition. California tribes currently have nearly 100 separate reservations or Rancherias.

The phrase "Tribal Cultural Resources" in California was first legally recognized and defined in 2014 under AB 52. The primary intent of AB 52 was to include California Native American Tribes early in the environmental review process and to establish a new category of resources related to Native Americans that require consideration under CEQA, known as tribal cultural resources.

Tribal cultural resources are sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe. Tribal cultural resources are sometimes referred to as "sacred sites" more generally. Sacred sites may be burial grounds, important archaeological areas, or religious objects. They are often sites of special ceremonies and healing.

Tribal cultural resources are of central importance to Native American nations because Native religion and culture is essential to the survival of Native American/American Indian nations as a distinctive cultural and political group. Many Native Americans have land-based religions, meaning they practice their

religion within specific geographic locations; their faith renders that land is itself a sacred, living being.

Comments

1) *Purpose of Bill.* According to the author, "AB 168 is consistent with California laws, which protect tribal lands. Without this bill, tribal cultural resources may be subject to unwanted destruction and desecration in favor of housing developments. We have lost much of our State's Native history, and once a religious or cultural artifact, site, or burial ground is lost, it cannot be replaced. To honor California's history and diversity, it is important that we continue to consult with Native American tribes and protect tribal cultural resources. Protecting these sacred places will ensure that generations of Californians to come can value the sovereignty of Native American tribes and communities."

2) *Protecting tribal cultural resources.* AB 168 purports to use the already existing CEQA process established by AB 52 (2014) to protect potential tribal cultural resources during the streamlined, approval process. While simple enough in concept, cross-referencing to already existing CEQA provisions could potentially lead to confusion as some CEQA terminology under the AB 52 process does not have a counterpart in a ministerial approval process context. For example, reference to the term "environmental review document." The existing AB 52 process requires that any mitigation measures agreed upon in the consultation process be recommended for inclusion in the environmental document. However, in a ministerial approval, there is no environmental document, only an application. A question arises as to what would be the equivalent document in this scenario?

   As the bill moves through the legislative process, the author shall continue to work with stakeholders to ensure that language is carefully crafted to ensure that tribal cultural resources continue to be protected and there is no confusion of the part of local governments on their responsibilities under this bill.

Related/Prior Legislation

SB 35 (Wiener, Mitchell, Chapter 366, Statutes of 2017) created a streamlined, ministerial approval process for infill developments in localities that have failed to meet their regional housing needs assessment (RHNA) numbers.

AB 52 (Gatto, Chapter 532, Statutes of 2014) established procedures and requirements under the California Environmental Quality Act (CEQA) for the

purpose of avoiding or minimizing impacts to tribal cultural resources.

SB 18 (Burton, Chapter 905, Statutes of 2004) required local governments to contact and consult with California Native American Tributes before the amendment or adoption of a general plan, specific plan, or designation of open space.

SB 1828 (Burton, Chesbro, 2002) would have subjected projects under CEQA and the Surface Mining and Reclamation Act of 1975 that could affect a Native American tribe's sacred site to additional conditions and approvals. AB 1828 was vetoed by Governor Davis.

TRIPLE REFERRAL:
This measure will be heard in the Senate Housing Committee July 2, 2019. If this measure is approved by the Senate Housing Committee it will be heard by the Senate Environmental Quality Committee July 3. If the measure is approved by this committee, the do pass motion must include the action to re-refer the bill to the Senate Governance and Finance Committee.

SOURCE: Author

SUPPORT:

Big Valley Rancheria
Dry Creek Rancheria Band of Pomo Indians
Habematolel Pomo of Upper Lake
Middletown Rancheria of Pomo Indians of California
Mooretown Rancheria
Tolowa Dee-ni' Nation
Pala Band of Mission Indians
Wilton Rancheria
Yocha Dehe Wintun Nation

OPPOSITION:

None received

-- END --

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

Bill No:	AB 296		
Author:	Cooley		
Version:	5/1/2019	**Hearing Date:**	7/3/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Paul Jacobs		

SUBJECT: Climate change: Climate Innovation Grant Program: voluntary tax contributions

DIGEST: This bill would establish the Climate Innovation Grant Program (Program), to be administered by the Strategic Growth Council (SGC), for the development and research of new innovations and technologies that either reduce emissions of greenhouse gases (GHG) or address the impacts of climate change. This bill also would establish a Climate Innovation Voluntary Tax Contribution Account (Account) and authorizes an individual to contribute as part of their state tax return.

ANALYSIS:

Existing law:

1) Establishes SGC, consisting of the Director of the State Office of Planning and Research (OPR), the Secretary of the Resources Agency, the Secretary for Environmental Protection, the Secretary of Business, Transportation, and Housing, the Secretary of California Health and Human Services, and one member of the public to be appointed by the Governor.

2) Directs SGC to:

   a) Identify and review activities and funding programs of member state agencies that may be coordinated to improve air and water quality, improve natural resources protection, increase the availability of affordable housing, improve transportation, meet the state's GHG emissions reduction goals, encourage sustainable land use planning, and revitalize urban and community centers in a sustainable manner;

   b) Recommend policies and investment strategies to the Governor, Legislature, and appropriate state agencies to encourage the development of sustainable communities;

c) Provide, fund, and distribute data and information to local governments and regional agencies that will assist in developing and planning sustainable communities; and,

d) Manage and award grants and loans to support the planning and development of sustainable communities.

This bill:

1) Establishes the Program to be administered by the SGC.

2) Requires the program to provide grants through a competitive process for the development and research of new innovations and technologies that do any of the following:

   a) Promote permanent and safe sequestration of GHG and carbon storage;

   b) Promote a permanent and safe removal of criteria air pollutants;

   c) Promote a clean, reliable, and affordable electric grid;

   d) Promote clean, reliable, and affordable transportation solutions;

   e) Address water quality and reliability issues that reduce environmental impacts in an affordable manner; and,

   f) Address soil quality issues in an affordable manner.

3) Requires grants provided by the Program to serve as a matching fund for a project.

4) Requires the SGC to develop:

   a) Solicitation and evaluation criteria for project proposals and establish the qualifications of grant applicants.

   b) Programming that fosters market facilitation and other efforts that accelerate the adoption and deployment of projects.

5) Requires the evaluation criteria to include a competitive process to evaluate the merits and likelihood of success of each project proposal, including technical and market acceleration facilitation considerations.

6) Requires SGC to submit an annual finance report for the Program to the Legislature.

7) Requires the chair of the SGC to appear, upon request, before the Joint Committee on Climate Change Policies to report on the status and accomplishment of the Program.

8) Authorizes SGC to seek private donations and publicly available moneys for the purposes of the Program.

9) Sunsets the grant program on January 1, 2031.

10) Creates the Climate Innovation Fund (Fund) and requires money in the fund to be continuously appropriated without regard to fiscal year to SGC for purposes of the Program.

11) Requires money received by the SGC from publicly available sources or private sources for the Program to be deposited in the Fund.

12) Establishes, until January 1, 2027, the Account. Authorizes an individual to contribute to the Account as part of their state tax return.

13) Continuously appropriates, except for administrative costs, moneys contributed by taxpayers from the Account to the Fund.

Background

1) *Climate change impacts.* Climate change is a global phenomenon, but its effects on different regions around the world will vary. Due to higher concentrations of heat-trapping greenhouse gases in the atmosphere, air and sea temperatures are warming which, in turn, are increasingly altering precipitation levels, air quality, and sea levels. The monthly peak amount of carbon dioxide in the Earth's atmosphere in 2019 jumped by a near-record amount to reach 414.8 parts per million in May 2019, which is the highest level in human history and likely the highest level in the past 3 million years. For California, this means there is greater likelihood of heat waves, droughts, reduced snowpack, large wildfires, and extreme storms with heavy precipitation and flooding.

2) *California's climate change goals.* AB 32 (Núñez), Chapter 488, Statutes of 2006, requires the statewide GHG emission level to be at the level was in 1990

by 2020. The state is on track to meet this requirement. SB 32 (Pavley) Chapter 249, Statutes of 2016, requires that statewide GHG emissions are reduced to at least 40% below the 1990 level by December 31, 2030.

3) *SGC's Climate Change Research Program (CCRP).* AB 109 (Ting, Budget Act of 2017, Chapter 249, Statutes of 2017) created the CCRP. The goals of the program are as follows:

   a) Invest in research that has a clear and demonstrated connection to the State's climate change goals, including GHG emission reduction and climate change adaptation and resilience.

   b) Advance research to support low-income and disadvantaged communities, and advance equitable outcomes in the implementation of the State's climate change policies and investment.

   c) Develop a research program that augments, builds connections, and fills gaps across current State research programs.

   d) Prioritize outcome-based research linked to practical climate action.

   e) Model meaningful engagement with the research community, community-based organizations and other stakeholders at all stages of the program to ensure relevance and utility of research process, projects, and results.

   f) Continue to advance and develop a common research platform to support climate change planning, policy development, and implementation across all sectors at the state, regional, and community scale.

   g) Leverage and complement existing research funding and policy innovations to accelerate climate change research, innovation, and policy and technology deployment.

   Additionally, through consultation with State agencies and other State climate change research programs, SGC has identified the following five priority research areas for investment through CCRP. These areas were identified by SGC to complement existing State research investment programs, specifically to focus on crosscutting research needs and to address areas not captured in current research investments:

   a) Supporting and Protecting Vulnerable Communities from the Impacts of Climate Change.

b) Integrating Land Use, Conservation, and Management into California's Climate Change Programs.

c) Increasing Data Accessibility and Planning Support for Local and Regional Climate Change Planning.

d) Accelerating and Supporting Transitions to Climate Smart Communities.

e) Low-GHG Transformative Technology Development and Deployment.

In 2018, SGC approved funding for four research initiatives that will develop clean technologies to reduce GHG emissions and advance equitable outcomes for vulnerable communities. The research teams that were selected for funding will explore topics as varied as developing tools for resilient forest management, sustainable use of biomass, improving carbon sequestration on farmlands, and advancing more efficient cooling technologies in low-income and disadvantaged communities. CCRP has received $29 million from the GGRF to date, with an additional $5 million from the GGRF approved for fiscal year (FY) 2019-20.

4) *Electric Program Investment Charge (EPIC).* The California Public Utilities Commission established the purpose and governance for EPIC in Decision 12-05-037 on May 24, 2012. In the decision, the CPUC designated four administrators for the program – the California Energy Commission (CEC) to oversee 80 percent of the funds and the remaining 20 percent to be administrated by the three investor owned electric utilities (IOUs). The CEC's portion of the funds provides funding for applied research and development, technology and demonstration and deployment, and market facilitation for clean energy technologies and approaches for the benefits of the ratepayers of the three IOUs. Projects funded must address strategic objectives and funding initiatives as detailed in the appropriate EPIC Investment Plan. EPIC has received over $1.2 billion through FY 2018-19.

Comments

1) *Purpose of Bill.* According to the author, "The impacts of climate change can be felt across the state with increased incidences and severity of drought, fire and flooding.

"According to the recently released UN Intergovernmental Panel on Climate Change (IPCC) Special Report and the National Climate Assessment, impacts

from global warming are already being observed across the nation and the world.

"Climate related risks to health, livelihoods, food security, water supply and economic growth are projected to increase with global warming of 1.5°C, estimated to be met in approximately 20 years, and become exacerbated with warming of 2°C, estimated to occur in within the next 100 years.

"There is a significant possibility that unanticipated and difficult-to-manage changes in the climate system will occur throughout the next century as multiple climate related events occur simultaneously and key warming thresholds are crossed. Accelerating innovations that address the direct causes of, and vital systems affected by, climate change can limit negative impacts.

"Current law requires conservation of precious resources and limits the emissions of greenhouse gases, criteria air pollutants and other contaminants into the environment. However, there is currently no program that takes a holistic approach in understanding how to best address the removal of emissions and pollutants from the environment in order to mitigate the impacts of and better adapt to climate change.

"AB 296 establishes the Climate Innovation Grant Program, within the Strategic Growth Council, to accelerate and support the research and development of new innovations that improve adaptability and resilience to the impacts of climate change. Specifically, AB 296 will utilize public (non-general fund) and private funds to award matching grants for projects that neutralize or remove emissions and pollutants to minimize current and future risks to human health and safety, quality of life, economic growth, ecosystems and the environment.

"To that end, AB 296 will utilize a competitive process to award matching grant funds to projects that improve adaptability and resilience to climate change, including innovations that address the following:

a) Carbon storage and capture
b) Clean, reliable and affordable electric solutions
c) Clean, reliable and affordable transportation solutions
d) Air quality
e) Water quality
f) Soil quality"

2) *Technology breakthroughs needed.* Mitigating GHG emissions and adapting to climate change impacts are both incredibly complex and challenging, particularly when the strategies have high economic costs or require behavioral changes. California currently is not on a trajectory to significantly mitigate its GHG emissions, or adapt to the increasingly severe impacts from climate change. To address these challenges, it is likely that technology and innovation breakthroughs are needed. This bill intends to facilitate these technology and innovation breakthroughs, which has been shown to be one of the most cost-effective strategies to tackle problems such as climate change.

3) *Research Administration.* A March 2018 report by the Senate Office of Research (SOR) "Optimizing Public Benefits from State-Funded Research" found nine key principles (Figure 1 below) that are essential for research programs to optimize public benefits. The report also recommended that each principle be addressed in the authorizing legislation for programs and given sufficient funding to ensure its implementation.

FIGURE 1
Key Principles for Research Programs

These key principles also apply for technology innovation grant programs such as the one proposed in this bill. Optimal research and technology program administration requires unique structure, culture, personnel, and supporting

services specifically oriented to support the specific goals of that granting program.

4) *Implementation concerns with this program.* In its current form, there are numerous concerns regarding effectively implementing this program at SGC, including:

   a) *Clearly defined goals and objectives.* According to the SOR report, research outcomes specifically follow program goals and objectives, so it is critical to develop clear goals and precise objectives. However, the program in this bill allows funding for an incredibly wide range of environmental areas, including subjects not related to climate change such as criteria air pollutants.

   b) Impartial expert guidance. The SOR report found that content expertise is essential in successfully guiding a research program. Successfully implementing the program in this bill would require three sets of expertise:

      i) Technical content expertise in the environmental areas allowed to receive funding in this program.

      ii) Expertise with the venture capital investment community who likely will be the main grant recipients from this program.

      iii) Philanthropic development expertise to solicit donations to ensure the program is sufficiently funded. This is an expertise normally found in nonprofit foundations and not in state agencies. It is unclear what challenges and conflicts might arise from a state agency performing this function.

   c) Intellectual property (IP) management. According to the SOR report, poor IP management can hinder private investment in research and technology development. Currently there is no statewide IP policy, and SOR found that unclear policies and royalty requirements in other state programs have likely already resulted in discouraging some venture capital investment in clean technology. Outlining IP policies for the program in this bill is particularly important since it will focus on the commercialization of technology and innovations.

   d) Stable and sufficient funding. Successful outcomes and administration from a research and innovation program requires stable and sufficient funding levels. However, according to the Assembly Appropriations Committee

analysis, the Franchise Tax Board estimated that revenue generated from the voluntary tax contribution will be around $8,000 in FY 2020-21. The uncertainty of funds to support this program present significant implementation challenges.

e) *Program overlap inefficiencies.* According to The Legislative Analyst's Office's (LAO) December 2018 report "Assessing California's Climate Policies—Transportation" program duplication and overlap can lead to inefficiencies such as difficulty in evaluating programs, lack of coordination, reduced effectiveness from grant recipient confusion, and increased administrative costs. In addition to CCRP and EPIC, the program proposed in this bill could have overlap with several other existing programs. These include, but are not limited to:

   i) *CEC's Natural Gas R&D Program.* Funds research, development, and demonstration projects to support cost-effective energy-efficiency and conservation activities.

   ii) *CEC's Alternative and Renewable Fuel and Vehicle Technology Program.* Promotes accelerated deployment of advanced transportation and fuel technologies.

   iii) *California Department of Food and Agriculture's (CDFA) Dairy Digester Research and Development Program.* Financial assistance for the installation of dairy digesters.

   iv) *CDFA's State Water Efficiency and Enhancement Program.* Provides financial assistance to implement irrigation systems that reduce greenhouse gases on California agricultural operations.

   v) *California Air Resources Board's Advanced Technology Freight Demonstrations and Freight Facilities.* Funding for freight demonstration projects (including facilities, drayage trucks, off-road equipment, and advanced engines) to help bring new zero-emitting technologies to market.

5) *Resolving implementation concerns.* Rather than individually resolving all of the implementation concerns outlined above, a streamlined alternative would be to consider the following options:

   a) *Specify that the program will be administered by SGC or another entity identified by SGC that is determined to have the appropriate skills*

necessary to successfully implement this program. This option could resolve the concerns with appropriate expertise by allowing SGC to determine whether there is another entity with expertise more suitable to effectively administer this program. SGC will still provide guidance and oversight of the administration of the program if an alternative administrating entity is chosen.

b) *Specify that the grants from this program should prioritize investment in areas that do not overlap with existing state programs.* This option will reduce the issues with potential program overlap.

c) *Specify that SGC may apply existing granting criteria and policies developed from CCRP for this program.* SGC has already done a significant amount of work to establish the CCRP such as holding public workshops to develop program goals, developing granting and review criteria, convening impartial expert guidance panels, adopting IP policies, and conducting gap analyses. Aligning this program with CCRP would allow SGC to provide guidance for the program by utilizing work already done.

d) *Establish a minimum funding threshold prior to the program taking effect.* Due to the uncertainty of generating sufficient funding levels for the feasible administration of the program in this bill, establishing a minimum funding threshold prior to the program taking effect could reduce implementation concerns.

The committee may wish to amend the bill to support a more effective implementation of the program by:

i) Authorizing SGC to determine whether another entity is more appropriate for administering the program.

ii) Prioritizing investment in areas that do not overlap with existing state programs.

iii) Utilizing existing criteria and policies developed for the CCRP for the implementation of this program.

iv) Establishing a minimum funding threshold of $2 million generated in the Fund prior to the administration of the program taking effect.

Related/Prior Legislation

AB 109 (Ting, Budget Act of 2017, Chapter 249, Statutes of 2017). Created the CCRP by providing $11 million to SGC to fund research on reducing carbon emissions, including clean energy, adaptation, and resiliency, with an emphasis on California. SGC was required to establish a plan that establishes research needs for carbon emission reductions including clean energy, adaptation, and resiliency.

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 Governance and Finance Committee.

SOURCE: Author

SUPPORT:

California Trout
California Waterfowl Association
Castro Valley Sanitary District
East Bay Regional Park District
LARTA Institute
Northern California Water Association
Port of San Diego
Regional Water Authority
Sierra Club California
SMUD
The Office of the External Affairs Vice President of the Associated Students of the University of California, Davis

OPPOSITION:

None received

-- END --

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

Bill No:	AB 402		
Author:	Quirk		
Version:	6/18/2019	**Hearing Date:**	7/3/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: State Water Resources Control Board: local primacy delegation: funding stabilization program

DIGEST: This bill creates an opt-in program, administered by the State Water Resources Control Board (SWRCB), to fund regulatory oversight of small public drinking water systems in Local Primacy Agency (LPA) counties.

ANALYSIS:

Existing law:

1) Authorizes, pursuant to the federal Safe Drinking Water Act (SDWA), the United States Environmental Protection Agency (US EPA) to set standards for drinking water quality and to oversee the states, localities, and water suppliers who implement those standards. (42 United States Code § 300(f) et seq.)

2) Declares that it is the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code § 106.3)

3) Requires, pursuant to the California SDWA, the SWRCB to regulate drinking water and to enforce the federal SDWA and other regulations. (Health and Safety Code (HSC) § 116275 et seq.)

4) Defines a "public water system" as a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. (HSC § 116275(h))

5) Authorizes the SWRCB to delegate primary responsibility of administration and enforcement of public water system compliance to local health officers in a county through a local primacy delegation agreement. Declares that the delegation shall not include community water systems serving 200 or more service connections. (HSC § 116330 et seq.)

6) Defines "small water systems," for the purposes of local primacy delegations, as community water systems except those serving 200 or more service connections, or non-community transient or non-community non-transient water systems. (California Code of Regulations (CCR) Title 22 § 64251)

7) Requires the SWRCB to set the amount of total revenue collected each year through the fee schedule at an amount equal to the amount appropriated by the Legislature in the annual Budget Act from the Safe Drinking Water Account for expenditure for the administration of this chapter. (HSC § 116565)

8) Authorizes a public water system to request and receive from the SWRCB a reduced fee if its entire service area serves a disadvantaged community, defined as a community with a median annual household income of less than 80% of the statewide median annual household income. (CCR Title 22 § 64300(a) and 64310)

This bill:

1) Authorizes the SWRCB to also delegate *partial* responsibility for the SDWA's administration and enforcement by means of a local primacy delegation agreement.

2) Authorizes the SWRCB, for counties that have not been delegated primary responsibility as of January 1, 2020, to offer an opportunity for the county to apply for partial or primary responsibility, if the SWRCB determines that it needs assistance in performing administrative and enforcement activities, as specified.

3) Authorizes the SWRCB to approve the application for delegation if the SWRCB determines that the local health officer is able to sufficiently perform the administrative and enforcement activities and would specify that a LPA has all of the authority over designated public water systems as is granted to the SWRCB by the SDWA.

4) Eliminates the annual drinking water surveillance program grant.

5) Requires the SWRCB to evaluate each LPA's oversight program at least annually and to list any deficiencies in its annual report on the drinking water program and make it available on the SWRCB's internet website.

6) Grants the LPA a reasonable amount of time, not to exceed two years, to make any needed program improvements prior to the initiation of any local primacy revocation actions.

7) Authorizes any LPA, with approval of the SWRCB, to elect to participate in a funding stabilization program effective for the 2021-22 fiscal year and fiscal years thereafter, as specified.

8) Requires LPAs participating in a funding stabilization program to remit all fines, penalties, and reimbursement of costs to the SWRCB for deposit into the Safe Drinking Water Account.

9) Requires the SWRCB to provide funding to the LPA each year for the reasonable costs incurred for the implementation of activities set forth in the work plan submitted by the LPA and approved by the SWRCB.

10) Requires the work plan set forth the activities to be performed by the LPA each fiscal year, including inspections, monitoring, surveillance, water quality evaluations, enforcement, and any other activities described in the delegation agreement.

11) Requires the SWRCB to adopt regulations to establish policies, guidelines, and procedures for the preparation of the work plan of the LPA and the terms of payment by the SWRCB for work performed, as specified.

12) Requires a public water system under the jurisdiction of a LPA that is participating in the funding stabilization program to pay fees to the SWRCB, as specified. Prohibits LPAs in the funding stabilization program from charging or collecting any additional fees from such public water systems.

13) Requires a participating LPA to establish and maintain accurate accounting records of all costs it incurs and periodically to make these records available to the SWRCB.

Background

1) *Regulation of public water systems.* The SWRCB has regulatory oversight of approximately 7,500 public drinking water systems in California. Thirty of California's 58 counties have LPA delegation agreements with the SWRCB, and therefore have primary responsibility of regulatory oversight of the public drinking water systems in their counties. LPA counties regulate a total of approximately 4,500 public drinking water systems, which consist of

community water systems with more than 14 and less than 200 connections, non-community non-transient systems, and non-community transient systems. In the remaining 28 counties, all public water systems, regardless of size, are directly overseen by the SWRCB. In all 58 counties, public water systems with 200 service connections or more are directly overseen by the SWRCB.

"State small water systems" serve more than 5 and less than 14 service connections and do not regularly serve drinking water to more than an average of 25 individuals daily for more than 60 days out of the year. These water systems are not considered public water systems and are not regulated by the SWRCB. Instead, state small water systems are regulated by county health officials, regardless of LPA status. Private domestic wells (systems with 1-4 service connections) are currently not regulated by any entity.

The regulation of public water systems includes: (1) issuance of permits covering the approval of water system design and operation procedures; (2) inspection of water systems; (3) the enforcement of laws and regulations to assure that all public water systems routinely monitor water quality and meet current standards; and, (4) assuring notification is provided to consumers when standards are not being met.

2) *SWRCB regulatory fees for public water systems.* The SWRCB establishes regulatory fees, paid annually by public water systems, based on costs of activities associated with regulating public water systems. The total collected revenue cannot exceed the amount allocated by the legislature in the annual budget, while also taking into account available reserves. For community water systems serving more than 100 service connections, a graduated flat fee is applied based on the number of service connections. For non-community non-transient water systems, the fee is based on the number of people the public water system serves, while non-community transient water systems pay a flat fee per system. Fees collected by the SWRCB are deposited into the Safe Drinking Water Account.

   According to the 2015 Safe Drinking Water Plan, "The Safe Drinking Water Account derives the majority of its funding from fee-for-service cost recovery for activities associated with the oversight of public water systems (PWS) serving 1,000 or more service connections. A lesser amount comes from smaller PWSs and non-community water systems. There are also fees that cover the costs of writing permits and enforcement actions."

3) *LPA regulatory fees for public water systems.* LPAs establish and collect oversight fees independently from the SWRCB, and do not deposit revenue

into the Safe Drinking Water Account. Fee revenue collected by LPAs are used to fund all costs associated with oversight.

4) *Challenges in regulating water systems in LPAs.* According to the 2015 Safe Drinking Water Plan, "Larger water systems are better equipped to deal with water quality issues because they have more customers to fund the necessary improvements, have economy of scale, more technical expertise, better management skills and knowledge, are able to solve operational problems internally, and have dedicated financial and business-related staff. They generally have more sophisticated treatment and distribution system operators who are able to react to incidents and changes in treatment conditions that may occur during operations. On the other hand, small systems, especially those in disadvantaged communities, have only a small number of customers, which provides them with limited fiscal assets and no economy of scale. They often lack technical expertise, the ability to address many of the issues pertinent to operating a water system, as well as qualified management and financial and business personnel. The greatest need for oversight is among those smaller PWS serving less than 1,000 service connections, but the fees to cover this activity are insufficient. As a result, it has been a struggle to maintain a program that provides sufficient oversight of small PWS. In recent years, more LPAs have returned the small PWS regulatory oversight program because their funding is inadequate to effectively administer the program."

   Several LPAs have had difficulty administering their oversight programs. Between 2007 and 2014, Fresno (2007), Marin (2010), Tuolumne (2010), San Mateo (2011), Tulare (2014), and Merced (2014) counties have returned oversight authority back to the SWRCB. In 2014, the SWRCB provided a one-time grant funding to the remaining LPAs to assist with data reporting, training, staffing, equipment, and other drinking water related items.

   The SWRCB recommended in 2015 that the legislature address the need for funding of activities that provide greater oversight of and technical assistance to small public water systems, particularly those that serve disadvantaged communities.

5) *Drinking water violations in small water systems.* In January 2018, the Public Policy Institute of California (PPIC) reported in Information Gaps Hinder Progress on Safe Drinking Water, "As of November 2017, the SWRCB's Human Right to Water portal showed that over 300 water systems, serving roughly 490,000 people, were out of compliance. About 13% of these systems are schools, serving roughly 13,000 people; the rest are community water systems. More than 90% of the non-compliant community systems are small,

serving fewer than 3,300 people each; 75% serve fewer than 500 people. Small systems are more likely to violate drinking water standards and to lack the technical, financial, and managerial capacity to resolve these issues on their own."

The SWRCB estimates that 300 disadvantaged communities in California are served by systems that fail to meet state drinking water standards (SWRCB, Affordable & Safe Drinking Water Initiative Fact Sheet, 2017). To ensure that disadvantaged communities still received drinking water oversight without an unaffordable fee, as of 2017, the SWRCB limited its own oversight fees to $100 per system (for systems with greater than 100 service connections, an additional graduated flat fee per service connection greater than 100 applies).

Comments

1) *Purpose of Bill.* According to the author, "California recognizes that all individuals have a human right to safe, clean, affordable, and accessible water. The law specifies that the right to water extends to all Californians, including disadvantaged individuals and groups and communities in rural and urban areas. The State of California seeks to protect public health and protect these rights by enforcing the Safe Drinking Water Act, which includes a variety of water safety standards, requirements for inspection, and reporting to the State.

   "LPA delegation agreements help ensure that small water systems deliver adequate and safe drinking water, but small water systems often take more resources per consumer to ensure compliance with state requirements than larger systems. Differences in state and local costs and administration can result in fee variability, but LPA oversight activities are funded entirely by fees. Without the benefit of economies of scale, LPA oversight programs not only cost more to administer, but also generate less fee revenue than large water systems overseen by the SWRCB. Increasing fees to match program costs is difficult to approve locally, especially when many of these communities are also disadvantaged. As a result, several LPAs have had difficulty administering their programs and have returned oversight to the SWRCB. Without a continuous source of funding, the remaining 30 LPAs are again at risk of relinquishing their oversight authority back to the state. Because LPAs currently regulate more than half of all public drinking water systems, it is in the state's interest to ensure that LPAs can continue to serve California consumers."

2) *Need for funding stabilization.* The regulatory functions of the SWRCB's Division of Drinking Water (DDW) are funded by fees paid by ***all*** public water

systems. The fee schedule is reviewed every year, but only updated when necessary. The total collected revenue cannot exceed the amount allocated by the legislature in the annual budget. The regulation for the current fee schedule became effective April 2017. That regulation included provisions for the SWRCB to reduce fees for disadvantaged communities. In January 2018, DDW sent notices to water systems with a reduced fee schedule for disadvantaged communities.

While the SWRCB has the statutory responsibility to regulate drinking water in *all* public water systems, it has the authority to delegate primary responsibility for the administration and enforcement of the SDWA to a county local health officer to assume such duties. As discussed earlier, this delegation to LPAs is only for small water systems serving fewer than 200 service connections and is subject to specific requirements that are contained in a Primacy Delegation Agreement with the LPA.

The regulatory functions of LPAs over drinking water systems are the same as the SWRCB, including the issuance of permits, inspection, surveillance, and enforcement activities. LPAs are authorized to collect fees as well as recover actual costs for implementing the regulatory program.

Due to the increasing costs and complexity of regulating small water systems, some LPAs have returned oversight to the SWRCB, because they lacked capacity to continue administering their programs. Since 2007, six counties have given up their local primacy programs. In these cases, the SWRCB has *re-assumed* regulatory jurisdiction for these water systems.

Under the new funding stabilization program in AB 402, the SWRCB would allocate funds to each participating LPA, in accordance with an annual work plan submitted by each local agency and approved by the SWRCB. The SWRCB would manage the LPA funding agreements and collect fees directly from each participating LPA-regulated water system. All participating LPAs would be evaluated at least annually for the deliverables stated in the funding agreement. If an LPA is determined to not meet the satisfactory performance standard, then the LPA's agreement would not be renewed.

AB 402 resolves the challenge of funding for the oversight of small public water systems. The bill makes efficient use of resources by strengthening the existing network of local health officers and encouraging local oversight of small water systems. Offering this funding program as an option, and not a mandate, allows LPA counties to individually decide how best to fund their activities.

Related/Prior Legislation

SB 200 (Monning, 2019). Would create a Safe and Affordable Drinking Water Fund to secure access to safe drinking water. This bill is scheduled to be heard in the Assembly Environmental Safety and Toxic Materials Committee.

SB 669 (Caballero, 2019). Would create a Safe Drinking Water Trust Fund, with net income used to assist community water systems in disadvantaged communities. This bill is held the Senate Appropriations Committee.

SB 623 (Monning, 2017-18). Would have created a Safe and Affordable Drinking Water Fund for secure access to safe drinking water. This bill was held in the Assembly Appropriations Committee.

SOURCE: California Association of Environmental Health Administrators

SUPPORT:

Amador County Board of Supervisors
City of Berkeley Division of Environmental Health
California Environmental Health Association
California State Association of Counties
Calaveras County Environmental Management Agency
Contra Costa County
County of Nevada
County of Sacramento
County of San Luis Obispo
County of Santa Cruz
Emigrant Gap Mutual Water
Imperial County Board of Supervisors
Mono County
Peters Drilling & Pump Service
Plumas County
Rural County Representatives of California
San Joaquin County
Siskiyou County Environmental Health Department
Yuba County Environmental Health
Yolo County

OPPOSITION:

Association of California Water Agencies

California Municipal Utilities Association
Coachella Valley Water District
Regional Water Authority
Santa Margarita Water District

ARGUMENTS IN SUPPORT: According to the California Association of Environmental Health Administrators, "AB 402 has been keyed a majority vote bill. It does NOT establish a new tax, but relies on the existing SWRCB fee authority, and the budget process. The proposed amendments...were taken to make this explicitly clear.

"Many of the systems that do not comply with our state drinking water standards serve disadvantaged communities. While the State Water Resources Control Board (SWRCB) has adopted a policy to limit the oversight fee for these systems to $100 per year, most local jurisdictions performing the same oversight role for other disadvantaged communities are financially unable to limit their fees to $100 per year – especially when the true cost of oversight runs well over $500 per system per year. Without AB 402 this disparity will continue – or be exacerbated.

"Many, if not all, local agencies can perform the same regulatory oversight as the state agencies at a similar or even reduced cost. This is largely due to local oversight efficiencies, proximity to the regulated community and local knowledge. After conducting a careful analysis of the program costs with the SWRCB Drinking Water Program, our LPAs have determined that in order to meet increased inspection and data management demands in the program, some program fees will have to be increased – whether the systems are being regulated by the state or locals. The Assembly Appropriations Committee acknowledged this fact in its analysis and estimated that IF all LPAs participate in the new program, there will be estimated increased State Water Board costs of $6.9 million to meet the drinking water needs of the counties. Our initial estimates show that by avoiding state assumption of the current LPA programs, the program could save between $1.5 and $2 million of any increased cost. We are convinced that AB 402 offers the most efficient way to ensure our critical drinking water programs are being effectively implemented."

ARGUMENTS IN OPPOSITION: California Municipal Utilities Association states: "We appreciate the important work LPAs perform on behalf of small systems, and we agree that it is important they have the resources to continue their efforts. And while we recognize that the affected small systems are often disadvantaged and fee increases are difficult to reconcile, we are concerned with the significant impact that the funding stabilization program would have on fees assessed through the Safe Drinking Water Account on water agencies with no

corresponding benefit. In addition, we believe that many of the systems overseen by LPAs are candidates for consolidation. The Legislature has given the State Water Board multiple authorities to advance those efforts and is considering yet another bill this year [SB 414 (Caballero)]. We believe that consolidation of the affected systems would reduce overall oversight costs and these efforts should be prioritized to ensure the most efficient use of resources and any fees."

The Association of California Water Agencies states: "As amended on June 18, AB 402 is silent on how the State Water Board would fund this new Program. However, by virtue of its placement in Safe Drinking Water Act (California Health & Safety Code, Section 116270 et seq.) the Program would be eligible for funding from the Safe Drinking Water Account (California Health & Safety Code, Section 116565), which consists largely of fees collected from public water systems to cover regulatory oversight costs of the State Water Board. All public water systems regulated by the State Water Board pay into this account, and larger public water systems pay disproportionately more in fees than small public water systems pay. That means if the State Water Board provided funds from the Safe Drinking Water Account to LPAs participating in this Program, other public water systems would be largely subsidizing LPAs. Additionally, the public water systems paying the most into this system would receive no benefit from these funds because they are not the type of systems overseen by LPAs. Recent amendments to this bill represent a substantial shift from the previous intent of this bill, which was to authorize the State Water Board to fund this program by assessing fees only on small public water systems."

-- END --

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

Bill No:	AB 423		
Author:	Gloria		
Version:	5/16/2019	**Hearing Date:**	7/3/19
Urgency:	No	**Fiscal:**	Yes
Consultant:	Eric Walters		

SUBJECT: San Diego County Air Pollution Control District: members

DIGEST: This bill restructures the San Diego County Air Pollution Control District (SDCAPCD), which is currently comprised exclusively of members of the County Board of Supervisors, to include 11 members representing a range of cities and specified backgrounds. AB 423 also tasks SDCAPCD with specified tasks including those relating to local emission measurement and control, and requires the state Air Resources Board with performing an audit of the SDCAPCD between 2013 and 2018.

ANALYSIS:

Existing federal law sets, through the Federal Clean Air Act (FCAA) and its implementing regulations, National Ambient Air Quality Standards (NAAQS) for six criteria pollutants, designates air basins that do not achieve NAAQS as nonattainment, allows only California to set vehicular emissions standards stricter than the federal government, and allows other states to adopt either the federal or California vehicular emissions standards. (42 U.S.C. §7401 et seq.)

Existing state law:

1) Establishes the Air Resources Board (ARB) as the air pollution control agency in California and requires the ARB, among other things, to control emissions from a wide array of mobile sources and implement the FCAA. (Health and Safety Code (HSC) §39500 et seq.)

2) Establishes local air districts (HSC §40000 et seq.) in order to, subject to the power and duties of ARB, and among other things:

   a) Achieve and maintain state and federal ambient air quality standards.

   b) Adopt rules and regulations reducing criteria pollutants.

c) Allow approval of alternative methods of emission control compliance, including emissions reductions, monitoring, or recordkeeping.

d) May sponsor, coordinate, and promote projects that will lead to the prevention, mitigation, or cure of the adverse effects of air pollution, including the adverse health effects of air pollution.

3) Establishes, as a part of the Charge Ahead Initiative, the Enhanced Fleet Modernization Program (EFMP)—funded with moneys from the Enhanced Fleet Modernization Subaccount within the High Polluter Repair or Removal Account within the Vehicle Inspection and Repair Fund—to incentivize the voluntary retirement of passenger vehicles and light- and medium-duty trucks. (HSC §44125 et seq.).

This bill:

1) States that it is the intent of the legislature for San Diego County Air Pollution Control District (District) employees keep their jobs through the above expansions.

2) Dictates a restructuring of the Board of the District to, instead of being comprised solely of members of the San Diego County Board of Supervisors, have members representing the following specified locales or backgrounds, to serve for specified terms:

a) Two representatives from the San Diego County Board of Supervisors, to serve 4 year terms.

b) Three representatives from the City of San Diego, to serve 4 year terms.

c) One representative from either the City of Chula Vista or Oceanside, to serve rotating 2 year terms.

d) One representative from either the City of Escondido, Carlsbad, El Cajon, or Vista, to serve rotating 2 year terms.

e) One representative from either the City of San Marcos, Encinitas, National City, La Mesa, Santee, Poway, Imperial Beach, Lemon Grove, Coronado, Solana Beach, or Del Mar, to serve rotating 2 year terms.

f) Three representatives from the public, with designated expertise as a public health professional, an air pollution specialist, and in environmental justice.

3) Specifies duties the restructured District must conduct including:

a) Creating and maintaining a website with pertinent information regarding air pollution emissions, enforcement actions, notices of violations, audits, budgets, and other such information.

b) Apply for statewide grant and incentive programs, including, but not limited to state and federal air pollution mitigation efforts.

c) Develop a plan for a comprehensive air monitoring program.

d) Publish an annual air quality report.

e) Consider adopting an indirect source rule to address mobile source pollution.

4) Tasks the state Air Resources Board with conducting an audit of the District's operations between 2013 and 2018.

Background

1) *Regulatory jurisdiction.* State law assigns the ARB with primary responsibility for control of mobile-source air pollution, including adoption of rules for reducing vehicle emissions and the specification of vehicular fuel composition. Stationary sources of air pollution, such as factories and refineries, are under the jurisdiction of local air districts (e.g., South Coast Air Quality Management District, San Joaquin Valley Air Pollution Control District). ARB and the local air districts share jurisdiction over emissions of toxics from stationary sources.

2) *Air quality standards.* The Federal Clean Air Act (FCAA) passed in 1963 and has been revised many times thereafter. The FCAA and its implementing regulations are intended to protect public health and environmental quality by limiting and reducing pollution from various sources. Under the FCAA, the United States Environmental Protection Agency (US EPA) establishes National Ambient Air Quality Standards (NAAQS) that apply to outdoor air throughout the country.

Regions that do not meet the national standards for any one of the standards are designated "nonattainment areas." The FCAA sets deadlines for attainment

based on the severity of nonattainment and requires states to develop comprehensive plans, known as the state implementation plan (SIP), to attain and maintain air-quality standards for each area designated nonattainment for NAAQS.

San Diego County is currently in nonattainment for federal ozone (8-hour) standards, as well as state ozone (1- and 8-hour), particulate matter < 10 micron, and particulate matter < 2.5 micron standards.

3) *Problems with San Diego's current air pollution control.* SDAPCD recently began the process of adjusting their acceptable toxic air contaminant levels, which, at 100 incidences of cancer predicted per million people, was among the highest in the state. This level had been set in the 1980's and has persisted since.

Recently, and for the third time, San Diego's climate action plan to control GHG emissions was found to be insufficient to comply with state GHG reduction goals and was rejected by the courts. The American Lung Association's recent air quality scorecard gave San Diego an "F" and ranked it as having the sixth worst smog pollution in the US for the fifth year in a row. Earlier versions of the county's climate action plan included continued increasing of GHG emissions; these decisions were supported by Board members who did not believe in anthropogenic contributions to global climate change.

The proponents of the bill contend that the proposed structuring of the Board will lead to decisions being made that better represent San Diego County's various cities, and will facilitate meaningful GHG and air pollution mitigation efforts. SDAPCD represents over 3 million people in 18 cities, while the Board is entirely made up of members of the San Diego County Board of Supervisors.

Comments

1) *Purpose of Bill.* According to the author, "The San Diego Air Pollution Control District Board is the only governing board of a large metropolitan area in California that is governed solely by the County Board of Supervisors. This structure is antiquated and unfair in that it denies cities a voice and gives the county indirect land use authority. This structure also does not reflect the diversity of county residents. Every other large air district in California has a board that includes representation from cities. The San Diego Air Pollution Control District Board should be reformed to conform to the standards of the other large areas in the state. San Diego is one of the top-five air districts in

terms of both population and pollution sources, and the APCD board should include equal voices from the cities and reflect the diversity of the country residents. This proposal puts San Diego in line with the other large districts, and makes it more representative of all the region's residents and businesses."

2) *What do other air districts do*? In 1947, California created air pollution control districts (APCD) or air quality management districts (AQMD) in every county of the state. Some districts have combined districts to serve a region larger than a single district. In total, California has 22 APCDs, 12 AQMDs and 1 Air Resources District for a total of 35 districts. Other large metropolitan areas have boards of directors which represent different regions within the district; the Bay Area Air Quality Management District Board has 24 members split by population of constituent counties, South Coast Air Quality Management District has a governing board of 13 members representing counties and cities within the district, and so on.

   To the extent feasible, each air district provides services to its constituents mostly in line with what is outlined in AB 423. Air districts control emissions, regulate facilities, and research new technology to bring their constituents into air quality standard attainment. While the added responsibilities AB 423 requires the restructured SDAPCD to fulfill will likely create more work, this is not unreasonable, and amendments previously made to this bill will ensure that added work is justly compensated.

3) *ARB audit*. Based on the shortcomings of San Diego County's climate actions to date, AB 423 requires the state ARB to perform a program audit of the SDCAPCD for the years of 2013 through 2018. Given the important of FCAA and state air quality standard compliance and the scale to which such a highly-populated region maintained and elevated air pollution levels, this audit seems appropriate. ***However, given the timing of this legislation and the work required, the committee may wish to consider amending this measure to give ARB more time to complete a thorough and complete audit.***

   Additionally, the author accepted amendments to AB 423 in the Senate Governance & Finance Committee on June 25th, but due to timing constraints those amendments will be crossed by this committee.

DOUBLE REFERRAL:

This measure was heard in Senate Governance & Finance Committee on June 25th, 2019, and passed out of committee with a vote of 5-0.

SOURCE: Author

SUPPORT:

350 Bay Area
350 San Diego
American Lung Association
California Environmental Justice Alliance
CEJA
Circulate San Diego
Climate Action Campaign
Coalition for Clean Air
Environmental Health Coalition EHC
Georgette Gomez, San Diego City Council President
IBEW Local Union 569
Olga Diaz, Escondido City Councilwoman
San Diego LGBT Center
Sierra Club California

OPPOSITION:

None received

-- END --

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

Bill No:	AB 430		
Author:	Gallagher		
Version:	6/20/2019	**Hearing Date:**	7/3/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: Housing development: Camp Fire Housing Assistance Act of 2019

DIGEST: Establishes a streamlined, ministerial approval process for residential and mixed-use developments within the cities of Biggs, Gridley, and Oroville in Butte County, the cities of Orland and Willows in Glenn County, the city of Corning in Tehama County, and the cities of Live Oak and Yuba City in Sutter County, so that these projects are not subject to review under the California Environmental Quality Act (CEQA).

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 §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) The Land Use and Planning Law:

    a) Requires every city and county to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element must identify and analyze existing and projected housing needs, identify adequate sites with appropriate zoning to meet the housing needs of all income segments of the community, and ensure that regulatory systems provide opportunities for, and do not unduly constrain,

housing development (Government Code (Gov. C.) §65583).

b) Establishes a ministerial approval process for certain multifamily affordable housing projects that are proposed in local jurisdictions that have not met regional housing needs (Gov. C. §65913.4).

This bill:

1) Authorizes a development proponent to submit an application for a development that is subject to a streamlined, ministerial approval process and is not subject to a conditional use permit if the development satisfies all of the following:

   a) The development is located within the territorial boundaries or a specialized residential planning area identified in the general plan of, and adjacent to existing urban development within, the cities of Biggs, Gridley, and Oroville in Butte County, the cities of Orland and Willows in Glenn County, the cities of Live Oak and Yuba City in Sutter County, and the city of Corning in Tehama County.

   b) The development is either a residential development or a mixed-use development that includes residential units with at least two-thirds of the square footage of the development designated for residential use.

   c) The development has a minimum density of at least four units per acre.

   d) The development is located on a site that is no more than 50 acres.

   e) The development is located on a site that either:

      i) Is zoned for residential use or residential mixed-use development.
      ii) Is consistent with the general plan and has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use, not including any land that may be devoted to open space or mitigation requirements.

   f) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law, is consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development is submitted to the local

government.

g) The development will achieve sustainability standards sufficient to receive a gold certification under the United States Green Building Council's Leadership in Energy and Environmental Design for Homes rating system, or the comparable rating under the GreenPoint rating system or voluntary tier under the California Green Building Code (Part 11 (commencing with Section 101) of Title 24 of the California Code of Regulations.

h) The development is not located on a site that is any of the following:

i) Either prime farmland or farmland of statewide importance, as defined, or land zoned or designated for agricultural protection or preservation.
ii) Wetlands.
iii) Within a high or very high fire hazard severity zone.
iv) A hazardous waste site.
v) Within a delineated earthquake fault zone.
vi) Within a special flood hazard area subject to inundation by a 100-year flood.
vii) Within a regulatory floodway.
viii) Lands identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.
ix) Habitat for species protected under the state or federal Endangered Species Acts or the Native Plant Protection Act.
x) Lands under conservation easement.

i) The development does not require the demolition of a historic structure that was placed on a national, state, or local historic register.

j) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act.

k) If the development would require the demolition of affordable housing units, requires the development to replace those units.

2) Requires a city, if it determines that a development is in conflict with any of the objective planning standards specified above, to provide the development proponent written documentation of which standard or standards the

development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

a) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.
b) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

3) If the city fails to provide the required documentation, the development shall be deemed to satisfy the objective planning standards.

4) Authorizes the city's planning commission or any equivalent commission responsible for review and approval of development projects, or the city council to conduct any design review or public oversight of the development. Requires that design review or public oversight to be objective and strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and broadly applicable to development within the jurisdiction. Requires that design review or public oversight to be completed as follows and prohibits it from in any way inhibiting, chilling, or precluding the ministerial approval of the project:

a) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.
b) Within 180 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

5) Provides that city approval of a development shall not expire if the project includes public investment, excluding tax credits, in housing affordability and 50 percent of the units are affordable to households making below 80 percent of the area median income.

6) Provides that city approval of a development not meeting these affordability thresholds shall automatically expire after three years, except that a project may receive a one-time, one-year extension if the project proponent provides documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.

7) Provides that city approval of a development shall remain valid for three years from the date of the final action establishing that approval and shall remain valid thereafter for a project so long as vertical construction of the development has begun and is in progress.

8) Prohibits a city from adopting any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval.

9) Sunsets January 1, 2026.

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.

   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 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) *Land use planning and permitting.* The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include seven mandatory elements, including a housing element that establishes the locations and densities of housing, among other requirements, and must incorporate environmental justice concerns. Cities' and counties' major land use decisions—including most zoning ordinances and other aspects of development permitting— must be consistent with their general plans. In this way, the general plan is a blueprint for future development.

3) *Ministerial approvals.* Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. Some local ordinances provide "ministerial" processes for approving projects. Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with the existing general plan and zoning

rules, as well as meeting standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review.

Ministerial approvals remove a project from all discretionary decisions of a local government, including an environmental review under CEQA. Thus, establishing processes to approve certain types of projects ministerially, also creates exemptions from CEQA.

4) *CEQA and Planning and Zoning.*

   a) *Residential projects that are consistent with a specific plan.* A residential project, such as those covered by AB 430, that is implementing, and is consistent with, a specific plan for which an EIR has been certified is exempt from CEQA (Gov. C. §65457(a)). However, if after the adoption of the specific plan, there are substantial changes that would require major revisions of the EIR, substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the EIR, or new information which was not known and could not have been known at the time of the EIR was certified becomes available, this exemption does not apply until a supplemental EIR for the specific plan is prepared and certified in accordance with CEQA.

   b) *Development projects that are consistent with a general plan.* If a development project is consistent with a local government's general plan and an EIR that was certified for that general plan, the application of CEQA to the approval of that project is limited to effects on the environment that are particular to the parcel or to the project and which either (1) were not addressed as significant effects in the prior EIR or (2) substantial new evidence shows will be more significant than when described in the prior EIR (PRC §21083.3).

5) *Infill development.* "Infill development" occurs in already built-up areas with existing transportation and utility infrastructure, often repurposes or replaces existing buildings, parking lots, or other impervious areas, and adds homes and/or businesses near the center of cities and towns. Examples of infill project locations include a disused parking lot, an old commercial property, or a former industrial site. Infill development is considered a vital strategy for efficient growth.

   Infill builds within an existing footprint of development, which can reduce development pressure on outlying areas, helping to safeguard lands that serve

important ecological functions and preserve open space and prevent conversion of agricultural land; can reduce the amount that people drive, improving air quality and reducing GHG emissions; and can lead to the cleanup and reuse of formerly economically viable but now abandoned sites, including those contaminated with hazardous substances. Also, by locating new developments near population centers and amenities, communities can take advantage of existing water, sewer, and transportation systems, avoiding the cost of installing expensive new infrastructure.

According to the US Environmental Protection Agency (US EPA), several trends point to a sustained increase in demand for infill development and a market opportunity for developers. Consumer preferences for the amenities that infill locations offer are likely to grow as changing demographics affect the housing market. In the next couple of decades, the needs and preferences of aging baby boomers, new households, and one-person households will drive real estate market trends – and infill locations are likely to attract many of these people. As more people choose to live in infill neighborhoods, employers are following, and vice versa. Many corporations are moving to infill locations, in part because they recognize the competitive advantages of being closer to the central city. (US EPA, "Smart Growth and Economic Success: Investing in Infill Development," February 2014.)

The Strategic Growth Council (SGC), as a part of its broader legislative mandate, has identified "infill" development as an important strategy for achieving AB 32 (Núñez, Pavley, Chapter 488, Statutes of 2006) greenhouse gas (GHG) emissions reduction targets. While contributing to reductions of GHG emissions, achieving infill development can confer a broad range of benefits, such as increased economic vitality of the state's urban centers; decreased consumption of energy, water, and other natural resources; reduced conversion of farmland and natural habitat areas; and the opportunity for more efficient infrastructure investment and delivery of municipal services.

6) *CEQA and development.* A pair of studies from the firm Holland & Knight reviewed CEQA lawsuits filed between 2010-2012 and 2013-2015, respectively. The studies conclude that CEQA litigation is disproportionately directed towards the types of projects that the state encourages, such as infill.

However, overall litigation rates regarding CEQA are low. In 2016, BAE Urban Economics did a quantitative analysis of the effects of CEQA on California's economy generally, including the specific effects on housing development. The report found "no evidence" to support the argument that CEQA represents a major barrier to development. To the contrary, the report

found that only 0.7 percent of all CEQA projects undergoing environmental review were involved in litigation. To help put this in perspective, the total number of CEQA cases filed make up approximately 0.02% of 1,100,000 civil cases filed annually in California. The report indicated that California's affordable housing production ranked 9th among the 50 states. In fact, the report concluded that the CEQA process also helped ensure that affordable housing is developed in a way that does not compromise the health and safety of an already vulnerable population.

In October 2017, this committee published the results of a survey it had conducted of state agencies regarding CEQA to gain a better understanding of CEQA compliance and litigation. The survey, covering Fiscal Years 2011/12 to 2015/16, showed over 90% of projects lead by state agencies were exempt from CEQA; and only 1% required an EIR. Further, out of a total of 15,783 projects, only 207 CEQA cases were brought against state agencies within those 5 years. With multiple cases brought against some of the same projects, it is estimated that less than 1% of projects were litigated. The survey results suggest that CEQA litigation is not a significant burden on projects where the state is the lead agency.

Two recent studies conducted by faculty at UC Berkley illustrate how aspects of the approval process that are independent of CEQA drive project approval timelines. CEQA requires project applicants to secure all applicable permits and approvals necessary to carry out the project, as well as to comply with any other environmental review required under applicable federal, state, local laws, regulations, or policies. These requirements apply independently of CEQA, but are also incorporated into the CEQA process. The results of the first study, done in residential development projects in five Bay Area cities, led to the conclusion that, among other facts "what drives whether and how environmental review occurs for residential projects is local land-use law." The second study, which focused on the building permit process in four Los Angeles area cities, found that different cities chose to apply CEQA differently with regard to residential development and that overall relatively few projects within the study area required a full EIR.

Finally, the Association of Environmental Professionals recently surveyed 46 cities and counties throughout the state to determine CEQA's impact on housing production. The survey found that under 6% of the housing projects in those jurisdictions were required to undergo a full EIR, which took 15 months on average to complete. Instead, the survey found that cities and counties are successfully using alternatives to EIRs that expedite housing projects: 35.9% of

projects were reviewed by MNDs, which took just 8 months to complete, while 42.3% were reviewed under streamlining provisions or exemptions for affordable housing, infill, and transit-priority projects, which took just 6 months to complete. Another 9.3% were determined to be eligible for other exemptions. The survey respondents also indicated that, among the barriers to increased housing production in California, CEQA is not a major cause. The costs of building, lack of available sites, and lack of financing for affordable housing were all cited as primary barriers for housing production.

7) *The Camp Fire.* Labeled as the deadliest and most destructive wildlife in California history to date, the Camp Fire started November 8, 2018, in Butte County and took 17 days to reach 100% containment. The fire resulted in 85 civilian fatalities, 3 missing people, 12 injured civilians, and 5 injured firefighters. It covered an area of 153,336 acres, almost 240 square miles, and destroyed 18,804 structures. According to the Department of Finance's (DOF) state demographic report released on May 1, 2019, over 14,600 housing units were destroyed.

Comments

1) *Purpose of Bill.* According to the author, "The Camp Fire, which started in Butte County in November 2018, is the most destructive and deadliest fire in State History, displacing 50,000 people. The fire destroyed almost 20,000 buildings (14% of Butte County's housing stock), exacerbating the housing crisis in the area and making it difficult for many of the fire victims and others to find affordable housing in surrounding areas. In some areas, the rental market vacancy rate, which was around 3% before the fire, fell to nearly zero percent after the fire. Many evacuees have had to resort to buying trailers or RVs, renting individual bedrooms, or leaving the area completely. It is essential to build more housing in impacted areas to make up for the massive housing loss from the Camp Fire and to allow evacuees the ability to stay in the area where they have jobs, family, and community ties. AB 430 will authorize housing developments in impacted areas to utilize a streamlined ministerial process at the local level if they meet qualifying criteria. The bill does not encourage urban sprawl, because it requires the development to be located within specified cities or specialized planning areas. Additionally, projects must be consistent with zoning standards and the city's general plan. The bill also disqualifies projects that have detrimental environmental impacts by excluding projects that are located in floodplains and floodways, prime farmland, and lands identified for conservation, among others."

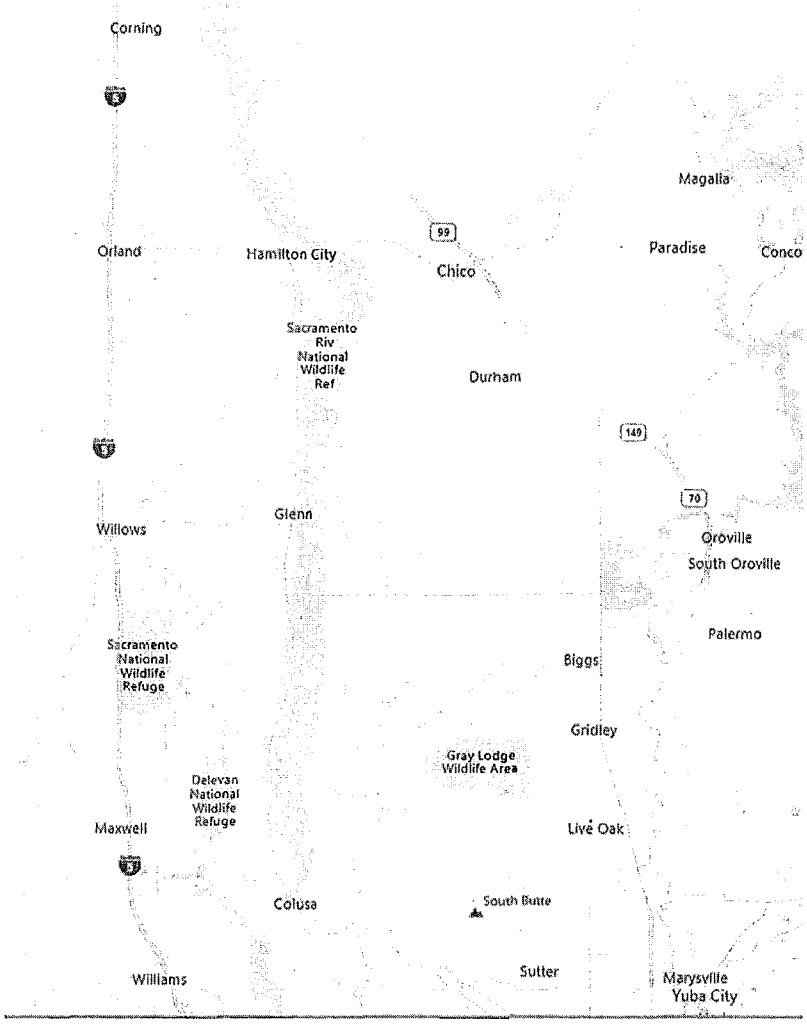
2) *Displaced residents of Paradise.* According to DOF's state demographic report released on May 1, 2019, Paradise had reported a population of 26,423 residents January 1, 2018. On January 1, 2019, after the Camp Fire, there were 4,590 residents. Thus, 21,833 residents were displaced from Paradise following the Camp Fire, plus those from the neighboring areas.

AB 430 seeks to ministerially approve an unknown quantity of residential and mixed-use projects in nearby cities to accommodate the anticipated need for housing for the displaced residents of Paradise. The chart below shows the increase in population each of the cities before and after the Camp Fire, including Chico which requested to be removed from the bill.

City	2018 Population	2019 Population	Numeric change	Percentage change
Biggs	1,894	2,066	+172	+1.1%
Chico (removed from bill)	92,861	112,111	+19,250	+20.7%
Corning	7,561	7,590	+29	+1%
Gridley	6,921	7,224	+303	+4.3%
Live Oak	8,799	8,840	+41	+0.4%
Orland	7,998	8,337	+339	+4.2%
Oroville	18,091	21,773	+3,682	+20.3%
Willows	6,273	6,282	+9	>0.1%
Yuba City	67,354	67,536	+180	+0.2%

Source: Department of Finance State Demographic Report released May 1, 2019.

According to the DOF, Oroville and Chico saw the largest increase in population, most likely as a result of the displaced Paradise residents. Chico's population jumped from 92,861 in 2018 to 112, 222 in 2019, a 20.7% increase; and Oroville's population went from 18,091 in 2018 to 21,773 in 2019, a 20.4% increase. These two cities were probably impacted the most because they are the closest major cities to Paradise. Other cities that would be eligible for the streamlined, ministerial review provided under AB 430 have seen more tempered increase in population, ranging from an additional 9 people in Willows to an additional 339 people in Orland.



Given that most of the residents seem to be relocating to Chico, with Oroville a distant second, does it make sense to relax the local planning process and environmental review standards in all these cities if it is not clear that this is where displaced residents are going?

The chicken or the egg? According to the author, these additional cities are necessary due to the removal of Chico from the bill. Expediting the construction of residential and mixed-use housing in these cities will help to provide additional housing choices and flexibility on relocation opportunities. As the housing options in the closer cities reach capacity, it is argued, people will look at farther options. However, whether Paradise residents will relocate to these cities is speculative and, in the meantime, otherwise appears to be a free pass for development in the area. Some say that development will not occur in the cities unless there is a need for it; but the flip side of that argument is - will residents move to a city that does not already have the housing and development available? Isn't that one of the main reasons why they have predominately and initially relocated to Chico and Oroville?

3) *What do we lose when we remove the environmental review of CEQA?*

Cumulative impacts. Under AB 430, local governments will not be able to analyze the cumulative impacts of the projects that would be ministerially approved under this bill. Generally, CEQA Guidelines §15064(h)(1) provides that a project may have a significant impact if (1) cumulative impacts maybe significant and (2) the project's effects are "cumulatively considerable." Cumulatively considerable means that incremental effects are considerable when viewed together the effects of past, current, and probably future projects. CEQA Guidelines §15130(b)(1) also requires consideration of "probable future projects" in pending applications. If a cumulative impact was adequately addressed in a prior EIR for a community plan, zoning action, or general plan, then an EIR for a current project need not further analyze the cumulative impact.

Cities covered by AB 430. According to the DOF State Demographic Report, each of the cities covered by AB 430, with the exception of Oroville and Yuba City, currently have less than 10,000 residents. Without environmental review, how will the affected cities ensure that they are able to provide for the basic necessities for the increased population? Things such as the provision of safe drinking water, wastewater treatment capacity, sewage capacity, landfill capacity, and public services such as fire and police protection; all of which a city needs to provide its residents with a minimum quality of life. One of the things specifically considered in an environmental review is whether the project would induce substantial unplanned population growth in the area, either directly or indirectly. But all these would not be addressed with a ministerial approval process. Giving such large projects a ministerial approval process not only presents an opportunity for project proponents to abuse the process, but could likely result in negatively affecting the quality of life of the residents involved if the city cannot provide for the basic necessities to support the growing population.

The author asserts that these concerns would be addressed by the city's general plan, which takes into account the anticipated population growth of a city over time, and by other zoning and planning laws that are still at play such as the Subdivision Map Act. The chart below, based on information from the Butte County Association of Government's website, shows the estimated population growth for some of the cities that are covered by the bill over the past 10 years.

City	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Biggs	1,107	1,715	1,704	1,710	1,697	1,752	1,879	1,889	1,894	2,066
Chico	86,187	86,952	87,895	88,664	89,037	89,873	90,556	92,022	92,861	112,111
Gridley	6,584	6,613	6,609	6,812	6,831	6,835	6,842	6,900	6,921	7,224
Oroville	15,546	15,527	15,554	15,747	15,914	16,161	17,814	17,893	18,091	21,773

Population growth for the cities covered by AB 430 between 2010 and 2018 was minimal. With the exception of a couple of outlier years in Biggs between 2010/11 and 2015/16, most population growths hoover at about 1% or less. *Given unique situation of displacement from Paradise and migration to surrounding cities, it is unlikely that there is a general plan that has factored in a 20% growth rate in a single year.*

And while it can be said that developers could be required to mitigate the effects of the increased population resulting from their development through the payment of development impact fees, those fees are often paid into a larger fund for future infrastructure development. A substantial increase in the population at an accelerated rate has the potential to outpace existing infrastructure and while development impact fees can potentially help mitigate the long term impacts, they do nothing to address the immediate impacts felt by the existing residents and city while infrastructure catches up with the population growth.

AB 430 projects. AB 430 would subject an unknown quantity of residential and mixed-use development projects to a ministerial approval process. Each of these projects have the potential to be very large in size – maxing out at 50 acres, each, with a minimum density of at least 4 units per acre. If a purely residential development, this would provide for a minimum 200 unit development or more, depending on the particular density ordinance of the city, spanning over potentially 50 acres - ***all without environmental review***. Further, can a developer have different "projects," each subject to its own ministerial approval, and each with 200 units developed, that are essentially different "phases" of a larger, overarching project?

While AB 430 contains some environmental safeguards that would generally apply to projects, such as LEED Gold certification for homes and restrictions on the types of land that can be built on, those safeguards do not take into consideration the unique circumstances of a particular project site or the cumulative environmental impacts of the projects. Will it lead to more cars on the road, increasing stormwater runoff and affecting the jurisdiction's ability to comply with federally-required stormwater permits? Could these new developments potentially lead to new and unsustainable public water systems? Could unchecked new development make it difficult for the cities to comply with other environmental laws, exposing those cities to liability? How will the cities know if the project is on a site that a tribal cultural resource?

How will the cities be fully aware of the impacts that result from the sudden

and substantial population growth such as is intended under AB 430? How will the cities know if the project would expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes; which is a specific concern addressed in the environmental review? **How will a local government know the effects substantial population growth will have on emergency evacuation routes? Will a city know if its underlying infrastructure can support the boost in development that AB 430 strives for and if it can provide for its residents basic necessities?** Should the local governments that are covered by AB 430 be allowed to be willfully unaware to the potential consequences, both individually and cumulatively, of a project? As demonstrated by the devasting events that has happened over the past few years; including the Camp Fire, the Tubbs Fire, the Woolsey Fire, the Oroville Dam spillway failure; **more and better planning and environmental review is needed, not less**. In the long run, is eliminating certain local planning processes and eliminating the environmental review process what is best for the community?

While it can be said that there are other ways to ensure things such as infrastructure capacity are considered, CEQA provides for the documentation and consideration of all these things into one consolidated document, allowing for the local government officials to address the environmental impacts in a comprehensive, transparent manner; and not siloed off from one another. Following the terrible events of the wildfires and the Oroville Dam spillway failure, the Legislature has strived to promote the reduction of wildfire risk, loss of life, and sound land use. Does AB 430, as written, promote these policies?

Lastly, between the large project sizes and the minimum density requirements, AB 430 has the high potential to encourage sprawl. The Legislature has a history of promoting sound land use through infill development. As currently written, AB 430 is not consistent with this principle.

4) *LEED Certification.* LEED certification offers the following categories for certification:

- Building Design & Construction
- Building Operations and Maintenance
- Interior Design and Construction
- Homes
- Neighborhood development.

AB 430 currently requires LEED Gold Certification for Homes, but the bill also covers mixed-use residential projects, which would not eligible for the Homes category. The most appropriate certification may be certification for Neighborhood Development or Building Design & Construction.

5) *Apples and oranges.* AB 430 provides for expedited judicial review for residential and mixed-use projects in specified cities that meet certain standards, including that the development will achieve sustainability standards sufficient to receive LEED Gold certification for Homes rating system, or the comparable rating under the GreenPoint rating system or voluntary tier under the California Green Building Code (CalGreen). The intent behind providing these alternatives to LEED Gold is to allow the project proponent flexibility in meeting the bill's requirements and presumes that it will be up to the local government's permitting agency to determine what is comparable.

   GreenPoint and CalGreen, which are based on the construction and infrastructure of the building itself; considers things such as energy efficiency and indoor air quality. These can be tracked and calculated as the development is being constructed. On other hand, the LEED certification process for Homes takes place after the project has been completed. LEED also mandates minimum energy efficiency and water efficiency as a prerequisite, and gives additional points based on whether a project contains additional desirable attributes such as proximity to transit, walkability, compatibility with bicycles, access to mixed-uses, redevelopment, historic resource preservation, preservation of trees, etc. It is noted that because certification takes place after the construction of the building, enforcement of such provisions is tricky.

   Nonetheless, because of the different metrics that are used between the systems, what level of GreenPoint or CalGreen is comparable to LEED Gold? How will a local government know what is the proper comparable rating? If left up to local governments, will there be inconsistent application? Each of the cities covered by the bill have an interest in building, and want to build, residential and mixed-use projects as quickly as possible. What prevents these cities from simply finding that a certain rating is comparable to LEED Gold just for the sake of expediting the projects?

6) *Committee amendments,* If the committee decides that bypassing the local planning process and environmental review is appropriate for these communities in light of the Camp Fire, the committee may wish to amend the bill to do all of the following:

   a) *Limit the projects size to a maximum of 10 acres.*

b) *Require the project have a minimum density of 20 units per acre.*
c) *Require the project be on a site in an area with per capita vehicle miles traveled at least 15% below the regional average.*
d) *Require the permitting agency to file a notice with OPR; and require project proponent to hold at least one public meeting before the application is submitted to give the public opportunity to provide appropriate and relevant information relating to a particular development.*
e) *Require the author to work with the appropriate stakeholders to ensure that tribal cultural resources are not adversely impacted by the ministerial approval process.*
f) *Specify that LEED certification for new construction or neighborhood development, or its equivalent, is required for the mixed-use projects.*

Related/Prior Legislation

SB 25 (Caballero) establishes expedited administrative and judicial review of environmental review and approvals granted for projects that are funded by opportunity zone funds or public agencies that meet certain standards, including LEED gold certification. SB 25 is has been referred to the Assembly Natural Resources Committee.

AB 394 (Obernolte) exempts from CEQA, until 2025, egress route projects or activities 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. AB 394 passed out of this committee with a vote of 4 – 0 and has been referred to the Senate Natural Resources Committee.

AB 2267 (Wood, 2018) would have established, until 2024, expedited administrative and judicial review for CEQA actions or proceedings on the adoption or approval of amendments to the Downtown Station Area Specific Plan for the City of Santa Rosa and for the adoption or approval of a specified planning document for incorporated or unincorporated areas of Sonoma County in the "RED Area." AB 2267 did not pass the Senate Floor.

TRIPLE REFERRAL

This measure was heard in the Senate Housing Committee on June 18, 2019, and passed out of committee with a vote of 10 - 0. 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 Governance and Finance Committee.

SOURCE: Author

SUPPORT:

Adventist Health
Bay Area Builders Exchange
Build.com
Butte County Board of Supervisors
Butte-Glenn Medical Society
CalChamber
California Apartment Association
California Association of Realtors
California Building Industry Association
Chico Builders Association
Chico Chamber of Commerce
Chico Downtown Business Association
City of Biggs
City of Corning
City of Gridley
City of Orland
City of Oroville
City of Willows
Civil Justice Association of California
Downtown Chico Business Association
Enloe Medical Center
Nevada County Contractor's Association
North Valley Property Owners Association
Placer County Contractors & Builders Exchange
Rural County Representatives of California
Sacramento Regional Builders Exchange
San Gabriel Valley Economic Partnership
Shasta Builders' Exchange
Sierra North Valley Realtors
Sustainability Management Association
Valley Builders Exchange, Inc.
Valley Contractors Exchange
Yuba Sutter Chamber of Commerce

OPPOSITION:

City of Chico
2 Individuals

-- END --

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

Bill No:	AB 508		
Author:	Chu		
Version:	6/6/2019	**Hearing Date:**	7/3/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: Drinking water: consolidation and extension of service: domestic wells

DIGEST: This bill makes changes to statute related to the State Water Resources Control Board's (SWRCB's) authority to order the consolidation of drinking water systems, including setting a deadline of July 1, 2020 as the date by which the SWRCB must develop a policy that provides a process for members of a disadvantaged community to petition for consolidation; and requiring the SWRCB, before ordering consolidation or extension of service, to notify owners and occupants of dwelling units that are reliant on a domestic well with unsafe drinking water about the adequacy and safety of the unit's drinking water.

ANALYSIS:

Existing law:

1) Pursuant to the federal Safe Drinking Water Act (SDWA), authorizes the United States Environmental Protection Agency (US EPA) to set standards for drinking water quality and to oversee the states, localities, and water suppliers who implement those standards. (42 United States Code § 300(f) et seq.)

2) Declares that it is the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code § 106.3)

3) Requires, pursuant to the California SDWA, the SWRCB to regulate drinking water and to enforce the federal SDWA and other regulations. (Health and Safety Code (HSC) § 116275 et seq.)

4) Requires the SWRCB, in administering SDWA programs to fund improvements and expansions of small community water systems, to encourage the consolidation of small community water systems that serve disadvantaged communities; and, to prioritize funding for construction projects that involve the physical restructuring of two or more community water

systems, at least one of which is a small community water system that serves a disadvantaged community, into a single, consolidated system. (HSC § 116326)

5) Authorizes the SWRCB, where a public water system or a state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water or where a disadvantaged community is reliant on a domestic well that consistently fails to provide an adequate supply of safe drinking water, to order consolidation, either physical or operational, with a receiving water system. (HSC § 116682 (a)(1))

6) Requires the SWRCB to develop and adopt a policy that provides a process by which members of a disadvantaged community may petition the SWRCB to consider ordering consolidation. (HSC § 116682 (a)(2))

7) Requires the SWRCB, before ordering consolidation or extension of service, to perform a series of activities, including, encouraging voluntary consolidation or extension of service; considering other enforcement remedies; consulting with the relevant local agency formation commission; and, notifying the potentially receiving water system and the potentially subsumed water systems. (HSC § 116682 (b))

8) Provides that any domestic well owner within the consolidation or extended service area who does not provide written consent shall be ineligible, until the consent is provided, for any future water-related grant funding from the state other than funding to mitigate a well failure, disaster, or other emergency. (HSC § 116682 (b)(9))

9) Requires the SWRCB, before ordering consolidation or extension of service, to make seven findings, including that the potentially subsumed water system has consistently failed to provide an adequate supply of safe drinking water; that all reasonable efforts to negotiate consolidation or extension of service were made; and, that consolidation of the receiving water system and subsumed water system or extension of service is appropriate and technically and economically feasible. (HSC §116682 (d))

10) Prohibits, in the case of an ordered consolidation, the consolidated water system from increasing charges on existing customers of the receiving water system solely as a consequence of the consolidation or extension of service unless the customers receive a corresponding benefit. Provides that, in the case of an ordered consolidation, fees or charges imposed on a customer of a subsumed water system shall not exceed the cost of the service. (HSC § 116682 (g)(1)(A) - (B))

11) Prohibits the receiving water system from charging any fees to, or place conditions on, customers of the subsumed water system that it does not charge to, or impose on, new customers that are not subject to the consolidation with the receiving water system. (HSC § 116682 (g)(1)(C))

12) Authorizes the SWRCB, in order to provide an adequate supply of affordable, safe drinking water to disadvantaged communities and to prevent fraud, waste, and abuse, to, if sufficient funding is available, contract with, or provide a grant to, an administrator to provide administrative, technical, operational, or managerial services, or any combination of those services, to a designated water system to assist the designated water system with the provision of an adequate supply of affordable, safe drinking water. (HSC § 116686 (a)(1)(A)(i))

13) Authorizes the SWRCB to order the designated water system to accept administrative, technical, operational, or managerial services from an administrator appointed by the SWRCB for full oversight of construction or development projects related to a consolidation or extension of service, including, but not limited to, accepting loans and grants and entering into contracts on behalf of the designated water system. (HSC § 116686 (a)(1)(C))

14) Makes legislative findings that regional solutions to water contamination problems are often more effective, efficient, and economical than solutions designed to address solely the problems of a single small public water system, and that it is in the interest of the people of the State of California to encourage the consolidation of the management and the facilities of small water systems to enable those systems to better address their water contamination problems. (HSC § 116760.10 (h))

This bill:

1) Clarifies that the SWRCB may order a consolidation with a receiving water system or extension of service in a disadvantaged community that is, in whole or in part, substantially reliant on domestic wells that consistently fails to provide an adequate supply of safe drinking water.

2) Establishes the deadline of July 1, 2020, for the existing law provision that requires the SWRCB to develop and adopt a policy for members of a disadvantaged community to petition the Water Board to consider ordering a

consolidation.

3) Requires the SWRCB to inform the owner of a dwelling unit and, if different, the owner of a domestic well, if the dwelling unit is reliant on a domestic well within a service area that does not provide an adequate supply of safe drinking water.

4) Deletes the requirement that the Water Board obtain a domestic well owner's consent prior to ordering a consolidation or extension of service.

5) Requires, if the owner of the dwelling unit or, if applicable, the domestic well does not provide written consent for consolidation or extension of service to serve the dwelling unit, both of the following to occur:
   a) The owner of the dwelling unit or domestic well shall be ineligible, until the owner provides written consent, for any future water-related grant funding from the state other than funding to mitigate a well failure, disaster or other emergency; and
   b) The SWRCB shall promptly take all reasonable steps to provide the occupants of the dwelling unit a written statement regarding their drinking water, as follows:
      i) That the domestic well does not provide an adequate supply of safe drinking water.
      ii) All likely health risks associated with all of the dwelling unit's specific known and likely water supply and water quality issues.
      iii) That the owner of the dwelling unit has been informed that the domestic well does not provide an adequate supply of safe drinking water and, despite being informed, has refused to consent to the construction of a lateral.
      iv) That the dwelling owner's failure to consent to construction of a lateral or provide an alternate adequate supply of safe drinking water evidences a failure to provide the bare living requirements necessary for a habitable dwelling.
      v) That the dwelling unit is untenantable because the dwelling unit substantially lacks an approved water supply.

6) Requires the SWRCB to consider how many owners of dwelling units served by domestic wells in the service area have provided, or are likely to provide, written consent to extension of service when determining if a consolidation is feasible, as specified.

7) Renames a capacity connection fee a capacity charge and would require a capacity charge to be paid only to the extent it does not exceed the reasonable

cost of providing the service.

8) Requires the SWRCB, upon ordering consolidation or extension of service to a community containing residences served by domestic wells to promptly take all reasonable steps to obtain written consent to the consolidation or extension of service from an owner of each residence served by a domestic well.

9) Specifies that an order pursuant to these provisions shall not require consolidation or extension of service to a residence served solely by a domestic well until an owner or the affected residence provides written consent to the extension of service.

Background

1) The Legislative Analyst's Office provides a succinct background on the general topic of Safe and Affordable Drinking Water in their Analysis of the 2018-19 Governor's Budget, as follows:

"Federal, State, and Local Entities Regulate Drinking Water. The federal Safe and Affordable Drinking Water Act (SDWA) was enacted in 1974 to protect public health by regulating drinking water. California has enacted its own safe drinking water act to implement the federal law and establish state standards. The U.S. EPA enforces the federal SDWA at the national level. However, most states, including California, have been granted "primacy" by the U.S. EPA, giving them authority to implement and enforce the federal SDWA at the state level.

"Maximum contaminant levels (MCLs) are health-based drinking water standards that public water systems are required to meet. MCLs take into account the health risk, detectability, treatability, and costs of treatment associated with a pollutant. Agencies responsible for regulating water quality enforce these standards.

"The California State Water Resources Control Board's (SWRCB) Division of Drinking Water (DDW) regulates public water systems that provide water for human consumption and have 15 or more service connections, or regularly serve at least 25 individuals daily at least 60 days out of the year. (A "service connection" is usually the point of access between a water system's service pipe and a user's piping.) The state does not regulate water systems with less than 15 connections; county health officers oversee them. At the local level, 30 of the 58 county environmental health departments in California have been

delegated primacy—known as Local Primacy Agencies (LPAs)—by the SWRCB to regulate systems with between 15 and 200 connections within their jurisdiction. For investor-owned water utilities under the jurisdiction of California Public Utilities Commission (CPUC), the DDW or LPAs share water quality regulatory authority with CPUC.

"The DDW regulates approximately 7,500 water systems. About one-third of these systems have between 15 and 200 service connections. The number of smaller systems—specifically, those with 14 or fewer connections— is unknown but estimated to be in the thousands.

"Multiple Causes of Unsafe Drinking Water. The causes of unsafe drinking water can generally be separated into two categories (1) contamination caused by human action and (2) naturally occurring contaminants. In some areas, there are both human caused and natural contaminants in the drinking water.

"Three of the most commonly detected pollutants in contaminated water are arsenic, perchlorate, and nitrates. While arsenic is naturally occurring, perchlorate contamination is generally a result of military and industrial uses. High concentrations of nitrate in groundwater are primarily caused by human activities, including fertilizer application (synthetic and manure), animal operations, industrial sources (wastewater treatment and food processing facilities), and septic systems. Agricultural fertilizers and animal wastes applied to cropland are by far the largest regional sources of nitrate in groundwater, although other sources can be important in certain areas.

"Unsafe Drinking Water a Statewide Problem. The SWRCB has identified a total of 331 water systems that it or LPAs regulate that are in violation of water quality standards. These water systems serve an estimated 500,000 people throughout the state. The number of water systems with 14 or fewer connections that are currently in violation of water quality standards is unknown, but estimated to be in the thousands by the SWRCB. Of the 331 systems identified by the SWRCB, 68 have violations associated with nitrates (and in some cases, additional contaminants). In some of these water systems, unsafe contamination levels persist over time because the local agency cannot generate sufficient revenue from its customer base to implement, operate, or maintain the improvements necessary to address the problem. The challenge in these systems is often a product of a combination of factors, including the high costs of the investments required, low income of the customers, and the small number of customers across whom the costs would need to be spread."

2) *Consolidation of Public Water Systems.* SB 88 (Budget Committee, Chapter 27 Statutes of 2015) authorizes SWRCB to require water systems that are serving disadvantaged communities with unreliable and unsafe drinking water to consolidate with or receive service from public water systems with safe, reliable, and adequate drinking water. SB 552 (Wolk, Chapter 773, Statutes of 2016) authorizes the SWRCB to identify public water systems that are consistently unable to provide an adequate and affordable supply of safe drinking water and, once funding is available, to then contract with a competent administrator to provide managerial and technical expertise to that system.

   Consolidating public water systems and extending service from existing public water systems to communities and areas, which currently rely on under-performing or failing small water systems, as well as private wells, reduces costs and improves reliability. Consolidating or extending service from a public water system to a community otherwise served by unreliable systems or unregulated private wells advances the goal of a reliable, accessible supply of safe drinking water for all California residents.

   The SWRCB currently posts information on its website about ordered consolidations. It also tracks and has information on voluntary consolidations. Currently, 60 consolidations are being funded by SWRCB. Fifteen mandatory consolidations are currently proceeding, although 5 of those have decided to pursue voluntary consolidation. Only one mandatory consolidation has been completed so far. In 2017-18, there were 90 voluntary physical consolidations and 6 voluntary managerial consolidations. Physical consolidations are for systems that are close enough to be connected by new pipelines. In managerial or operational consolidation, the systems remain physically separate, but are managed by the same entity.

Comments

1) *Purpose of Bill.* According to the author, "Last year, the state made great progress in ensuring access to clean drinking water for small disadvantaged communities by passing AB 2501 [(Chu), Chapter 871, Statutes of 2018]. However, our state still has a long way to go, with over 1 million Californians still without this basic right. AB 508 builds on progress made by AB 2501 by reducing existing barriers between these communities and safe drinking water."

2) *Problematic domestic well notification requirements.* This bill builds upon the authority vested to the SWRCB to order the consolidation of domestic wells

with inadequate supplies of safe water in disadvantaged communities. Its intent is to remove barriers to, and to encourage, consolidation efforts. However, the bill's provisions relating to domestic well notifications are problematic.

SWRCB does not have statutory authority to regulate domestic wells. This means that SWRCB does not have information about specific domestic wells, nor is it able to require testing for domestic well owners or able to access private property in order to conduct testing itself. Further, the SWRCB lacks infrastructure at present to manage data collected from domestic wells even if it were to be granted that authority.

AB 508 would impose substantial new notification requirements on the SWRCB that assume it possesses information on the locations of domestic wells, who they serve, what contaminants may be present in them, and what the health effects of those contaminants may be.

Thus, the SWRCB does not have the authority to obtain the necessary information to implement these provisions of the bill; extending its authority to regulate private wells would be a major policy initiative well beyond the scope of this legislation.

The Committee may wish to consider amending the bill to:

a) *Remove the domestic well notifications provisions;*
b) *Require the SWRCB, when ordering a consolidation or extension of service to a disadvantaged community with inadequate safe drinking water, to include in its public meeting notice to ratepayers, renters, and property owners, information about water quality concerns in the area, relevant information about health effects of water contaminants, and information about opportunities for consolidation or extension of service to address water quality issues.*

Related/Prior Legislation

AB 2501 (Chu, Chapter 871, Statutes of 2018). Authorizes the SWRCB to order consolidation with a receiving water system when a disadvantaged community is reliant on a domestic well that consistently fails to provide an adequate supply of safe drinking water; prohibits, for an ordered consolidation, the receiving water

system from charging specified fees or imposing specified conditions on customers of the subsumed water system that it would not otherwise charge or impose; and, makes other changes to ordered consolidation law.

SB 623 (Monning, 2017). Would have created the Safe and Affordable Drinking Water Fund, administered by the SWRCB, to assist communities and individual domestic well users to address contaminants in drinking water that exceed safe drinking water standards. This bill was held in the Assembly Rules Committee.

SB 778 (Hertzberg, 2017). Would have required the SWRCB to report on public water system consolidations to date, and their success or failure. This bill was held in the Assembly Appropriations Committee.

SB 552 (Wolk, Chapter 773, Statutes of 2016). Authorizes the SWRCB to contract with an administrator to provide administrative and managerial services to a designated public water system to assist with the provision of an adequate and affordable supply of safe drinking water.

SB 1263 (Wieckowski, Chapter 843, Statutes of 2016). Authorizes the SWRCB to deny a permit for a new public water system if it determines that it is reasonably foreseeable that the proposed new public water system will be unable to provide affordable, safe drinking water.

SB 88 (Budget Committee, Chapter 27 Statutes of 2015). Authorizes the SWRCB to require water systems that are serving disadvantaged communities with unreliable and unsafe drinking water to consolidate with, or receive service from, public water systems with safe, reliable, and adequate drinking water.

AB 685 (Eng, Chapter 524, Statutes of 2012). Declares that it is the established policy of the state that every human being has the right to clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes and that relevant state agencies, including the Department of Water Resources, the SWRCB, and the State Department of Public Health shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria pertinent to the human uses of water.

Double Referral:

If this measures is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Governance and Finance Committee.

SOURCE: Leadership Counsel for Justice and Accountability

SUPPORT:

Alliance of Californians for Community Empowerment (ACCE) Action
Aoki Water Justice Clinic, UC Davis School of Law
Audubon California
California Coastkeeper Alliance
California Environmental Justice Alliance
California Institute for Rural Studies
California League of Conservation Voters
Center for Community Action and Environmental Justice (CCAEJ)
Center for Sustainable Neighborhoods
Central California Environmental Justice Network
Clean Water Action
Community Water Center
Courage Campaign
Ella Baker Center for Human Rights
Leadership Counsel for Justice & Accountability
Lutheran Office of Public Policy- California
Planning and Conservation League
Policy Link
Pueblo Unido CDC
Sierra Club California
Social Justice Ministry, Diocese of Fresno
The Trust for Public Land
Western Center on Law & Poverty

OPPOSITION:

None received

-- END --

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

Bill No:	AB 729		
Author:	Chu		
Version:	6/20/2019	**Hearing Date:**	7/3/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: Carpet recycling: carpet stewardship

DIGEST: Revises the Product Stewardship for Carpets Program to, among other things, require the stewardship plan include a funding mechanism with differential assessments, require a "contingency plan" in the absence of an approved plan by CalRecycle, and increase the administrative penalties from $1,000 per day to $5,000 per day.

ANALYSIS:

Existing law, the Product Stewardship for Carpets Program:

1) Requires manufacturers of carpets sold in this state, individually or through a carpet stewardship organization, to submit a carpet stewardship plan to CalRecycle that includes specified elements relating to the recycling of postconsumer carpet (Public Resources Code (PRC) §42972).

    a) Requires the plan to establish and provide for a carpet stewardship assessment per unit of carpet sold in the state to fund the plan and that is remitted to the organization to carry out the plan (PRC §42972(a)(7)).

2) Requires CalRecycle, within 60 days after receiving a plan, to review and determine whether the plan complies with the law's requirements and notify the submitter of its decision. Specifies that any plan not approved by March 31, 2012, is out of compliance until determined to be complete by CalRecycle (PRC §§42973).

3) Requires CalRecycle to post a notice on its website listing manufacturers that are in compliance with the bill's requirements. Requires a wholesaler or retailer that distributes or sells carpets to monitor the website to determine if the sale of a manufacturer's carpet is in compliance (PRC §42978).

4) Requires the carpet stewardship organization to annually demonstrate to CalRecycle that it has achieved continuous meaningful improvement in the

rates of recycling and diversion and other specified goals in order to be in compliance (PRC §42975).

5) Provides for the imposition of administrative civil penalties upon a person who violates the bill and would provide that the manufacturer or organization whose plan is not approved by CalRecycle by March 31, 2012, is subject to those penalties until the plan is approved (PRC §42978, 42973(b)).

6) Declares a state goal to reach a carpet recycling rate of 24% by January 1, 2020 (PRC §42972.2).

7) Requires, on or before January 1, 2023, CalRecycle to establish the minimum carpet recycling rate (PRC §42972.2(b)).

8) Prohibits an organization from expending funds from an assessment for any of the following purposes (PRC §42972):

   a) Penalties imposed by CalRecycle;
   b) Costs associated with litigation against the state; or,
   c) Engineered municipal solid waste conversion, use in cement kilns, and transformation, as defined.

9) Requires the organization to pay CalRecycle a quarterly administrative fee, set by CalRecycle at an amount that is adequate to cover the costs of administering and enforcing the Act. Limits the amount of administrative fees paid for a calendar year to 5% of the aggregate assessments collected for the preceding calendar year (PRC §42977).

10) Establishes an advisory committee to make recommendations on carpet stewardship plans (PRC §42972.1).

This bill:

1) Requires a carpet stewardship organization to be a 501(c)(3) organization.

2) Requires the funding mechanism to be composed of a system of differential assessments that takes into account the financial burden that a particular carpet material has on the stewardship program. If a certain carpet material requires a higher subsidy to incentivize use in the market place, based on market history and modeling, requires that material to have a proportionally higher assessment.

a) Declares that it is the intent of the Legislature that the amount of the assessment be reduced by the organization as the program is implemented over time and becomes more efficient.

b) Requires the organization to update the plan to either increase or decrease the assessment as appropriate and to submit the updated plan to CalRecycle.

3) Requires a carpet stewardship plan to include a "contingency plan" that demonstrates how the activities in the plan will continue to be carried out in the absence of an approved plan by CalRecycle through an independent entity, such as an escrow company.

4) Requires the organization, as part of its plan, to set up a trust fund or escrow account into which it shall deposit unexpended funds and ongoing consumer assessments if the plan is terminated or revoked.

5) If the plan is terminated or revoked, requires that the trustee or escrow agent:

a) Accept carpet stewardship assessment payments directly from manufacturers into the trust fund or escrow account; and,
b) Make payments from the trust fund or escrow account, at the direction of CalRecycle, to implement the most recently approved plan.

6) If a new plan has not been approved within one year, authorizes CalRecycle to make modifications to the previously approved plan and continue to direct payments from the trust fund or escrow account to implement the modified plan.

7) Upon the approval of a successor organization, requires the trustee or escrow agent to transfer funds to the new organization.

8) Removes the 5% of the aggregate assessments cap on administrative fees paid to CalRecycle.

9) Increases the penalty amounts for the program from $1,000 per day to up to $5,000 per day.

Background

1) *Extended Producer Responsibility (EPR) Programs.* According to CalRecycle, EPR is a strategy that places shared responsibility for end-of-life product

management on the producers, and all entities involved in the product chain, instead of on the general public and local governments, with oversight and enforcement provided by a governmental agency. This approach provides flexibility for manufacturers, based on their expertise in designing products and the systems that bring these products to market, to design systems to capture those products at the end-of-life to meet statutory goals. Currently there are 4 statewide EPR programs: paint, carpet, mattresses, and pharmaceutical and sharps waste.

2) *Recycling Carpet.* Discarded carpet is one of the 10 most prevalent waste materials in California landfills, comprising about 3.2% of waste by volume disposed of in California in 2008. Most carpet is made from nylon and other polymers derived from virgin fossil fuel. Carpet is difficult to recover plastics from due to the multiple materials bound together and is designed for durability and longevity. Numerous products can be manufactured from recycled carpet, including carpet backing and backing components, carpet fiber, carpet underlayment, plastics and engineered materials, and erosion control products.

3) *California's carpet recycling program.* California's carpet stewardship program was created by AB 2398 (Perez), Chapter 681, Statutes of 2010. As an EPR program, manufacturers (either individually or through their stewardship organization) are required to design and implement their own stewardship program. This means there is a stewardship organization that prepares and implements a plan to reach certain goals, finances and distributes funds to support the stewardship program, and reports to CalRecycle on their progress. CalRecycle's role in the carpet stewardship program is to review and approve plans, check progress, and support industry by providing oversight and enforcement to ensure a level playing field among carpet manufacturers. Other service providers participate in the management system as negotiated with the stewardship organization.

4) *Carpet America Recovery Effort (CARE).* CARE is a third-party nonprofit carpet stewardship organization based in Georgia. AB 2398 established CARE as the sole carpet stewardship organization until April 1, 2015, and after that date, permits an organization to submit a stewardship plan to CalRecycle for approval. Currently, CARE is the only carpet stewardship organization in California.

5) *Carpet stewardship plans.*

    a) *California Carpet Stewardship Plan 2011-2016.* Consistent with AB 2398, CARE is directed to collect an assessment that is sufficient to meet, but not

exceed, the anticipated cost of implementing the stewardship plan. In the approved California Carpet Stewardship Plan 2011-2016 (2011-2016 Plan), the initial ($0.05) per square yard assessment was approved through 2016. In 2015 and 2016, the 2011-2016 Plan was revised through three separate addenda in order to support continuous meaningful progress in line with the goals of AB 2398 and in response to market conditions. The first addenda provided justification for additional program incentives and enhancements to help CARE achieve compliance and increased the assessment from $0.05/square yard of carpet sold in California to $0.10/square yard effective April 1, 2015. The second addenda authorized a one-year grant and loan pilot program. The third addenda, approved in 2016, increased the assessment from $0.10/square yard of carpet sold in California to $0.20/square yard effective April 1, 2016. The 2011-2016 Plan was set to expire December 1, 2016.

b) *California Carpet Stewardship Plan 2017-2021.* In October 2016, CARE submitted a new California Carpet Stewardship Plan 2017-2021 (2017-2021 Plan), which included an increase of the assessment to $0.25/square yard. CalRecycle disapproved the plan on December 20, 2016, and gave CARE 60 days to resubmit a revised 2017-2021 Plan for consideration. The disapproval required CARE to continue operating under the 2011-2016 Plan until a new plan was approved by CalRecycle, but for no more than 120 days.

CalRecycle found that the new proposed plan, "taken as a whole, does not ensure continuous meaningful improvement in carpet recycling and diversion in 2017 and beyond." According to CalRecycle, the plan focuses on existing subsidies that have not demonstrated increased recycling rates; moreover, CARE intends to "scale back" subsidy guarantees going forward. The plan does not address the possibility of providing subsidies to points in the supply chain that may result in significant increases in recycling, such as installer subsidies to increase diversion and recycling, funding for discounted drop-off fees, or subsidies for secondary manufacturers to use post-consumer nylon. Most of the activities described in the 2017-2021 Plan, according to CalRecycle, continue existing initiatives at much the same level as the 2011-2016 Plan that expired in 2016, at a time when CalRecycle already found that the Program lacked continuous meaningful improvement three years in a row.

AB 2398 established administrative civil penalties of $1,000 per day ($10,000 for intentional, knowing, or negligent violations). In its disapproval of CARE's 2017-2021 plan, the director directed staff to delay

enforcement action against carpet manufacturers, wholesalers, and retailers for 120 days, "provided the regulatory entity is participating in good faith in continuing to carry out the requirements of the law and CARE's existing plan."

On February 20, 2017, CARE submitted a revised 2017-2021 Plan, which specified that with the $0.25/square yard assessment, it expects to collect $23.7 million in 2017. The plan identifies $1.7 million in reuse subsidy payments; $7.1 million in recycling processor payments; $11.1 million in manufacturer payments; just under $1 million in specified grants; and, $6.2 million in "program expenses," which includes $764,142 for CARE salaries and staffing. On April 21, 2017, CalRecycle disapproved the revised 2017- 2021 Plan based upon a finding that the plan did not comply with statutory requirements. In its disapproval, CalRecycle noted that without an approved plan in place, all manufacturers that sell carpet in California are subject to penalties until they are covered by an approved plan. Additionally, wholesalers and retailers would be subject to penalties for selling carpet from non-compliant manufacturers. In order to preserve the recycling infrastructure and avoid market disruptions, CalRecycle authorized manufacturers, wholesalers, and retailers to continue to operate without penalties for 60 days.

The Director of CalRecycle directed staff to develop a draft plan to help CARE comply with state requirements. At the June 2017 public meeting, CalRecycle presented its Final Carpet Stewardship Program Enforcement Plan, which was later updated and presented at the October 2017 public meeting. Because the 2011-2016 Plan had ended on December 31, 2016, the Director allowed CARE to continue to operate under the 2011-2016 Plan under conditions specified in the updated enforcement plan, including a requirement that CARE submit a carpet stewardship plan to CalRecycle by March 16, 2018, that would incorporate the provisions of AB 1158.

c) *California Carpet Stewardship Plan 2018-2022.* On March 16, 2018, CARE submitted a new Carpet Stewardship Plan 2018-2022 (2018-2022 Plan). The plan was disapproved on May 15, 2018, after reviewing staff found that the plan did not meet statutory requirements. On June 12, 2018, CalRecycle agreed to delay implementation of its Enforcement Plan (see below) for an additional 33 days, to allow public consideration of CARE's revised plan at CalRecycle's October 2018 Monthly Meeting. On August 17, 2018, CARE submitted its revised 2018-2022 Plan, and another revision on September 24, 2018. This plan was conditionally approved by the director at CalRecycle's October 2018 public meeting, which required

CARE to submit an additional revised plan within 60 days to address a number of recommendations regarding economic analysis, consumer convenience, incentivizing market development, and source reduction. On December 14, 2018, CARE submitted a new "Chapter 0" as an addendum to the plan to address the recommendations of CalRecycle. This plan was approved by the director on February 19, 2019, with additional requirements that must be implemented by September 2, 2019.

6) *Enforcement actions against CARE.* On March 10, 2017, separate from its consideration of the proposed 2017-2021 stewardship plan, CalRecycle began an enforcement proceeding against CARE for failing to meet the requirement that the carpet stewardship organization achieve "continuous and meaningful improvement in the rates of recycling and diversion of postconsumer carpet subject to its stewardship plan and in meeting the other goals included in the organization's plan." In spite of the significant amount of money collected by CARE from California consumers, CalRecycle found that CARE did not meet these requirements in 2013, 2014, or 2015. After each finding, CalRecycle provided CARE with recommendations on adjustments to the plan that would result in meaningful improvement; however, CARE has not, yet, officially incorporated CalRecycle's suggestions in any subsequent plans, although they are looking into the possibility of implementing a system for differential assessments (see below). CalRecycle sought a total of $3.285 million in penalties: $182,500 for 2013; $1.46 million for 2014; and, $1.64 million for 2015.

   On June 20, 2017, CalRecycle considered and adopted the final Enforcement Plan which was later updated to extend the timeframe manufacturers may continue to avoid penalties until after August 17, 2018, when the resubmitted 2018-2022 Plan was due. At that time, according to the Enforcement Plan, if there is not an approved resubmitted plan, a noncompliance manufacturer without an approved plan may be subject to civil penalties.

   Following a hearing on September 26, 2017, the Office of Administrative Hearings issued a proposed decision on February 13, 2018, that concluded that there is cause to impose a civil penalty against CARE but reduced the total penalties to $1,003,750. It is noted that the Court also concluded that a civil penalty in the amount of $1,500/day is more appropriate to serve as a deterrent effect going forward for the 2015 reporting period. CalRecycle had until May 23, 2018 to accept, reject, or modify the decision. On April 26, 2018, CalRecyle accepted the proposed decision, with modifications which included reducing the penalty amount to be consistent with penalties specified in statute.

Comments

1) *Purpose of Bill.* According to the author, "California has led the way with its flagship carpet recycling program. My bill from 2017, AB 1158, outlined specific targets and gave the State the authority to set future targets for carpet recycling. However, the State needs additional tools to provide a backstop in the case a plan is inadequate to meet set recycling goals. Currently, there is no mechanism to continue the program if a stewardship plan submitted by manufacturers is disapproved, AB 729 will allow for a "bridge" plan to avoid disruptions in our carpet recycling infrastructure and protect consumer fees if a plan is disapproved or revoked."

2) *The show must go on.* This bill is intended to address a shortcoming that has been identified in the state's product stewardship programs – what happens to the fee money collected from consumers if the organization is unable to continue program operations, either through an enforcement action by CalRecycle or if the organization is dissolved or unwilling to continue operations. Particularly, given the complex enforcement history in this program, it is important that the state has a mechanism to oversee funds if CalRecycle does not grant additional extensions to CARE after the current September 1st deadline to preserve California's carpet recycling infrastructure and protect California consumers.

   Under AB 729, if a plan is terminated or revoked and CalRecycle does not approve a new carpet stewardship plan within one year, CalRecycle would be authorized to modify the previously approved plan and take over the program.

   Opponents of the bill have expressed concern of allowing CalRecycle to take over the program, without any parameters, and instead think it would be more appropriate for CARE to continue to implement the plan until a new organization is designated. However, given the complicated past between CalRecycle and CARE and the program history, this may not be an ideal solution either.

   As the state entity with the subject matter expertise when it comes to recycling and waste reduction, CalRecycle would be the most logical choice. The Legislature has entrusted CalRecycle with the fair regulation of its waste and recycling programs. If not CalRecycle, then who?

3) *CalRecycle's administrative costs.* Under the Act, CARE is required to pay CalRecycle a quarterly administrative fee to cover the department's costs in administering and enforcing the chapter, but that fee is limited, on an annual

basis, to 5% of the amount of assessments collected in the prior year.

According to the author, CalRecycle's costs have exceeded the 5% cap for the last 3 out of 7 years, with costs of implementation highest in 2015 and 2016. It is noted that this is when CARE was found to not be improving carpet recycling and not making progress towards the statutory recycling goals. During this time, according to the author, significant CalRecycle staff time was allocated to work with CARE to improve its program and bring CARE into compliance. Recent adjustments to the assessment by CARE have resulted in the administrative fees falling below the 5% limitation, but history supports, or at least the consideration of, this 5% cap being removed.

Even with the removal of the 5% cap, the administrative fee will still be limited to CalRecycle's costs of enforcing and implementing the Act. It is also recognized, however, the amount of assessments collected is dependent on the amount of new carpet sold, which has been decreasing in recent years. What happens if assessments collected (revenue) is low due to declining carpet sales but enforcement/administrative fees are high? How does CARE make up this difference? Through cutting program funding or an increased consumer assessment? Would an increased assessment on carpet cause consumers to want to look into alternative flooring options other than carpet? But if CalRecycle is not fully reimbursed by CARE for its enforcement costs, where does that money come from?

4) *Differential Assessments*. In February 2018, in response to CARE's draft 2018-2022 Plan, the advisory committee recommended that CARE implement a system of differential assessments based on face fiber type that correlates to the subsidy required to have it be economically recycled, with adequate time for implementation within 12 months of the approved plan.

   AB 729 would change the differential assessment recommendation into a mandate, and instead require the plan to establish a system of differential assessments that takes into account the financial burden a particular carpet material has on the program, and require carpet materials that are associated with higher subsidies due to low level of recyclability to have a higher assessment. AB 729 does not impose a timeframe by which CARE would be required to develop and implement the differential assessments.

   According to the 2018-2022 Plan approved in February 2019, CARE has been engaged in internal discussions to consider the potential adoption of differential assessments and may amend the program to apply differential assessments such as for different fiber types, market segments, or price *if* CARE determines it is

in the best interest of achieving the goals of the Act. CARE will consult both the advisory committee and CalRecycle to provide input on the approach *if* CARE decides to move forward with development of a differential assessment. CARE may also consider hosting a public stakeholder workshop and/or a targeted mill/retailer participant workshop to solicit broader input on the potential implications, benefits, and challenges with adopting differential assessments.

It seems AB 729's differential assessments mandate is a direct response to CARE's open-ended approach, instead specifying that the differential assessments take into account the financial burden and recyclability of a particular carpet material type. A lower assessment for carpet that costs less to recycle and a higher assessment for carpet that is harder to recycle; the intent to incentivize the purchase of easier to recycle carpet in the marketplace.

CARE has expressed concern for unintended consequences with this approach such as putting PET carpet at a disadvantage, which, it is argued, could have effects on other legislative efforts surrounding the use of PET, and encouraging consumers to consider other flooring alternatives. Additionally, recycling markets fluctuate, causing the recyclability and demand for materials to fluctuate also.

Opposition also points out that existing grants and subsidies for recycling postconsumer carpet is already structured to incentivize the recycling of carpet materials that have the highest recyclability, and therefore to additionally assign that type of carpet with the lowest assessment rate would put other carpet manufacturers at an unfair disadvantage. They assert that the differential assessment would only benefit one carpet manufacturer that produces a certain type of carpet material, which makes up a very small portion the amount of carpet sold. To increase recycling rates, according to the opposition, the assessment should focus on a material that comprises a larger percentage of the program. The underlying logic is if the Legislature wants to increase recycling rates of already purchased carpet, the Legislature needs to encourage consumers to continue to buy carpet of similar material, even if harder to recycle, by having a lower assessment. If there is more demand for it, more will be recycled.

Although certain types of carpet may have been popular in the past or continue to be popular and therefore have a larger presence in the market, does that mean the Legislature should provide incentives and promote that particular type if it is hard to recycle when other more sustainable, easier to recycle carpet options are available? Does this reasoning promote an endless cycle of

trying to process and find markets for unsustainable, harder to recycle carpet material? Although recyclability of a material depends on finding end-markets for those materials, does the Legislature want to encourage the use of hard to recycle materials for carpet because the state needs end markets for those materials? Or should the amount of recycled content in carpet play a roll in the differential assessment?

The committee may wish to amend the bill to also require the differential assessments to take into account the amount of postconsumer content contained in a particular face fiber type.

Related/Prior Legislation

AB 2097 (Acosta, Chapter 340, Statutes of 2018) extended the date by which carpet manufacturers are required to submit their annual report to CalRecycle from July 1 to September 1 of each year.

AB 1158 (Chu, Chapter 794, Statutes 2017), among other things, requires a carpet stewardship plan to achieve a 24% recycling rate for postconsumer carpet by January 1, 2020, revises the criteria a carpet stewardship organization is required to meet to achieve compliance with carpet stewardship laws, and creates an advisory committee to provide comments and recommendations on carpet stewardship plans, amendments to plans, and annual reports.

SOURCE: National Stewardship Action Council

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.

SUPPORT:

ACR Solar
Aquafil
California Product Stewardship Council
California Refuse Recycling Council, Northern District
California Resource Recovery Association
Castro Valley Sanitary District
Changing Markets
Changing Markets Foundation

Clean Water Action/Clean Water Fund
Ecology Center
Interface, Inc.
Los Angeles County Solid Waste Management Committee
Nate Miley, Alameda County Board of Supervisors
National Stewardship Action Council (sponsor)
Planet Recycling, Inc.
Plastic Pollution Coalition
RethinkWaste
Sea Hugger
Seventh Generation Advisors
The 5 Gyres Institute
The Center for Oceanic Awareness, Research, and Education (COARE)
UPSTREAM

OPPOSITION:

Beau Monde Fine Floors, Inc.
Carpet & Rug Institute
Carpet House
Creative Floor Design, Inc.
D.A. Roberts Enterprises, Inc.
Mohawk Industries
Stan Bilchik Carpet Co.
The Floor Store

ARGUMENTS IN SUPPORT: According to a coalition letter, which included, among others, California Product Stewardship Council and National Stewardship Action Council, "CalRecycle is the oversight agency for the carpet stewardship program and they simply do not have enough tools to ensure this program works properly. It is working well enough that California has the highest recycling rate in the country as the national average is 3% recycled and California is now at 15% but that is very low considering the original legislation passed in 2010 with a recycling baseline rate of 8%.

"CalRecycle is expected to know by September 1, 2019 if the Carpet America Recovery Effort (CARE) will have met their programmatic requirements and will be making a very important decision to either approve the program or determine CARE has not lived up to its commitment and enforce against CARE or disallow them from running the program. If that happens, it is critical for California's businesses that we have a way to get the $15.5 million in California fee money

back from CARE to allow another stewardship organization to take over and continue to support carpet recycling infrastructure."

ARGUMENTS IN OPPOSITION: According to Mohawk Industries, "CARE and its members are working diligently to collect, process, and find end-markets for recycled carpet in order to meet the goals of AB 1158 which was signed by the Governor in 2017 and only implemented last year.

"AB 729 does not help with collection, processing, or end-markets for carpet and as noted above, only serves to distract from what is necessary to achieve the goals of this program. Rather than introducing more legislation to continue to change the rules, the proponents and CalRecycle need to allow CARE and its members to run the program according to existing law."

-- END --

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

Bill No:	AB 792		
Author:	Ting and Irwin		
Version:	6/20/2019	**Hearing Date:**	7/3/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Paul Jacobs		

SUBJECT: Recycling: plastic containers: minimum recycled content and labeling

DIGEST: This bill would impose specified minimum postconsumer content standards for plastic beverage containers subject to the California Redemption Value (CRV) that would require the beverage container to contain, on average, no less than 75 percent postconsumer recycled plastic content on and after January 1, 2030.

ANALYSIS:

Existing law:

1) Establishes the California Beverage Container Recycling and Litter Reduction Act (Bottle Bill), which:

   a) Requires beverage containers sold in this state to have a CRV of 5 cents for containers that hold fewer than 24 ounces and 10 cents for containers that hold 24 ounces or more and requires a distributor to pay a redemption payment to the California Department of Resources Recycling and Recovery (CalRecycle). Continuously appropriates these funds to CalRecycle for the payment of refund values and processing fees.

   b) Defines "beverage" to include soda, beer and other malt beverages, wine and distilled spirit coolers, carbonated mineral and soda waters, noncarbonated fruit drinks, and vegetable juices in liquid form that are intended for human consumption. Excludes from the definition of beverage vegetable drinks in beverage containers of more than 16 ounces, milk, medical food, and any product sold in a container that is not an aluminum beverage container, a glass container, a plastic beverage container, or a bimetal container.

   c) Requires that each new glass container manufactured in the state contain a minimum of 35 percent postfilled (recycled food container cullet) glass.

Requires every glass food, drink, or beverage container manufacturer in the state to report the amount of tons of new glass and the tons of postfilled glass used in the manufacturing of those containers to CalRecycle.

d) Provides that any person convicted of a violation is guilty of an infraction punishable by a fine of up to $100 and not more than $1,000 per violation.

2) Requires all rigid plastic bottles and rigid plastic containers sold in the state to be labeled with the code indicating the resin used to produce the rigid plastic bottle or rigid plastic container.

This bill:

1) Encourages beverage manufacturers to use plastic beverage containers that contain 100 percent recycled plastic content.

2) Requires, by March 1, 2022, and annually thereafter, every beverage manufacturer to report to CalRecycle in pounds and by resin type, under penalty of perjury, the amount of virgin plastic and postconsumer recycled plastic used by the manufacturer for plastic beverage containers subject to the a CRV for sale in the state in the previous calendar year.

3) Between January 1, 2021, and December 31, 2024, requires a plastic beverage container filled with a beverage sold by a beverage manufacturer subject to the CRV for sale in the state to, on average, contain no less than 25 percent postconsumer recycled plastic. Increases that amount to 50 percent between January 1, 2025, and December 31, 2029, and to 75 percent on and after January 1, 2030.

4) Subjects a beverage manufacturer that does not meet the minimum recycled plastic content requirements described in (3) to an administrative penalty, which increases as compliance rates decrease.

5) Requires a beverage manufacturer to pay the penalties described in (4) based on information reported to CalRecycle on the date the annual report is due.

6) Authorizes CalRecycle to conduct audits and inspections and take certain disciplinary action against a beverage manufacturer for the purpose of ensuring compliance with these requirements.

7) Imposes an additional administrative penalty of 115 percent of the difference between the manufacturer's audited actual average postconsumer recycled

plastic content percentage and the percentage reported if an audit or inspection reveals than the actual percentage was lower than the amount reported.

8) Deposits penalties collected into the Recycling Enhancement Penalty Account, which is created by the bill. Moneys in the account are available for expenditure upon appropriation by the Legislature.

9) Provides that penalties assessed are in addition to any other applicable civil or criminal penalties.

10) Specifies that the penalties shall be adjusted to reflect changes in the California Consumer Price Index.

11) Specifies that the rigid plastic bottle and container labeling requirement does not apply to rigid plastic containers and rigid plastic bottles that are medical devices, medical products that are required to be sterile, prescription medicine, and packaging used for those products.

Background

1) *Plastic in the Bottle Bill.* The vast majority (97 percent) of beverage containers subject to the Bottle Bill are made out of Polyethylene Terephthalate (PET, #1). PET is used to manufacture most soft drink and water bottles. Other types of plastics used to make containers subject to the Bottle Bill include High Density Polyethylene (HDPE, #2), Polyvinyl Chloride (PVC, #3), Low Density Polyethylene (LDPE, #4), Polypropylene (PP, #5), Polystyrene (PS, #6), and other (#7). The table below shows a breakdown of containers sold in 2018 by plastic type, as well as containers recycled and their recycling rate.

Plastic Containers Sold and Recycling Rate in 2018

Plastic Type	Containers Sold	Containers Recycled	Recycling Rate (%)
PET, #1	12,480,696,915	9,276,239,810	74
HDPE, #2	196,169,790	127,773,380	65
PVC, #3	116,110	16,651	14
LDPE, #4	8,849,177	289,590	3
PP, #5	3,512,434	372,222	11
PS, #6	117,416,820	32,047,313	27
Other, #7	44,754,072	2,930,194	7

Source: CalRecycle May 2019 Biannual Report of Beverage Container Sales, Returns, Redemption, and Recycling Rates

2) *Recycled plastic markets.* The US has not developed significant markets for recycled content materials, including plastic. Historically, China has been the largest importer of recycled materials. According to the International Solid Waste Association, China accepted 56 percent by weight of global recycled plastic exports. California currently exports roughly 30 percent of its recycled plastic.

   In an effort to improve the quality of the materials it accepts and to combat the country's significant environmental challenges, China enacted Operation Green Fence in 2013, under which it increased inspections of imported bales of recyclables and returned bales that did not meet specified requirements at the exporters' expense. In 2017, China established Operation National Sword, which included additional inspections of imported recycled materials and a filing with the World Trade Organization indicating its intent to ban the import of 24 types of scrap, including PET, HDPE, PVC, and PS beginning January 1, 2018. In November 2017, China announced that imports of recycled materials that are not banned will be required to include no more than 0.5 percent contamination.

   Following China's actions, other Southeast Asian countries have enacted policies limiting or banning the importation of recycled plastic materials. Last year, Malaysia and Vietnam implemented import restrictions. Earlier this year, India announced that it will ban scrap plastic imports. Thailand has announced a ban that will go into effect in 2021. While the recycled plastic markets for #1 and #2 plastics have not significantly been affected, these international restrictions on recycled plastic exports have affected scrap value prices for #3-7 plastics. As of February 2019, PP plastic had a negative scrap value of -$33 per ton, down from a positive value of $112 in 2018.

3) *Recycled plastic beverage containers.* PET is one of the easiest plastics to recycle, and recycled PET (rPET) can be used to manufacture numerous items including beverage containers, clothing, health care product containers, and carpet, among many others. Other types of plastics, particularly #3, 4, 6, and 7 plastics, are much more challenging to recycle, and many of these types of products simply get sent to a landfill. This problem has likely been exasperated by the recent export restrictions implemented by China and other countries.

   The Food and Drug Administration (FDA) oversees the use of recycled materials to make new food containers. FDA's safety concerns include ensuring that contaminants from the post-consumer material are not in the final food-contact product, that recycled post-consumer material not regulated for food-contact use is not incorporated into food-contact packaging, and that adjuvants

in the recycled plastic comply with the regulations for food-contact use. To address these concerns, FDA considers each proposed use of recycled plastic on a case- by-case basis and issues informal advice as to whether the recycling process is expected to produce plastic suitable for food-contact applications. FDA has prepared the Guidance for Industry - Use of Recycled Plastics in Food Packaging: Chemistry Considerations to assist manufacturers of recycled-content food packaging.

AB 2530 (Gordon), Chapter 861, Statutes of 2016 required beverage container manufacturers to report the amount of recycled content in their products. According to the 2018 reports, the majority of beverage manufacturers in the state use very little or no recycled plastic resin in manufacturing their bottles. Notable exceptions are a few small manufacturers, as well as Nestlé and Niagara who used 37 percent and 40 percent recycled plastic, respectively.

4) *EU's single-use plastic ban.* Earlier this year, the European Union (EU) announced a comprehensive single-use plastics ban by 2021. Under the new policy, many single-use items would be banned, including plastic cutlery, plates, straws, stirrers, balloon sticks, cotton swabs sticks, and expanded polystyrene foam food and beverage containers. All products covered by the ban would have to be replaced by "sustainable" alternatives. Additionally, all EU countries will be required to reach a 90 percent collection goal for plastic bottles by 2029, and plastic bottles will be required to contain 25 percent recycled content by 2025 and 30 percent by 2030.

Comments

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

"In California alone, nearly 12 billion plastic bottles are sold every year. While many plastic bottles are made of recyclable content, more than 3 billion bottles are not recycled at all, and are dumped in landfills. In order to encourage efficient use of recyclable plastics, AB 792 sets a minimum recycled content standard for plastic bottles in California.

2) *Minimum content standards support recycling markets.* The plastic recycling market challenges mentioned previously are due to numerous reasons, including, but are not limited to:

a) *Low demand for recycled plastic.* As mentioned previously, beverage container manufacturers currently use very little recycled plastic on their own. The major reason for low demand for recycled plastics by beverage

manufacturers is due to the low price for producing virgin plastic, making it a much cheaper option than using recycled plastic. This is considered a market failure as the low market price for virgin plastic does not account for its high environmental costs from production, disposal, and litter.

b) *Low scrap value for plastic.* Demand directly impacts price, and low demand for recycled plastic means lower prices. Scrap value for #3-7 plastics is particularly problematic, but even PET, which has a positive scrap value, is still much lower than aluminum. As of February 2019, the scrap value for a ton of PET was $188, compared to aluminum which was $1,150 per ton. Recent shifts by beverage manufacturers from using aluminum to plastic, as well as the market impacts from the China policy, has only exasperated this challenge.

c) *Low recycling rate for plastic.* In turn, low scrap value for plastic reduces the recycling incentive, leading to lower recycling rates.

This bill is intended to help correct these market failures. By requiring manufacturers of plastic beverage containers to achieve specified recycled-content requirements, this bill has the potential to support plastic recycling markets in the following ways:

a) Increase demand for recycled plastic.

b) Increase scrap value for recycled plastic.

c) Increase the recycling rates for plastic beverage containers.

d) Incentivize a shift away from using non-economically feasible types of recycled plastics (#3-7).

e) Reverse the trend back to using more aluminum beverage containers.

All of these intended market impacts from this bill have the potential to correct market failures and lead to a reduction in the production of virgin plastic and plastic waste.

3) Comprehensive strategies are needed. This bill can have positive and significant environmental and public benefits specifically by reducing the use of plastics that end up polluting our oceans and waterways. In addition to requiring the use of rPET, this bill could additionally incentivize manufacturing and consumer changes that reduce the use of problematic

plastics. However, it is also possible that this bill could lead to unintended consequences such as shifting beverage container materials into ones that are more environmentally damaging or by reducing non-beverage container uses of rPET. As such, this bill should be seen as one component to a more comprehensive and ongoing strategy in the effort to eliminate and reduce single-use plastics and protect against potential unintended consequences.

4) *Incentivizing source reduction.* The penalties in this bill are enforced on a per bottle basis, essentially penalizing a 4 ounce water bottle the same as a 2 liter soda bottle. In contrast, penalizing by weight might lead to opportunities to incentivize beverage container manufacturers to source reduce through light weighting or other design changes. The bill already requires manufacturers to report plastic used by manufacturers by weight, so administratively this would not be cumbersome to enforce.

   As this bill moves forward, the author may wish to consider revising the penalties to be based on weight rather than on a per bottle basis to incentivize the reduction of overall plastic used in manufacturing beverage containers.

5) *Supply challenges.* Major challenges to achieving the mandates in this bill will likely stem from having a sufficient supply of rPET. The production and supply of rPET is a complex global market, and challenges include the following:

   a) *FDA requirements for rPET used for food containers.* Currently, the majority of rPET produced is used for non-food contact containers such as polyester fibers used in clothing and carpets. Producing rPET to meet the higher FDA requirements for food contact containers is more expensive and difficult. Much of the recycled PET feedstock cannot be manufactured into rPET used for food containers due to high levels of contamination.

   b) *Competition from other uses of rPET.* As mentioned previously, rPET is used to manufacture numerous types of products, posing competition for beverage container manufacturers to obtain a sufficient supply.

   c) *Yield loss.* Depending on the quality of PET, there is typically a 60 percent to 75 percent technical yield loss when producing rPET. The yield loss can be due to issues such as contamination or container shapes used to produce rPET. Yield loss means a larger supply of feedstock PET is required to produce a comparable amount of rPET.

d) Out-of-state sourcing. Preferably, beverage container manufacturers would source their rPET supplies from in-state producers. However, the rPET market is a global one, and if necessary, establishing new out-of-state supply chains to meet the mandates from this bill may present challenges.

In the short run, these supply challenges present real challenges for beverage container manufacturers and rPET producers. However, over the long run, these challenges are solvable, and overcoming them could also lead to positive public benefits. There are numerous strategies that could be employed to help alleviate in-state supply challenges in the long run including increasing recycling rates, decreasing contamination levels, reducing exports, light weighting, and choosing substitute materials such as aluminum. Over time, because supplies of used PET feedstock and rPET are global markets, sufficient supply chains will likely be established to overcome any in-state supply challenges. One thing the world is not short of is a supply of plastic.

6) *Phased-in timeline.* Over time, supply challenges are likely solvable. However, these challenges are problematic in the short term, and it will take time for the markets and supply chains to adjust. The expectation of reaching 25 percent recycled content by January 1, 2021 in this bill is likely particularly onerous from an economic feasibility perspective. Rather than making this large jump early on, the industry will likely need a more gradual schedule initially to achieve these ambitious targets. A more accelerated schedule can be implemented to reach the longer-term mandates because the industry will have plenty of time for planning and the markets and supply chains will have time to adjust.

The Committee may wish to amend the bill to adjust the timeline for reaching the minimum recycled content standards in this bill to allow for the manufacturers and the markets to adjust to these changes and help support an economically feasible pathway to reach the ambitious goals in the bill. The proposed schedule might be as follows:

Compliance Date	*Recycled Content Standard*
January 1, 2021	*15%*
January 1, 2023	*25%*
January 1, 2025	*35%*
January 1, 2027	*50%*
January 1, 2030	*75%*

7) *Technical clarifications.*

The Committee may wish to amend the bill to make the following technical changes:

a) Delete the penalty schedule that occurs on or after January 1, 2035, which is no longer applicable to the bill. Delete the dates for the penalty when the overall compliance rate is at least 75 percent but less than 100 percent, which will clarify that this penalty applies to all required recycled plastic content standards in perpetuity.

b) Clarify CalRecycle's enforcement authority over beverage container manufacturers by:

i) Referencing civil penalties rather than administrative penalties.

ii) Referencing "an enforcement action pursuant to Chapter 8 of this division" rather than "a disciplinary action consistent with Section 14591.2" when authorizing the department to conduct audits and inspections.

c) Clarify that the minimum recycled content standards are to be measured in the aggregate.

8) *Add co-author.*

Per request by the author, the Committee may wish to amend the bill to add Senator Skinner as a co-author.

9) *Clarifying AB 906 (Bloom), Chapter 823, Statutes of 2017.* This bill includes a clarification of a previous bill that is unrelated to minimum recycled content standards. The following statement from the sponsors of the author's amendment explains the reasons for including it:

> "Most medical devices used in settings requiring sterility (surgical kits, implant devices, etc.) are packaged in plastic packaging that uses a resin called PETG, due to its rigidity and resistance to heat which protects both the devices and their sterility during shipping. In 2017 AB 906 (Bloom) was enacted that required a change in the recycling labeling provisions for rigid plastic containers (primarily beverage containers) in California, changing the designation for PETG. At that time it was generally thought that the bill did not impact "medical devices" since the packaging for those devices is not recycled (it is disposed of as medical waste due to its use in surgical and

other medical settings subject to contamination). The packaging for these devices is also regulated by the FDA, which regulates both the devices themselves and the packaging as one "unit" requiring preapproval of FDA before they can be used.

The enactment of AB 906 raised a question whether the bill, by making changes to PETG designation, would require medical device packaging, which is not recycled, to contain a recycling "triangle", and therefore trigger possible reapproval of such packaging by the FDA.

The amendment would simply clarify that the existing California law requiring a recycling label for rigid plastic containers does not apply to medical device packaging, since the packaging cannot be recycled for safety reasons. The language used for the amendment conforms to the definition and exemption for medical devices used in SB 54 (Allen)/AB 1080 (Gonzalez). Those bills exempt medical device packaging from the recycling mandate for the same reason."

Related/Prior Legislation

SB 54 (Allen, 2019). This bill would establish the policy goal of the state that, by 2030, manufacturers and retailers achieve a 75 percent reduction of the waste generated from single-use packaging and products offered for sale or sold in the state through source reduction, recycling, or composting. This bill is pending before the Assembly Natural Resources Committee.

AB 1080 (Gonzalez, 2019). This bill is identical SB 54 and is pending before this committee.

AB 906 (Bloom), Chapter 823, Statutes of 2017. Defined PET for the purposes of a labeling requirement as a plastic having certain characteristics, including, among other things, a melting peak temperature, as determined by a specified procedure, within a specified temperature range.

SOURCE: Author

SUPPORT:

5 Gyres Institute
Association of California Recycling Industries
Association of Plastic Recyclers
Brightline Defense

California League of Conservation Voters
Californians Against Waste
CarbonLITE Industries
Center for Oceanic Awareness, Research, and Education
Defenders of Wildlife
Friends Committee on Legislation of California
Green Fiber International, Inc.
Heal the Bay
Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force
Mojave Desert & Mountain Recycling Authority
Natural Resources Defense Council
One Earth Recycling
Plastic Pollution Coalition
Recology Inc.
RePET Inc.
rePlanet
Republic Services
RethinkWaste
Seventh Generation Advisor
Sierra Club California
Solid Waste Association of North America's Legislative Task Force,
StopWaste
Surfrider Foundation
The Story of Stuff Project
Tomra Systems ASA
UPSTREAM
Verdeco Recycling, Inc.
Wishtoyo Chumash Foundation
Zero Waste USA

OPPOSITION:

American Beverage Association
California Bottled Water Association
DS Services of America, Inc.
International Bottled Water Association
Nestle Waters North America, Inc.
Niagara Bottling, LLC
Plastics Industry Association
Plastics Recycling Corporation of California

ARGUMENTS IN SUPPORT: StopWaste states, "Plastic pollution and its impact on the environment and human health have been well documented. Plastics are estimated to comprise 60-80% of all marine debris and 90% of all floating debris. By 2050, by weight there will be more plastic than fish in the ocean if nothing is done to change the trajectory of production and use of plastic. In California, more than 3 billion bottles are not recycled at all and are dumped in landfills or littered.

For this bill to succeed upon implementation, it is essential to have a robust recycling market and infrastructure and for funding to be available to make it happen. Because of its impact on the greenhouse gas emissions reduction, we strongly encourage the use of the Greenhouse Gas Reduction Fund. We also believe that the Recycling Market Development Zone Program which currently provides loans, technical assistance, and product marketing for new businesses, expanding existing businesses, creating jobs, and diverting waste from landfills should be strongly supported in order to manage the materials at their highest economic value and contribute to a circular economy."

ARGUMENTS IN OPPOSITION: DS Services of America, Inc. writes, "Every plastic bottle is NOT created equal in terms of the intended content (a bottled water product (clear drinking water) as a regulated food is far different from a juice or a juice smoothie, as a beverage). PET bottles containing recycled content of 25% or higher presents concerns with discoloration and degradation of the bottle that would both be an aesthetic issue for our customers and consumers and an inventory management issue for our retail partners.

The timelines in AB 792 are also unrealistic. The bill requires 25% recycled content compliance in one (1) year after enactment. It further requires 50% recycled content five (5) years after enactment. These timelines are unrealistic and ignore supply chain constraints, and the time involved in upgrading blow-molding machinery, not to mention the lack of available rPET supply; when ALL beverage manufacturers are completing for FDA approved food-grade quality recycled PET plastic."

-- END --

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

Bill No:	AB 834		
Author:	Quirk		
Version:	6/20/2019	**Hearing Date:**	7/3/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Paul Jacobs		

SUBJECT: Safe recreational water use: standards: Freshwater and Estuarine Harmful Algal Bloom Program

DIGEST: This bill would require the State Water Resources Control Board (SWRCB) to establish, maintain, and amend as necessary, minimum standards for the safety of freshwater recreational bodies as related to harmful algal blooms (HABs). This bill would also establish the Freshwater and Estuarine Harmful Algal Bloom Program at SWRCB to protect water quality and public health from HABs.

ANALYSIS:

Existing law:

1) Establishes SWRCB and Regional Water Quality Control Boards (RWQCBs), under the Porter-Cologne Water Quality Control Act, to regulate and protect water quality in California.

2) Requires SWRCB to implement, with the assistance of the RWQCBs, a public information program on matters involving water quality, and to maintain information relating to water quality monitoring, assessment, research, standards, regulation, enforcement, and other pertinent matters on its Internet Web site.

3) Establishes the California Water Quality Monitoring Council to review existing water quality monitoring, assessment, and reporting efforts, and recommend specific actions and funding needs necessary to coordinate and enhance those efforts.

4) Requires the California Department of Public Health (CDPH), by regulation and in consultation with the SWRCB, local health officers, and the public, to establish, maintain, and amend as necessary, minimum standards for the sanitation of public beaches.

5) Authorizes recreational activities in which there is body contact with the water, in certain reservoirs, to the extent that it is compatible with public health and safety requirements.

This bill:

1) Requires the SWRCB, by regulation and in consultation with CDPH, the Office of Environmental Health Hazard Assessment (OEHHA), local health officers, California Native American tribes, and the public, to establish, maintain, and amend as necessary, minimum standards for the safety of freshwater recreational bodies as related to HABs, as CDPH determines are reasonably necessary for the protection of the public health and safety.

2) Requires SWRCB to establish a Freshwater and Estuarine Harmful Algal Bloom Program to protect water quality and public health from HABs.

3) Requires SWRCB acting through the Freshwater and Estuarine Harmful Algal Bloom Program, in consultation with the California Water Quality Monitoring Council, OEHHA, CDPH, the Department of Water Resources (DWR), the Department of Fish and Wildlife (DFW), the Department of Parks and Recreation (DPR), other appropriate state and federal agencies, and California Native American tribes, to do all of the following:

    a) Coordinate immediate and long-term event incident response, including notification to state and local decision makers and the public regarding where HABs are occurring, waters at risk of developing HABs, and threats posed by HABs.

    b) Conduct and support field assessment and ambient monitoring to evaluate HAB extent, status, and trends at the state, regional, watershed, and site-specific waterbody scales.

    c) Determine the regions, watersheds, or waterbodies experiencing or at risk of experiencing HABs to prioritize those regions, watersheds, or waterbodies for assessment, monitoring, remediation, and risk management.

    d) Conduct applied research and develop tools for decision-support.

    e) Provide outreach and education, and maintain a centralized Internet Web site for information and data related to HABs.

4) Requires SWRCB to post a report on the board's website, on or before July 1, 2020, with information about:

   a) The incidence of, and response to, freshwater and estuarine HABs in the previous three years.

   b) Actions taken by the board as required under this bill.

   c) Recommendations for additional actions, including preventative actions where possible, that should be taken to protect water quality and public health, including recommendations for any necessary statutory or regulatory changes.

5) Allows SWRCB to enter into contracts with a value not to exceed $100,000 per fiscal year with public or private entities to procure goods and services to aid in incident response, if SWRCB determines that a HAB occurrence constitutes an emergency. These contracts are exempted from personal services contracting and competitive bidding requirements.

Background

1) *Harmful Algal Blooms.* In balanced ecosystems, algae and cyanobacteria are harmless and serve as a food base for many organisms. HABs occur when colonies of these organisms produce toxic or harmful effects on people, fish, shellfish, marine mammals, and birds. According to the National Oceanic and Atmospheric Administration, less than one percent of blooms actually produce toxins. HABs are a concern because they affect not only the health of people and aquatic ecosystems, but also the health of local and regional economies.

2) *Freshwater HABs.* Most freshwater HABs are caused by cyanobacteria. Cyanobacteria HABs have increased in frequency and geographic distribution in the United States and globally in recent decades. In freshwater systems, human actions that disturb ecosystems, such as nutrient runoff from agricultural lands, pollution, modifications to hydrological systems, such as the creation of lakes and ponds, and introduction of nonindigenous species have all been linked to the occurrence of some HABs.

3) *Cyanobacteria.* Cyanobacteria are photosynthesizing aquatic bacteria that form part of the normal microbial communities of marine and freshwater ecosystems. Cyanobacteria HABs are generally caused by freshwater or brackish water species and commonly form in slow-flowing, nutrient-rich waters, usually in the warmer months of the year. Blooms are often found in

water bodies where very little mixing occurs, such as farm dams, ponds, or reservoirs. Certain environmental features, including nutrient concentrations, water temperature, and pH, may play a role in triggering toxin production, although the particular parameters that trigger toxin production are not fully known or predictable. Toxin production is generally more common during warmer weather in summer, but can occur at any time of the year.

4) *Impacts.* Human exposures to cyanobacterial toxins have occurred through drinking water, recreational water use, contaminated food or dietary supplements, and contaminated dialysis water. Human illnesses caused by HABs, though rare, can be debilitating or even fatal. These same toxins cause wildlife mortality events in fish, birds, and marine mammals, including sea otters and sea lions.

5) *HABs in California.* Watersheds throughout California are particularly prone to HABs due to the warm climate, reduced water supplies due to droughts, run-off from agricultural and municipal sources, and climate change, according to the University of California, Davis, and the City of Watsonville Water Quality Program. HABs have been reported in multiple locations across California, including the Sacramento and San Joaquin Rivers, the San Francisco Bay Delta, Clear Lake, and in the counties of Alameda, Humboldt, Kern, Lake, Mono, Riverside, San Joaquin, Santa Cruz, and Siskiyou.

   In 1998, the Marine Mammal Center in Sausalito diagnosed the first case of domoic acid toxicosis in marine mammals, a condition caused by HABs which causes the animals to have seizures. The last couple of years have seen unprecedented numbers of marine mammals with domoic acid toxicosis. In addition, CDPH and various county health departments have documented cases of dog fatalities throughout the state from HABs. California normally imposes a moratorium on shellfish harvesting from May through October when there is the highest chance of toxic poisoning from marine HABs and enforces strict testing of commercial fisheries.

6) *Recreational Water Use Standards – Public Beaches.* Local authorities in California often monitor for HABs and post warnings when they are detected. However, there are no official standards for when HABs pose a threat to human health. The implementation of bacterial standards to protect public health at public beaches in California may be useful as a potential analogue for how SWRCB, in collaboration with others, might implement regulations for HABs. Beaches, or more precisely the ocean waters adjacent to the beach, must be safe for swimming and other recreational use. When certain bacteria are present in sufficient concentrations, they pose a health hazard for swimming

and other recreational activities. County health officers issue various types of warnings when certain kinds of bacteria are found in the water at levels that exceed standards set by CDPH.

In California there are four types of warnings about beach water quality conditions:

a) Postings are triggered when a water sample fails to meet CDPH's Ocean Water-Contact Sports Standard.

b) A beach closure is put in place immediately after a sewage spill is reported that may affect the beach.

c) Rain advisories are pre-emptive warnings that people should avoid swimming in ocean waters during a rain event and for three days after rainfall ceases.

d) Permanent postings are sites where urban runoff discharges to the beach even during the dry season, and historic data shows that the beach water near the discharge point generally contains elevated bacteria levels.

7) *State Efforts on HABs.* There are multiple monitoring, research, and response efforts relating to HABs in California:

a) The California Cyanobacteria and Harmful Algal Bloom Network (CCHAB) was originally established as the Statewide Blue-Green Algae Working Group in 2006 to address HABs in the Klamath River. The mission of the CCHAB Network has expanded to work towards the development and maintenance of a comprehensive, coordinated program to identify and address the causes and impacts of cyanobacteria and HABs in California. The CCHAB Network has a diverse membership that includes SWRCB, RWQCBs, OEHHA, DFW, CDPH, and DWR. It also includes federal agencies, tribal governments, county agencies, cities, academics, researchers, and utilities. Since its establishment, the CCHAB Network has developed guidance for responding to HABs, including action levels for cyanotoxins; held trainings on HAB identification and sampling; and funded a number of grant projects. In February 2015, the CCHAB Network became a workgroup of the California Water Quality Monitoring Council.

b) As a response to statewide freshwater HABs, the SWQCB Surface Water Ambient Monitoring Program (SWAMP) developed an assessment and support strategy in 2016 that outlines actions and infrastructure being

developed to support local response to HAB events and is funding some of the infrastructure and tools necessary for the successful implementation of the strategy. The goal is to have a program to assess, communicate, and manage freshwater HABs in a collaborative manner. SWAMP is working with the CCHAB Network to implement many aspects of the strategy. SWAMP has also developed a bloom reporting form, guidance documents, and field and lab procedures to support the strategy and to coordinate monitoring when blooms are detected.

c) In 2016, the Ocean Protection Council (OPC) and the Inter-Agency Harmful Algal Bloom Task Force asked the California Ocean Science Trust to convene an OPC Science Advisory Team (OPC-SAT) working group to explore HAB toxins. This resulted in several outputs intended to help address interagency research and scientific needs related to marine HABs, in particular their effect on seafood safety and the Dungeness crab fishery.

d) There are currently a number of groups that monitor water quality and toxins from algal blooms, primarily in coastal and marine waters, such as the Central and Northern California Ocean Observing System (CeNCOOS), the Southern California Coastal Ocean Observing System (SCCOOS), the Southern California Coastal Water Research Project (SCCWRP), CDPH, and the Harmful Algal Bloom Monitoring and Alert Program (CalHABMAP).

Comments

1) *Purpose of Bill.* According to the author, "Toxic algal blooms afflict every region of the state and changing weather patterns seem to be increasing the intensity and duration of the blooms. In Alameda County alone, at least multiple lakes are currently impaired, including Lake Chabot in the East Bay Regional Park District where a multiyear bloom has poisoned and killed at least three pet dogs. The blooms can produce a variety of toxins – including a liver toxin (microcystin), and a neurotoxin (anatoxin-a, which has the nickname Very Fast Death Factor because of its acute toxicity). It is crucial to ensure that Californians are not exposed to algal pollution when drinking water from their faucet or going for a swim in their local lake, and current State efforts simply cannot ensure this. AB 834 creates the Freshwater and Estuarine Harmful Algal Bloom Program at the State Water Resources Control Board

which will institutionalize and strengthen the State's public outreach, research, monitoring, and mitigation of this growing public health and environmental threat."

Related/Prior Legislation

AB 835 (Quirk, 2019) was held on the suspense file in the Assembly Appropriations Committee. However, the entire contents of the bill were rolled into this one.

AB 411 (Wayne, Chapter 765, Statutes of 1997) directed the CDPH to develop bacteriological standards for coastal beaches and required the SWRCB to develop a beach monitoring program implemented by local environmental health officers and health directors.

AB 1946 (Wayne, Chapter 152, Statutes of 2000) requires local health officers to submit to the SWRCB, on or before the 15th day of each month, documentation of all beach postings and closures.

AB 2053 (Quirk, 2018) was substantially similar to this bill, and would have required the SWRCB to establish a Freshwater and Estuarine Harmful Algal Bloom Program to protect water quality and public health from HABs. The bill was held on the suspense file in Assembly Appropriations.

AB 300 (Alejo, 2015) would have required the SWRCB to establish and coordinate the Algal Bloom Task Force to assess and prioritize the actions and research necessary to prevent or mitigate toxic algal blooms, to solicit and review project proposals, provide funding recommendations, and to review the risks and impacts of algal blooms. The bill was held on the suspense file in the Senate Appropriations Committee.

AB 1470 (Alejo, 2016) was similar to AB 300. The bill was never heard and was held in the Assembly Water, Parks, and Wildlife Committee.

SB 1070 (Kehoe, Chapter 750, Statutes of 2006) required the establishment of the California Water Quality Monitoring Council, administered by SWRCB, through a Memorandum of Understanding between the California Environmental Protection Agency and the Natural Resources Agency. The bill required the council to review existing water quality monitoring, assessment, and reporting efforts and to recommend specific actions and funding needs necessary to coordinate and enhance those efforts.

SOURCE: The Karuk Tribe

SUPPORT:

The Karuk Tribe
California Association of Professional Scientists
East Bay Municipal Utility District
East Bay Regional Parks District
Environmental Working Group
International Brotherhood of Electrical Workers - Local 1245

OPPOSITION:

None received

-- END --