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

Bill No:	SB 4		
Author:	McGuire and Beall		
Version:	4/10/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: Housing

DIGEST: Creates a streamlined, ministerial approval process for an eligible neighborhood multifamily project (NMP) or eligible transit-oriented development (TOD) project located on an eligible parcel. Prohibits those eligible projects from being subject to a conditional use permit if it is consistent with objective zoning standards and objective design review standards, as defined.

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 all cities and counties to adopt an ordinance that specifies how they will implement state density bonus law.

    b) Requires cities and counties to grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain certain affordability restrictions or will be available for certain types of populations.

c) Requires the city or county to allow an increase in density of 20% over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for low-income, very low-income, or senior housing, and by five percent for moderate-income housing in a common interest development.

d) Provides that upon the request of a developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of disabled and guest parking, that meets certain bedroom-to-parking space ratios.

e) Requires cities and counties to provide an applicant for a density bonus with concessions and incentives based on the number of below market-rate units included in the project.

f) Requires, until January 1, 2029, cities and counties to adopt zoning standards in the San Francisco Bay Area Rapid Transit District's (BART) transit-oriented development (TOD) guidelines and establishes a streamlined approval process for certain projects on BART-owned land.

g) 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.

h) Requires local governments located within the territory of a metropolitan planning organization (MPO) to revise their housing elements every eight years following the adoption of every other regional transportation plan (RTP). Local governments in rural non-MPO regions must revise their housing elements every five years.

i) Provides that each community's fair share of housing shall be determined through the regional housing needs allocations (RHNA) process.

j) Requires a local jurisdiction to give public notice of a hearing whenever a person applies for a zoning variance, special use permit, conditional use permit, zoning ordinance amendment, or general or specific plan amendment.

k) Requires HCD, by June 30, 2019, to complete a study evaluating the reasonableness of local fees charged to new developments. The study shall

include findings and recommendations regarding potential amendments to the Mitigation Fee Act to substantially reduce fees for residential development.

This bill:

1) Provides that an eligible neighborhood multifamily project (NMP) or eligible transit-oriented development (TOD) project located on an eligible parcel may submit an application for a development to be subject to a streamlined, ministerial approval process and not subject to a conditional use permit if it is consistent with objective zoning standards and objective design review standards, as defined.

   a) Defines "neighborhood multifamily project" as a project to construct up to two residential units in a nonurban community and up to four units in an urban community, located on an eligible parcel that is located on vacant land, that meets all other applicable local zoning requirements, and provides at least .5 parking spaces per unit.

   b) Defines "eligible TOD project" as a transit oriented development project, located on an eligible parcel in an urban community that meets certain requirements, including, but not limited to, being located within ½ mile of an existing or planned transit station entrance, meets minimum density requirements, meets certain parking requirements, meets local requirements, designates at least 2/3 of the square footage of the development for residential use, and includes certain affordability restrictions.

   c) Defines "eligible parcel" as a parcel that meets certain requirements including, among others, that the parcel is zoned to allow residential use and qualifies as an infill site.

   d) Defines "infill site" as a site in an urban or nonurban community that meets the following criteria:

      i) The site has not previously been used for urban uses and both of the following apply (i) The site is immediately adjacent to parcels that are developed with urban uses or at least 75% of the perimeter of the site adjoins parcels that are developed with urban uses, and (ii) the remaining 25% of the site adjoins parcels that have been previously developed for urban uses.

ii) "Urban use" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

e) Defines "non-urban community" as not an urban community. Urban community means either of the following.

i) A city with a population of 50,000 or greater that is located in a county with a population of less than 1,000,000.

ii) An urbanized area or urban cluster located in a county with a population of 1,000,000 or greater.

2) States that if a local agency determines that a development is inconsistent with any of the requirements allowing streamlined approval, the local agency shall provide the development proponent with written documentation of which requirement the development conflicts with and an explanation for the reason or reasons the development conflicts with that requirement or requirements within a specified period of time. If a local agency fails to provide the required documentation, the development shall be deemed to satisfy the requirements for streamlined approval.

3) Provides that design review or public oversight of the development may be conducted, as specified.

4) Provides that if a project is approved using the streamlined process outlined in this bill and the project contains 50% of units affordable to households making below 80% AMI, the approval shall not expire. The approvals for projects with fewer than 50% units affordable to those making 80% AMI shall expire after 3 years; a project proponent may apply for a one year extension after providing specified documentation.

5) Prohibits streamlining from applying if the local agency finds that the development would have a specific, adverse impact, as specified, on public health or safety, including but not limited to, fire safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

6) Authorizes a development proponent of an eligible TOD project to apply for a density bonus. A project that meets the requirement for streamlining under this bill before adding any height increases, density increases, waivers, or concessions awarded through a density bonus shall remain eligible for

streamlining after the addition of a density bonus, waiver, incentive, or concession.

Background

1) *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 on 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.

2) 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.

3) *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.

4) *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 that are permitted "by right" – 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 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 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 or as a by right, also creates exemptions from CEQA.

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) *Infill development and CEQA.* Several changes have been made to CEQA to encourage infill projects, including the following:

   a) *SB 743.* SB 743 (Steinberg, Ch. 386, Stats. 2013) made several changes to CEQA for projects located in areas served by transit (i.e. TOD). Among the changes, SB 743 directed the Governor's Office of Planning and Research

(OPR) to develop a new approach for analyzing the transportation impacts under CEQA. SB 743 also created a new exemption for certain projects that are consistent with a Specific Plan and eliminates the requirement to evaluate aesthetic and parking impacts of a project if the project is a residential, mixed-use residential, or employment center project located on an infill site within a transit priority area.

b) *SB 226.* SB 226 (Simitian, Ch. 469, Stats. 2011) establishes abbreviated CEQA review procedures for specified infill projects, where only specific or more significant effects on the environment which were not addressed in a prior planning-level EIR need to be addressed. An EIR for such a project need not consider alternative locations, densities, and building densities or growth inducing impacts. Any unmitigated effects specific to the project can be analyzed in an "infill" EIR that limits review only to those impacts without the need to analyze alternatives or growth- inducing impacts. SB 226 required OPR to develop CEQA Guidelines for purposes of this bill.

In order for infill projects to qualify for the CEQA benefits in SB 226, they must meet statewide performance standards developed by OPR. The statute required that these performance standards promote the state's GHG emissions reductions goals in AB 32 (Núñez, Pavley) and SB 375 (Steinberg), state planning priorities, water conservation and energy efficiency standards, transit-oriented development policies, and public health.

c) SB 375. SB 375 (Steinberg, Ch. 728, Stats. 2008) established the Sustainable Communities and Climate Protection Act of 2008. SB 375 directed the California Air Resources Board (ARB) to set regional targets for reducing GHG emissions, setting up a "bottom up" approach to ensure that cities and counties are involved in the development of regional plans to achieve those targets. SB 375 tied together the regional allocation of housing needs and regional transportation planning in an effort to reduce GHG emissions from motor vehicle trips. According to ARB, transportation accounts for approximately 40% of GHG emissions, with cars and light trucks making up a significant majority of those emissions (30% overall).

SB 375 established a collaborative process between regional and state agencies to set regional GHG reduction targets, and provided CEQA incentives for development projects that are consistent with a regional plan that meets those targets. SB 375 has three major components: (i) Using the regional transportation planning process to achieve reductions in GHG emissions consistent with AB 32 goals; (ii) Offering CEQA incentives to

encourage projects that are consistent with a regional plan that achieves GHG emission reductions; and, (iii) Coordinating the regional housing needs allocation process with the regional transportation process while maintaining local authority over land use decisions.

Comments

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

"A variety of causes have contributed to California's lack of housing production, including restrictive zoning ordinances, skyrocketing land prices, local permitting processes that provide multiple avenues to stop a project, and the lack of public funding to advance workforce affordable housing. These issues pose challenges to constructing market-rate and affordable housing developments alike. SB 4 advances strategic changes local zoning to allow construction of additional homes in two ways. First, SB 4 grants streamlined ministerial review to eligible projects within ½ mile of fixed rail or ferry terminals in cities of 50,000 residents or more in smaller counties and in all urban areas in counties with over a million residents. Second, SB 4 allows ministerial permitting of up to fourplexes in cities and urban areas over 50,000 people (duplexes in urban areas under 50,000) on any vacant infill parcels zoned residential. SB 4 helps address the affordable housing crisis in big cities and small, in every corner of California by encouraging projects that are in scale with what local governments already allow in areas with sufficient transit, but some cities simply won't approve and unlocking neighborhood multi-family buildings in residential areas throughout the state."

2) *Two more CEQA exemptions.* SB 4 allows a development proponent of a NMP or an eligible TOD project located on an eligible parcel to submit an application for a development to be subject to a streamlined, ministerial approval process and not be subject to a conditional use permit if the development meets certain criteria, thereby creating a CEQA exemption for NMPs and eligible TOD projects.

3) *Where would this apply?* One of the requirements a NMP or TOD project must meet to qualify for streamlined, ministerial approval process is that the project must be located on an "eligible parcel," which, among other things, must be zoned for residential use and qualify as an "infill site." Infill site, for purposes of the Land Use and Planning Law, is not defined, however under CEQA, and as applied to transit priority projects that are consistent with an MPO's sustainable communities strategy, "infill site" means a site in an urbanized area, as defined, that meets certain criteria.

SB 4's definition of "infill site" can be broken down into two components: (1) the site is in an urban or nonurban community; and (2) the site either (A) has not been previously developed for urban uses and is adjacent to or adjoins parcels developed with urban uses, as specified, or (B) the site has been previously developed for urban uses." "Urban use" is defined to mean any residential, commercial, public institutional, transit or transportation facility, or retail use, or any combination of those uses. Component (2) and the definition of "urban use" mimics language that has been used in other definitions of "infill site," but where SB 4 differs is the application of that criteria to urban and nonurban communities.

SB 4 defines "urban community" to mean either (1) a city with a population of 50,000 or greater that is located in a county with a population or less than 1,000,000 or (2) an urbanized area or urban cluster, as designated by the U.S. Census Bureau, located in a county with a population of 1,000,000 or greater. "Nonurban community" means an urbanized area or urban cluster that is not an urban community. According to the U.S. Census Bureau, an urbanized area is an area with more than 50,000 people, and an urbanized cluster are areas with at least 2,500 people and less than 50,000.

Figure 1[1] below is the most recent U.S. Bureau map depicting the urbanized areas and urban clusters in the United States as of 2010. Figure 2 is specific to California.

Figure 1

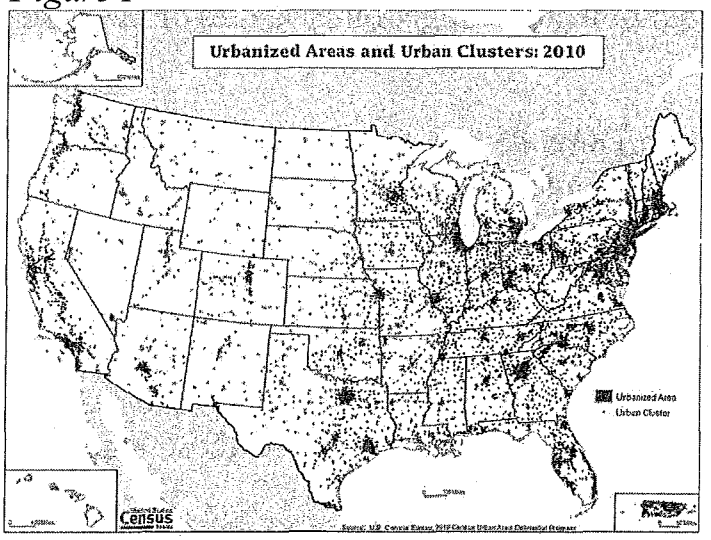

Figure 2

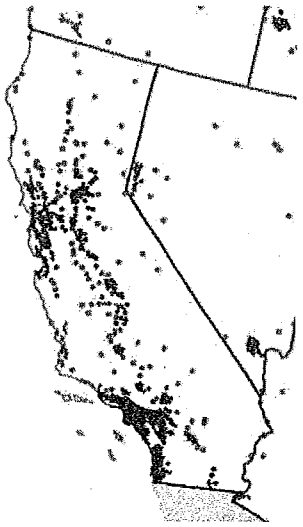

Figure 2 shows where urbanized areas and urban clusters are located in California and therefore potentially subject to the use by right provisions of the bill.

[1] https://www2.census.gov/geo/pdfs/maps-data/maps/thematic/2010ua/UA2010_UAs_and_UCs_Map.pdf, available as of April 16, 2019

How do the two definitions of "infill site" overlap? Does having two definitions create confusion? Does this new definition of "infill site" affect an MPO's implementation of its sustainable communities strategy? Does this new definition apply to open-space and greenfields, as Figure 2 seems to indicate, and thereby induce growth?

The committee may wish to require the author, as the bill moves through the legislative process, to make the definition of "infill site" more consistent with what is already used in existing law.

4) *What do we lose with a CEQA exemption?* Often groups will seek a CEQA exemption in order to expedite construction of a particular type of project and reduce costs. Providing an exemption, however, can overlook 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.

If a project is exempt from CEQA, certain issues may not get addressed. For example, environmental impacts including matters such as air quality, water quality, noise, cumulative impacts, and growth inducing impacts will not be considered, and neither will their potential mitigation measures or available alternatives.

Even though the ultimate goal is to provide housing in both urban and nonurban communities quickly, and not allow projects to be delayed by local permitting processes, CEQA ensures that projects are approved in accordance with informed and responsible decisionmaking. It ensures that decisionmakers, project proponents, and the public know of the potential short-term, long-term, and maybe permanent environmental consequences of a particular project before the project is approved. CEQA gives local governments and project proponents the opportunity to mitigate, or avoid if possible, those impacts.

In the context of NMPs and TOD projects, relevant considerations may include, but are not limited to:

- Whether the project would impair or interfere with an adopted emergency response plan or emergency evacuation plan.
- Whether the project would require or result in the relocation or construction of new or expanded water or wastewater treatment or

stormwater drainage, electric power, natural gas, or telecommunications facilities.

- Whether sufficient water supplies are available to serve the project.
- Whether the project would generate solid waste in excess of the capacity of local infrastructure.
- Whether the project conflicts with provisions of a local, state, or regional conservation plan.
- Specifically for NMPs, whether the project would generate greenhouse gas emissions that would significantly impact the environment.
- Whether the project would be located on a site that is included on a certain list of hazardous materials sites and would create a significant hazard to the public or the environment.
- Whether there are any seismic-related issues or landslide concerns.
- Whether soils underlying the project would be capable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available.

These considerations, and more, are covered by an environmental review. Yet, SB 4 would remove NMPs and TOD projects from the environmental review process; *denying local governments the ability to consider, and hopefully mitigate or avoid, any environmental impacts.*

Without environmental review, local governments will be unable to weigh the environmental impacts that may be associated with a TOD project or MNP and balance it with the need for a specific housing project.

5) *Environmental safeguards.* Prior legislation that gave CEQA exemptions to residential or mixed-use projects, through either a direct CEQA exemption or a streamlined, ministerial approval process, also contained robust environmental safeguards to ensure the project did not cause significant adverse impacts to the communities in which the project was developed. For example, exemptions for agricultural employee residential housing, affordable housing, and mixed-use housing required things such as the project site not be within a delineated earthquake fault zone, not be subject to a landslide hazard, or does not harm any species protected by the federal Endangered Species Act. SB 35, which provided for a streamlined, ministerial approval process for multifamily housing developments that met certain zoning, affordability restriction, and density requirements and were located in certain jurisdictions also prohibited the development from being located in a coastal zone, prime farmland, wetlands, very high fire hazard severity zone, hazardous waste site, delineated earthquake fault zone, special flood hazard area, regulatory floodways, lands identified for conservation in an adopted natural community conservation plan,

habitat for protected species, and lands under conservation easement.

SB 4 does not contain these same safeguards, and only prohibits the site from being located in an architecturally or historically significant historic district, a coastal zone, a very high fire hazard severity zone, or a flood plain. It can be argued that having safeguards in place for SB 4 is just as important as it was for SB 35, especially in the context of building residential units.

The committee may wish to amend the bill to include the same environmental safeguards in SB 4 as were included in SB 35 (2017).

Related/Prior Legislation

SB 50 (Wiener, 2019) requires a local government to grant an equitable communities incentive, which reduces local zoning standards, when a development proponent meets specified requirements. SB 50 is set for hearing in the Senate Governance and Finance Committee on April 24, 2014.

AB 2162 (Chiu, Chapter 753, 2018) streamlined affordable housing developments that include a percentage of supportive housing units and onsite services.

AB 2923 (Chiu, Chapter 1000, Statutes of 2018) required, until January 1, 2029, cities and counties to adopt zoning standards in the San Francisco BART transit-oriented development (TOD) guidelines and establishes a streamlined approval process for certain projects on BART-owned land.

SB 827 (Wiener, 2018) would have created an incentive for housing developers to build near transit by exempting developments from certain low-density requirements, including maximum controls on residential density, maximum controls on FAR, as specified, minimum parking requirements, and maximum building height limits, as specified. A developer could choose to use the benefits provided in that bill if it meets certain requirements. This bill failed passage in the Senate Transportation and Housing Committee.

SB 35 (Wiener, 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.

SB 2 (Cedillo, Chapter 633, Statues of 2007) required cities and counties to accommodate their need for emergency shelters on sites where the use is allowed without a conditional use permit, and requires cities and counties to treat transitional and supportive housing projects as a residential use of property.

TRIPLE REFERRAL

SB 4 was also referred to the Senate Committee on Housing and the Senate Committee on Governance and Finance. The Senate Housing Committee heard the bill on April 2, 2019, and the bill was passed out of committee with a vote of 8 – 1. The Senate Governance and Finance Committee will hear the bill on April 24, 2019. This Committee is also set to hear SB 4 on that date, pending receipt.

SOURCE: Author

SUPPORT:

California Alternative Payment Program Association (CAPPA)

OPPOSITION:

Associated Builders and Contractors, Inc.

-- END --

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

Bill No:	SB 48		
Author:	Wiener		
Version:	3/25/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: Interim housing intervention developments

DIGEST: Establishes certain kinds of emergency shelters, known as interim housing intervention developments, as a use by-right in areas zoned for mixed use. Also makes changes to housing element law with regards to zoning where emergency shelters are allowed as a permitted use without a conditional use or discretionary permit, as specified.

ANALYSIS:

Existing law:

1) Existing law, the Planning and Zoning Law:

   a) Requires cities and counties to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element is required to include an identification and analysis of existing and projected housing needs and a statement of goals, policy objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing (Government Code (Gov. C.) §65583).

   b) Requires the housing element to identify adequate sites for housing and to make adequate provision for the existing and projected needs of all economic segments of the community (Gov. C. §65583).

   c) Requires the housing element to contain the identification of a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or discretionary permit (Gov. C. §65583(a)(4)).

      i) Defines "emergency shelter" as housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household

may be denied emergency shelter because of an inability to pay (Health & Safety Code (HSC) §50801).

d) Provides that emergency shelters may only be subject to development and management standards that apply to residential and commercial development within the same zone, except that a local government may apply written, objective standards including off-street parking based on demonstrated need, provided that the standards do not require more parking for emergency shelters than for other residential or commercial uses in the same zone (Gov. C. §65583(a)(4)).

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) Defines "interim shelter intervention" to mean housing or shelter in which a resident may live temporarily while waiting to move into permanent housing.

a) Requires interim shelter intervention be flexible to address the resident's household needs and may include, but is not limited to, recuperative or respite care, motel vouchers, navigation centers, transitional housing used as an interim intervention, and emergency shelters.

b) Prohibits an interim shelter intervention from requiring a resident to pay more than 30% of the resident's monthly household income for housing costs and requires an interim shelter intervention to be low barrier and culturally competent and focused on providing support for moving people out of crisis and into permanent housing as quickly as possible.

2) Defines "use by right" to mean that the local government's review shall not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a "project" for purposes of CEQA.

3) Makes an "interim shelter intervention development" a use by right, until January 1, 2027, in areas zoned for mixed use, if the development meets certain requirements including, among others, that it meet all applicable state and local health and safety requirements, it provides privacy, it has accommodations for persons with disabilities, and it complies with the Housing First Model.

4) Specifies that emergency shelter zones, which are required under existing housing element law to be permitted without a conditional use or other discretionary permit, may be located within zones that allow residential use, including mixed use areas.

5) Specifies that local governments may designate zones for emergency shelters in an industrial zone if the local government can demonstrate how the zone is connected to amenities and services that serve people experiencing homelessness.

6) Specifies that a zone or zones where emergency shelters are permitted without a conditional use or other discretionary permit shall include sites that meet certain standards.

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 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 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 that are permitted "by right" – 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 or as a by-right, also create 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) *Housing law.* State housing law requires a local government's housing element to identify zones where emergency shelters are permitted by-right (SB 2, Cedillo, 2007) and requires cities and counties to treat transitional and supportive housing projects as a residential use of property. Local governments can only impose the same standards on emergency shelters that apply to other

residential and commercial development within the same zone, plus specified written, objective standards.

State law applies similar treatment to supportive housing—longer-term housing assistance that focus on providing stable housing to homeless persons or families. Last year, the Legislature established supportive housing as a use by right in all zones that allow residential uses, including mixed use zones, if they meet certain requirements including that 100% of the units are affordable and a certain percentage of units be supportive housing units (AB 2162, Chiu). AB 2162 limited the by-right approval to projects of 50 units or fewer in jurisdictions with both a population of fewer than 200,000 and homeless counts below 1,500.

5) Other relevant CEQA applications:

   a) Residential projects that are consistent with a specific plan. A residential project that is implementing, and is consistent with, a specific plan for which an EIR has been certified if exempt from CEQA. 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.

6) *Homelessness issues*. A 2018 report by the State Auditor recently highlighted the homelessness challenge that California faces. According to the report, "based on 2017 information from the U.S. Department of Housing and Urban Development, California leads the nation with both the highest number of people experiencing homelessness—about 134,000, or 24 percent of the nation's total—and the highest proportion of unsheltered homeless persons (68 percent) of any state. In contrast, New York City and Boston shelter all but 5

percent and 3 percent, respectively, of their homeless populations."

7) *Housing First Model.* The Legislature recently adopted as the state's official housing policy - a "Housing First" approach to address homelessness (SB 1380, Mitchell, 2016) and required state agencies and departments that administer programs that provide housing-based services to people experiencing homelessness or are at risk of homelessness to adopt a Housing First model. Housing First is an evidence-based model that uses housing as a tool, rather than a reward, for recovery and that centers on providing or connecting homeless people to permanent housing as quickly as possible. Housing First providers offer services as needed and requested on a voluntary basis and do not make housing contingent on participation in services. Further, Housing First includes time-limited rental or services assistance, so long as the housing and service provider assists the recipient in accessing permanent housing and in securing longer-term rental assistance, income assistance, or employment. Decades of research show that supportive housing with a Housing First requirement – a stable, affordable place to live with no limit on that stay, along with services that promote housing stability – ends homelessness among people who experience chronic homelessness. Supportive housing lowers public health costs, reduces blight and improves property values, and decreases recidivism in our local jails and state prisons. For these reasons, the state has invested millions of dollars in leveraging federal and local dollars to create more supportive housing.

Comments

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

"California has a growing homelessness crisis. Homelessness is a diverse problem, but one glaring aspect is the number of unsheltered homeless in our state. California accounts for about half of all unsheltered homeless in the nation, despite having about 15% of our nation's population. Further, of the 130,000 homeless people living in California, 69% are unsheltered. While some California localities do provide a sufficient number of shelter beds, in others, there are either no shelter beds at all, only a small number, only seasonally available shelter, or no shelters specific to youth. SB 48 seeks to expand shelter access in California and to do so in a geographically equitable way by creating a streamlined approval process and requiring that shelters and other interim housing intervention developments be approved without a conditional use permit. To receive this streamlined approval process, a project must meet all applicable health and safety codes; provide privacy; allow for pets, possessions, and partners; and be low-barrier. Furthermore, the project

must provide services to connect people to permanent housing. The goal of this bill is to expand shelter access and to ensure it dovetails with and complements California's ultimate priority: to transition people experiencing homelessness into permanent housing."

2) *Emergency shelters versus interim shelter intervention development.* A local government, as a part of its housing element, is required to identify zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit. SB 48 would also make an interim shelter intervention development a use by right. According to the definition of "interim shelter intervention," the development may include recuperative or respite care, motel vouchers, navigation shelters, transitional housing, and *emergency shelters*. Thus, interim shelter intervention development is broader in scope than emergency shelters.

   Some individuals struggle with conventional forms of emergency shelter because of medical issues, disabilities, family situations, pets, or other conditions. These individuals have greater needs for services and require housing interventions that remove some of the barriers to becoming sheltered.

3) *A CEQA exemption.* SB 48 would deem an interim shelter intervention development that meets certain requirements a use by right, until January 1, 2027, and would prohibit the local government from requiring the development to be subject to any discretionary local governmental review or approval. By removing the local government's discretionary review of the project, the bill also removes the local government's environmental review under CEQA, effectively creating a CEQA exemption.

4) *A balancing act.* Often groups will seek a CEQA exemption in order to expedite construction of a particular type of project and reduce costs. In this case, a CEQA exemption is sought to avoid "Not In My Backyard" (NIMBY) opponents of an interim shelter intervention development. Providing an exemption, however, can overlook 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.

   If a project is exempt from CEQA, certain issues will not get addressed. For

example, environmental impacts including matters such as air quality, water quality, noise, cumulative impacts, and growth inducing impacts will not be considered, and neither will their potential mitigation measures or available alternatives.

Even though the ultimate goal is to provide homeless services quickly, and not allow projects to be delayed by NIMBY opponents, CEQA ensures that projects are approved in accordance with informed and responsible decisionmaking. It ensures that decisionmakers, project proponents, and the public know of the potential short-term, long-term, and maybe permanent environmental consequences of a particular project before the project is approved. CEQA gives local governments and project proponents the opportunity to mitigate, or avoid if possible, those impacts.

In the context of interim shelter intervention development, generally, if the development is consistent with a specific plan with a certified EIR, that development would be exempt from CEQA, with some exceptions. Or, in cases where an interim shelter intervention development is consistent with a general plan with a certified EIR, the local government would be limited in its environmental review to the effects that are peculiar to that project and were not discussed in the prior EIR.

Without environmental review, local governments will be unable to weigh the environmental impacts that may be associated with interim shelter intervention development and balance it with the need for homeless services.

5) *Amendments taken in Senate Governance and Finance Committee.*

This bill was previously heard in the Senate Governance and Finance Committee, and passed with a vote of 6 - 0. The author has accepted amendments from the Governance and Finance Committee that will be taken in this Committee. Due to time constraints, these amendments have not yet been adopted into the print version of the bill. This analysis is based on SB 48 as it would be changed by those amendments. The amendments:

- Limit the bill's new by-right approval authority to shelters located in mixed use areas, instead of both mixed use and residential areas, to reduce potential neighborhood impacts.
- Establish a seven-year sunset on the by-right approval process in the bill so as to better align the bill with the intent to rapidly address the current homelessness emergency.
- Clarify that staff, including a manager, must be on site while the shelter is open.

Additionally, the author has committed to defining the privacy requirement in the bill in greater detail.

Related Legislation

SB 450 (Umberg) exempts from CEQA, until January 1, 2023, interim motel housing projects that convert pre-existing motel and hotel structures to supportive or transitional housing and that are limited to making minor interior alternations. SB 450 was passed out of this committee on April 10, 2019, with a vote of 6 - 0. SB 450 is currently in Senate Appropriations Committee.

SB 744 (Caballero) makes changes to the existing use by-right approval process for supportive housing projects and, for No Place Like Home Projects that are not eligible for the use by-right approval process, establishes certain administrative review and expedited judicial review requirements. Prohibits the court from awarding attorney's fees to a prevailing petitioner in a No Place Like Home action or proceeding unless the Attorney General, within 45 days, finds that the action or proceeding was brought to protect a public interest. SB 744 is set for hearing in this committee on April 24, 2019.

TRIPLE REFERRAL

This bill has been triple referred to Senate Housing Committee, Senate Governance and Finance Committee, and this committee. This measure was heard in Senate Housing Committee on April 2, 2019, and passed out of committee with a vote 8 – 0. The measure was then heard in Senate Governance and Finance Committee on April 10, 2019, and passed out of committee with a vote of 6 - 0.

SOURCE: Author

SUPPORT:

California Alternative Payment Program Association
California Alternative Payment Program Association (CAPPA)
California Council of Community Behavioral Health Agencies
California Rural Legal Assistance Foundation
California YIMBY
Corporation for Supportive Housing (CSH)
Housing California
Non-Profit Housing Association of Northern California (NPH)
San Francisco Housing Action Coalition

San Francisco Housing Action Coalition
San Joaquin Continuum of Care
Western Center on Law & Poverty

OPPOSITION:

None received

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

Bill No:	SB 49		
Author:	Skinner		
Version:	4/11/2019	**Hearing Date:**	4/24/19
Urgency:	No	**Fiscal:**	Yes
Consultant:	Eric Walters		

SUBJECT: Energy efficiency

DIGEST: This bill tasks the California Energy Commission (CEC) with assessing and adopting regulations, including but not limited to specified policies, pertaining to demand response in order to reduce wasteful energy consumption and associated greenhouse gas (GHG) emissions.

ANALYSIS:

Existing law:

1) Requires the CEC to establish building design and construction standards that increase the efficiency in the use of energy and water for new residential and new nonresidential buildings. The CEC must periodically update the standards. (Public Resources Code §25402(a)(1))

2) Requires the CEC's building efficiency standards to be cost-effective when taken in their entirety and amortized over the economic life of the structure compared with historic practice. When determining cost-effectiveness, the CEC must consider the value of the water or energy saved, impact on product efficacy for the consumer, and the life-cycle cost of complying with the standard. The CEC must consider other relevant factors, including, but not limited to the standards' cost on house costs, the total statewide costs and benefits of the standard over its lifetime, economic impacts on California businesses, and alternative approaches and their associated costs. (PRC §25402(b)(3))

3) Requires the CEC to establish appliance efficiency standards based on a reasonable use pattern. The CEC may prescribe other cost-effective measures, including incentive programs, fleet averaging, energy and water consumption labeling not preempted by federal labeling law, and consumer education programs, to promote the use of energy and water efficient appliances whose use requires a significant amount of energy or water use on a statewide basis. An appliance manufactured on or after the effective date of these standards

may not be offered for sale in California unless it complies with the standards. (PRC §25402(c)(1))

4) Authorizes the CEC to adopt regulations establishing an administrative enforcement process for appliance efficiency violations and allows the CEC to assess a civil money penalty for violations up to $2,500 for each violation. Penalties assessed for appliance efficiency violations are deposited into the CEC's Appliance Efficiency Enforcement Subaccount and fund the CEC's appliance efficiency enforcement activities upon appropriation by the Legislature. (PRC §25402.11)

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

6) Requires, under the Renewable Portfolio Standard (RPS) investor-owned utilities (IOUs), publicly owned utilities (POUs) and certain other retail sellers of electricity to achieve 33% of their energy sales from an eligible renewable electrical generation facility by December 31, 2020, and establishes portfolio requirements and a timeline for procurement quantities of three product categories. (Public Utilities Code §399.11 et seq.)

7) States, under The 100 Percent Clean Energy Act of 2018 (SB 100, De León, Chapter 312, Statutes of 2018), that it is the policy of the state that eligible renewable energy resources and zero-carbon resources supply 100% of retail sales of electricity to California end-use customers and 100% of electricity procured to serve all state agencies by December 31, 2045.

This bill, with regards to reducing unnecessary consumption of energy and associated GHG emissions, requires the CEC to:

1) Establish, as deemed appropriate and considering technologies as specified, regulatory standards for appliances and buildings to facilitate load management. These technology standards will enable appliances' and/or buildings' operations to be scheduled, shifted, or curtailed to minimize electricity generation-associated GHG emissions.

2) Ensure the above regulations are cost effective for consumers to purchase, maintain, and meaningfully affect GHG emissions.

3) Require future updates and revisions of the above regulations as necessary for achieving energy and GHG goals.

Background

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

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

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

2) *GHG reductions from electricity production.* A December 2018 report from the Legislative Analyst's Office titled "Assessing California's Climate Policies – An Overview" identifies different economic sectors' contributions to GHG emissions. The report finds that electricity generation has driven the greatest proportion of emission reductions, due to a shift towards renewable energy.

3) *Renewable electricity and California's grid.* Achieving the state's GHG emission and renewable resource use goals will require further decarbonization of electricity generation. Solar and wind power in particular are already being widely implemented to shift away from fossil fuel-derived electricity, but these renewable resources do not have the same consistent availability across the day as fossil fuel sources.

The interplay of renewable power availability and consumer electricity demand is often shown in a plot of grid load and hour of the day, colloquially known as a "duck curve". Solar and wind power is most available, and may often be oversupplied, during the day when demand is low. Between 5:00 and 8:00 PM, there is a sharp increase in electricity demand at the same time renewables are decreasing their supply. To fulfil this demand, utilities typically use peaking power plants burning fossil fuels.

In order to achieve the state's renewable portfolio goals and continue to decrease the GHG emissions associated with electricity generation, California must reconcile the energy needs of the state with the inherent challenges of using wind and solar power. This challenge of renewable integration has been approached through applying "demand response" where changes are made to the power consumption of an electric utility customer to better match the demand for power with the supply.

4) *Demand response technology*. There is a wide range of policy, market, and infrastructure changes that may help the state achieve greater renewable integration through demand response. SB 49 specifies the CEC consider solutions, including but not limited to, incentive programs, fleet averaging, labeling, and consumer education programs to achieve demand response goals.

   OhmConnect, one of SB 49's supporters, is a company that informs utility customers of upcoming predicted high-demand times and incentivizes them with cash payments to reduce electricity use during that time. These services would fall within the scope of CEC's regulatory consideration under SB 49.

Comments

1) *Purpose of Bill.* According to the author, "To implement SB 100 (DeLeon, 2018), California will need to integrate more renewable resources into the grid that produce power only at certain times of the day – like solar and wind. California still uses fossil fuel – mostly natural gas – to provide energy when demand is highest and renewable resources are not able to produce. This means energy providers often have to build twice – building renewable energy facilities that provide power during the day and using natural gas facilities to provide energy at night when energy demand is high. The cost of double-building is passed on to the ratepayer.

   "To avoid the ratepayer cost of double-building and still keep the lights on, California needs to do two things. First, CA needs to reduce unnecessary energy use. And second, California needs to better match the supply of energy

(from solar and wind) with the demand for energy (coming from your plug, your fridge, or your electric car). Clarifying the Energy Commission's (CEC) authority to consider GHGs when setting appliance and building standards, and directing the CEC to use this authority to set standards, will ensure that the state is making progress toward better and more cost-effectively integrating renewable energy into the grid."

2) *Working towards renewable integration.* SB 49 was amended in the Senate Energy, Utilities, and Communications Committee to clarify the scope of the practices the CEC may consider in their resulting regulations, ensure the standards are periodically reviewed and updated, and consider life-cycle benefits of avoiding electricity system costs. These clarifications should ensure the resulting CEC regulations adequately assess feasible demand response technologies.

   Given the track record of electricity generation for reducing state GHG emissions, the challenges of renewable integration into the current grid, and the role the specified technologies can play in improving demand response, the committee may wish to consider supporting this bill.

3) *Author amendment.* The author would like to propose, in order to clarify the bill is not impacting the Commission's authority to require utilities to do load management, minor changes to the language in Section 1 of the bill (25402(f)).

   The committee may wish to approve this technical and clarifying author's amendment.

Double Referral:

This measure was heard in the Senate Energy, Utilities, and Communications Committee on April 10, 2019, and passed out of committee with a vote of 11-1.

Related/Prior Legislation

SB 1414 (Wolk, Chapter 627, Statutes of 2014) required utilities to include demand response in resource adequacy plans and required the CPUC to establish a mechanism to value load-modifying demand response resources that can reduce a load serving entity's resource adequacy obligation.

SOURCE: Author

SUPPORT: California Efficiency + Demand Management Council
East Bay Community Energy

Natural Resources Defense Council
OhmConnect

OPPOSITION: None received

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

Bill No:	SB 59		
Author:	Allen		
Version:	4/1/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	David Ernest García		

SUBJECT: Autonomous vehicle technology: Statewide policy

DIGEST: This bill requires the Governor's Office of Planning and Research (OPR), in coordination with the State Air Resources Board (ARB) to convene an autonomous vehicle (AV) interagency working group to guide policy development for autonomous passenger vehicles pursuant to specific principles, and report to the Legislature no later than January 1, 2021.

ANALYSIS:

Existing law:

1) Establishes the ARB as the air pollution control agency in California and requires ARB, among other things, to control emissions from a wide array of mobile sources and coordinate, encourage, and review the efforts of all levels of government as they affect air quality.

2) Establishes OPR as the comprehensive state-planning agency, including, but not limited to, transportation issues facing the state.

3) Defines AV as any vehicle equipped with autonomous technology that has been integrated into that vehicle, and allows operation of an AV with the presence of a driver on California public roads upon the California Department of Motor Vehicle's (DMV) approval with specified manufacturer certification and vehicle capabilities.

4) Provides that the DMV may impose additional requirements on vehicles capable of operating without a driver and that the DMV may require the presence of a driver in the driver's seat if necessary for safety.

This bill:

1) Makes findings and declarations.

2) Requires OPR, in coordination with ARB, to convene an autonomous vehicle interagency working group to guide policy development for autonomous passenger vehicle technology, as specified, with the following membership:

   a) The Transportation Agency.

   b) The Department of Transportation.

   c) The Department of Motor Vehicles.

   d) The Governor's Office of Business and Economic Development.

   e) The Strategic Growth Council.

   f) Representatives of local government as determined by OPR.

   g) Any additional relevant organizations identified by OPR.

3) Requires, on or before January 1, 2021, the working group to submit to the Legislature recommendations, as specified, that ensure passenger AVs support the state's efforts to reduce greenhouse gas (GHG) emissions and criteria air pollutants, reduce traffic congestion and vehicle miles traveled, encourage efficient land use, and improve safety and access to mobility and economic opportunities for all Californians.

4) Provides specified principles to guide the working group.

Background

1) *Autonomous vehicles in California.* In 2012, SB 1298 (Padilla) established conditions for the operation of automated vehicles (AV) in California. In 2014, the DMV adopted regulations for the testing of AVs on public roads requiring a test driver and established an application and approval process for a testing permit. As of April 1, 2018, there are 52 manufacturers that have this permit. In early 2018, the DMV adopted regulations for testing AVs without a driver at the wheel and for deployment of AVs in California. DMV began accepting applications for these permits on April 1, 2018.

2) *Levels of Automation.* In September 2016, the National Highway Traffic Safety Administration (NHTSA) released its federal policy on automated vehicles. NHTSA emphasized the importance of highly automated vehicles (HAVs) in reducing traffic fatalities in the United States. In 2015, over 35,000 people died in traffic crashes, representing a 7.2% increase year-over-year, the largest increase since 1966. They cite that 94% of car crashes are associated with human choice or error, presenting a major opportunity for HAVs to save lives.

NHTSA's policy release provided Vehicle Performance Guidelines for Automated Vehicles, a Model State Policy framework, clarification of NHTSA's current regulatory tools, and the identification of potential new tools and authorities to aid the safe deployment of HAVs. NHTSA also adopted the Society of Automotive Engineers International (SAE) definitions for levels of automation (see below), ranging from SAE Level 0 (no automation) to SAE Level 5 (full automation under all conditions). Level 2 vehicles may include partially automated features such as lane assist and adaptive cruise control but still require the full engagement of the driver. HAVs are considered to be SAE Levels 3-5, which are the levels of automation this bill addresses.

Level 0	No Automation	Driver is in full control at all times
Level 1	Driver Assistance	A driver assistance system controlling either steering or acceleration/braking using some info about environment as driver controls all other aspects
Level 2	Partial Automation	One or more driver assistance systems of both steering and acceleration/braking using some info about environment as driver controls all other aspects
Level 3	Conditional Automation	Automated driving system performing all aspects of dynamic driving task with expectation that a driver is ready to take control when prompted
Level 4	High Automation	Automated driving system performing all aspects of driving task in certain conditions even if the driver does not respond when prompted
Level 5	Full Automation	Full-time performance of all aspects of the driving task in all conditions, can be managed by a human driver

Comments

1) *Purpose of Bill.* According to the author, "SB 59 will ensure California plans responsibly for the potential wide-scale introduction of autonomous vehicles to prevent this innovative new technology from adding to our serious climate, clean air, and traffic challenges. Autonomous vehicles can significantly improve how Californians get around including by increasing safety. However, if not planned for deliberately, this new transportation mode could exacerbate our already daunting mobility problems leading to more traffic congestion and air pollution. Numerous institutions are studying the potential impacts of AVs. Several recent studies found that because AVs make travel less onerous, their widespread adoption could increase vehicle travel by 15 to 60 percent. A recent experiment conducted by UC Davis, UC Berkeley, and Georgia Tech mimicked life with an AV (by providing each participating household with a chauffeur.) That experiment saw households travel 83 percent more miles per week, with more than a fifth of the vehicle trips carrying no passengers.

   "SB 59 calls on the Office of Planning and Research to convene an Autonomous Vehicles Smart Planning Task Force to develop recommendations to ensure that the deployment of autonomous vehicles supports our state's environmental and equity goals instead of hindering them. Unless we develop carefully considered policies, the promise of autonomous vehicles leading to a better quality of life, could instead result in unintended consequences that exacerbate our already daunting challenges."

2) *Uncertainty about AVs.* AVs have the potential to transform every sector of transportation. However, much is uncertain about these impacts. AVs could replace transit trips, or it could provide better first- and last-mile connectivity to increase transit use. AVs could enhance vehicle safety by removing human error from the driving task and improve access to mobility for many people.

   On the other hand, AVs could create more congestion and sprawl as it becomes more convenient to live farther and farther from typical destinations. For example, someone who wanted to live near Lake Tahoe, but works in downtown San Francisco, could use the 4+ hour car trip (even longer with rush hour traffic) to work while in transit. Additionally, AV owners could send their cars on passenger-less trips to avoid paying for parking, which would increase traffic congestion, as well as GHG and air pollution emissions from vehicles on the road that are not Zero Emission Vehicles (ZEVs). It is important to note that such "ghost trips" by AV ZEVs would not only increase GHG and air

pollution emissions from the other cars on the road, ZEVs themselves are not truly emission free because the source of their fuel is not GHG- or pollution-free.

For example, although a fully battery electric vehicle does not emit GHGs or air pollution from its tailpipe, the electricity in California is not GHG- or pollution-free. The Union of Concerned Scientists (UCS) calculated both power plant emissions and emissions from the production of coal, natural gas and other fuels power plants use based on data released in February 2018. UCS determined that the average battery electric vehicle in California gets the equivalent of 109 MPG, which is far cleaner than any gasoline-powered vehicle, but undeniably not GHG- or pollution-free. Therefore, even if all AVs in California are ZEVs, vehicles sent on ghost trips would still increase traffic, GHG emissions, and air pollution, and would do so at a cost less expensive to the vehicle owner than paying for an all-day parking spot in most metropolitan centers.

As such, the state should not ignore the very real harms of AV ghost trips, even when those AVs are ZEVs.

Currently, the Legislature has limited understanding of how to plan for a "driverless" world. More recently, support for AVs has been tempered by highly publicized accidents and misuse of AV technology (such as a person sleeping in the driver seat of their vehicle as the car drives autonomously on the freeway).

3) *Policy Coordination Needed.* The UC Davis Institute of Transportation Studies (ITS) recently issued a series of policy briefs characterizing AVs as one of the three "revolutions" in transportation, along with electrification and shared mobility (i.e., the shared use of a vehicle on as-needed basis). According to ITS, these must happen concurrently in order to bring about increased access to mobility, more affordable transportation, and major reductions in GHG emissions.

However, if there is just automation without shared mobility or electrification (e.g., people primarily riding in personal, gas-powered AVs), then California could end up in a future of more vehicle miles traveled, more vehicles on the road, more sprawl, and more GHG emissions and energy use. ITS states that achieving all three revolutions together will require unprecedented levels of policy support.

Related/Prior Legislation

SB 336 (Dodd; 2019) requires an on-board employee when public transit agencies deploy autonomous transit vehicles. This bill is pending in the Senate Transportation Committee.

SB 936 (Allen; 2018) would have required OPR to convene an Autonomous Vehicles Smart Planning Task Force. This bill died in the Senate Appropriations Committee.

SB 802 (Skinner, 2017) would have established the Emerging Vehicle Advisory Study Group to review and advise the Legislature on policies pertaining to new types of AVs operating in California. SB 802 died in the Assembly Appropriations Committee.

SB 145 (Hill, Chapter 725, Statutes of 2017) removed a provision that required the Department of Motor Vehicles (DMV) to notify the Legislature upon receipt of an application to operate an autonomous vehicle capable of operating without the presence of a driver and removed a 180-day delay of an approved application.

AB 1592 (Bonilla, Chapter 814, Statutes of 2016) authorized a pilot program by the Contra Costa Transportation Authority to test autonomous vehicles without a driver, steering wheel, brake pedal or accelerator.

SB 1298 (Padilla, Chapter 570, Statutes of 2012) established rules for the operation of autonomous vehicles on public roads.

DOUBLE REFERRAL:

This measure was heard in Senate Transportation Committee on April 9, 2019, and passed out of committee with a vote of 10-1.

SOURCE: CALSTART
Union of Concerned Scientists

SUPPORT:

California Electric Transportation Coalition
Center for Climate Change and Health
Community Environmental Council
Fossil Free California

Sierra Club California
Transform

OPPOSITION:

TechNet

-- END --

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

Bill No:	SB 69		
Author:	Wiener		
Version:	4/11/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	David Ernest García		

SUBJECT: Ocean Resiliency Act of 2019

DIGEST: This bill includes various changes to state law on oceans, rivers, watersheds, and watercourses. Of particular interest to the Senate Environmental Quality Committee are provisions relating to water quality, ballast water, and ocean-going vessel speed reduction.

ANALYSIS:

Existing law:

1) Establishes the California Department of Fish and Wildlife (CDFW) and the Fish and Game Commission (FGC) and, in general, FGC sets regulations that CDFW implements and enforces with CDFW providing data and expertise to inform the FGC's decision-making process.

2) Requires FGC to establish fish hatcheries for the purposes of stocking state waters with fish and requires CDFW to maintain and operate those hatcheries.

3) Requires CDFW, with the advice of the Advisory Committee on Salmon and Steelhead Trout and the Commercial Salmon Trollers Advisory Committee, to prepare and maintain a comprehensive program, as specified, for the protection and enhancement of salmon, steelhead trout and other anadromous fish fisheries.

4) Establishes the Ocean Protection Council (OPC) and the State Coastal Conservancy (SCC) in the California Natural Resources Agency (CNRA) and requires OPC to establish and administer the Ocean Acidification and Hypoxia Reduction Program, as specified.

5) Provides for CDFW along with the Department of Food and Agriculture to govern the business of aquaculture.

6) Requires CDFW to examine all dams in the all the rivers and streams in the state naturally frequented by fish.

7) Requires CDFW to identify and list specified streams and watercourses in the state for which minimum flow levels are needed to assure the continued viability of fish and wildlife resources and to transmit that information to the State Water Resources Control Board (SWRCB).

   a) Requires CDFW to initiate studies to develop requirements for identified streams, subject to appropriation, to complete studies on each identified stream within 3 years.

   b) Specifies through Legislative intent language that studies should be initiated on ten streams in each fiscal year.

   c) Sets a filing fee of $850 from certain water users for specified permit applications to defray the costs of this effort, with fees collected by SWRCB and forwarded every six months to CDFW.

8) Establishes the California Air Resources Board (ARB) and air pollution control and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular sources.

9) Appropriates $6 million to the California State Coastal Conservancy (SCC) for support to implement a beneficial reuse pilot program for dredged sediment in the Redwood City Harbor.

10) Requires the OPC to develop an ocean acidification and hypoxia task force that makes continuing annual recommendations for further actions that may be taken to address ocean acidification and hypoxia.

11) Requires CNRA to update every 3 years the climate adaptation strategy to identify vulnerabilities to climate change by sectors and priority actions needed to reduce risks in those sectors.

12) Requires the State Lands Commission (SLC) to adopt regulations that require owners of vessels carrying ballast water to implement and comply with an interim performance standard that, by January 1, 2030, is modified to have a standard of zero detectable living organisms.

13) Requires the Department of Water Resources (DWR) to supervise the maintenance and operation of dams, including Oroville Dam and requires that certain water projects incorporate features DWR determines necessary for the

preservation of fish and wildlife and establishes standards for those features to be incorporated into permits on a year-round basis to the extent that those features are consistent with other uses of the project, if any.

14) Identifies the SWRCB and the regional water boards as the principal state agencies to control water quality and requires SWRCB to formulate a water quality plan for the ocean waters of California, knowns as the California Ocean Plan, and a water quality control plan for enclosed bays and estuaries known as the California Enclosed Bays and Estuaries Plan.

15) Requires SWRCB to adopt standards to address water quality objectives and effluent limitations that are specifically appropriate to brackish groundwater treatment systems that produce municipal water supplies for local use.

16) Establishes the Marine Managed Areas Improvement Act which prescribes six classifications for designating managed areas in the marine and estuarine environments, which defines state water quality protection areas for the purposes of the act as including areas of special biological significance (ASBS).

17) Prohibits commercial timber operations except with a timber harvest plan permit or other permit issued by the California Department of Forestry and Fire Protection (CalFire) and requires, as part of the permit review procedure, the permit not be approved if a regional water board finds, based on substantial evidence, that the timber operation causes or contributes to a violation of the regional water quality control plan.

18) Prescribes enforceable waste discharge requirements through permits issued by the SWRCB and regional water boards for the discharge of waste that could affect the water quality of the state.

This bill:

1) Makes findings and declarations.

2) Requires CDFW to undertake a pilot project to assess the effectiveness of parentage-based tagging in improving the management of central valley Chinook salmon hatcheries and in rebuilding salmon runs and the California salmon fishing industry, as specified.

3) Changes the requirement that CDFW to examine all dams in all rivers and streams in this state naturally frequented by fish from "from time to time" to

every five years.

4) Requires CDFW, no later than January 1, 2022, to develop and implement at least one additional ocean-based offsite hatchery salmon release operation, as specified.

5) Requires CDFW to develop a policy, by January 1, 2022, for the use of releases, including in-river and ocean net pen releases, of salmon produced in state managed and comanaged hatcheries during periods of drought or in other circumstances that result in significantly abnormal levels of mortality during onsite releases, as specified.

6) Requires ARB, in coordination with affected local air districts along the coast and in consultation with the national marine sanctuary program, to develop and implement a voluntary vessel speed reduction incentive program for the Santa Barbara Channel and San Francisco Bay area regions to reduce air pollution, the risk of fatal vessel strikes on whales, and harmful underwater acoustic impacts, as specified, with a report due by December 31, 2022.

7) Requires, as part of the program, ARB to provide financial incentives to program participants based on percent of distance traveled by a participating vessel through a vessel speed reduction zone at 10 knots or less.

8) Eliminates the discretion of regional water quality control boards to approve timber harvesting plans if the timber operations proposed in the plan will result in a significant discharge into a watercourse that has been classified as impaired due to sediment, as specified.

9) Requires CNRA to (1) update the coastal wetlands resources report, as specified, (2) issue a report on or before January 1, 2023, and (3) update the report once every 5 years thereafter.

10) Requires SCC to submit a report on the beneficial reuse pilot project for dredged sediment on or before December 31, 2022, and to develop a beneficial reuse program to place and reuse dredged sediment for coastal wetland restoration projects, as specified.

11) Renames an existing list of streams and watercourses throughout the state for which minimum flow levels need to be established in order to assure the continued viability of stream-related fish and wildlife resources as the "California Endangered Rivers List" and requires the list to be updated annually.

12) Requires CDFW to develop a program that will initiate studies on at least three streams or watercourses in each fiscal year, as specified, and provides that if CDFW fails to initiate studies for at least three streams or watercourses in a fiscal year then CDFW must return specified filing fees for that fiscal year to SWRCB for specified uses.

13) Requires OPC, on or before December 1, 2022 and in consultation with independent scientists and experts, to report on using low-trophic mariculture to mitigate and adapt to climate change impacts, as specified.

14) Requires, on or before December 31, 2020, OPC to establish a representative statewide advisory group that includes the diverse interests that will affect and be affected by ocean acidification and technical and policy experts, as specified, to advise the state on its policy, management, science, and communications priorities and strategies to address ocean acidification and hypoxia.

15) Requires the CNRA Secretary to direct OPC, on or before December 31, 2021, to conduct a statewide vulnerability assessment to identify the risks ocean acidification poses to the state's biological resources, communities, and economies for the purpose of identifying priorities and options for actions to address ocean acidification and hypoxia, as specified.

16) Establishes the ballast water control technology review panel to provide ongoing evaluation of the improvements in ballast water control technology, as specified, with reporting requirements on or before January 1, 2021, and every four years thereafter.

17) Shifts, from DFW and SLC to the California Water Quality Monitoring Council, and SWRCB, the responsibility to collect the data necessary to establish and maintain an inventory of the location and geographic range of nonindigenous species populations in the coastal and estuarine waters of the state that includes open coastal waters and bays and estuaries, with specified reporting requirements.

18) Requires SWRCB, On or before December 31, 2020, to repeal a resolution titled, "Approving Exceptions to the California Ocean Plan for Selected Discharges into Areas of Special Biological Significance, Including Special Protections for Beneficial Uses, and Certifying a Program Environmental Impact Report."

19) Prohibits waste discharges into areas of special biological significance, as specified.

20) Requires regional water board with a marine protected area, to designate one state water quality protection area annually until all marine protected areas have an associated state water quality protection area, as specified.

21) Requires, on or before December 31, 2022, SWRCB to amend the California Ocean Plan and the California Enclosed Bays and Estuaries Plan to include water quality objectives and effluent limitations that specifically address ocean acidification and hypoxia as specified.

22) Prohibits the approval of timber harvest plans by CalFire unless the appropriate regional water board finds that the timber operations will not result in a discharge into a watercourse that has been classified as impaired due to sediment under the federal Clean Water Act, as specified.

23) Establishes various forest practice requirements on a person who discharges sediment into Class I, II, or III watercourses pursuant to a timber harvest plan and requires the regional boards to incorporate these requirements into any applicable waste discharge requirements to manage sediment, achieve water quality objectives, and protect beneficial uses of water. Requires regional boards to notify CalFire of any inconsistencies it finds with the proposed timber harvest plan permit.

Background

1) *Vessel speed reduction.* The Vessel Speed Reduction (VSR) Program is a longstanding Port of Los Angeles initiative for reducing emissions from vessels entering and leaving the harbor. The benefits of the VSR program include: cutting ship emissions by conserving fuel, reducing air and water pollution, improving air quality across the region and along the California coast, and promoting voluntary sustainable practices among shipping lines.

   Commercial ships that move goods around the world represent the single largest source of air pollution associated with operations at the Port of Los Angeles and many other ports around the globe. Because ships are governed by international convention, there are limits to what one port or even one nation can do to regulate them. Recognizing the importance of cutting vessel emissions, the Port of Los Angeles launched the Vessel Speed Reduction Program (VSR) in 2001. The Port of Los Angeles developed the original program in partnership with the Port of Long Beach, and the voluntary program remains a key strategy of the San Pedro Bay Ports Clean Air Action

Plan. Both the South Coast Air Quality Management District and ARB have recognized VSR as an effective strategy for improving air quality throughout Southern California and along the California coastline.

Participation in the VSR program has increased steadily over the years and remains high. Out of 3,728 ships entering and leaving the Port of Los Angeles in 2015, 92% slowed to 12 knots within in 20 nautical miles and 80% did so within 20 to 40 nautical miles. VSR is among the main strategies leading to the Port's significant progress in cutting vessel pollution over the last decade with diesel particulate matter down 87% and sulfur oxides down 97%. The Port also has made more inroads in curbing greenhouse gas (GHG) emissions from ships than any other source category, having reduced them 25% since 2005. Ongoing and new initiatives target nitrogen oxides, the toughest pollutant to tackle from ships, which are down 31% over time.

SB 69 proposes a similar voluntary program for the Santa Barbara Channel and San Francisco Bay, but sets the speed of the program for 10 knots, which is aligned with similar national programs and scientific advice from the National Marine Sanctuaries and the National Ocean and Atmospheric Administration.

2) *Nonindigenous species in California's waters:* Nonindigenous aquatic plant and animal species can be transported, both intentionally and unintentionally, to new ecosystems and regions through human activities. According to SLC, shipping is the most significant vector for the transport and introduction of aquatic nonindigenous species, contributing 79.5% of established aquatic nonindigenous species in North America and 74.1% across the globe.

Once a nonindigenous species is moved, becomes established in a new geographic location, and causes impacts, it is considered an invasive species. Invasive species cause ecological, economic, and human health harm in the receiving environment. Impacts of these species include disrupting agriculture, shipping, water delivery, and recreational and commercial fishing; undermining levees, docks and environmental restoration activities; impeding navigation and enjoyment of the state's waterways; and damaging native habitats and the species that depend on them. Nonindigenous species are believed to account for up to $120 billion per year in losses across the United States. California has more documented aquatic invasive species than any other state.

Commercial ships transport organisms through two primary vectors: vessel biofouling and ballast water. Vessel biofouling occurs when organisms, such as barnacles, algae, mussels, worms, crabs, and other invertebrates, attach to, or

are associated with, the hard surfaces of the vessel, then are transported to new environments that the vessel enters. Ballast water is sea water taken on, redistributed on, and discharged from large oceangoing vessels for functions related to stability, balance, and trim. Ballast water can contain millions of microscopic aquatic plants, animals, bacteria, and viruses. Each ballast water discharge has the potential to release over 21.2 million individual free-floating organisms. Prior to the implementation of ballast water management practices in the early 2000s, it was estimated that more than 7000 species were moved around the world on a daily basis in ships' ballast water.

The prevention of species introduction through the management of human activities, such as requirements related to biofouling and ballast water management, is considered the most protective and cost-effective way to address the dispersal of nonindigenous species.

3) *California's ballast water management program*: In order to address the threat of the introduction of aquatic nonindigenous species, the legislature enacted the Ballast Water Management for Control of Nonindigenous Species Act of 1999, AB 703 (Lempert, Chapter 849, Statutes of 1999), which established initial requirements for vessels to manage ballast water prior to discharge in California waters. The legislature reauthorized and expanded the program through the Marine Invasive Species Act of 2003, AB 433 (Nation, Chapter 491, Statutes of 2003), which mandated moving, "the state expeditiously toward elimination of the discharge of nonindigenous species into the waters of the state or into waters that may impact the waters of the state, based on the best available technology economically achievable." In 2006, the legislature established interim and final performance standards for the discharge of ballast water from large commercial ships through enactment of the Coastal Ecosystems Protection Act, SB 497 (Simitian, Chapter 292, Statutes of 2006).

4) *California's ballast water performance standards*: Among its provisions, SB 497 required SLC, on or before January 1, 2008, to adopt regulations that require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to implement interim and final (zero detectable living organisms for all organism size classes) performance standards for eradicating organisms in ballast water before it is discharged. SLC established California performance standards that were to be phased-in between 2009 and 2016 in order to allow for, and encourage, the development of technologies that would enable vessels to meet the standards.

SB 497 also requires SLC, prior to implementing performance standards, to report to the legislature on the efficacy, availability, and environmental impacts, including the effect on water quality, of currently available

technologies for ballast water treatment. SB 497 additionally requires SLC, if it determines that technologies to meet the performance standards are unavailable, to include in the report an assessment of why the technologies are unavailable. In response to these reporting requirements, between 2007 and 2014, SLC produced five reports (2007, 2009, 2010, 2013, and 2014) for the legislature, all of which indicated that ballast water treatment technologies were not available to enable vessels to comply with the then existing performance standards. Therefore, the legislature updated and delayed implementation of the performance standards several times: SB 1781 (Committee on Environmental Quality, Chapter 696, Statutes of 2008), SB 814 (Committee on Natural Resources and Water, Chapter 472, Statutes of 2013), AB 1312 (O'Donnell , Chapter 644, Statutes of 2015). The current implementation dates for the ballast water discharge performance standards, as enacted by AB 1312, are as follows:

a) Interim standards:

   i) Newly built vessels constructed on or after January 1, 2020: first arrival at a California port on or after January 1, 2020.

   ii) Existing vessels constructed prior to January 1, 2020: first scheduled drydocking on or after January 1, 2020.

b) Final standards: all vessels: January 1, 2030.

5) *Latest information from SLC and the federal ballast water performance standards*. In its December 2018 report, 2018 Assessment of the Efficacy, Availability, and Environmental Impacts of Ballast Water Treatment Technologies for Use in California Waters, SLC reports, once again, that based on all available data, there are currently no ballast water treatment technologies available to enable vessels to meet the interim California performance standards.

   According to SLC, for many years, the shipping industry has advocated for enactment of one uniform national standard for ballast water discharge to replace the perceived patchwork of state and federal ballast water management requirements. The legislation it sought, the federal Vessel Incidental Discharge Act (VIDA), failed repeatedly in recent years.

   SLC opposed VIDA, as did other states, state attorneys general, and environmental groups, arguing that a one-size-fits-all federal approach to vessel discharge management ignores the unique environmental concerns

in each state, usurps state authority, and weakens environmental protection.

Nevertheless, in December 2018, President Trump signed VIDA into law.

SLC notes that VIDA, regrettably, will preempt California's authority to establish or implement state-specific ballast water management requirements once implementing federal regulations are adopted.

Under VIDA, US EPA is responsible for establishing a uniform national standard for ballast water discharge. US EPA has two years to adopt vessel discharge regulations, and the US Coast Guard, the entity charged with implementing and enforcing the discharge standards established by US EPA, has two additional years to adopt implementation and enforcement regulations. State laws remain effective until the US Coast Guard promulgates regulations establishing enforcement protocols. States, including California, may enforce the federal standard, inspect vessels, and collect fees and ballast water management reporting forms from vessels arriving at ports.

According to SLC, the state's adoption of the federal standards would enable SLC to assess vessel compliance to the federal discharge standard and hold non-compliant vessels accountable for violations.

6) *Area of Special Biological Significance (ASBS).* ASBS are 34 ocean areas monitored and maintained for water quality by SWRCB and, according to SWRCB, cover much of the length of California's coastal waters. They support an unusual variety of aquatic life, and often host unique individual species. ASBS are basic building blocks for a sustainable, resilient coastal environment and economy.

Comments

1) *Purpose of Bill.* According to the author, "SB 69 will provide a far-reaching set of strategies to blunt the impacts of climate change in the ocean while enabling marine ecosystems to sustainably store increasing amounts of carbon. Specifically, this legislation will: (1) Help restore water quality and reduce ocean acidity by setting statewide acidity and hypoxia objectives, requiring denitrification of anthropogenic freshwater discharges by 2024, and overlaying marine reserves and areas of biological significance with State Water Quality Protected Area designations; (2) Restore habitats and encourage practices that increase sequestration of blue carbon, including wetlands restoration, beneficial reuse of marine sediments to build up eroded wetlands, and sustainable mariculture (cultivation of shellfish & seaweed); (3) Protect keystone species,

including whales (by codifying procedures currently in use to prevent ship strikes) and salmon (through improved genetic monitoring, increased focus on endangered rivers and dam removal where appropriate, and reform of certain timber harvest practices to prevent sedimentation of rivers and streams); and (4) Engage relevant stakeholders across the public and private sectors on ocean acidification moving forward by conducting a statewide vulnerability assessment and creating an advisory group. Together, these measures will ensure that California has the strategy and ability to mitigate the effects of climate change in the ocean, sequester greater amounts of carbon, and allow coastal communities to continue their way of life into the future."

2) *Vessel speed reduction.* As noted in the background, VSR is a longstanding Port of Los Angeles initiative for reducing emissions from vessels entering and leaving the harbor. SB 69 seeks to expand the success of that voluntary program to the Santa Barbara Channel and San Francisco Bay, but sets, on advice from the National Marine Sanctuaries and the National Ocean and Atmospheric Administration, the speed of the program for 10 knots instead of 12 knots.

   To the extent possible, it may be more preferable for VSR programs to apply to all approaches to California's ports, and for those voluntary programs to be as harmonized as possible with a consistent set of requirements.

   As this bill moves forward, the author may wish to consider amending the bill to harmonize the existing program at the Port of Los Angeles with the program proposed in SB 69, or to create on singular statewide program.

3) *Areas of special biological significance.* SB 69 repeals a SWRCB resolution and prohibits the discharge of waste into areas of special biological significance. SB 69 gives regional water boards the ability to approve temporary discharges of waste into areas of special biological significance only if water quality degradation is limited to the shortest possible time and the discharge does not permanently degrade water quality.

   According to the author, his intent is to address point sources of storm water.

   As this bill moves forward, the Committee may wish to direct the author to clarify the policy goals of the amendments he is making to section 13170.3 of the Water Code. Additionally, the author may wish to consider working with SWRCB to develop policy direction for—and identify any necessary statutory changes regarding—the approval of exceptions to the California Ocean Plan for selected discharges into ASBS.

4) *Ballast water.* As noted in the background, SLC has again found that, based on all available data, there are currently no ballast water treatment technologies available to enable vessels to meet the interim California performance standards. Despite claims to the contrary, SLC's work on this issue is quite robust.

SLC is charged with overseeing the California Marine Invasive Species Program (MISP), which is a multi-agency program designed to reduce the risk of introducing nonindigenous species into State waters from vessels 300 gross registered tons and above that are capable of carrying ballast water.

MISP was established by the Ballast Water Management for Control of Nonindigenous Species Act of 1999 and reauthorized and expanded by the Marine Invasive Species Act (MISA) of 2003. The purpose of MISP is to move the state expeditiously toward elimination of the discharge of nonindigenous species into the waters of the state and has taken the following approaches: (1) Developing sound, science-based policies in consultation with technical experts and stakeholders; (2) Tracking and analyzing ballast water and vessel biofouling management practices of commercial vessels that arrive at California ports; (3) Enforcing laws and regulations to prevent introductions of nonindigenous species; and (4) Conducting and facilitating outreach to promote information exchange among scientists, regulators, the shipping industry, and other stakeholders.

The reports that SLC publishes on ballast water treatment involve input from stakeholders and experts, as well as public comment. As such, there is no evidence that moving the work identified by SB 69 from DFW and SLC to the California Water Quality Monitoring Council, and SWRCB, would result in a different conclusion. Also, recent federal legislation preempts California's ability to establish or implement state-specific ballast water management requirements once implementing federal regulations are adopted.

Of particular note is that SLC has sponsored AB 912 (Muratsuchi, 2019) to deal with these unfortunate realities.

Additionally, given the looming federal preemption on ballast water standards, the work of the ballast water control technology review panel to provide ongoing evaluation of the improvements in ballast water control technology will become moot after their first report identifies what actions California may take that were not preempted by VIDA.

Given the lack of good rationale for, and likely identical outcomes of, changing the consulting role of SLC to SWRCB regarding the collection of

data necessary to establish and maintain an inventory of the location and geographic range of nonindigenous species populations in the coastal and estuarine waters of the state, the Committee may wish to keep SLC in its consulting role.

Additionally, given the looming federal preemption, as well as cost considerations, the Committee may wish to consider sunsetting the ballast water control technology review panel.

5) *Author amendment*. The author would like to propose, as a clean up to amendments taken in the Senate Natural Resources and Water Committee, striking section 4 from the bill.

The Committee may wish to approve this author's amendment, as well as technical and clarifying amendments identified by Legislative Counsel.

DOUBLE REFERRAL:

This measure was heard in Senate Natural Resources and Water Committee on April 9, 2019, and passed out of committee with a vote of 6-2.

SOURCE: California Coastkeeper Alliance
Pacific Coast Federation of Fishermen's Associations

SUPPORT:

Benioff Ocean Initiative
California Coastkeeper Alliance
California League of Conservation Voters
California Marine Sanctuary Foundation
California Trout
Center for Biological Diversity
Clean Water Supply Programs American Rivers
Coachella Valley Waterkeeper
Defenders of Wildlife
Environmental Action Committee of West Marin
Environmental Defense Center
Golden Gate Salmon Association
Heal the Bay
Humboldt Baykeeper
Inland Empire Waterkeeper
Institute for Fisheries Resources
Los Angeles Waterkeeper

Marine Conservation Institute
Monterey Coastkeeper
Ocean Conservancy
Orange County Coastkeeper
Pacific Coast Federation of Fishermen's Associations
Plastic Pollution Coalition
Residents for Responsible Desalination
Russian Riverkeeper
San Diego Coastkeeper
San Francisco Baykeeper
Santa Barbara Channelkeeper
Santa Barbara Museum of Natural History
Save Our Shores
Seventh Generation Advisors
Sierra Club California
South Yuba River Citizens League
Surfrider Foundation
The 5 Gyres Institute
The Center for Oceanic Awareness, Research, and Education (COARE)
The Otter Project
Wholly H20
WILDCOAST
Yuba River Waterkeeper

OPPOSITION:

Association of California Water Agencies (ACWA)
California Association of Sanitation Agencies
Western States Petroleum Association (WSPA)

ARGUMENTS IN SUPPORT: According to a coalition of supporters, "SB 69 outlines critical statewide action that California can take now to increase the resilience of coastal and ocean ecosystems to climate change. On a local level, the bill addresses water quality and nutrient pollution issues that contribute to ocean acidification and hypoxia (OAH) hot spots, and it enhances the potential of marine protected areas and areas of special biological significance to serve as 'hope spots' for California's coastal ecosystems by improving water quality protections. The bill also directs the State Water Board to set an OAH water quality objective in the state's Ocean Plan, which will lay the groundwork for future action.

"SB 69 complements existing state efforts to mitigate carbon emissions through a blue carbon strategy. By directing the state to protect and restore habitats like eelgrass, kelp, and wetlands that sequester greenhouse gas emissions, the bill

provides an effective and long-term solution for carbon sequestration. The benefits of this strategy will extend far beyond carbon storage, as these habitats also support the biodiversity of our ocean and coastline and serve as nursery habitat for important fishery species.

"SB 69 improves California's ocean resiliency by protecting keystone species that are vital to the biodiversity of our marine ecosystems, while incentivizing common sense strategies that provide benefits to all stakeholders involved."

ARGUMENTS IN OPPOSITION: According to the California Association of Sanitation Agencies, "as proposed, SB 69 would require all wastewater dischargers subject to the California Ocean Plan and the California Enclosed Bays and Estuaries Plan to adopt, incorporate or improve denitrification protocols. The potential impact from discharges of nitrates and remediation is a complicated and nuanced issue for which there is a significant amount of research currently underway and also for which many technological advances are being made relative to management options.

"In California's Bay Area and also in Southern California, large scale scientific studies and management plans for nutrients, including the need for nitrification/denitrification, are currently being employed in conjunction with California Regional Water Quality Control Boards. California's Regional Water Quality Control Board currently have the authority to require wastewater agencies to comply with water quality requirements, and can impose requirements for planning and implementation of processes to decrease nitrogen loadings in receiving waters. In fact, in the San Francisco Bay Area the Regional Water Board has already issued the 1st nutrient watershed permit in 2014 with the 2nd watershed permit planned for adoption in May 2019.

"For these reasons, CASA feels it is inappropriate and unnecessary to reopen both the Ocean and Enclosed Bays and Estuaries Plan to prescribe a blanket requirement on all wastewater agencies to employ denitrification protocols. This is a one size fits all approach for an issue that is variable and nuanced, which should be addressed regionally, and for which significant and necessary scientific investigations currently on-going should be allowed to continue so that, if needed, appropriate management actions can be taken that will result in the desired outcomes."

-- END --

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

Bill No:	SB 226		
Author:	Nielsen		
Version:	3/18/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: Watershed restoration: wildfires: grant program

DIGEST: Requires the California Natural Resources Agency (CNRA) to develop and implement a Watershed Restoration Grant Program to provide grants to certain counties in which a wildfire occurred in 2017 or 2018, as specified, for watershed restoration and exempts from CEQA the projects that are funded by the grant program.

ANALYSIS:

Existing law:

1) Under the California Watershed Protection and Restoration Act, authorizes local governments, special districts, and other interested parties to participate in local watershed partnerships to ensure efficient, long-lasting, and effective watershed restoration and management and to improve the watershed (Public Resources Code (PRC) §5808.2).

2) Makes available, upon appropriation by the Legislature, $443,000,000 as grants for projects that plan, develop, and implement climate adaptation and resiliency projects; including funding for Sierra Nevada and Cascade upper watersheds, watersheds in the Sierra Nevada Conservancy, and grants for various fish passage improvements in Southern California and another category for fish passage improvements on a statewide basis (Approved in Proposition 68 at the June 5, 2018, election).

This bill:

1) Requires the CNRA to develop and implement a Watershed Restoration Grant Program, as specified, to provide grants to eligible counties for the restoration of watersheds that are within 10 miles of the boundaries of a wildfire that occurred in the county.

a) Defines "eligible counties" as those counties in which a wildfire occurred in 2017 or 2018 and for which a state of emergency was declared by the Governor.

b) Defines "watershed" to mean any river, watershed, or river system tributary that was affected by a wildfire.

2) Provides that projects funded by these grants are exempt from CEQA.

3) Appropriates $75 million from the General Fund and allows appropriations to be available for encumbrance for five years.

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 hub for multi-disciplinary regulatory process.* CEQA assists in moving a project through the multi-disciplinary, regulatory process because responsible agencies rely on the lead agency's environmental documentation in acting on the aspect of the project that requires its approval and must prepare its own findings regarding the project. A variety of issues, many of which involve permitting and/or regulatory program requirements, should be coordinated and analyzed together as a whole. CEQA provides a comprehensive analysis of a project's impacts in those subject areas.

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

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

3) *Wildfires and watersheds.* Wildfires increase susceptibility of watersheds to flooding and erosion and can have both short- and long-term impacts on water supplies, such as treatment costs, need for alternative supplies, and diminished reservoir capacity. The degree to which wildfire degrades water quality and supply depends on multiple factors. These include the extent and intensity of

the wildfire, post-wildfire precipitation, watershed topography, and local ecology.

As more people build homes in wildland-urban interface areas, and as climate change and other factors increase the frequency of fires, there is a growing risk to life and property. Blazes like the Tubbs Fire and 2018's Camp and Carr wildfires can expose the drinking water for millions of people to the risk of contamination by toxic chemicals and parasites. There is an increasing concern that the new scale of wildfires in urban areas could cause damage to public water supply that isn't immediately apparent. When homes are destroyed by wildfires, insulation, roofing, and home furnishings release toxins, creating new sources of water contamination.

In addition to releasing toxins into the water supply, fires kill healthy tree roots. Without the tree roots, contaminating sediment and ash are flushed by rain into reservoirs, rivers, and lakes that supply cities with drinkable water. In 2017, the US Geological Survey published a study that predicted wildfires could double the amount of sediment in a third of the largest western watersheds by 2050. In some areas, sediment could increase 1,000%, potentially carrying parasites and harmful metals and chemicals with it.

4) *Improving California watersheds*. California has developed several programs and funding sources to improve watershed function and restoration. There are distinct programs for small scale restoration grants at the California Department of Fish and Wildlife (CDFW). Additionally, there have been funds allocated for projects that in one way or another target watershed improvements in several resources or water bonds.

   Most recently, Chapter 10 in Prop 68, approved by the voters in 2018, allocated $443 million in the chapter titled "Climate Preparedness, Habitat Resiliency, Resource Enhancement, and Innovation." Its many subcategories include funding for Sierra Nevada and Cascade upper watersheds, watersheds in the Sierra Nevada Conservancy, and grants for various fish passage improvements in Southern California and another category for fish passage improvements on a statewide basis.

   While it is possible that these or other watershed programs may fund watershed restoration projects caused by or made necessary by damages from wildfire, there is no dedicated funding source for that purpose.

Comments

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

> "Catastrophic wildfires have had devastating effects on our state's watersheds. Ash and debris from recent wildfires have ended up in our watersheds, blocking waterways and causing poor water quality. As part of rebuilding and cleaning up after wildfires, we must also restore our watersheds. By creating a grant program to encourage this, we can financially assist local governments to address this issue as is appropriate to each county affected. We must offer the necessary support to restore damaged watersheds to protect the health of California residents and the environment."

2) *Need for the exemption?* Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor under the California Emergency Services Act are exempt from CEQA. CEQA Guidelines Section 15269 also exempts specific actions necessary to prevent or mitigate an emergency.

Given the already existing exemption that would apply to the projects under the grant program, the committee may wish to amend the bill to remove the CEQA exemption.

3) *Amendments taken in Senate Natural Resources and Water Committee.*

This bill was previously heard in the Senate Natural Resources and Water Committee, and passed with a vote of 8 - 0. The amendments approved in that committee are contained in the staff analysis of that committee and are described below in verbatim:

> "In discussion with the author, the following committee amendments are proposed. Delete the finding, and to clarify that the bill applies to wildfires from 2017 and 2018, delete the reference on page 3, line 23, to wildfires that occurred before December 31, 2019. (Amendments 1 and 2). Rephrase 71385 (b) to state that "Counties shall provide a 50% match for grants received pursuant to this part." (Amendment 3). Delete the application deadline on page 4, line 17 and substitute that the application deadline shall be set by the Agency. Clarify that the purpose of the grants is to restore the damages caused by wildfires exclusively. And also clarify that the grants may not be used to pay for any otherwise required mitigation for various other activities. Such language is standard in water and resource bonds. (Amendments 4 and 5)."

Due to time constraints, these amendments have not yet been adopted into the print version of the bill. Following the hearing, staff from the Senate Natural Resources and Water Committee confirmed the amendments with this committee's staff. This analysis is based on SB 226 as it would be changed by those amendments.

Related/Prior Legislation

SB 5 (De León, Ch. 852, Stats. 2017) Proposition 82 makes available, upon appropriation by the Legislature, $443,000,000 as grants for projects that plan, develop, and implement climate adaptation and resiliency projects; including funding for Sierra Nevada and Cascade upper watersheds, watersheds in the Sierra Nevada Conservancy, and grants for various fish passage improvements in Southern California and another category for fish passage improvements on a statewide basis.

DOUBLE REFERRAL

This measure was heard in Senate Natural Resources and Water Committee on April 9, 2019, and passed out of committee with a vote of 8 - 0.

SOURCE: Author

SUPPORT:

CalForests
California State Association of Counties
Rural County Representatives of California

OPPOSITION:

California League of Conservation Voters

-- END --

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

Bill No:	SB 405		
Author:	Archuleta		
Version:	3/27/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Eric Walters		

SUBJECT: Solid waste: reclaimed asphalt pavement: pilot project: the County of Los Angeles

DIGEST: This bill creates a pilot program in Los Angeles County to evaluate using 85-100% reclaimed asphalt pavement. The program will produce an evaluation of the project's technical performance, greenhouse gas emissions, and road conditions and report it to the Department of Transportation, Legislature, and Governor's office.

ANALYSIS:

Existing law:

1) Establishes the California Integrated Waste Management Act of 1989 (Act) which sets up a variety of requirements regarding to the disposal, management, and recycling of solid waste. The Act establishes specifications of up to 40% reclaimed asphalt mix may be used, while permitting Caltrans to exceed that.

2) Under SB 1 (Beall, Chapter 5, Statutes of 2017), in addition to other actions regarding fuel taxes and transportation infrastructure projects, allocates approximately $1 billion annually over the next ten years for repairing California's streets and roads.

This bill:

1) Makes findings and declarations regarding road construction waste, as well as the statutory need for a county-specific program, and defines terms regarding asphalt pavement.

2) Establishes a pilot program for the Los Angeles County Department of Public Works (DPW) to, by December 31, 2022, evaluate the viability of using hot mix asphalt of 85-100% reclaimed asphalt to pave roads and highways.

3) Requires an interdisciplinary, five-person evaluation team to include a DPW representative, an expert in pavement engineering, and three faculty members from local universities with expertise in recycling, engineering, and greenhouse gas emissions.

4) Will produce an evaluation of the project's technical performance, greenhouse gas emissions, and road conditions and report it to the Department of Transportation, Legislature, and Governor's office.

Background

1) *Reclaimed asphalt pavement.* In order to access or replace the underground contents of paved areas, the surface pavement must be removed. This asphalt, along with other aggregates, can be mixed and treated to produce reclaimed asphalt pavement (RAP). The National Asphalt Pavement Association (NAPA) asserts that asphalt pavement recycling has many advantages including reduced cost of construction, conservation of materials, preservation of existing pavement geometrics, preservation of the environment, and conservation of energy.

   Currently, RAP collected during road construction is either landfilled or stored in large piles on private or public lands. There are at least 30 such piles in the Los Angeles area, some of which are as large as a football field and approximately 20 feet tall. These piles grow with further road construction, and decrease with any suitable use for RAP (road resurfacing, fill material, etc.).

2) *Lower energy and material requirements*. NAPA purports that increased use of RAP as a percentage of the total asphalt mix can significantly reduce greenhouse gas emissions by eliminating the significant fuel consumption required to acquire and process raw materials for virgin mix.

3) *Environmental impacts of RAP*. Numerous studies have been conducted with varying conditions to determine the risk of hazardous leachate from RAP. A 2009 University of Florida study indicated that the RAP samples investigated did not leach chemicals greater than typical groundwater standards.

   The existing RAP piles in the Los Angeles area have been attributed with air quality concerns from nearby residents. A 2017 local news segment interviewed residents of Lake Balboa who claimed that the RAP pile covers blew off in high winds, causing asphalt particles to become airborne and cause respiratory distress.

A 2000 report from the federal Environmental Protection Agency investigated the emissions associated with hot mix asphalt plants. It found no significant correlation between varying RAP content and emission factors. SB 405 requires the evaluation team to produce a greenhouse gas study that documents the difference in emissions of greenhouse gases between the use of high RAP hot mix asphalt and the use of virgin hot mix asphalt, which will fill a gap in existing evidence.

Comments

1) *Purpose of Bill.* According to the author, "Senate Bill 405 would create a pilot program in Los Angeles County to demonstrate the viability of using recycled grindings in road repair and maintenance."

2) *Minor technical amendments.* ***The author may wish to consider amending SB 405 to uncodify the findings and declarations.***

DOUBLE REFERRAL:

This measure was heard in the Senate Transportation Committee on March 26, 2019 and passed out of the committee with a vote of 12-0.

SOURCE: Author

SUPPORT: California State Council of Laborers
California-Nevada Conference of Operating Engineers
Los Angeles County Board of Supervisors
Manhole Adjusting Inc.
Pavement Recycling Systems Inc.

OPPOSITION: None received

-- END --

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

Bill No:	SB 424		
Author:	Jackson		
Version:	4/11/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: Tobacco products: single-use and multiuse components

DIGEST: Prohibits a person from selling, giving, or furnishing to another person certain single-use cigarette products. Requires manufacturers of tobacco products with a reusable component to either use recyclable materials to make any reusable component of the tobacco product or to collect the reusable components through a take-back or mail-back program either individually or through a stewardship program, as specified.

ANALYSIS:

Existing law:

1) Requires the Department of Public Health (DPH) to establish and develop a program to reduce the availability of "tobacco products," as defined, to persons under 21 years of age through authorized enforcement activities, as specified, pursuant to the Stop Tobacco Access to Kids Enforcement Act (Business & Professions Code (BPC) §22950, et seq.).

2) Permits an enforcing agency, as specified, to assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes to another person who is under 21 any tobacco product, instrument, or paraphernalia that is designed for the smoking or ingestion of tobacco products, as specified, ranging from $400 to $6,000 for a first, second, third, fourth, or fifth violation within a five-year period (BPC §22958).

3) Prohibits the sale, distribution, or nonsale distribution of tobacco products directly or indirectly to any person under 21 through the U.S. Postal Service or through any other public or private postal or package delivery service at locations, including, but not limited to, public mailboxes and mailbox stores (BPC §22963).

4) Requires any person selling or distributing, or engaging in the nonsale distribution of, tobacco products directly to a consumer in the state through the U.S. Postal Service or by any other public or private postal or package delivery

service, including orders placed by mail, telephone, facsimile transmission, or the Internet, to comply with specific provisions.

5) Defines "tobacco product" as a product containing, made, or derived from tobacco or nicotine that is intended for human consumption, as specified, including an electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, and any component, part, or accessory of a tobacco product, whether or not sold separately. Prohibits any product approved by the federal Food and Drug Administration (FDA) for sale as a tobacco cessation product or for other therapeutic purposes, as specified, from being deemed a tobacco product (BPC §22950.5).

6) Under the California Integrated Waste Management Act of 1989, requires each city or county source reduction and recycling element to include an implementation schedule that shows a city or county must divert 25% of solid waste from landfill disposal or transformation by January 1, 1995, through source reduction, recycling, and composting activities, and must divert 50% of solid waste on and after January 1, 2000. (Public Resources Code (PRC) §41780). It is a policy goal of the state that not less than 75% of solid waste be source reduced, recycled, or composted by 2020, and annually thereafter (PRC §41780.01).

This bill:

1) Prohibits a person or entity from selling, giving, or in any way furnishing to another person, of any age, in the state:

   a) A cigarette utilizing a single-use filter made of any material, including cellulose acetate, any other fibrous plastic material, or any organic or biodegradable material.

   b) An attachable and single-use plastic device meant to facilitate manual manipulation or filtration of a tobacco product.

   c) A single-use electronic cigarette.

   d) A single-use vaporizer device.

2) Applies this prohibition to any direct or indirect transaction, whether made in person in the state or by means of a public or private method of shipment or delivery to an address in the state.

3) Authorizes the city attorney, county counsel, or district attorney to assess a civil fine of $500 for each sale, gift, or furnishing of up to 20 of the specified items.

    a) Encourages the city attorney, county counsel, or district attorney acting as an enforcing agency to develop guidelines for its agency to conduct tobacco control investigations of those violations concurrent with other tobacco control provisions.

4) Requires a manufacturer of a tobacco product to use materials eligible for recycling under state or local recycling programs, including electronic waste recycling programs, in existence as of January 1, 2020, to make any reusable component of the tobacco product.

5) If it is not possible to make the reusable component out of a material eligible for recycling under either a state or local program or if the use of tobacco makes the reusable component ineligible for recycling, requires the manufacturer, either individually or through a stewardship organization, to collect the reusable components through either:

    a) Take-back collection bins that are made available by the manufacturer to the public at every location that sells that manufacturer's tobacco product.

    b) A mail-back program that uses safe-for handling containers that are made available by the manufacturer to the public at every location that sells the manufacturer's tobacco product.

6) Requires manufacturers of tobacco products with reusable components designated as household hazardous waste to either, at the component's end-of-life:

    a) Collect the household hazardous waste reusable component and send the component to the appropriate recycler.

    b) Reimburse household hazardous waste collection facilities for the costs of collecting and recycling the reusable component.

7) Authorizes manufacturers of tobacco products with reusable components to fund and join a stewardship organization with other manufacturers.

    a) Requires the stewardship organization to submit to CalRecycle a stewardship plan for approval and a list of the manufacturers that are

members of the organization.

b) Prohibits the costs of administering a take-back or mail-back program from being passed on to the consumer through a visible fee.

8) Requires a manufacturer of a tobacco product with a reusable component, individually or through a stewardship organization, to provide an annual report to the Department of Resources Reduction and Recycling (CalRecycle) that describes the manufacturer's compliance with these requirements.

9) Authorizes CalRecycle to impose an administrative penalty, as specified, on a manufacturer in violation of these provisions and requires CalRecycle to deposit all penalties collected in the Tobacco Product Stewardship Account, which would be created by the bill.

10) Authorizes CalRecycle to adopt regulations and to collect a fee from a manufacturer of a tobacco product with a reusable component that does not exceed the reasonable regulatory costs of enforcing and administering these provisions.

Background

1) *Cigarette waste is a significant environmental pollution problem*. Cigarette filters, composed of a type of plastic called cellulose acetate, will degrade with sun exposure but do not bio-degrade. As a result, cigarette butts accumulate in the environment. The impact of a single cigarette butt may be small, but 267 billion cigarettes are smoked in the United States each year. Many littered butts are carried as runoff from streets to drains, to rivers, and ultimately to beaches and the ocean, where they may be ingested by wildlife.

a) Coastal Litter. Cigarette butts have been the most common type of trash found during coastal cleanup events for more than 30 years. The non-profit Ocean Conservancy, which sponsors the International Ocean Cleanup event, reports that during the group's 2018 coastal cleanup, more than 2.4 million butts were picked up worldwide, topping food wrappers and plastic beverage bottles. The same event picked up 842,837 cigarette butts and related litter from coastlines in the United States and 198,814 from California, more than from any other state. As the incidence of smoking declines in the United States and in California, so does tobacco-related litter. The coastal cleanup event in 2008 picked up 1,492,092 pieces of tobacco-related trash in the United States and 370,529 pieces in California,

a decrease of 43.5 percent nationally and 46.3 percent in California from 2008 to 2018.

b) Other Impacts to the Environment. According to the U.S. Food and Drug Administration, more than 7,000 chemicals are contained in every puff of a cigarette including dozens of known carcinogens. Those chemicals remain in discarded cigarette butts and can accumulate in the environment. The butts are not bio-degradable and can harm wildlife that attempt to consume them. The United Nations' World Health Organization (WHO) issued a report in 2017 that describes the chemicals in discarded butts as being acutely toxic to aquatic organisms. The report, *Tobacco and Its Environmental Impact: An Overview*, also referred to studies that show one in three smokers discards their tobacco trash on the ground. The report expressed concerns about the cost of cleaning up tobacco-related waste, which is not typically borne by the producers of tobacco products nor by users. Instead most clean-up of tobacco-related litter is left to citizen advocacy groups, local communities, and governments using taxpayer funding. In the report, WHO warned that the plastic disposable liquid cartridges of e-cigarettes may become the cigarette butt waste problem of the future.

2) *Extended producer responsibility.* CalRecycle defines EPR as a strategy to place a shared responsibility for end-of-life product management on the producers, and all entities involved in the product chain, instead of the general public; while encouraging product design changes that minimize a negative impact on human health and the environment at every stage of the product's lifecycle. This allows the costs of treatment and disposal to be incorporated into the total cost of a product. It places primary responsibility on the producer, or brand owner, who makes design and marketing decisions. It also creates a setting for markets to emerge that truly reflect the environmental impacts of a product, and to which producers and consumers respond.

By shifting costs and responsibilities of product disposal to producers and others who directly benefit, EPR provides an incentive to eliminate waste and pollution through product design changes.

There are a number of existing, statewide EPR programs for various products, including, but not limited to, paint, used oil, mattresses, and, most recently, home-generated drug and sharps waste.

Comments

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

"Tobacco product waste is a pervasive problem that has reached a crisis point. Single use filters, otherwise known as 'cigarette butts', can be found in every corner of this state, including our beaches, parks, coasts, and waters. Cigarette butts are the number one type of litter found in public clean-ups. Other tobacco product litter is increasingly found across the state.

"Tobacco product waste not only impacts the environment as other waste, like plastics, the tobacco-related component of that waste additionally pollutes toxic chemicals that adversely impairs ecosystems and kills wildlife. Tobacco product litter can be accidentally consumed by pets and small children, resulting in toxic harms.

"Municipalities spend millions on the clean-up of tobacco product waste, and, increasingly, millions more when waterways are rendered out of compliance with water quality laws because of tobacco waste pollution. Without a comprehensive program to bring manufacturer responsibility and recyclability standards into the equation, the public taxpayer will continue to pay for improper disposal of these products.

2) *Is cannabis use impacted?* SB 424 prohibits a person or entity from selling giving, or furnishing to another person a single-use vaporizer device. Cannabis users may use a single-use vaporizer device to smoke cannabis. Consequently, cannabis users, along with other people who use single-use vaporizer devices for tobacco, will be impacted by this ban.

3) *Manufacturer versus distributor.* For purposes of the recycling and take-back provisions, SB 424 places responsibility on the manufacturer of the tobacco product that contains a reusable component. However, especially for out-of-state manufacturers, the manufacturer is not always the entity that is responsible for selling and distributing the product into the state. Sometimes it is a third-party distributor. Does it makes sense to place the responsibility of compliance on an entity that did not necessarily have control over its product being sold into the state?

4) *Out-of-state parties.* SB 424 prohibits entities from selling, giving or furnishing the specified banned products through indirect transactions that ship the banned product to an in-state address and requires manufacturers of tobacco products to use materials eligible for recycling when making any reusable component of the tobacco product. If it is not possible for the manufacturer to make the reusable product out of eligible material or if the use

of tobacco makes the reusable component ineligible for recycling, SB 424 requires the manufacturer to collect the reusable components either individually or through a stewardship organization. It is presumed that these prohibitions and requirements would also apply to out-of-state entities that sell the products into the state.

How does the enforcing entity compel compliance of an out-of-state entity? What jurisdiction does the enforcing entity have over these out-of-state entitles? How would the enforcing entity collect the applicable civil fine or administrative penalty?

5) *Prior stewardship programs*. Over the years, the Legislature has enacted various extended producer responsibility programs, requiring entities to take a shared responsibility of the management of their end-of-life products either individually or through a stewardship organization. Those programs proscribed various aspects of the organization including registration, formation, budget, formation of stewardship plan including goals and minimum collection requirements, reporting, and timeframes. SB 424, instead, provides a skeleton of those prior stewardship programs simply requiring manufacturers to either take-back their products individually or through a stewardship program and to submit an annual report on their compliance with the bill's provisions. As written, these stewardship organization provisions are vague.

As the bill moves through the Legislative process, the author will need to include additional details for the operation of the stewardship organization to ensure proper compliance and that it is achieving the purposes of this bill.

6) *Consumer behavior*. Preventing cigarette waste not only falls on the manufacturers but also on the consumer. Too often consumers will dispose of single-use cigarettes and their components without a second thought. Sometimes, the waste is properly disposed of in a trash container, but often not. Especially with cigarette butts, consumers have come into the habit of simply "flicking" the butt wherever is most convenient – usually onto the ground. Will the switch from single-use electronic cigarettes or vaporizer pens and cigarettes with single-use components to tobacco products with reusable components force consumers to change their behavior? Will consumers take advantage of the take-back collection bins or mail-back programs or will they continue to dispose of these items in the most convenient place possible? To effectively reduce the amount of cigarette waste that is disposed of into our environment, consumer behavior must also change. Should the bill also include provisions that would incentive consumers to participate in the take-back and mail-back programs?

7) *Delayed operative date*. Given the impact this bill would have on manufacturers of tobacco products with reusable components and the fact that they will need to either change their manufacturing practices or form a stewardship program, the author may wish to provide a delayed operative date to give affected parties time to come into compliance.

8) *Outstanding policy issues*. This is an ambitious bill that will continue to evolve through the Legislative process. The Committee may wish to consider directing the author to continue to work with Committee staff as the bill moves forward to address the various policy considerations addressed herein.

Related/Prior Legislation

SB 8 (Glazer) makes it an infraction punishable by a fine of up to $25 for a person to smoke, as defined, on a state coastal beach or in a unit of the state park system, as defined, or to dispose of used cigar or cigarette waste on a state coastal beach or in a unit of the state park system unless the disposal is made in an appropriate waste receptacle. SB 8 passed out of the Senate Natural Resources and Water Committee on March 12, 2019, by a vote of 7-2.

AB 1718 (Levine) makes it an infraction punishable by a fine of up to $25 for a person to smoke, as defined, on a state coastal beach or in a unit of the state park system, as defined, or to dispose of used cigar or cigarette waste on a state coastal beach or in a unit of the state park system unless the disposal is made in an appropriate waste receptacle. AB 1718 passed out of the Assembly Water, Parks, and Wildlife Committee on April 9, 2019, by a vote of 10 - 4.

SB 835 (Glazer, 2018) would have implemented a ban on smoking and disposing of tobacco products, as defined, at state parks and establishes an infraction punishable by a fine of up to $25 for a violation. SB 835 was vetoed by Governor Brown.

SB 836 (Glazer, 2018) would have prohibited smoking of cigarettes, cigars, pipes and other tobacco-products in state coastal beaches, as specified, and establish that a violation is an infraction with a fine of up to $25. SB 836 was vetoed by Governor Brown.

AB 2308 (Stone, 2018) would have prohibited the sale of cigarettes utilizing a single-use filter. AB 2308 failed passage in the Assembly Governmental Organization Committee.

SB 1333 (Block, 2016) would have prohibited the smoking of tobacco products on state coastal beaches and at state parks, as specified, and established that a violation is an infraction with a fine of up to $250. SB 1333 was vetoed by Governor Brown.

AB 48 (Stone, 2015) would have prohibited the sale of cigarettes utilizing a single-use filter. AB 48 was never heard in the Assembly Governmental Organization Committee.

AB 1504 (Stone, 2014) would have prohibited the sale of cigarettes utilizing a single-use filter. AB 48 failed passage in the Assembly Governmental Organization Committee.

AB 1142 (Bloom, 2013) would have prohibited smoking at state parks and beaches, as specified, and established that a violation is an infraction with a fine of up to $250. AB 1142 failed passage in the Assembly Governmental Organization Committee.

TRIPLE REFERRAL

This measure was heard in Senate Health Committee on April 10, 2019, and passed out of committee with a vote of 7-1. If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Judiciary Committee.

SOURCE: National Stewardship Action Council

SUPPORT:

Alameda County, County Supervisor, District 4
California Association Environmental Health Administrators
California Product Stewardship Council
Californians Against Waste
Center for Oceanic Awareness, Research, and Education
Colorado Medical Waste, Inc.
Full Circle Environmental
Heal the Bay
Napa County, Public Works
National Stewardship Action Council (sponsor)
Plastic Pollution Coalition
RethinkWaste
Save Our Shores
Sea Hugger

Seventh Generation Advisors
Sierra Club, California
Steve Devine, Program Manager, Public Works, County of Napa
StopWaste
Supervisor Nate Miley, Alameda County
Surfrider Foundation
The 5 Gyres Institute
The Center for Oceanic Awareness, Research, and Education (COARE)
The Story of Stuff Project
The Story of Stuff Project
UPSTREAM
Wishtoyo Chumash Foundation
Zero Waste USA

OPPOSITION:

None received

-- END --

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

Bill No:	SB 458		
Author:	Durazo		
Version:	4/11/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	No
Consultant:	Eric Walters		

SUBJECT: Public health: pesticide: chlorpyrifos

DIGEST: This bill outlaws the use of pesticides containing chlorpyrifos in California, until such time as the director of the Department of Pesticide Regulation issues control measures which are determined to be protective of children's neuro development.

ANALYSIS:

Existing law:

1) Regulates the use of pesticides and authorizes the Director of Pesticide Regulation (DPR) to adopt regulations to govern the possession, sale, or use of specified pesticides, as prescribed. (Food and Agriculture Code §11501, et. seq, 11456, 12976)

2) Requires DPR to designate and establish a list of restricted materials based upon, but not limited to, specified criteria, including the danger of impairment to public health, as specified. Permits DPR to adopt regulations that prohibit the use or possession of a restricted material in certain areas or under certain conditions. (FAC §14001, et. seq)

3) Under Chapter 3.5 of Division 26 of the Health and Safety Code (HSC):

   a) Defines a Toxic Air Contaminant (TAC) as an air pollutant which may cause or contribute to an increase in mortality or an increase in serious illness, or which may pose a present or potential hazard to human health. (HSC §39650)

   b) Requires that a TAC which is a pesticide shall be regulated in its pesticidal use by the DPR pursuant to Article 1.5 (commencing with Section 14021) of Chapter 3 of Division 7 of the Food and Agricultural Code. (HSC §39650)

c) Directs the Air Resources Board (ARB) to adopt technologically feasible control measures to reduce or eliminate TAC emissions and identify potential adverse health, safety, or environmental impacts that may occur as a result of implementation of an airborne toxic control measure. (HSC §39665)

4) Under AB 304 (Williams, Chapter 584, Statutes of 2013), requires the director of the Office of Environmental Health Hazard Assessment (OEHHA) to, for each pesticide identified as a TAC, in consultation with OEHHA, ARB, and any air pollution control or air quality management districts in the affected counties, determine and publically disclose the need for and appropriate degree of control measures. (FAC §14024)

This bill:

1) Makes findings and declarations regarding existing research on chlorpyrifos and its impact on children.

2) Outlaws the use of a pesticide containing chlorpyrifos, until such time as the director of the Department of Pesticide Regulation (DPR) adopts control measures for its use, and said control measures are determined by the director of OEHHA to not result in neurodevelopmental harm to children.

Background

1) *Pesticidal uses*. According to the EPA, chlorpyrifos is an organophosphate insecticide, acaricide, and miticide used primarily to control foliage and soil-borne insect pests on a variety of food and feed crops. Chlorpyrifos has been used as a pesticide since 1965 in both agricultural and non-agricultural areas. The largest agricultural market for chlorpyrifos in terms of total pounds of active ingredient is corn. It is also used on soybeans, fruit and nut trees, Brussels sprouts, cranberries, broccoli, and cauliflower, as well as other row crops. Non-agricultural uses include golf courses, turf, green houses, and on non-structural wood treatments such as utility poles and fence posts. It is also registered for use as a mosquito adulticide, and for use in roach and ant bait stations in child resistant packaging. Products are sold as liquids, granules, water dispersible granules, wettable powders, and water soluble packets, and may be applied by either ground or aerial equipment. According to DPR, use of chlorpyrifos in California has dropped by more than 50% from two million pounds in 2005 to just over 900,000 pounds in 2016.

2) *Impacts on human health*. The sponsors of this bill provided the Committee with a number of studies to illustrate the health effects of exposure to

chlorpyrifos and organophosphate pesticides (OPs - chlorpyrifos is an organophosphate pesticide). An ongoing cohort study on residential exposure to chlorpyrifos conducted by the Columbia Center for Children's Environmental Health enrolled pregnant women in New York City and assessed exposure by measuring chlorpyrifos in umbilical cord blood collected at delivery. A number of reports came from this study: a 2006 published paper reported that chlorpyrifos exposure was associated with delays in mental and psychomotor development, attention problems, Attention-deficit/hyperactivity disorder (ADHD), and pervasive development disorder at three years of age; a 2011 paper reported that chlorpyrifos exposure was associated with reductions in full-scale IQ and working memory at seven years of age; and, a 2012 paper reported that chlorpyrifos exposure was associated with structural changes in brain regions related to cognition and working memory at six to 11 years of age. Researchers at Mount Sinai School of Medicine also studied pregnant women in New York City, but they assessed exposure by measuring metabolites of OP in urine collected early in the third trimester. An August 2011 report of that study states that OPs were associated with a reduction in mental development at 12 months among black and Hispanic children, and decrements in perceptual reasoning at six to nine years of age among children born to mothers with reduced ability to metabolize chlorpyrifos.

The Center for Environmental Research and Children's Health at UC Berkeley conducted a study of pregnant women in the Salinas Valley to examine agricultural exposure to OPs. They assessed exposure by measuring metabolites of OPs in urine collected during the first and second half of pregnancy. In 2010, researchers reported that exposure was associated with attention problems and ADHD at 3.5 and five years of age. A 2011 paper reported that OPs were associated with reductions in full-scale IQ, working memory, perceptual reasoning, processing speed, and verbal comprehension at seven years of age. UC Davis researchers evaluated whether residential proximity to agricultural pesticides during pregnancy is associated with autism spectrum disorders or developmental delay. A paper published in 2014 reported proximity to OPs at some point during gestation was associated with increased risk for autism and developmental delay.

3) *Environmental fates*. According to the Oregon State University Extension Services' National Pesticide Information Center:

   a) Chlorpyrifos is stable in soils with reported half-lives ranging between 7 and 120 days. Studies have found chlorpyrifos in soils for over one year following application. Soil persistence may depend on the formulation, rate of application, soil type, climate and other conditions.

b) The US Environmental Protection Agency (EPA) analyzed the US Geological Survey's National Water Quality Assessment data for surface water contamination. A total of 1530 agricultural streams and 604 urban streams were tested. Of the streams tested, 15% of the agricultural streams and 26% of the urban streams contained chlorpyrifos at concentrations ranging from 0.026 ppb to 0.400 ppb. However, monitoring data were not collected for the watersheds where chlorpyrifos use is pervasive. The US EPA does not have legally enforceable maximum contaminant level drinking water standards.

c) Researchers monitored outdoor air chlorpyrifos concentrations (at stations located within three miles of average daily chlorpyrifos applications of 7.7 pounds per square mile per day) following ground application of chlorpyrifos in an agricultural setting. Median air concentrations of chlorpyrifos were measured at 33 nanograms per cubic meter. In one study, researchers estimated an outdoor air residence time of 4 hours for chlorpyrifos.

4) *Federal regulatory actions*. According to the US EPA, since its first registration in 1965, it has reviewed chlorpyrifos for tolerance reassessment, reregistration, and most recently, as part of its ongoing registration review. EPA actions related to chlorpyrifos include:

a) 2000 – Agreement to eliminate, phase-out, and modify certain uses. In 1996, the Food Quality Protection Act set a more stringent safety standard to be especially protective of children. After finalizing the chlorpyrifos risk assessments for reregistration, EPA identified the need to modify certain uses to meet the revised standard of safety, and to address health and environmental risks from chlorpyrifos exposure. The registrants of chlorpyrifos entered into an agreement with EPA to eliminate, phase out, and modify certain uses. Some examples of the cancellations and modifications include:

i) Eliminating most homeowner uses, except ant and roach baits in child resistant packaging and fire ant mound treatments, and phasing out all termiticide uses; and,

ii) Discontinuing all uses of chlorpyrifos products in the US on tomatoes, restricting use on apples to pre-bloom and dormant application, and lowering the grape maximum residue level to reflect the labeled dormant application.

b) 2002 – Label changes to ensure environmental and worker safety. EPA made a number of changes to required safety measures to improve safety for the environment and for those applying this pesticide, including:

   i) Use of buffer zones to protect water quality, fish, and wildlife;

   ii) Reductions in application rates per season on some crops, including citrus and corn; and,

   iii) Increase in amount of personal protective equipment to mitigate risk to agricultural workers.

c) 2011 – Preliminary human health risk assessment. As part of the registration review process, EPA completed a comprehensive preliminary human health risk assessment for all chlorpyrifos uses. This assessment included the results of extensive new research and the findings of a number of new studies that had become available since the Agency's 2000 human health risk assessment for chlorpyrifos.

d) 2012 – Spray drift mitigation and changes to application rates. EPA significantly lowered the aerial pesticide application rates and created "no-spray" buffer zones for ground, airblast, and aerial application methods around public spaces, including recreational areas, schools, homes and other sensitive areas.

e) 2014 – Revised human health risk assessment. As part of the registration review process, EPA completed a revised human health risk assessment for all chlorpyrifos uses. The assessment updated the 2011 risk assessment based on new information received, including public comments. EPA factored in exposures from multiple sources including exposures from food and water, from inhaling the pesticide, and through the skin. EPA considered all populations including infants, children, and women of child-bearing age. EPA incorporated information from a 2012 assessment of spray drift exposure and as well as new restrictions put into place to limit spray drift.

f) 2015 – Proposed rule to revoke food tolerances. EPA issued a proposed rule to revoke food tolerances based on the findings in the 2014 risk assessment. This rule was never finalized and is the subject of litigation.

g) 2016 – Revised human health risk assessment. After receiving public comments on the 2014 risk assessment and feedback from the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel, EPA again revised its human health risk assessment for chlorpyrifos.

h) 2017 – Denial of Petition to Revoke Tolerances. In March 2017, EPA denied a petition that asked them to revoke all pesticide tolerances for chlorpyrifos and cancel all chlorpyrifos registrations. EPA concluded that despite several years of study, the science addressing neurodevelopmental effects remains unresolved and further evaluation of the science during the remaining time for completion of registration review is warranted.

5) *State regulatory actions*. In 2015, DPR designated chlorpyrifos a restricted material, meaning that only trained, licensed professionals with a permit from a local county agricultural commissioner may use products containing the pesticide. In 2017, it was added to California's Proposition 65 list of chemicals known to cause reproductive harm. In September 2018, following extensive scientific review and public comment, DPR proposed designating chlorpyrifos as a "toxic air contaminant" (TAC), which California law defines as an air pollutant that may cause or contribute to increases in serious illness or death, or that may pose a present or potential hazard to human health. In November 2018, DPR recommended that county agricultural commissioners begin implementing the interim measures on January 1, 2019 while it completes a formal regulatory process. The interim recommendations include: banning all aerial applications of chlorpyrifos; discontinuing its use on most crops; requiring a quarter-mile buffer zone during all allowed applications of the pesticide and for 24 hours afterwards; and, requiring a 150-foot setback from houses, businesses, schools and other sensitive sites at all times, regardless of whether the site is occupied at the time of application. DPR's recommendations to the county agricultural commissioners include adopting interim permit conditions into existing and new permits until permanent control measures are put in place. According to DPR's knowledge, all counties are following these recommendations.

a) *Listing chlorpyrifos as a Toxic Air Contaminant (TAC)*. Following the interim action, DPR adopted an emergency regulation listing chlorpyrifos as a TAC effective on April 1, 2019. The listing of a TAC requires DPR to determine, in consultation with the OEHHA, ARB, and the air pollution control districts or air quality management districts in the affected counties, the need for and appropriate degree of control measures for chlorpyrifos. Within two years of the determination of the need for control measures, DPR must develop control measures in consultation with the county agricultural commissioners, air pollution control districts, and air quality management districts in the affected counties. The permanent control measures adopted will replace the current recommended interim permit conditions.

Comments

1) *Purpose of Bill.* According to the author, "This year, the Legislature will likely approve Governor Gavin Newsom's plan for expanding early childhood development. When the Governor talks about early childhood development, he makes a compelling case for the impact in the physical development of the child's brain. According to the American Academy of Pediatrics report "There is a wealth of evidence demonstrating the detrimental effects of chlorpyrifos exposure to developing fetuses, infants, children, and pregnant women." This bill will prevent exposure to a dangerous chemical that damages that organ in our children.

   "SB 458 protects the health of children and frontline communities from the brain-toxic pesticide chlorpyrifos. Widely used in California agriculture, chlorpyrifos ends up in people's bodies from residue on fruits and vegetables, contaminated water and dust, and drift from fields into the air in nearby communities."

2) *Senate Health Committee Amendment.* On April 11, 2019, the Senate Health Committee amended SB 458 to include HSC §105243(b), which reads "This section shall remain in effect unless and until (1) the Director of Pesticide Regulation adopts control measures for chlorpyrifos in accordance with Section 14024 of the Food and Agricultural Code, and (2) the Director of Environmental Health Hazard Assessment determines, by clear and convincing evidence, that the control measures adopted by the Director of Pesticide Regulation for chlorpyrifos will not result in neurodevelopmental harm to children after taking into account consumption of food and water."

   This amendment serves to, upon January 1, 2020, ban the use of chlorpyrifos in California, despite ongoing regulatory deliberations, while still establishing a framework for the pesticide to be used again if proven safe. The path to reintroduction must consider the fact that chlorpyrifos may remain in the environment immediately surrounding the application site, and that ARB is designated in statute as partly responsible for the development of TAC controls. Moreover, while it allows DPR to establish control measures, it does not require them.

   Given these concerns, the author may wish to amend the bill so that (1) ARB also considers control measures proposed by DPR, (2) the health impacts to other sensitive receptors, as defined, are considered alongside the impacts on neurodevelopmental harm in children, and (3) it is made clear that the director of DPR is not required to take action to establish control protocols.

DOUBLE REFFERAL:

This measure was heard in the Senate Health Committee on April 10, 2019, and passed out of committee with a vote of 6-1.

SOURCE: American Academy of Pediatrics, California (sponsor)
EARTHJUSTICE (sponsor)
United Farm Workers (sponsor)

SUPPORT:
American Academy of Pediatrics, California
Binational Center for the Development of Oxacan Indigenous Communities
Breast Cancer Prevention Partners
California Environmental Justice Alliance
California Food & Farming Network
California Health Coalition Advocacy
California League of Conservation Voters
California Medical Association
California Rural Legal Assistance Foundation
California State PTA
Californians for Pesticide Reform
Center for Environmental Health
Center for Food Safety
Center on Race, Poverty & the Environment
Central California Environmental Justice Network
Central Valley Air Quality Coalition
Children's Defense Fund-California
Courage Campaign
Dolores Huerta Foundation
EARTHJUSTICE
Educate. Advocate.
Empower Family California
Environmental Working Group
Friends of the Earth
Indivisible Sacramento
Leadership Counsel for Justice and Accountability
Madera Coalition of Community Justice
Natural Resources Defense Council
Pajaro Valley Federation of Teachers, AFT 1936
Pesticide Action Network
United Farm Workers (UFW)
United Food and Commercial Workers (UFCW)
Western Center on Law & Poverty

OPPOSITION:
African American Farmers of California
Agricultural Council Of California
Almond Alliance Of California
American Chemistry Council
American Pistachio Growers
California Agricultural Aircraft Association
California Association Of Pest Control Advisers
California Association Of Winegrape Growers
California Bean Shippers Association
California Citrus Mutual
California Cotton Ginners And Growers Association, Inc.
California Farm Bureau Federation
California Fresh Fruit Association
California Manufacturers & Technology Association
California Pear Growers Association
California Seed Association
Dow AgroSciences
Far West Equipment Dealers Association
Nisei Farmers League
Western Agricultural Processors Association
Western Growers Association
Western Plant Health Association

ARGUMENTS IN SUPPORT: According to American Academy of Pediatrics, "Chlorpyrifos is highly toxic, with demonstrated severe health effects far below current average exposure levels. This is why the federal Environmental Protection Agency announced plans to ban its use on food in 2015, before reversing this decision in 2017. Then-President of the American Academy of Pediatrics Fernando Stein signed a statement that characterized this decision as "deeply alarm[ing]," noting the "wealth of science demonstrating the detrimental effects of chlorpyrifos exposure to developing fetuses, infants, children, and pregnant women," including, in severe cases, convulsions, difficulty breathing, paralysis and death. One long-term Columbia University study found that toddlers with higher levels of chlorpyrifos exposure displayed developmental delays by age three, and were more than five times as likely to be on the autism spectrum and more than 11 times as likely to display symptoms of attention disorders than their peers. Moreover, even by the EPA's own estimates, children and pregnant women are exposed to far higher levels of chlorpyrifos than could reasonably be considered safe, with toddlers' exposure levels an astonishing 140 times higher."

ARGUMENTS IN OPPOSITION: According to a coalition of opposing groups, "Chlorpyrifos is an important tool farmers use as a part of their integrated pest management programs to protect California's food supply from invasive species. In the presence of some key insect pests, chlorpyrifos is the only effective pest control option for California growers. Further, DPR and OEHHA are currently conducting analysis on potential neurodevelopmental harm to children from chlorpyrifos, so this bill is unnecessary…

"…SB 458 creates serious problems for others in the agriculture industry. Because insects have the ability to adapt to changing farming practices and develop selective resistance to control measures, farmers require access to a variety of tools to manage insect pests. Chlorpyrifos contributes significantly to the control of insect pests in a wide range of crops, including fruit, nut and vegetable crops. It is an important insecticide in the Integrated Pest Management (IPM) systems in these crops due to its efficacy, value as resistance management tool, established international registration status, and as a tool against invasive pests and endemic pest outbreaks…"

According to Dow AgroSciences LLC, "The recent amendment to SB 458 is especially concerning because it undermines the highly effective system for regulating pesticides that has been in place in California for decades, by granting the Office of Environmental Health Hazard Assessment unprecedented authority to, in effect, approve or disapprove risk management measures that CDPR has determined to be appropriate for a particular pesticide. Further, the amendment would impart this extraordinary authority to OEHHA utilizing a standard of proof ("clear and convincing evidence") that is inappropriate in the regulatory context and virtually without precedent in the Food and Agriculture Code. This upending of the current system for regulating pesticide products in the State is unwarranted and inappropriate."

-- END --

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

Bill No:	SB 463		
Author:	Stern		
Version:	2/21/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: Natural gas storage wells: monitoring and reporting

DIGEST: This bill would require the operator of a natural gas storage well to provide the chemical composition of a reportable leak and develop a plan to monitor emissions from the well in the event of a leak.

ANALYSIS:

Existing law:

1) Requires the Division of Oil, Gas, and Geothermal Resources (DOGGR) in the Department of Conservation to regulate the drilling, operation, maintenance, and abandonment of oil and gas wells in the state.

2) Requires the operator of a gas storage well to submit a risk management plan to identify and plan for mitigation of all threats and hazards associated with gas storage well operation in order to ensure internal and external mechanical integrity of a well, including site-specific information, as specified.

3) Provides that a person who fails to comply with these requirements and other laws relating to the regulation of oil or gas operations is guilty of a misdemeanor.

4) Requires DOGGR to determine by regulation what constitutes a reportable leak from a gas storage well and the timeframe for reporting those leaks, as specified. Specifies that until the regulations are in effect, operators are required to notify DOGGR immediately of a leak of any size from a gas storage well, and requires DOGGR to post information about a reported leak that cannot be controlled within 48 hours on its internet website.

5) Provides that a person who fails to comply with these requirements and other laws relating to the regulation of oil or gas operations is guilty of a misdemeanor.

This bill:

1) Requires the operator of a gas storage well to:

   a) include a complete chemical inventory, as specified, of materials used in or on wells in its risk management plan.

   b) regularly quantify and report to DOGGR the chemical composition of the gas stored in a gas storage well, as specified.

   c) develop and implement a plan to, in the event of a leak, monitor emissions from the gas storage well and related equipment that can quantify the chemical composition of emissions to the environment, as specified.

   d) provide to DOGGR the chemical composition of the leak, as specified, for reportable leaks.

2) Requires DOGGR to post certain leak chemical data online.

3) Provides that no reimbursement is required for the state mandated program.

Background

1) *Aliso Canyon leak recap and aftermath.* On October 23, 2015, a natural gas leak from a gas storage well ("SS-25") was discovered at the Southern California Gas Company's (SoCal Gas') Aliso Canyon natural gas storage facility (facility) located in northeastern Los Angeles County. The facility is the largest in the western United States. The SS-25 well, originally drilled in 1953 for oil and converted to gas storage service in 1973, is located uphill from and approximately 1-1/4 miles away from homes in the Porter Ranch community.

   Over the course of several attempts to "kill" the well, the SS-25 leak became a blowout. Almost four months later, the leak was officially plugged on February 18, 2016 following a successful kill attempt using a newly drilled relief well.

   The Air Resources Board's (ARB's) final estimate is that 109,000 metric tons of methane, a potent greenhouse gas, were emitted to the atmosphere from the leak. While it was occurring, the leak was estimated to constitute about 20% of total statewide methane emissions.

   The SS-25 leak caused severe disruption in the surrounding communities. Over 8,000 households relocated at some point during the leak. The Los Angeles

Unified School District relocated two schools temporarily, and numerous news reports cited losses for local businesses.

The Los Angeles County Department of Public Health and the local air quality regulator (the South Coast Air Quality Management District (AQMD)) received thousands of health and odor complaints between them during the leak.

In addition to the gas emissions, the leaking well released liquid and solid particulate matter into the atmosphere particularly at the start of the leak when the multiple kill attempts occurred. These kill attempts involved the injection of heavy liquids and solids into the main bore of the well, which the leaking gas forced back out. Oily mists and the deposit of oily particles were observed in the community. Increased use of heavy machinery in responding to the leak likely resulted in particulate matter emissions as well.

During the leak and in response to complaints, various measurements of gas-phase and liquid- and solid-phase compounds began to be regularly performed by SoCal Gas, AQMD, and others. However, there were delays in the start of some elements of this monitoring for various reasons, including safety concerns and other limitations. It is generally easier to make physical measurements of airborne particulate matter than detailed chemical measurements. While ambient atmospheric concentrations of many chemical species – particularly methane – returned to background levels after the SS-25 well was plugged, health complaints in the community continued.

According to a summer 2016 presentation by a staff member of the Los Angeles County Department of Public Health, the health effects reported due to the SS-25 leak could not be fully explained by the chemical species known to be present. In 2016, the Los Angeles County Department of Public Health had an independent researcher investigate dust and particles inside the homes of neighbors of the facility. The researcher found certain chemical species associated with the well kill attempts, such as barium. In response, the Los Angeles County Department of Public Health required that cleaning be performed on houses in the surrounding communities to remove this dust.

2) *Legislative Response.* The Legislature passed and then-Governor Brown signed several laws following the SS-25 leak in order to help prevent a similar leak from occurring again. These included measures to protect public safety, ensure accountability, and strengthen oversight of natural gas storage facilities.

Of relevance here, an Aliso Canyon-specific bill (SB 380, Pavley, Chapter 14, Statutes of 2016) incorporated into law multiple aspects of the comprehensive safety review of the wells at the facility, and imposed additional restrictions on operations at the facility until certain conditions were met, among other things.

SB 887 (Pavley, Chapter 673, Statutes of 2016) provided a statutory framework for revised natural gas storage well regulation by DOGGR. This included a new proactive risk management plan to mitigate for hazards, leak monitoring standards, new well testing requirements, and additional well construction and operating requirements.

3) *Regulatory response.* DOGGR both issued emergency regulations during the leak and significantly revamped natural gas storage regulations that went into effect in June 2018. These regulations instituted risk-based proactive management of natural gas storage wells, and enhanced monitoring, that includes well leak reporting requirements.

   ARB also approved regulations implementing leak monitoring requirements for underground natural gas storage facilities in 2017.

4) *Health risk from exposure still unknown.* Recent reports indicate that public health officials are still not entirely sure what was released from the well during the leak, which hinders an assessment of the public health impacts of the leak. In May 2018, the Office of Environmental Health Hazard Assessment released a study based on publicly available information that indicated that residents were likely exposed to low levels of well control materials at the start of the leak and probably did not indicate a long-term health problem. However, the October 2016 federal interagency task force report on natural gas storage wells – "Ensuring Safe and Reliable Underground Natural Gas Storage" – recognized that "the full range of health risks from exposures to air pollutants released from the leak [SS-25] well is not known, including health risks that may manifest over the long term."

   Health complaints from those who live near the facility and that residents attribute to facility operations continue.

5) *Current status of the Aliso Canyon facility.* In late 2016, SoCal Gas applied to resume injections at the Aliso Canyon facility and in the spring of 2017 received approval for injections to resume. Restrictions on the amount of gas that could be stored in the facility were instituted and remain in place. Certain criteria have to be met for stored gas in the facility to be withdrawn. These restrictions remain in place. The CPUC proceeding to investigate the feasibility or reducing or eliminating the use of the Aliso Canyon facility, as required by SB 380, is underway.

6) *Public health study status.* In early 2016, AQMD issued an order of abatement to SoCal Gas to address the SS-25 leak. AQMD and SoCal Gas ended up in litigation over a health study that SoCal Gas agreed to undertake under the order. A settlement yielded $1 million for AQMD to undertake a scoping study

for a public health assessment. The Request for Proposals under that study's auspices will begin shortly. Additionally a recent settlement of state claims with SoCal Gas related to the leak provided $25 million for a more extensive public health study. Interpretation of the results will likely continue to be hampered by the lack of certain atmospheric emissions composition data from the critical first few weeks of the SS-25 leak.

Comments

1) *Purpose of Bill.* According to the author, "The massive gas leak from a storage well at the Aliso Canyon gas storage facility three years ago had a profound and devastating impact on the surrounding community. Local public health and air quality regulators received thousands of complaints regarding the smell from the odorants, the oily mist ejected intermittently from the well and numerous ailments associated with the leak. Thousands of families relocated, and two public schools were closed for the duration of the leak. After the leak was stopped, and people returned to their homes, health complaints continued. Researchers found numerous chemicals associated with the leak and the operations to stop the leak in homes neighboring the storage facility. While we now have some information about the chemicals that the community was exposed to during the leak, knowledge remains incomplete and impairs a full assessment of the public health impacts to the neighbors.

   "SB 463 seeks to improve the assessment of the risks to the public health from gas storage well leaks in the future by requiring a more thorough disclosure of the chemicals present and used at gas storage facilities. In the event of a leak, enhanced reporting and monitoring of emissions from the well are also required. When implemented, a more complete public health assessment would be available to the community neighboring a leaking gas storage well. The neighbors of the Aliso Canyon facility will never know everything they were exposed to during the leak. We need to take the commonsense measures required by SB 463 in order to be better prepared to evaluate and understand the public health risks from future leaks, and ensure that regulators and the public have the information they need to assess health risks and respond.

2) *A work in progress.* The Senate Natural Resources and Water Committee analysis notes that the author is seeking to incorporate the bill's proposed enhanced chemical reporting within the existing federal and state regulatory framework. However, it is not yet clear if federal reporting data are sufficient to meet the needs of public health assessments. Additional items to resolve include identifying the appropriate lead agency for the proposed enhanced monitoring and reporting requirements, the appropriateness of specifying

emissions monitoring techniques, and the appropriate timeliness requirements to start emissions monitoring in the event of a leak.

The Committee may wish to direct staff to work with the author on the elements of the bill subject to the Committee's jurisdiction, and rehear the bill, as needed.

Related/Prior Legislation

SB 57 (Stern, 2017) would have prevented the re-start of natural gas injections into the Aliso Canyon gas storage facility until the root cause analysis of the SS-25 leak was public. (This study is now due later this year.) *This bill failed in the Senate.*

SB 887 (Pavley, Chapter 673, Statutes of 2016) revamped the statutory requirements for the regulation of natural gas storage wells.

SB 380 (Pavley, Chapter 14, Statutes of 2016) set statutory standards applicable to the reopening of the Aliso Canyon natural gas storage facility following the SS-25 leak including the requirement that the California Public Utilities Commission open a proceeding to consider reducing or eliminating the use of that facility.

Double Referral:

This measure was heard in the Senate Natural Resources and Water Committee on April 9, 2019, and was passed out of committee with a vote of 7-0.

SOURCE: Author

SUPPORT:

California League of Conservation Voters

OPPOSITION:

None received

-- END --

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

Bill No:	SB 535		
Author:	Moorlach		
Version:	2/21/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	David Ernest García		

SUBJECT: California Global Warming Solutions Act of 2006: scoping plan

DIGEST: This bill requires the Air Resources Board to include greenhouse gas emissions from wildfires and forest fires in its scoping plan, as specified.

ANALYSIS:

Existing law:

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

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

3) Requires ARB to prepare and approve a scoping plan to achieve maximum technologically feasible and cost-effective reductions in GHG emissions at least once every five years, as specified. (HSC §38561)

4) Requires all GHG rules and regulations adopted by ARB be consistent with the updated scoping plan. (HSC § 38592.5)

This bill:

Requires ARB to include GHG emissions from wildfires and forest fires in the scoping plan, as specified.

Background

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

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

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

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

   Additionally, AB 398 requires all GHG rules and regulations adopted by ARB to be consistent with ARB's scoping plan that outlines how to achieve maximum technologically feasible and cost-effective reductions in GHG emissions.

Comments

1) *Purpose of Bill.* According to the author, "Wildfires in California have been a natural occurrence over the centuries. In fact, they should occur on occasion, especially in our forests. Every 70 years is an appropriate burn cycle, but not every 7 years, which seems to be the new normal. Why? Because of human interaction with otherwise pristine wilderness areas, thanks to sparks from vehicles and electrical transmission equipment, among other things, is causing more fires.

   "This higher frequency of human-caused wildfires dramatically contributes to the production of greenhouse gases and this needs to be addressed if Sacramento is really serious about climate change. In the past several years, I have tried my best to help my fellow legislators to quantify greenhouse gases and include this information in analyses so that we can appropriately fund and mitigate these issues.

   "In hindsight, my previous legislative efforts -- including SB 1463 in 2016 and 2018 -- could have made a difference in the tragic fires of 2017 and 2018. It's a shame that environmental leaders do not focus on all the components of manmade greenhouse gas emissions, thus miscalculating and essentially ignoring the impacts of wildfires and their emissions on the atmosphere.

   "I acknowledge that previous legislation has required some minimal tracking of emissions produced by wildfires, including SB 859 (Budget, Chapter 368, Statutes of 2016) and SB 901 (Dodd, Chapter 626, Statutes of 2018). As important as that information provides, it is more of an asterisk in an otherwise mountain of emission research. Unless policy makers actually include all greenhouse gas emissions in the AB 32 Scoping Plan, our state's planning document which drives our approach to reducing emissions, it will do us little good in the long-run to continue championing marginal emission reduction alternatives.

   "Senate Bill 535 does not intend to set up compliance standards for our forest and timber stewards. I simply want to ensure that when there are human-related catastrophic fires, we are measuring the large scale emissions, recognizing them in our high-level planning documents and appropriately mitigating wildfires and their impact on California in the future."

2) *GHG emissions from wildfires and forest fires.* In California's 2017 Climate Change Scoping Plan, ARB wrote that they have "developed a statewide emission inventory for black carbon in support of the [Short Lived Climate

Pollutant (SLCP)] Strategy, which is reported in two categories: non-forestry (anthropogenic) sources and forestry sources. The black carbon inventory will help support implementation of the SLCP Strategy, but is not part of the State's GHG Inventory that tracks progress towards the State's climate targets."

Given state law relating to reducing SLCPs, tracking black carbon in the scoping plan is appropriate.

That being said, the reason GHG emissions from these kinds of events are not included in the state's GHG emissions inventory is nuanced, but still relatively simple.

First, natural disasters that emit GHGs (such as wildfires and forest fires) occurred before climate change, will continue to occur as the climate continues to change, and will persist even if mankind ultimately solves the problem of climate change.

As such, while science can now conclusively (1) attribute individual extreme events to climate change and (2) determine what types of events are made worse by climate change, it is important to recognize that extreme events like the record-breaking wildfires in California are a symptom of climate change, not the cause.

The overwhelming consensus of climate scientists is that climate change is anthropogenic, meaning human activity has caused the rising GHG concentrations in the atmosphere and, therefore, increasing average global temperatures and the extreme version of events climate change causes.

The fundamental scientific understanding that human activity is responsible for climate change precludes including GHG emissions from natural disasters in the state's inventory that tracks progress towards California's climate goals, even ones that are made worse by climate change.

By including new and highly variable sources of GHG emissions, such as wildfires and forest fires, in the state's inventory, caps would need to be adjusted according to uncertain sources of emissions. This could make the program unworkable for those industries currently covered under cap-and-trade because the program would be over supplied with allowances until a wildfire or forest fire occurred. At that point, the market would then tighten due to the unexpected need for allowances, which could cause huge price spikes for businesses as the supply of allowances in the program falls.

Moreover, a question arises as to whom would actually be responsible to pay for the allowances necessary to cover a wildfire or forest fire. Would a utility have to pay for the allowances to cover the GHG emissions from a wildfire if they are ultimately determined to be responsible? Who would pay for the allowances if that utility went bankrupt? California taxpayers? What if an individual is found to be responsible? And then declares bankruptcy? Are California taxpayers still on the hook to cover the cost of those emissions?

Additionally, as noted in the background, state law requires all GHG rules and regulations adopted by ARB to be consistent with the scoping plan. Including natural disasters, like wildfires and forest fires, in the scoping plan would shift the focus from the true cause of climate change—human activity—to sources of GHG emissions that, while individually large, are not responsible for long-term climate change. This could significantly impede the state's ability to address climate change.

It is well known that California is only responsible for approximately 1% of global GHG emissions. As such, climate change policy experts in the state have opined that the reason California has implemented aggressive climate policies is (1) to prove that it is possible to reduce the anthropogenic sources of GHG emissions that are responsible for climate change without harming California's economy; (2) to demonstrate that California is willing to do its part in the global fight against climate change by addressing the anthropogenic sources of GHG emissions that are responsible for climate change; and (3) to design successful policies that can be exported to the rest of the world so that climate change can eventually be stopped.

In this regard, California has been wildly successful. Despite—or, perhaps, because of—our aggressive climate change policies, the California economy has grown to be the fifth largest economy in the world. This proves to the rest of the world that California's policies are effective and can be replicated across the globe and that doing so will not only protect the environment, but will bolster the global economy.

That being said, if California were to include sources of GHG emissions in the scoping plan that are not the underlying cause of climate change—such as those from wildfires and forest fires—and ARB had to focus on reducing those emissions because of other provisions in state law (e.g., that ARB must focus on cost-effective GHG emissions reductions), California's policies would no longer be exportable to other jurisdictions that do not face the wildfire and forest fire problems that California does. Such an outcome would diminish California's role as a leader on climate change and the world would lose the

innovative and actionable climate change policies that California currently creates.

Moreover, if California chose to focus on wildfire and forest fire GHG emissions that are not the underlying cause of global climate change, jurisdictions that mostly or only have anthropogenic sources of GHG emissions may refuse to enact policies to reduce their GHG emissions because doing so would put their businesses at an economic disadvantage to California businesses.

Finally, wildfires and forest fires release biomass carbon into the atmosphere in the form of carbon dioxide, methane is emitted due to incomplete combustion of biomass, and nitrous oxide is a product of combustion. In an effort to contextualize the GHG emissions from fires, ARB publishes that data on their website. In fact, the available numbers and graphs were updated as recently as March 5, 2019. Given that this information is already available and up to date, *a question arises as to the necessity of this bill.*

For the reasons outlined in this comment, the Committee may wish to consider holding this measure.

SOURCE: Author

SUPPORT:

CalChamber
Calforests

OPPOSITION:

None received

-- END --

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

Bill No:	SB 574		
Author:	Leyva		
Version:	4/11/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: Cosmetic Fragrance and Flavor Ingredient Right to Know Act of 2019

DIGEST: This bill would require cosmetic manufactures, commencing July 1, 2020, to disclose to the Division of Environmental and Occupational Disease Control information related to cosmetic products that contain a fragrance or flavor ingredient that is included on a "designated list," as defined, and a list of fragrance allergens that are present in specified concentrations. Also requires the Division to post on its database a list of those fragrance, flavor, and allergen ingredients in the cosmetic product, as specified.

ANALYSIS:

Existing law:

1) Enacts the Safe Cosmetics Act, which requires cosmetic manufacturers to provide the Department of Public Health (DPH) Division of Environmental and Occupational Disease Control (DEODC) with a complete and accurate list of its cosmetic products that, as of the date of submission, are sold in the state and that contain any ingredient that is a chemical identified as causing cancer or reproductive toxicity, including any chemical that:

   a) Is contained in the product for purposes of fragrance or flavoring; or,
   b) Is identified by the phrase "and other ingredients" and determined to be a trade secret, as specified.

2) Defines "cosmetic" as any article, or its components, intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to, the human body, or any part of the human body, for cleansing, beautifying, promoting attractiveness, or altering the appearance, but does not include soap.

3) Requires DPH to develop and make operational a consumer-friendly, public website that creates a database of the information collected pursuant to the Safe Cosmetics Act. Requires the database to be searchable to accommodate a wide range of users, as specified.

Under Proposition 65:

4) Prohibits a person, in the course of doing business, from knowingly discharging or releasing a chemical known to the state to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water.

5) Prohibits a person, in the course of doing business, from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual.

6) Requires the Governor to publish a list of chemicals known to cause cancer or reproductive toxicity and to annually revise the list.

Under the California Green Chemistry statutes:

7) Requires the Department of Toxic Substances Control (DTSC), on or before January 1, 2011, to adopt regulations to establish a process to identify and prioritize those chemicals or chemical ingredients in consumer products that may be considered a chemical of concern. These chemicals of concern must be taken from a list of candidate chemicals, which unifies a number of hazardous chemical lists from other authoritative sources.

8) Requires DTSC, on or before January 1, 2011, to adopt regulations to evaluate chemicals of concern and their potential alternatives in consumer products and to determine how best to limit exposure or to reduce the level of hazard posed by the chemical of concern in the product.

9) Authorizes DTSC to take specified regulatory actions to limit exposure or to reduce the level of hazard posed by a chemical of concern.

10) Creates the Uniform Trades Secrets Act which establishes a legal framework for the protection of trade secrets for companies in California.

This bill:

1) Makes findings and declarations.

2) Requires cosmetic manufactures, commencing July 1, 2020, to disclose to DEODC:

a) A list of each fragrance ingredient or flavor ingredient that is included on a designated list, as defined;
b) A list of each fragrance allergen that is present in the cosmetic product in specified concentrations. Specifies that those ingredients shall appear on the database in a unique manner that distinguishes them from other reportable ingredients and indicates that they are hazardous only to individuals who suffer from fragrance allergies;
c) Whether the cosmetic product is intended for professional use or retail cosmetic use;
d) The Chemical Abstracts Service (CAS) number for each fragrance ingredient and flavor ingredient; and,
e) The corresponding Universal Product Code (UPC) for the cosmetic product.

3) Defines "designated list" as any of the 23 authoritative lists identified in the Act, including any subsequent revisions to those lists when adopted by the authoritative body.

4) Specifies, in order to protect trade secrets, that this bill does not require a manufacturer to disclose the weight or amount of a fragrance ingredient or flavor ingredient, or to disclose how a fragrance or flavor is formulated. Permits manufacturers to protect, and not disclose, any fragrance ingredient or flavor ingredient, or combination of fragrance ingredients or flavor ingredients that are not on a designated list.

5) Requires DEODC, commencing July 1, 2020, to post on the Safe Cosmetics Act website a list of all fragrance ingredients and flavor ingredients that are included on a designated list and the health hazards associated with each fragrance ingredient or flavor ingredient, as specified. Requires DEODC to identify whether an ingredient is a fragrance ingredient or a flavor ingredient.

Background

1) *Hazardous ingredient reporting*. The California Safe Cosmetics Act of 2005 established the California Safe Cosmetics Program (CSCP), where manufacturers of cosmetics are required to report any products that contain ingredients known or suspected to cause cancer, birth defects, or other reproductive harm. CSCP collects this data and makes it available online to the public. Since the launch of the online program in 2009, a total of 77 unique ingredients that are carcinogens or developmental or reproductive toxins have been reported in over 57,313 products by 481 companies. Sixty-three percent of the reported products were makeup, 13% were nail products, 8% skin care products, and 6% sun-related products. However, DPH states that not all

companies are complying with the reporting requirements and that the extent of non-compliance is difficult to assess.

2) *Federal authority.* The Food and Drug Administration's (FDA) regulation of cosmetics is different than its regulation of other products like drugs and medical devices. Certain cosmetic products and their ingredients are not subject to the FDA authority and the FDA has maintained that cosmetic firms are responsible for ensuring that their products are safe prior to marketing them. FDA regulations do, however, prohibit or restrict the use of several ingredients in cosmetic products and require warning statements on the labels of certain types of cosmetics. The Environmental Protection Agency (EPA) is responsible for gathering health and safety and exposure data on pollutants and toxic substances that can affect public health. The U.S. Department of Labor's Occupational Health and Safety Administration sets permissible exposure limits at which many chemicals are considered safe. Certain chemicals found in products used in establishments are of concern and listed on California's Proposition 65 list of chemicals known to cause cancer or reproductive toxicity, but are not prohibited for use in cosmetics in the US.

3) *Disclosing ingredients.* Many employers can get information from product Safety Data Sheets (SDS). The California Division of Occupational Safety and Health's (CalOSHA) Hazard Communication Standard requires product manufacturers to provide salon owners with an SDS for each product used in the salon that may contain a hazardous chemical at 1% or more (or at 0.1% or more for chemicals that may cause cancer) or that could be released into the air at levels above limits set by CalOSHA or the American Conference of Governmental Industrial Hygienists. The SDS explain the health risks of the product and list precautions for worker protection. In general, the SDS must provide information about the hazards of chemicals in the product. The challenge is that employees may request SDSs from their employer, but they are difficult to obtain and do not necessarily have all the ingredients listed.

4) *The California Green Chemistry regulation.* The California legislature passed, and Governor Schwarzenegger signed the Green Chemistry law AB 1879 (Feuer, Chapter 559, Statues of 2008) and SB 509 (Simitian, Chapter 560, Statues of 2008) in 2008. The laws authorize and require DTSC to adopt regulations to identify and prioritize chemicals of concern in consumer products, and their possible alternatives, and to take regulatory action to best protect people and the environment. In response, DTSC promulgated the Safer Consumer Products Regulations. According to DTSC, the regulations provide for a continuous four-step, science-based, ongoing process to identify safer consumer product alternatives. DTSC describes the process as follows:

a) Candidate Chemicals – Candidate chemicals have at least one quality that can cause harm to people or the environment (called a hazard trait). The regulations establish a list of candidate chemicals (approximately 1,200) based on the work of authoritative organizations, and specify a DTSC process to add to the list.

b) Priority Products – Priority products are consumer products that contain one or more candidate chemicals and subsequently declared priority projects by DTSC's Work Plan. An initial list of three product-chemical combinations was released on March 13, 2014, and on July 15 2016, a proposal to list Children's Foam-Padded Sleeping Products containing the flame retardants TDCPP and TCEP as a priority product began. Before a priority product is finalized it goes through the rulemaking process, which may take up to one year. Sixty days after a priority product is finalized, responsible entities, e.g., manufacturers, will need to submit priority product notifications.

c) Alternatives Analysis – The regulations require responsible entities (manufacturers, importers, assemblers, and retailers) to notify DTSC when their product is listed as a priority product. DTSC will post this information on its website. Priority product manufacturers (or other responsible entities) must perform an alternatives analysis on the product's candidate chemicals to determine how to limit exposure to, or reduce the level of, public health and/or environmental harm.

d) Regulatory Responses – The regulations require DTSC to identify and implement regulatory responses that will protect public health and/or the environment, and maximize the use of acceptable and feasible alternatives of least concern. DTSC may require regulatory responses for a priority product if the manufacturer decides to keep it, or for an alternative product selected to replace it.

5) *Proposition 65.* In 1986, California voters approved a ballot initiative, the Safe Drinking Water and Toxic Enforcement Act of 1986, commonly referred to as Proposition 65, to address their concern that "hazardous chemicals pose a serious potential threat to their health and well-being, [and] that state government agencies have failed to provide them with adequate protection…" Proposition 65 requires the state to publish a list of chemicals known to cause cancer or birth defects or other reproductive harm. This list, which must be updated at least once a year, currently includes approximately 800 chemicals. The Office of Environmental Health Hazard Assessment (OEHHA)

administers the Proposition 65 program, including evaluating all currently available scientific information on substances considered for placement on the Proposition 65 list.

Under Proposition 65, businesses in California are required to provide a "clear and reasonable" warning before knowingly and intentionally exposing anyone to a Proposition 65-listed chemical. Warnings can be made in many ways, including by labeling a consumer product, posting signs, distributing notices, or publishing notices in a newspaper. Once a chemical is listed, businesses have 12-months to comply with warning requirements.

Proposition 65 also prohibits companies that do business within California from knowingly discharging listed chemicals into sources of drinking water. Once a chemical is listed, businesses have 20-months to comply with the discharge prohibition.

Businesses with less than 10 employees and government agencies are exempt from Proposition 65's warning requirements and its prohibition on discharges into drinking water sources. Businesses are also exempt from the warning requirement and discharge prohibition if the exposures they cause are so low as to create no significant risk of cancer or birth defects or other reproductive harm.

6) *Disclosure for cleaning products*. While existing law provides warnings to consumers under Proposition 65 and provides for a scientific evaluation process of chemicals in products under the Green Chemistry Initiative, prior to the passage of the Cleaning Product Right to Know Act of 2017 (SB 258, Lara, Chapter 830, Statutes of 2017), there was no uniform method of disclosing ingredients to consumers in state law or regulation. SB 258 addressed this deficiency by requiring manufacturers of cleaning products to disclose significantly more information about the ingredients and chemicals in their products, including fragrances. This ingredient disclosure now allows families to choose products that suit their needs; protects consumers diagnosed with asthma or allergies from unintentional exposure; and, assists poison control centers and physicians to properly diagnose and treat patients. Disclosure is particularly important to minimize acute and chronic health impacts, particularly for vulnerable populations such as children, pregnant women, cancer survivors, and individuals with health conditions and sensitivities.

Additionally, passage of this law now provides valuable information to DTSC, which had not previously been privy to all of the ingredients in cleaning products, allows third parties to evaluate the toxicity of products for the safety

of consumers, and provides key information to researchers and scientists studying causes of asthma, allergies, and even more serious conditions.

Comments

1) *Purpose of Bill.* According to the author, "In California, we actually know more about the fragrance ingredients in products that we use to clean our homes than those that we put on our faces or bodies. Consumers have a right to know what ingredients are in the beauty and personal care products they bring home to their families and use daily on their bodies. The bottom line is that no toxic ingredients should be kept secret. SB 574 will empower consumers so that they can make educated decisions about which products to use with their kids and families.

   "No federal law requires the disclosure of fragrance or flavor ingredients in personal care and beauty products to consumers, workers, manufacturers or even regulatory agencies. This loophole allows dozens – sometimes even hundreds – of chemicals to hide under the word "fragrance" on the labels of cosmetic products with no regulatory oversight of the safety of those ingredients. Fragrance chemicals can be found in more than 95% of shampoos, conditioners, hair styling products, antiperspirants and shaving products as well as fine fragrances, body spray and lotions and 1/3 of the fragrance chemicals currently in use have been linked to negative health impacts ranging from allergic reactions to reproductive harm and increased risk of breast cancer. The same loophole exists for chemicals used to flavor a product, which are appearing more and more frequently in lip gloss and chap sticks marketed to kids."

2) *Right to know.* Stakeholders opposed to the measure argue that the mere presence of an ingredient from a designated list does not mean that the product or fragrance is toxic. Further, they maintain that virtually any chemical can be toxic at some dose.

   The primary purpose of the California Safe Cosmetics Program (CSCP) is to collect information on hazardous and potentially hazardous ingredients in cosmetic products sold in the state and to make this information available to the public. The CSCP, the program this bill would expand, is intended to alert Californians to the presence of, not the threshold or concentration of, Proposition 65 chemicals in cosmetic products, chemicals known to cause cancer, birth defects or other reproductive harm. The approach taken in SB 574 is consistent with the listing of products in the Safe Cosmetics Program.

3) *Designated lists*. Stakeholders opposed to the bill have also taken issue with some of the authoritative lists included in the bill. It is important to note that, with recent amendments taken in the Senate Health Committee, all of the authoritative lists included in SB 574 are identical to those included in the Cleaning Product Right to Know Act of 2017.

   However, since the bill now addresses allergen ingredients differently than flavor and fragrance ingredients, including one of the 23 remaining authoritative lists may not make sense. Per the Senate Health Committee, the bill's disclosure requirements for fragrance allergens now only apply to allergen ingredients present at specified concentrations. The amendments further specify that those allergen ingredients "appear on the database in a unique manner that distinguishes them from other reportable ingredients and indicates that they are hazardous only to individuals who suffer from fragrance allergies." The opponents make a reasonable argument that including a fragrance allergen list on the "designated list" for disclosure for fragrance and flavor ingredients could cause confusion and inadvertently cause double reporting under two different standards.

   To address this issue, the Committee may wish to amend the bill to delete the fragrance allergen list from the flavor and fragrance ingredients "designated lists" as follows:

   ~~(W) Fragrance allergens included in Annex III of the EU Cosmetics Regulation No. 1223/2009, as required to be labeled by the EU Detergents Regulation No. 648/2004~~.

4) *Compliance timelines*. Stakeholders have also raised concerns about manufacturer compliance timelines for reporting when lists are updated with new chemicals and suggest following the language in the Cleaning Product Right to Know Act of 2017, SB 258 (Lara). SB 258 requires a manufacturer, within six months of a change to a designated trait list, to make revisions to the information disclosed pursuant to the Act.

   The Committee may wish to consider directing staff to work with the author and stakeholders on language that would address compliance timeline concerns, including providing manufacturers at least six months to comply after any of the designated lists or EU fragrance allergen list is updated.

5) *Technical amendments needed*. Several technical amendments are needed to conform with the recent Senate Health Committee amendments.

The Committee may wish to adopt the following technical amendments:

Page 7, lines 28 – 40:

(8) "Trade secret" means any fragrance ingredient or flavor ingredient or combination of fragrance ingredients and flavor ingredients for which an exemption to ingredient public disclosure has been approved by the federal Food and Drug Administration pursuant to Section 720.8 of Title 21 of the Code of Federal Regulations, or for which the manufacturer or its supplier claims protection under the Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code) and for which the manufacturer maintains justification in accordance with Section 108955. "Trade secret" does not include a fragrance ingredient, flavor ingredient, or a constituent of a fragrance ingredient or flavor ingredient that is on a designated list, as defined in paragraph (2), *or any fragrance allergen required to be disclosed under (b)(1)(B).*

Page 8, line 32 – 38:

To protect trade secrets, this section does not require a manufacturer to disclose the weight or amount of ~~a fragrance ingredient or flavor ingredient~~ *any ingredient that requires disclosure under subsection (1)(A) or (B)* or to disclose how a ~~fragrance or flavor~~ *cosmetic product or an intentionally added fragrance ingredient or flavor ingredient* is formulated. A manufacturer may protect, *as a trade secret,* and is not required to disclose, any ingredient, or combination of ingredients, that is not on a designated list *or required to be disclosed under (b)(1)(A) or (B).*

Page 9, lines 5 – 6:

(A) A list of all fragrance ingredients and flavor ingredients that are included on a designated list *and all fragrance allergens required to be disclosed under (b)(1)(B).*

Related/Prior Legislation

SB 258 (Lara, Chapter 830, Statutes of 2017) creates the Cleaning Product Right To Know Act of 2017 (Act), which requires manufacturers of cleaning products to disclose specified chemicals on a product label and on the manufacturers website.

AB 1575 (Kalra of 2017) and AB 2775 (Kalra, Chapter 393, Statutes of 2018) require a professional cosmetic manufactured on or after July 1, 2020, for sale in this state to have a label affixed on the container that satisfies all of the labeling requirements for any other cosmetic pursuant to specific federal laws. AB 1575 was held on the Senate Appropriations Committee suspense file.

AB 2125 (Chiu, Chapter 564, Statutes of 2016) requires the DTSC to publish guidelines for cities, counties, and cities and counties to voluntarily implement local healthy nail salon recognition programs.

AB 237 (Galgiani of 2011) and AB 595 (Dymally of 2007) would have required cosmetic product manufacturers that do not comply with the U.S. Food and Drug Administration (FDA) Voluntary Cosmetic Reporting Program (VCRP) to provide to DPH the same kind of information disclosed through the VCRP. AB 237 was held on the Assembly Appropriations Committee suspense file, and AB 595 was held on the Senate Appropriations Committee suspense file.

SB 1712 (Migden of 2008) would have required a manufacturer of lipstick sold in this state to provide evidence to DPH that the lipstick contains no more than an unavoidable trace of lead. SB 1712 died in the Assembly Health Committee.

AB 908 (Chu of 2005) would have prohibited a person or entity from manufacturing, selling, or distributing in commerce any cosmetic that contains any of two specified phthalates, and would have defined a cosmetic as misbranded if sold by an internet website where the list of ingredients in the cosmetic is not easily viewable before the purchase. AB 908 failed passage in the Assembly Health Committee.

AB 2012 (Chu of 2004) would have required, by January 1, 2006, the manufacturer of any cosmetic or personal care product subject to regulation by the FDA and manufactured, processed, or distributed in commerce in the state to notify California Office of Environmental Health Hazard Assessment (OEHHA) of any ingredient in its product that is a chemical identified as causing cancer or reproductive toxicity, as specified. AB 2012 failed passage in the Assembly Health Committee.

AB 2025 (Chu of 2004) would have required the manufacturer of any cosmetic or personal care product sold in California to submit to OEHHA a list of ingredients contained in the product, including the name of each ingredient for purposes of fragrance or flavoring and the name of each ingredient identified by the phrase "and other ingredients." AB 2025 would have banned a cosmetic or personal care product that contains a chemical known to cause cancer or reproductive toxicity

unless OEHHA issued a safe use determination on that product. AB 2025 was not heard in the Assembly Health Committee at the request of the author.

DOUBLE REFERRAL: This measure was heard in Senate Health Committee on April 10, 2019 and passed out of committee with a vote of 5-2.

SOURCE: Breast Cancer Prevention Partners
Black Women for Wellness
Women's Voices for the Earth

SUPPORT: 100% Pure
Able Differently
Alaska Community Action on Toxics
Alliance of Nurses for a Healthy Environment (ANHE)
American Sustainable Business Council
As You Sow
Beautycounter
Breast Cancer Action
Breast Cancer Over Time
Breast Cancer Prevention Partners
CA Coalition for Clean Air
CA Environmental Justice Alliance
CA Healthy Nail Salon Collaborative
CA League of Conservation Voters
CA Pan-Ethnic Health Network
CA Product Stewardship Council
California Baby
California Communities Against Toxics
California Health Coalition Advocacy
California Healthy Nail Salon Collaborative
California Labor Federation
Californians for a Healthy and Green Economy (CHANGE)
CalPIRG
Center for Oceanic Awareness, Research and Education (COARE)
Center on Reproductive Rights & Justice
Central California Asthma Collaborative
Citizens for Choice
City and County of San Francisco, Department of the Environment
Clean Water Action
Coming Clean

Communities for a Better Environment
Consumer Federation of California
Côte
Credo Beauty
Crunchi, LLC
DEMES Natural Products, Inc.
Earth Mama Organics
Ecology Center
EcoPlum
Eighty2degrees Design Studio
Elavo Mundi Solutions, LLC
Environmental Health Strategy Center
Environmental Working Group (EWG)
EO Products
Essential Skincare
Five Gyres Institute
Goddess Garden
Green Science Policy Institute
HAN Skin Care Cosmetics
Happy Pretty You! Reiki Salon & Spa
Healthcare Without Harm
inHarmony Naturals
Innersense Organic Beauty
Intelligent Nutrients
Juice Beauty
just the goods
Just Transition Alliance
Learning Disabilities Association of Georgia
Learning Disabilities Association of Illinois
Learning Disabilities Association of Iowa
Learning Disabilities Association of Maine
Learning Disabilities Association of Maryland
Learning Disabilities Association of New Jersey
Learning Disabilities Association of Oklahoma
Learning Disabilities Association of South Carolina
Learning Disabilities Association of Tennessee
Learning Disabilities Association of Texas
Learning Disabilities Association of Utah
Mindful Minerals
National Stewardship Action Council
Natural Resources Defense Council
Non toxic Revolution

Oregon Environmental Council
OSEA Malibu
OZNaturals
Physicians for Social Responsibility – Los Angeles
Physicians for Social Responsibility – SF Bay Area
Plastic Pollution Coalition
Regional Asthma Management & Prevention (RAMP)
Safer States
Savvy Women's Alliance
Science and Environmental Health Network (SEHN)
Seventh Generation
Seventh Generation Advisors
Sierra Club California
SkinOwl
Southern California Coalition for Occupational Safety & Health
Suntegrity Skincare
Susanne's Organics Salon
Sustain Natural
Tenoverten
UCLA Center for Study of Women
US PIRG
Women's Voices for the Earth
Woodland Coalition for Green Schools
Zorah Biocosmetiques
1 Individual

OPPOSITION: CalChamber of Commerce
California Manufacturers & Technology Association
Consumer Healthcare Products Association
Fragrance Creators Association
Personal Care Products Council

ARGUMENTS IN SUPPORT: According to Breast Cancer Prevention Partners, "BCPP has been focused for over a decade on securing more disclosure of the hidden fragrance and flavor ingredients in the personal care and beauty products that consumers and salon workers use every day. A federal labeling loophole coupled with an unregulated $84 billion cosmetic industry and a $70 billion global fragrance industry allows dozens – sometimes even hundreds – of chemicals to hide under the word "fragrance" on the product labels of beauty and personal care products. As a result, the public is exposed to a shocking number of

unlabeled, unregulated toxic fragrance and flavor chemicals from common beauty and personal care products without their knowledge or consent.

The Toxic Fragrance and Flavor Chemicals Right to Know Act of 2019 (SB574) would address this lack of disclosure by requiring manufacturers selling cosmetic products in California to publicly report any hazardous ingredient used to make a fragrance or flavor, including those linked to cancer, reproductive or developmental harm, neurotoxicity, endocrine disruption, allergies, and asthma — as well as air and water contaminants, and persistent, bioaccumulative and toxic chemicals (PBTs). The reportable information would then be made publicly available through California's Safe Cosmetics Database.

In our recent report, Right to Know: Exposing Toxic Fragrance Chemicals in Beauty, Personal Care and Cleaning Products — BCPP tested household products and revealed the presence of harmful fragrance chemicals linked to cancer, hormone disruption, reproductive harm, allergies, asthma and other respiratory problems that did not appear on the label. Shockingly, we found hat three out of four of the toxic chemicals detected in the personal care and beauty products we tested were fragrance chemicals. Flavor chemicals also pose potential harm to human health and the environment: California's Proposition 65 list features 10 chemicals used to make flavors that are carcinogens or reproductive toxicants. A total of 35 flavors are on California's Department of Toxic Substance Control's Candidate Chemicals List due to their harmful properties. As an organization committed to preventing breast cancer by reducing exposures to chemicals linked to the disease, we believe that everyone has the right to know about the presence of hazardous chemicals in the personal care and beauty products they use at work, and in the products which they purchase for themselves and their families.

ARGUMENTS IN OPPOSITION: According to the Personal Care Products Council, CA Chamber of Commerce, and CA Manufacturers & Technology Association, "we've worked collaboratively to establish the existing regulations at both the federal and state levels to provide transparency and oversight of the health and safety of all cosmetics. Under federal law, personal care product companies disclose every individual ingredient on product labels, except for the proprietary ingredients that make up a fragrance which may be listed collectively as 'fragrance' in order to protect the intellectual property associated with those ingredients.

"In addition to the federal law, the personal care products industry faces further ingredient transparency in California under California's Safe Cosmetics Act of 2005. SB 574 duplicates the work already being done under these existing

California and U.S. laws and for the following additional reasons should be rejected:

a) **It is trying to fix a problem that doesn't exist.** The belief that fine fragrances present a human health hazard is unfounded. There is a very robust, publicly available review undertaken by the RIFM panel of internationally recognized experts. Decades of consumer experience with our products demonstrate they are among the safest product category regulated by the FDA.
b) **It threatens confidential business information.** The bill, as written, does not provide adequate protection for cosmetic companies' intellectual properties.
c) **It relies on 27 "authoritative" lists, which are redundant, not grounded in sound science and could cause consumer confusion.** More than 80 percent of the lists were already included in the Cleaning Product Right to Know Act of 2017 (SB 258), which includes Prop. 65.
d) **SB 574 unfairly punishes an industry that has led the way on all intentionally-added ingredient disclosures.**
    - Since the 1960s, all cosmetics have listed on the product label the name of each cosmetic ingredient "in descending order of predominance." Thus, the ingredient present at the highest concentration is listed first, the one present at the next highest concentration is listed second, etc.
    - This label public disclosure along with use instructions is a model for effective communication with consumers."

-- END --

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

Bill No:	SB 613		
Author:	Stern		
Version:	4/4/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	David Ernest García		

SUBJECT: State agency greenhouse gas emission reduction report cards

DIGEST: This bill requires the Air Resources Board (ARB) to create and publish on its internet website a methodology for state agencies to estimate the greenhouse gas (GHG) emissions that occur throughout the life cycle of all of the food they purchase, as specified, and requires that number to be included in their State Agency Greenhouse Gas Reduction Report Card (Report Card).

ANALYSIS:

Existing law:

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

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

3) Requires, by October 1 of each year, each state agency to prepare and submit to the Secretary of the California Environmental Protection Agency (CalEPA), a State Agency Greenhouse Gas Reduction Report Card (Report Card), as specified. (Government Code §12892)

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

5) Establishes methane emission reduction goals that include targets to reduce the landfill disposal of organic waste of 50% by 2020 and 75% by 2025 from the 2014 level. (HSC § 39730.6)

6) Requires the Department of Resources Recycling and Recovery (CalRecycle), in consultation with ARB, to adopt regulations to achieve the organics reduction targets, which go into effect in 2022. (PRC § 42652.5)

This bill:

Requires ARB to create and publish on its internet website a methodology for state agencies to estimate the GHG emissions that occur throughout the life cycle of all of the food they purchase, as specified, and requires that number to be included in their Report Card.

Background

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

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

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

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

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

2) *State Agency Greenhouse Gas Reduction Report Card (Report Card).* SB 85 (Committee on Budget and Fiscal Review, Chapter 178, Statutes of 2007) was a budget trailer bill that requires CalEPA to prepare a report describing state agency actions to reduce GHG emissions. Additionally, state law further directs CalEPA to compile and organize this information in the form of a "Report Card" and post it on the CalEPA website. The reports reflect information gathered annually for actual GHG reductions occurring in the previous year. Projections of future GHG emissions are also included and current as of October 1 the previous year, when state agencies are required to submit their information to CalEPA. These Report Cards must include, among other things:

   a) A list of measures that have been adopted and implemented by the state agency with the actual GHG emissions reduced as a result of these measures.

   b) A list and timetable for adoption of any additional measures needed to meet GHG emission reduction targets.

   c) A comparison of the reductions from actions taken or proposed to be taken by a state agency to that agency's GHG emission reduction targets.

   d) An estimate of the GHG emissions from each agency's own operations and activities.

3) *Scope of emissions.* When compiling the data necessary for their Report Cards and CalEPA's accompanying report, agencies use the General Reporting Protocol for the Voluntary Reporting Program (GRP) published by The Climate Registry. In Draft Version 3.0 of the GRP from February 2019, the GRP states that it, "adheres to five overarching accounting and reporting principles that are intended to help ensure that GHG data represent a faithful, true, and fair account of an organization's GHG emissions."

These accounting principles are:

a) Relevance: Ensure that the GHG inventory appropriately reflects an organization's GHG emissions and serves the decision-making needs of users—both internal and external to the organization.

b) Completeness: Account for and report all relevant GHG emission sources and activities within the defined inventory boundary.

c) Consistency: Use consistent methodologies to allow for meaningful comparisons of emissions over time. Clearly document any changes to the data, inventory boundary, methods, or any other relevant factors in the time series.

d) Transparency: Address all relevant issues in a factual and coherent manner, based on a clear audit trail. Disclose any relevant assumptions and make appropriate references to the accounting and calculation methodologies and data sources used to allow intended users to make decisions with reasonable confidence.

e) Accuracy: Ensure that the quantification of GHG emissions is neither systematically overstating nor understating true emissions, and that uncertainties are reduced as much as practicable. Achieve sufficient accuracy enabling users of the data to be able to make decisions with reasonable assurance of the integrity of the reported information.

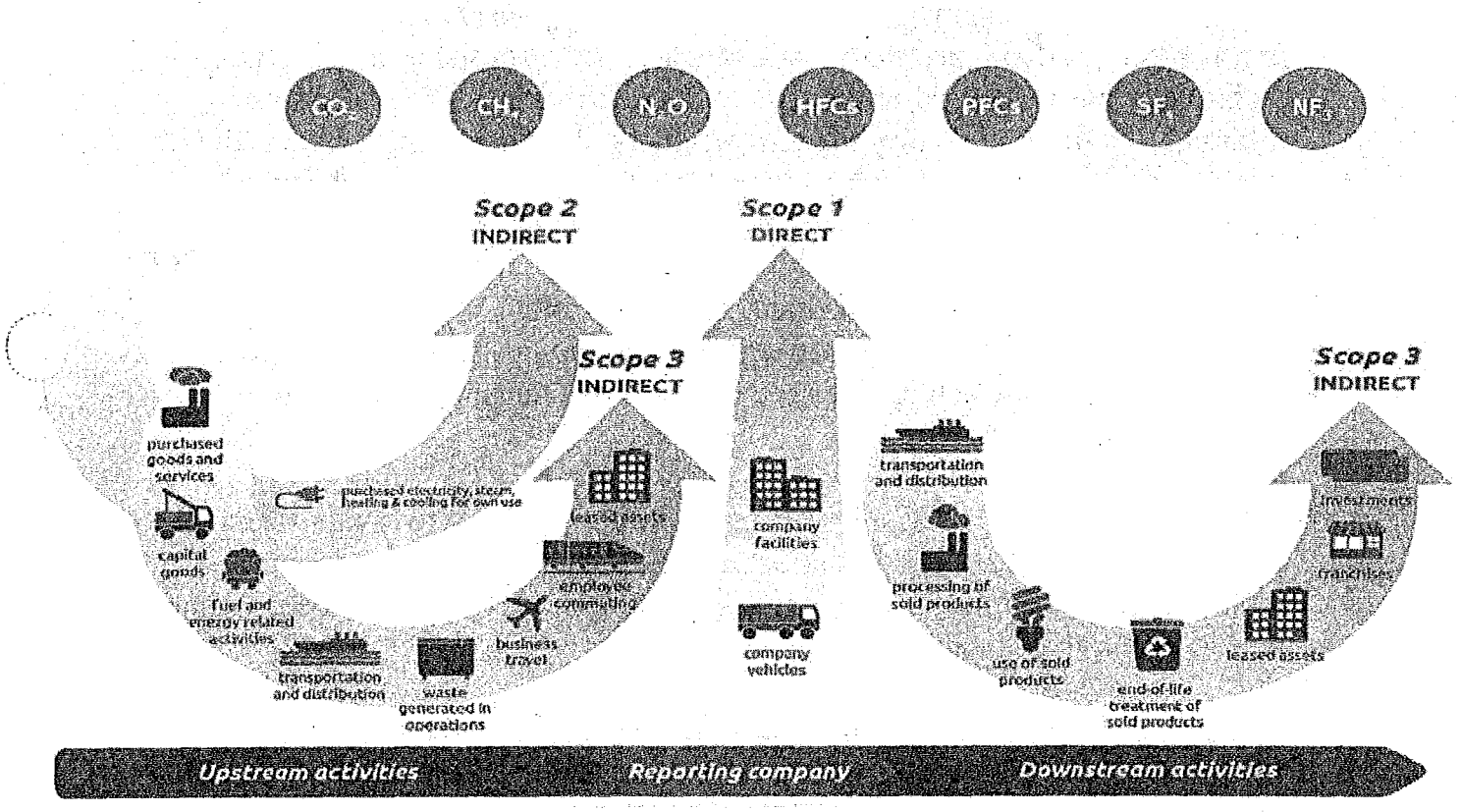
4) *What are Scope 1 and Scope 2 emissions? Are there other scopes of emissions?* When discussing what emissions should be included under the completeness principle, the GRP states, "to fulfill the GHG accounting principle of completeness, the inventory must include all relevant direct and indirect emissions within the defined reporting boundary. For the purposes of reporting to The Climate Registry (TCR), all Scope 1 and Scope 2 emissions and direct and indirect carbon dioxide emissions from the combustion of biomass are relevant, and must be included within the reporting boundary for the inventory to be considered "complete" according to TCR's criteria."

a) Scope 1: Direct anthropogenic GHG emissions.

b) Scope 2: Indirect anthropogenic GHG emissions associated with the consumption of purchased or acquired electricity, steam, heating, or cooling.

c) Scope 3: All other (non-Scope 2) indirect anthropogenic GHG emissions that occur in the value chain. Examples of Scope 3 emissions include emissions resulting from the extraction and production of purchased materials and fuels, employee commuting and business travel, use of sold products and services, and waste disposal.

Currently, as recommended by the GRP, the Report Cards and CalEPA's accompanying report only contain Scope 1 and Scope 2 emissions. The emissions targeted by this bill are one type of Scope 3 emission. The following is a graphical representation of Scope 1, Scope 2, and Scope 3 emissions:



5) *Organic waste diversion goals*. CalRecycle is tasked with diverting from landfills at least 75% of solid waste statewide by 2020. Organic materials make up over half of the waste stream (54.8%); food continues to be the greatest single item disposed, comprising approximately 18% of materials landfilled. Leaves, grass, prunings, and trimmings represent just under 7% of the total waste stream.

Local governments are required to submit Source Reduction and Recycling Elements and comprehensive annual reports to CalRecycle to identify the

programs and plans to ensure they meet the state's 50% diversion requirement for local jurisdictions and to assist CalRecycle in meeting the state's 75% diversion goal. Pursuant to AB 341 (Chesbro, Chapter 476, Statutes of 2011), generators are required to arrange for recycling services and requires local governments to implement commercial solid waste recycling programs designed to divert solid waste from businesses. AB 1826 (Chesbro, Chapter 727, Statutes of 2014), requires generators of specified amounts of organic waste (i.e., food waste and yard waste) to arrange for services to divert that material.

The primary beneficial reuse of organic waste is anaerobic digestion or composting. Anaerobic digestion is the controlled breakdown of organic matter without air, used to manage waste and/or to release energy. It is a biological process that produces an energy-rich biogas, which is used as a fuel. This technology has been used in the United States for decades in wastewater treatment facilities and dairy manure digesters. It is increasingly being used to manage the state's organic waste stream, including food waste, to generate clean energy. Digestate, the material left over at the end of the process, is similar to compost and can be composted with other material or used alone as a soil amendment. Composting is the aerobic controlled decomposition of organic material, such as leaves, twigs, grass clippings, and food scraps to produce compost, which can be used as a soil amendment and for slope stabilization.

6) *Waste reduction and GHGs*. Diverting organic waste provides significant GHG reductions over landfilling. Composting and other organics processing technologies reduce GHGs by avoiding the emissions that would be generated by the material's decomposition in the landfill.

Landfill gas is generated by the decomposition of organic materials such as food, paper, wood, and yard waste. 50% of landfill gas is methane, a GHG that is 21 times more efficient at trapping heat than carbon dioxide. While most modern landfills have systems in place to capture methane, significant amounts continue to escape into the atmosphere. According to ARB's GHG inventory, approximately 7 million tons of carbon dioxide equivalent are released annually by landfills. That number is expected to increase to 8.5 million tons of carbon dioxide equivalent by 2020.

Comments

1) *Purpose of Bill.* According to the author, "as part of our climate commitments, California requires state agencies to report their greenhouse gas emissions and

track efforts to reduce our emissions over time. Since 2008, agencies have been doing this reporting through the annual State Agency Greenhouse Gas Reduction Report Card. While the state's intention was to have comprehensive emissions reporting, a critical category of GHG emissions has been omitted: food consumption-based emissions. Globally, the food and agriculture sector accounts for at least one quarter of greenhouse gas emissions. Research has shown that we cannot meet the Paris Agreement targets without shifting toward more climate-friendly foods, and California has a responsibility to do our part. The state can use its procurement decisions to help with this shift. This legislation takes the important step of expressly requiring agencies to report the GHG emissions associated with their food purchases through the State Agency Greenhouse Gas Reduction Report Card. This will bring our climate policies in line with their intent to include a comprehensive inventory of emissions by state agencies, and fill a critical gap in our climate mitigation efforts."

2) *Role of CalRecycle.* This bill directs ARB, without input from CalRecycle, to develop a methodology for a state agency to estimate the GHG emissions that occur through the life cycle of all food purchased by state agencies. As noted in the background, the state already has organic waste diversion goals in order to reduce the GHG emission impacts from sources like food. These policies are implemented by CalRecycle because they are the agency with the expertise on organic waste.

3) *Scope of emissions.* As noted in the background, per the guidelines provided in the GRP by The Climate Registry, currently only Scope 1 and Scope 2 emissions are included in the Report Cards and CalEPA's accompanying report. SB 613 seeks to add one specific type of Source 3 emission to the Report Cards, namely, emissions relating to food.

   Other types of Source 3 emissions include employee travel (e.g., GHG emissions associated with business air travel or commuting to work).

   Questions arise as to (1) why emissions from food purchases should be singled out from other Source 3 emissions for inclusion in Report Card; (2) how this approach would further the state's organic waste diversion and GHG emission reduction goals; and (3) whether the increased costs to state agencies to develop, maintain, and use the GHG accounting methodology for food purchases to be included in Report Cards is worth it.

SOURCE: Author

SUPPORT:

None received

OPPOSITION:

None received

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

Bill No:	SB 632		
Author:	Galgiani		
Version:	4/10/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: California Environmental Quality Act: injunction vegetation treatment projects

DIGEST: Prohibits a court from enjoining or staying a project that is consistent with a vegetation treatment program for which a program environmental impact report has been certified by the Board of Forestry and Fire Protection.

ANALYSIS:

Existing state law, the California Environmental Quality Act (CEQA):

1) 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) Sets requirements relating to the preparation, review, comment, approval and certification of environmental documents, as well as procedures relating to an action or proceeding to attack, review, set aside, void, or annul various actions of a public agency on the grounds of noncompliance with CEQA.

This bill:

Prohibits a court from enjoining or staying a project that is consistent with a vegetation treatment program for which a program environmental impact report has been certified by the Board of Forestry and Fire Protection.

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.* CEQA assists in moving a project through the multi-disciplinary, regulatory process because responsible agencies rely on the lead agency's

environmental documentation in acting on the aspect of the project that requires its approval and must prepare its own findings regarding the project. A variety of issues, many of which involve permitting and/or regulatory program requirements, should be coordinated and analyzed together as a whole. CEQA provides a comprehensive analysis of a project's impacts in those subject areas.

d) *Program EIRs*. Under CEQA Guidelines Sec. 15168(a), a program EIR is an EIR prepared for a series of actions that can be characterized as one large project and that is related, among other ways, as logical parts in the chain of contemplated actions and as individual activities carried out under the same authorizing authority and having generally similar environmental effects that can be mitigated in similar ways. A program EIR can be used for a variety of purposes including avoiding multiple EIRs, simplifying later environmental review for activities within the program, and consideration of broad programmatic issues. A program EIR, like a regular EIR, must provide decisionmakers with sufficient analysis to intelligently consider the environmental consequences of a project.

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

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

Historically, California's wildfires were less severe, burning fewer acres and destroying fewer structures by factors of two and three, respectively, when compared with modern fire statistics. Additionally, fire seasons have been extending further into the winter months since 2000. The fire sieges in October and December of 2017 serve as prime examples of the expanding fire season.

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

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

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

3) *Vegetation Treatment Program.* The Board of Forestry and Fire Protection (Board) is mandated to regulate forestry activities throughout the state and to develop policies and regulations that contribute to fire prevention and recovery efforts. The Board is also charged with identifying State Responsibility Area (SRA) land and developing rules and regulations that enable CAL FIRE to prevent, respond to, and control fire events in those regions.

The Board has been working on a statewide Vegetation Treatment Program (VTP) Program EIR for over a decade. However, in January 2019, to address public concerns expressed over the potential impacts, changes in environmental conditions that the Program EIR was intended to analyze (e.g., increases in wildfire size and intensity), and CEQA processes, the Board pulled back the draft Program EIR that was issued in November 2017 and announced it would be preparing a new draft Program EIR, dubbed CalVTP, which is slated to be completed by the end of the year.

Under CalVTP, CAL FIRE would implement vegetation treatments to reduce wildfire risks and avoid or diminish the harmful effects of wildfire on the people, property, and natural resources in the State of California. To counteract decades of fire suppression, vegetation treatment activities would be designed to reduce fire fuels, improve protection from wildfire through strategically

located fuel breaks, and mimic a natural fire regime using prescribed burning. In addition, ecosystem restoration activities would be designed to approximate natural habitat conditions, processes, and values to those occurring prior to the period of fire suppression. The new Program EIR will be prepared for the proposed CalVTP.

Currently, the Board is circulating the Notice of Preparation (NOP) for the Program EIR to seek input from responsible and trustee agencies and other interested parties regarding the scope and content of the environmental information to be included in the Program EIR. According to the Board, "Since a previous draft [Program EIR] for the Vegetation Treatment Program (VTP) was released in 2017, substantial increases in wildfire size, intensity, and destructiveness to California's residents have occurred and are projected to continue to occur. As a result, the description and magnitude of treatment activities in the 2017 VTP have been modified and expanded to meet the worsening wildfire conditions being experienced."

Comments

1) *Purpose of Bill.* According to the author, "The Board of Forestry and Fire Protection proposed a Programmatic Environmental Impact Report (PEIR) for a Vegetation Treatment Program (VTP) as part of a comprehensive fire prevention strategy 12 years ago. The key objectives of the program were to prevent loss of lives and property, reduce fire suppression costs and protect natural resources from damaging wildfire through the use of appropriate vegetation treatments.

"Despite years of efforts to put forth this PEIR, threats of lawsuits and protracted litigation have prevented this PEIR from being finalized. The Board of Forestry and Fire Protection announced on January 29, 2019 that they will again try to create a sweeping environmental review to encompass projects that meet certain criteria and they hope to have it certified by the end of 2019.

"On April 12, 2019, Governor Newsom released a report on *Wildfires and Climate Change: California's Energy Future*. In it, he states, '[T]his year has all the conditions for devastating fires, with a very wet season leading to high vegetation density. During fire season, that vegetation dries out and becomes fuel.' SB 632 is consistent with this report expanding fire prevention activity by improving forest and vegetation management and accelerating fuel reduction projects on both public and private land.

"SB 632 provides that once this new PEIR is certified that the courts cannot stay or enjoin a project that is consistent with the vegetation treatment program."

2) *Tying the hands of the courts*. SB 632 limits the courts' ability to stay or enjoin a project that is consistent with a VTP for which a PEIR has been certified by the Board. Since the Cal VTP is still being developed and going through the public participation, it is difficult to determine what types of projects this would affect.

   The ability to grant injunctive relief is fundamental to the equitable nature of these court proceedings. Generally, injunctive relief is granted by a court to preserve the status quo until a determination of the merits of the CEQA challenge can be made. The ability to stay or enjoin a qualified project, whatever that project may be, during the pendency of CEQA actions or proceedings is often necessary to prevent prospective damage as well as to contain ongoing damage. Without having a better sense of what types of projects will be included in the Cal VTP and their scope, would it be prudent for the Legislature to limit the court's ability to order injunctive relief?

   The committee may wish to amend the bill to strike its contents and instead insert language directing the Cal VTP be completed and certified no later than June 30, 2020.

SOURCE: Calforests

SUPPORT:

Associated California Loggers
Calforests
California Farm Bureau Federation
California Licensed Foresters Association
Forest Landowners of California
Northern California Power Agency
Personal Insurance Federation of California
Rural County Representatives of California
San Diego Gas and Electric
Southern California Edison (SCE)

OPPOSITION:

American Bird Conservancy
Battle Creek Alliance
California Chaparral Institute
California Native Plant Society
Center for Biological Diversity
Center for Sustainable Communities
Coast Action Group
Conservation Congress
Defiance Creek Raptor Rescue
Endangered Habitats League
Environmental Protection Information Center (EPIC)
Forest Unlimited
Forests Forever Foundation
Geos Institute
Greenpeace U.S.A.
John Muir Project
Last Tree Laws
Los Padres Forest Watch
Lost Coast League
Lost Coast Ranch
Sean and Sage Audubon Society
Sequoia ForestKeeper
Sierra Club of California
Southern Oregon Prescribed Fire Network
The Chaparral Lands Conservancy
Wild Nature Institute
1 Individual

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

Bill No:	SB 633		
Author:	Stern		
Version:	2/22/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: Santa Susana Field Laboratory: monitoring program

DIGEST: This bill would require the Office of Environmental Health Hazard Assessment, on or before July 1, 2020, in coordination with specified entities, to develop and implement a monitoring program to collect data on contaminants from Santa Susana Field Laboratory that could migrate to and pollute surrounding areas.

ANALYSIS:

Existing law:

1) Under the federal Atomic Energy Act of 1954 and the Low-level Radioactive Waste Policy Act, generally vests the Nuclear Regulatory Commission (NRC) with the authority to regulate radioactive materials and wastes, and provides that the NRC may delegate authority over low-level radioactive materials and wastes (essentially all radioactive wastes other than spent nuclear fuel rods and the like) to "agreement states" including California.

2) Under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), commonly known as the federal Superfund law, provides the United States Environmental Protection Agency (EPA) with authority over the remediation of uncontrolled or abandoned hazardous-waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment.

3) Requires the Department of Toxic Substance Control (DTSC) to establish standards and regulations for the management of hazardous wastes to protect against the hazards to public health, domestic livestock, wildlife and the environment.

4) Authorizes DTSC and the California Water Quality Control Board the authority to require, oversee, and recover costs for the remediation of sites where contamination of soil and water presents a hazard to human health or the environment.

5) Authorizes the Department of Toxic Substances Control (DTSC) to compel a responsible party to take or pay for appropriate removal or remediation action necessary to protect public health and safety and the environment at the Santa Susana Field Laboratory (SSFL) site in Ventura County.

6) Prohibits the sale, lease, sublease, or other transfer of any land presently or formerly occupied by the SSFL unless the Director of DTSC certifies that the land has undergone complete remediation pursuant to specified protective standards.

This bill:

1) Requires the Office of Environmental Health Hazard Assessment (OEHHA), on or before July 1, 2020, in coordination with the State Water Resources Control Board (SWRCB), relevant regional water boards, the South Coast Air Quality Management District and DTSC, to develop and implement a monitoring program to collect data on contaminants from SSFL that could migrate to and pollute surrounding areas.

Background

1) Santa Susana Field Laboratory. The SSFL is a former nuclear research and rocket engine test facility near Simi Valley (Ventura County) that operated from 1948 until 2006. At the time of its inception, the location was fairly remote, but now it is surrounded by 500,000 people who live within 10 miles of the site.

The first commercial nuclear-power producing reactor inside the United States was built at SSFL. The reactor powered over 1,100 homes in the Moorpark area for a short period of time. SSFL, however, also became home to the first partial meltdown of a power-producing reactor in the United States on July 26, 1959.

During the partial meltdown, workers intentionally vented radioactivity into the atmosphere. As a matter of routine, radioactive and chemical wastes were burned in the open air, barrels were ignited by rifle fire, and plumes of toxic smoke traveled far beyond the site. A million gallons of trichloroethylene, a toxic solvent, was used to flush rocket engines after testing, and was then allowed to percolate into the ground and groundwater. Dozens of other toxic chemicals including PCBs, dioxins, heavy metals, volatile organic compounds, perchlorate, among other substances, heavily contaminated this site.

Over the decades of operation, the SSFL experienced numerous accidents, spills and releases that have resulted in widespread radioactive and chemical contamination of the groundwater, surface water and soil on the site and the surrounding area.

2) *Responsible Parties.* SSFL is owned by two federal agencies, the Department of Energy (DOE) and National Aeronautics and Space Administration (NASA), and the Boeing Company which assumes the liabilities of prior defense and aerospace corporations. These three entities are the responsible parties (RPs) for the cleanup of SSFL, with Boeing currently owning most of the land. In 2010, the federal government and California entered into agreements to cleanup the DOE and NASA portions, with a promise to complete the cleanup by 2017.

3) *Cleanup Update.* According to DTSC, it is completing and expects to issue a final Program Environmental Impact Report (PEIR) and a final Program Management Plan (PMP) in 2019 for the cleanup of SSFL. The PMP will serve as a roadmap for completing the cleanup and will assist in managing the complex cleanup activities. It describes how DTSC will oversee individual cleanups conducted by the three responsible parties. The PEIR describes the potential environmental impacts from cleanup activities, and identifies actions that DTSC may require DOE, NASA and Boeing to take to avoid or reduce those impacts.

The PMP and PEIR will require DOE and NASA to comply with cleanup agreements known as the 2010 Administrative Orders on Consent (AOC) for soil. These orders require DOE and NASA to clean up their areas of SSFL to natural background levels, eliminating contamination caused by SSFL while also protecting cultural and biological resources.

All three RPs are held to the 2007 Consent Order for the groundwater cleanup. Boeing is also held to the 2007 Consent Order for soil cleanup, which was the initial agreement between DTSC and the RPs to implement a risk-based cleanup that provides for safe suburban residential use of the property.

DTSC maintains that it continues to review and monitor and oversee SSFL environmental testing. If any data is found that demonstrates a threat to human health from any SSFL area, DTSC states that it will take immediate actions to stop that threat.

According to information provided by DTSC, it has overseen several cleanup activities at various areas and buildings within SSFL over the past 25 years. These cleanup activities resulted in removal and offsite disposal of over 51,000 cubic yards of contaminated soil, bedrock, sediments and other material from

SSFL. The major soil remediation and removal activities efforts conducted to date are included in the draft PMP that was released in September of 2017.

Comments

1) *Purpose of Bill.* According to the author, "There is a history of various agencies manipulating data and minimizing public health risks from this site. There is little if any public confidence in announcements made about cancer or other health risks or the potential for off-site migration of contaminants from SSFL.

   "This bill vests in the Office of Environmental Health Hazard Assessment (OEHHA), in coordination with the State Water Resources Control Board and the South Coast Air Quality Management District as well as the Department of Toxics Substances Control, a monitoring program to collect data on contaminants from SSFL that could migrate to and pollute surrounding areas.

   "OEHHA and the State Water Board and the South Coast Air Quality Management District are considered science-based and neutral agencies whose information can be relied upon by the public."

2) *Specify additional monitoring needed*? The SSFL currently performs monitoring of potential contaminant migration from the SSFL property under multiple state and local agency permits. Air, surface water, groundwater, and soil are regulated and monitored by Ventura County Air Quality Management District, Los Angeles Regional Water Quality Control Board and DTSC. However, given the extraordinary level of contamination at the site and the decades long delay in serious, meaningful cleanup, additional monitoring from a neutral, science-based agencies might help restore some public confidence.

   As the bill moves forward, the author may wish to consider providing more direction to OEHHA about what kind of additional monitoring should be conducted to avoid any duplication of existing efforts.

Related/Prior Legislation

SB 990 (Kuehl, Chapter 729, Statues of 2007) authorizes DTSC to compel a responsible party or parties to take or pay for appropriate removal or remediation action, as prescribed, necessary to protect public health and safety and the environment at the SSFL site in Ventura County. Also prohibits the sale, lease, sublease, or other transfer of any land presently or formerly occupied by the SSFL

unless the Director of DTSC certifies that the land has undergone complete remediation.

SOURCE: Author

SUPPORT:

None received

OPPOSITION:

None received

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

Bill No:	SB 647		
Author:	Mitchell		
Version:	4/11/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: Hazardous substances: metal-containing jewelry

DIGEST: This bill would revise and recast the hazardous waste control provisions relating to lead and cadmium standards for children and adult jewelry.

ANALYSIS:

Existing law:

Under hazardous waste control laws:

1) Requires the Department of Toxic Substances Control (DTSC) to regulate the handling and management of hazardous waste and hazardous materials. Specifies that a violation of the hazardous waste control laws is a crime.

2) Under Proposition 65 (the Safe Drinking Water and Toxic Enforcement Act of 1986), lists toxins that are known to the state to cause cancer and reproductive damage. Cadmium and lead are both listed on the Proposition 65 list as both a carcinogen and a reproductive toxin.

3) Prohibits a person from manufacturing, shipping, selling, or offering for sale or promotional purposes jewelry, as defined, for retail sale in the state, unless the jewelry is made entirely from specified materials that do not exceed specified lead and cadmium content limits, and imposes separate material requirements for children's jewelry, as provided.

4) Provides that the content limits in adult jewelry for electroplated metal, unplated metal, plastic or rubber, and dye or surface coating are 6%, 1.5%, 0.02%, and 0.06% of lead by weight, respectively.

5) Provides that the content limit in children's jewelry for metal, glass, ceramic, or component parts ranges from .02 - .06 of lead by weight, as specified.

6) Provides that the content limit in children's jewelry for cadmium is .03% by weight.

7) Defines "children" for purposes of these provisions to mean children 6 years of age and younger.

8) Requires a manufacturer or supplier of jewelry that is sold, offered for sale, or offered for promotional purposes to prepare a certification that attests that the jewelry does not contain a level of lead or cadmium in excess of the provided limits.

9) Provides test methods and procedures for testing jewelry for purposes of these provisions.

This bill:

1) Changes the lead content limit in children's jewelry to .01% (100 ppm) of lead by weight, excluding inaccessible component parts.

2) Creates surface coating limits in children's jewelry of .009 (90 ppm) of lead by weight and .0075 percent (75 ppm) of cadmium by weight.

3) Changes the lead content limits in adult jewelry for electroplated metal, unplated metal, and dye or surface coating to .05% (500 parts per million (ppm)) of lead by weight.

4) Revises the definition of "children" to mean persons 15 years of age and younger.

5) Defines "inaccessible" to mean not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product.

6) Provides that DTSC may establish guidance on what component parts in children's jewelry shall be considered inaccessible.

7) Requires the manufacturer or supplier certification to include additional detail about the jewelry covered by the certification, including, among other things, the dates on which, and the locations where, the jewelry was tested for purposes of certification. Because a violation of these additional certification requirements would be a crime, the bill would impose a state-mandated local program.

8) Authorizes the use of additional specified test methods to determine compliance with the standards for lead in children's jewelry.

9) Makes numerous non-substantive clean-up changes to these sections.

Background

1) *History of the Law.* In June 2004, the California Attorney General's Office and two environmental groups filed a lawsuit under Proposition 65 against several major retailers for selling jewelry containing dangerous amounts of lead without providing the required warning. The lawsuit resulted in a consent judgment with a number of jewelry manufacturers, distributors, and retailers. The settlement requires these businesses to comply with restrictions on lead in jewelry.

   Shortly after the original parties settled the lawsuit, the Legislature enacted the Lead-Containing Jewelry Law (AB 1681, Pavley). The law codifies the standards that are in the consent judgment. In 2008, the Legislature amended the Lead-Containing Jewelry Law (AB 2901, Brownley). Among other things, AB 2901 amended the definition of jewelry, extended the restrictions to promotional items, required manufacturers to provide compliance certifications, and enhanced DTSC's enforcement authority.

   After the Legislature enacted the Lead-Containing Jewelry Law to place limits on lead levels in jewelry, some manufacturers replaced lead with cadmium, which is also toxic. In response, the Legislature again modified the law, now called the Metal-Containing Jewelry Law, to include a restriction on cadmium in children's jewelry, effective January 1, 2012. In 2011, Governor Brown signed into law SB 646 (Pavley), which revised the definition of the term "jewelry" to include tie clips and clarified certification requirements for jewelry suppliers and/or manufacturers.

2) *Background on heavy metals in children's jewelry.* Lead and cadmium are toxic heavy metals that may be found in children's jewelry. Although there are no known risks to health from jewelry containing lead or cadmium touching the skin, there are serious potentially fatal risks from ingesting lead or cadmium.

3) *Health impacts of lead in children's jewelry.* Lead is used in making some children's jewelry because it is inexpensive and easily molded. It has a sweet taste that my encourage children to repeatedly chew or suck on lead-containing jewelry. Moreover, children's innate curiosity and their age-appropriate hand-

would strengthen the California's cadmium standard for children's jewelry by limiting paint and surface coating of children's jewelry to .0075% (75 ppm), which is the ASTM International standard. ASTM International is one of the largest voluntary standards developing organizations in the world. They develop technical documents that are the basis of manufacturing, management, procurement, codes and regulations for dozens of industry sectors.

5) *New age threshold.* SB 647 (Mitchell) would raise the age threshold in the definition of "children's jewelry" from jewelry intended for children six years of age and younger to children 15 years of age and younger. The age threshold matches the Canadian standard. According to a regulatory impact analysis statement from Canada's Department of Health, Canada chose the broader age limit because it is more reflective of industry marketing practices, which targets the 10-14 year "tweens-young teens" age range as a single group. Staff notes that since industry has to comply with the Canadian age standard, it should be feasible to comply with the same standard in California.

6) *Adult jewelry standard.* In 2006, AB 1681 (Pavely) set the standard for adult jewelry to no more than 6% lead by weight if it is electroplated with suitable under and finish coats and established a stricter standard for non-electroplated metals containing lead (electroplating is the practice of using electricity to coat a metal with a thin layer of another, more precious metal, and can be used to make cheap metals look expensive). In 2012, the European Union (EU) adopted a .05% lead by weight standard for any individual part of jewelry.

   The study used to justify the EU standard was prepared by the EU's European Chemicals Agency. The report analyzes how the IQ of a young child would be affected if the child mouthed lead jewelry. For more common mouthing scenarios, the study shows that jewelry meeting California's adult jewelry standard would create appreciable risks to a child's IQ. Under a chronic mouthing scenario, the study concludes that a .05% lead jewelry standard would not create appreciable risks to the child's IQ. According to the sponsor, the adult jewelry standard is important to children's health since it is not uncommon for children to have access to adult jewelry.

   This bill would adopt the EU standard, which is significantly stronger than the current state standard for adult jewelry. Again, staff would note that since the industry has to comply with the EU standard, they should be able to comply with it in California, as well.

Related/Prior Legislation

Senate Bill 646 (Pavley, Chapter 473, Statutes of 2011) deleted provisions specifying that a party that is a signatory to the amended consent judgment or a signatory to the consent judgment in the consolidated action entitled People v. Burlington Coat Factory Warehouse Corporation, et al. (Alameda Superior Court Lead Case No. RG04-162075) is deemed to be in compliance with California law. SB 646 also revised the definition of the term "jewelry" to include tie clips and clarified certification requirements for jewelry suppliers and/or manufacturers.

SB 929 (Pavley, Chapter 313, Statutes of 2010) added prohibitions for jewelry containing cadmium to the Lead-Containing Jewelry Law, updating the statute to become the Metal-Containing Jewelry Law.

AB 1681 (Pavley, Chapter 415, Statutes of 2006), created the Lead-Containing Jewelry Law, which prohibited the manufacture, shipping, sale, or offering for sale of jewelry, children's jewelry, or jewelry used in body piercing that is made from materials with more than specified levels of lead.

AB 2901 (Brownley, Chapter 575, Statutes of 2008) strengthened and expanded DTSC's enforcement authority for the Lead-Containing Jewelry Law.

SOURCE: Department of Justice, Office of the Attorney General

SUPPORT:

Breast Cancer Prevention Partners
Center for Environmental Health
Clean Water Action
Environmental Working Group
Physicians for Social Responsibility

OPPOSITION:

None received

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

Bill No:	SB 659		
Author:	Borgeas		
Version:	3/27/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	No
Consultant:	Genevieve M. Wong		

SUBJECT: California Environmental Quality Act: attorney's fees: infill housing

DIGEST: Requires the court to award reasonable attorney's fees to a prevailing party that is the respondent or real party in interest in actions or proceedings brought under CEQA for an infill housing development project.

ANALYSIS:

1) Existing law, the California Environmental Quality Act (CEQA):

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

   b) Sets requirements relating to the preparation, review, comment, approval and certification of environmental documents, as well as procedures relating to an action or proceeding to attack, review, set aside, void, or annul various actions of a public agency on the grounds of noncompliance with CEQA (PRC §21167).

2) Authorizes a court, upon motion, to award attorney's fees to a prevailing party in any action that has resulted in the enforcement of an important right affecting the public interest, if specified conditions are met (Code of Civil Procedure (CCP) §1021.5).

3) Authorizes a trial court to order sanctions if a party acts in bad faith or in a way that is frivolous or solely intended to cause unnecessary delay (CCP §128.5).

This bill requires the court, for actions or proceedings brought under CEQA on a project involving the development of housing at an infill site, to award reasonable

attorney's fees to a prevailing party, as defined by existing law, that is the respondent or real party in interest. If the respondent and real party in interest prevail on some, but not all, of the claims, requires the court to determine the attorney's fees based on the relative percentage of each claim to the entirety of the action or proceeding.

Background

1) *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.

2) *Enforcement of CEQA.* CEQA is enforced through judicial review. CEQA actions taken by public agencies can be challenged in the Superior Court once the agency approves or determines to carry out the project. CEQA appeals are subject to unusually short statute of limitations. Under current law, court challenges of CEQA decisions generally must be filed within 30 to 35 days, depending on the type of decision. The courts are required to give CEQA actions preference over all other civil actions.

3) *Attorney's fees.* CEQA makes no special provisions for attorney's fees. Many CEQA actions are brought by environmental organizations and community groups to enforce provisions of the Act for the purposes of environmental protection. If the challenge is successful, petitioners may seek attorney's fees and costs as private attorneys general under the Private Attorney General Statute (described below).

4) *Private Attorney General Statute*. In 1977, the Legislature enacted CCP §1021.5 which authorizes courts to award attorney's fees in actions to enforce important rights in the public interest and was intended to encourage litigation deemed to be in the public interest by persons acting as a private attorney general.

   The private attorney general statute allows for the award of attorney's fees to the prevailing party in order to promote actions to enforce rights affecting an important public interest. But the standard for awarding attorney's fees is demanding; the plaintiff must not only prevail, he or she must further prove that: (1) a significant benefit has been conferred on the general public or a large class of persons; (2) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate; and (3) those fees should not in the interest of justice be paid out of the recovery, if any.

   The basic purpose of the private attorney statute is to make private actions to enforce important public policies economically feasible. A fee claimant must show that the cost of legal victory exceeds the litigant's personal stake in the outcome of the matter. While the private attorney general statute does not prohibit an award of fees to prevailing project applicants, because their participation in CEQA cases is to pursue their own projects, no CEQA case to date has awarded them fees.

Comments

1) *Purpose of Bill.* According to the author, "California is experiencing a housing crisis. With so many residents struggling to find affordable housing, it is critical to evaluate CEQA and ensure that infill housing projects are constructed expediently in order to address this urgent need.

2) *Attorney's fees for developers of infill housing projects*. To date, no court has awarded attorney's fees to project applicants because their participation in the CEQA litigation is motivated by its personal stake in the outcome (i.e., – the approval and advancement of their project and, as in the case of SB 659, infill housing development projects). Requiring a court to award attorney's fees to a prevailing party that is the respondent or real party in interest would create a chilling effect on public participation in the CEQA process and undermine the exact purpose of the private attorney general statute. In *Woodland Hills Residents Association v. City Council of Los Angeles* (1979) 23 Cal.3d 917, 933, the Supreme Court explained that,

> "...[t]he fundamental objective of the private attorney general doctrine of fees is 'to encourage suits effectuating a strong [public] policy by awarding substantial attorneys' fees ... to those who successfully bring such suits and thereby bring about benefits to a broad class of citizens' . . . privately initiated lawsuits are often essential to the effectuation of fundamental public policies embodied in constitutional or statutory provisions . . . without some mechanism authorizing the award of attorneys' fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible."

In *San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 756, the California Third District Court of Appeal held that private attorney general fees are "not intended to punish those who violate the law but rather to ensure that those who have acted to protect the public interest will not be forced to shoulder the cost of litigation." *Sundance v. Municipal Court* (1987) 192 Cal.App.3d 268, 273, held that an award of attorneys' fees is not a gift. It is just compensation for expenses actually incurred in vindicating a public right."

Although specific to projects "involving the development of housing at an infill site," SB 659 sets dangerous precedent for the awarding of attorney's fees for all CEQA matters. The context of this application is especially concerning considering the parties typically involved in these types of projects – wealthy developers who can afford high-priced attorneys. An individual or neighborhood association will not be able to afford the top of the line attorneys hired by wealthy developers to protect their multi-million dollar project. And even if there are serious deficiencies of the underlying environmental review document or approval of the project, it is unlikely that an ordinary individual or neighborhood association will be willing nor can afford to take on that risk. SB 659 will create a chilling effect of individuals and organizations with legitimate environmental claims.

3) *Acting in good faith.* According to the author's fact sheet, SB 659 is aimed to ensure that all parties have an interest in acting in good faith. However, that is not the standard that the language in SB 659 imposes for awarding attorney's fees. Instead, SB 659 requires the court to award attorney's fees to a prevailing party that is a respondent or real party in interest, regardless of whether the petitioner was acting in good faith or bad faith. If the goal of SB 659 is to prevent frivolous lawsuits, the language should reflect that.

   Some have argued that the standard used for courts to award attorney's fees when a party acts in bad faith is too high. Many point to the requirement that

the actions or tactics are frivolous or solely intended to cause unnecessary delay, arguing that it sets a difficult bar to meet. Others argue that the standard needs to be maintained, otherwise it will lead to a chilling effect.

The committee may wish to amend the bill to authorize the court to award attorney's fees to a prevailing party that is a respondent or real party in interest when the court finds the petitioner used actions or tactics, made in bad faith, that are frivolous or intended to cause unnecessary delay, which would provide for a different standard for awarding attorney's fees for these infill housing development projects than what is currently provided in existing law.

Related/Prior Legislation

AB 3027 (Chavez, 2018) limited the award of attorney's fees in CEQA lawsuits to prevailing parties who are adjacent property owners, business owners, tenants, or large environmental organizations. AB 3027 failed passage in the Assembly Natural Resources Committee.

DOUBLE REFERRAL

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

SOURCE: Author

SUPPORT:

California Association of Realtors

OPPOSITION:

California League of Conservation Voters
Sierra Club of California

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

Bill No:	SB 667		
Author:	Hueso		
Version:	4/10/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	David Ernest García		

SUBJECT: Greenhouse gases: recycling infrastructure and facilities

DIGEST: This bill would require the Department of Resources Recycling and Recovery (CalRecycle) (1) on or before January 1, 2020, to develop a five-year strategy to meet the state's organic waste and diversion goals by supporting organic waste infrastructure development, and (2) on or before June 1, 2021, to coordinate with the Treasurer's Office on developing financial incentives for in-state recycling infrastructure. Additionally, requires the Treasurer to coordinate with the States of Nevada, Oregon, and Washington on infrastructure financing to support regional recycling needs, support development of interstate recycling infrastructure, and support markets for recyclable materials.

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. IWMA also requires a state agency and large state facility, for each office building of the state agency or large state facility, to provide adequate receptacles, signage, education, and staffing, and arrange for recycling services, as specified (PRC §§ 41780.01, 42921, 42924.5).

2) Establishes methane emission reduction goals that include targets to reduce the landfill disposal of organic waste of 50% by 2020 and 75% by 2025 from the 2014 level. (HSC § 39730.6)

3) Requires CalRecycle, in consultation with the Air Resources Board, to adopt regulations to achieve the organics reduction targets, which go into effect in 2022. (PRC § 42652.5)

This bill:

1) Makes findings and declarations.

2) Expands the purposes of the California Alternative Energy and Advanced Transportation Financing Authority Act to include providing an alternative method of financing for the establishment of facilities needed to develop organic waste diversion technologies.

3) Requires CalRecycle to support technology advancement and infrastructure to meet the state's 2025 organic waste reduction target and the state's recycling goals.

4) Requires CalRecycle to develop, on or before January 1, 2021, a five-year investment strategy to drive innovation and support technological development and infrastructure in order to meet the organic waste reduction targets and recycling goals, as specified.

5) Requires the investment strategy to set forth a five-year plan for the expenditure of moneys.

6) Specifies that an eligible expenditure may occur over multiple fiscal years and that CalRecycle may make multiyear funding commitments over a period of more than one fiscal year.

7) Requires the investment strategy to assess the amount of money needed to build the infrastructure necessary to achieve methane emission reduction goals that include targets to reduce the landfill disposal of organic waste of 50% by 2020 and 75% by 2025 from the 2014 level.

8) Requires the investment strategy to identify priorities and strategies for financial incentive mechanisms to help achieve organic waste reduction targets and recycling goals, as specified.

9) Requires CalRecycle, on or before June 1, 2021, to develop financial incentive mechanisms, to fund organic waste diversion and recycling infrastructure, as specified.

10) Establishes the California Recycling Infrastructure Investment Account in the State Treasury for the Treasurer to administer.

11) Requires the Treasurer, when providing any financial incentives, to do all of the following:

    a) Ensure that a recipient of a financial incentive leverages local, state, federal, and private funding sources to maximize investment in organic waste diversion and recycling infrastructure.

    b) Prioritize projects that have multiple benefits, as specified.

    c) Prioritize projects that maximize benefits while minimizing negative consequences to disadvantaged communities, as identified by CalEnviroScreen.

    d) Seek to achieve a portfolio approach to funding that supports a diverse set of projects.

12) Requires the Treasurer to coordinate with the States of Nevada, Oregon, and Washington on infrastructure financing to support the recycling needs of the region.

13) Requires the Treasurer to create an advisory stakeholder committee to support development of interstate recycling infrastructure and markets for recyclable materials.

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% 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) *Operation National Sword and market challenges for recyclable materials*. 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 recyclable plastic exports. In California, approximately one-third of recyclable 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 recyclable 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, the 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.

Earlier this month, 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 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) *Organic waste diversion goals*. CalRecycle is tasked with diverting from landfills at least 75% of solid waste statewide by 2020. Organic materials make up over half of the waste stream (54.8%); food continues to be the greatest single item disposed, comprising approximately 18% of materials landfilled. Leaves, grass, prunings, and trimmings represent just under 7% of the total waste stream.

Local governments are required to submit Source Reduction and Recycling Elements and comprehensive annual reports to CalRecycle to identify the programs and plans to ensure they meet the state's 50% diversion requirement for local jurisdictions and to assist CalRecycle in meeting the state's 75%

diversion goal. Pursuant to AB 341 (Chesbro, Chapter 476, Statutes of 2011), generators are required to arrange for recycling services and requires local governments to implement commercial solid waste recycling programs designed to divert solid waste from businesses. AB 1826 (Chesbro, Chapter 727, Statutes of 2014), requires generators of specified amounts of organic waste (i.e., food waste and yard waste) to arrange for services to divert that material.

The primary beneficial reuse of organic waste is anaerobic digestion or composting. Anaerobic digestion is the controlled breakdown of organic matter without air, used to manage waste and/or to release energy. It is a biological process that produces an energy-rich biogas, which is used as a fuel. This technology has been used in the United States for decades in wastewater treatment facilities and dairy manure digesters. It is increasingly being used to manage the state's organic waste stream, including food waste, to generate clean energy. Digestate, the material left over at the end of the process, is similar to compost and can be composted with other material or used alone as a soil amendment. Composting is the aerobic controlled decomposition of organic material, such as leaves, twigs, grass clippings, and food scraps to produce compost, which can be used as a soil amendment and for slope stabilization.

4) *Waste reduction and GHGs*. Diverting organic waste provides significant GHG reductions over landfilling. Composting and other organics processing technologies reduce GHGs by avoiding the emissions that would be generated by the material's decomposition in the landfill.

   Landfill gas is generated by the decomposition of organic materials such as food, paper, wood, and yard waste. Fifty percent of landfill gas is methane, a GHG that is 21 times more efficient at trapping heat than carbon dioxide. While most modern landfills have systems in place to capture methane, significant amounts continue to escape into the atmosphere. According to ARB's GHG inventory, approximately 7 million tons of carbon dioxide equivalent are released annually by landfills. That number is expected to increase to 8.5 million tons of carbon dioxide equivalent by 2020.

Comments

1) *Purpose of Bill.* According to the author, "California is facing a crisis due to a lack of infrastructure for local jurisdictions to meet our solid and organic waste diversion goals. In 2016, the Legislature passed SB 1383 (Lara), which set an organic disposal reduction target of 50% percent by 2020 and 75% by 2020. By

2020, Californians must dispose of no more than 2.7 pounds per day in order to meet the statewide 75% recycling goals. That's a reduction of almost 24 million tons per year. The lack of organic waste infrastructure is only one part of the equation. In 2018, China enacted strict contamination limits and an import ban on various types of solid waste, plastics and unsorted mixed papers. This has led to the stockpiling of materials at solid waste and recycling facilities in California. Previously, our recycling policies were built around the idea that China would buy our recyclable materials, but now California must take the necessary steps to address this decline and ensure we have the necessary tools to meet our recycling needs. Unfortunately, local jurisdictions do not have the resources to effectively handle these compounding issues. California needs to invest in domestic markets as well as partner with local and private entities to address this crisis. SB 667 addresses this by requiring CalRecycle to develop a five year investment strategy for infrastructure necessary to meet our organic and solid waste reduction goals. Through this strategy, California can develop the infrastructure necessary to properly manage all of our waste as our recycling needs increase."

2) *The right person for the job?* SB 667 requires the Treasurer to coordinate with the States of Nevada, Oregon, and Washington on infrastructure financing to support the recycling needs of the region. SB 667 also requires the Treasurer to create an advisory stakeholder committee to support development of interstate recycling infrastructure and markets for recyclable materials.

   Given CalRecycle's expertise in dealing with recycling, a question arises as to why the Treasurer should be given these tasks without coordination from CalRecycle.

   The Committee may wish to amend the bill to require the Treasurer to consult with CalRecycle when performing these duties.

SOURCE: Author

SUPPORT: Athens Services
California League of Cities
California State Association of Counties
Recology
Renewable Natural Gas
Republic Services
Rural County Representatives of California

StopWaste
Western Placer Waste Management Authority

OPPOSITION: None received

-- END --

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

Bill No:	SB 690		
Author:	Hueso		
Version:	3/27/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: Water quality: Tijuana River

DIGEST: This bill would require the San Diego Regional Water Quality Control Board to negotiate an interagency agreement with the federal government under which the Department of Water Resources would be responsible for the planning, design, permitting, and construction of the Tijuana River Border Control Project.

ANALYSIS:

Existing federal law under the Clean Water Act (CWA):

1) Establishes the structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.

2) Makes it unlawful to discharge any pollutant from a point source into navigable waters, unless a permit was obtained.

3) Establishes the National Pollutant Discharge Elimination System (NPDES) permit program to regulate point source discharges of pollutants into US waters. An NPDES permit sets specific discharge limits for point sources discharging pollutants into US waters and establishes monitoring and reporting requirements as well as special conditions.

4) Authorizes states to implement and enforce the NPDES permit program as long as the state's provisions are as stringent as the federal requirements. In California, the State Water Resources Control Board (SWRCB) is the delegate agency responsible for the NPDES permit program.

Existing state law, under the Porter-Cologne Water Quality Control Act (Porter-Cologne):

1) Establishes the SWRCB and regional water quality control boards to preserve, enhance, and restore the quality of California's water resources and drinking

water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations.

This bill:

1) Makes numerous findings and declarations regarding the public health and environmental impacts of the discharge of raw sewage and other waste through the Tijuana River Valley (TRV).

2) Requires the San Diego Regional Water Quality Control Board (San Diego Water Board) to negotiate an interagency agreement with the federal government under which the Department of Water Resources would be responsible for the planning, design, permitting, and construction of the Tijuana River Border Control Project.

3) Requires that the state share of funding for the project equals the federal share, and would require that the proposed interagency agreement to make the federal government responsible for the ownership, operation, and maintenance of the project after it has been constructed.

4) Defines "Tijuana River Border Pollution Control Project" as the waste capture and diversion structure that is located at the main channel of the Tijuana River between Dairy Mart Road and the United States-Mexico border intended to capture sediment, solid waste, and polluted flows in the Tijuana River.

Background

1) *Pollution problems in the TRV.* The Tijuana River watershed straddles the international border between the United States and Mexico. The Tijuana River flows through highly urbanized areas in Mexico before entering into the Tijuana Estuary and the Pacific Ocean through San Diego in the United States. The Tijuana Estuary is the largest functioning wetland in southern California, providing habitat for at least six endangered species and many threatened species of wildlife and vegetation. It is an exceptionally rich and invaluable natural resource designated as a "Wetlands of International Importance" by the United Nations. The lower six miles of the Tijuana River and the Tijuana Estuary (collectively referred to as the Tijuana River Valley) are listed as impaired water bodies (referred to as "303(d) listed water bodies) pursuant to the CWA due to excessive levels of bacteria, heavy metals, trash, and sediment among other pollutants. As a result of the presence of these pollutants, water quality objectives are not attained in the TRV and numerous designated

beneficial uses are impaired; most importantly, those associated with protection of aquatic life and protection of human health.

The San Diego Water Board is required to develop total maximum daily loads (TMDLs), or an alternative approach with comparable results, for all impaired waters. A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality objectives. Pursuant to State Policy, when adopting TMDLs, the Water Board must also identify an implementation strategy designed to attain the TMDL and water quality objectives and restore beneficial uses in impaired waters.

2) *The International Boundary and Water Commission (IBWC).* Pursuant to a 1944 Treaty entered into by the United States and Mexico, the IBWC was created and authorized to work to address and resolve water quality issues at border and transborder rivers and streams. The IBWC consists of two sections – the United States Section (USIBWC) and the Mexico Section. Each section has exclusive jurisdiction and control on its respective side of the border over works constructed, acquired, or used in the fulfillment of its obligations under the 1944 Treaty.

3) *IBWC Minute 283 and the NPDES Permit.* Pursuant to the 1944 Treaty, the U.S. and Mexico Sections can amend the treaty by issuing Minutes, which must be approved by both countries. IBWC Minute 283 titled "Conceptual Plan for the International Solution to the Border Sanitation Problem in San Diego, California/Tijuana, Baja California, approved on July 2, 1990 by both governments, provided the framework for designing, constructing, and operating an international sewage collection system and secondary treatment plant to attempt to mitigate the significant threat to beneficial uses caused by uncontrolled and untreated discharges of waste across the border. Minute 283 laid the foundation for the construction and operation of the South Bay International Wastewater Treatment Plant (SBIWTP), a secondary treatment sewage plan owned by the USIBWC and initiated concrete actions to address the uncontrolled sewage that continuously flows from Mexico to the United States.

The San Diego Water Board's early regulation of the SBIWTP in 1996 after the facility's initial construction was the Board's first border-related priority to address significant cross-border flows of untreated sewage and associated water quality and public health risks posed by the above mentioned pollutants. On June 26, 2014, the San Diego Water Board adopted updated waste discharge requirements and NPDES permit for the USIBWC's discharges of

secondary treated wastewater from the SBIWTP to the Pacific Ocean.

4) *Sedimentation and Trash.* With the sewage treatment plant on-line to mitigate the single greatest threat, the San Diego Water Board turned its attention to its next and current highest border priority, the restoration of TRV due to excessive sedimentation and trash. In addition to their direct impacts, sediment and trash also convey numerous other pollutants to the river and estuary due to the strong tendency of many pollutants to bind to sediment particles and trash. For this reason, reduction of sediment and trash flows will also reduce the introduction of numerous other pollutants to the Valley. Accordingly in 2007, the San Diego Water Board initiated the development of a sedimentation and trash TMDL for the TRV, and the USEPA funded a preliminary investigation of the problem.

5) *Tijuana River Valley Recovery Team.* The San Diego Water Board convened its first sediment and trash workshop with stakeholders in June 2009 which led to the creation of the TRV Recovery Team (Recovery Team or TRVRT), a consensus-based collaboration of over thirty federal, state, and local government agencies, environmental and science communities, and other interested organizations and stakeholders from both sides of the border. Common amongst all members was the desire to address sediment and trash flows which degrade valuable estuarine and riparian habitats, threaten life and property from flooding, and impact recreational opportunities for residents and visitors in the TRV.

6) *Recovery Strategy.* In January 2012, the TRVRT published its "Recovery Strategy: Living with the Water." The purpose of the Recovery Strategy is twofold. First, it is intended to be a concise summary of the first phase of actions to cleanup the Valley and restore its beneficial uses. Second, it is intended to outline the steps in a way that will allow stakeholders, policy makers, and potential funding sources have a clear understanding of both the problems and the solutions that will allow the Recovery Team to achieve its vision and mission. Finally, the Recovery Strategy acknowledges that resolution to the sediment and trash problems will require partnerships between the U.S. and Mexico to provide watershed-based solutions. The Recovery Team recognizes that source control and pollution prevention activities are often the best and most economically feasible long-term solutions to sediment and trash and other water quality problems.

   The Recovery Team identified seven Priority Action Areas for work in the initial phase of Recovery: (1) Partner with Mexico to Implement Optimum, Watershed-based Solutions; (2) Understand How Water, Sediment and Trash

Flow; (3) Reduce Sources of Sediment and Trash; (4) Implement Sediment and Trash Capture Devices in the Watershed; (5) Fund and Perform Ongoing Operations and Maintenance (O&M); (6) Involve and Inform the Community in Mexico and U.S.; and (7) Protect and Enhance Natural Resources.

Comments

1) *Purpose of Bill.* According to the author, "For more than 30 years, the Tijuana River Valley has experienced an increased discharge of trash, sediment, and wastewater generated because of sewage infrastructure inadequacies. In February of 2017, one of the largest spills occurred, resulting in 143 million gallons of raw sewage flowing into the Tijuana River Valley. The discharge of raw sewage and other waste through the Tijuana River Valley poses serious public health risks from untreated and partially treated human and industrial wastewater that contains toxins and bacterial and viral pathogens, E. coli, vibrio and salmonella, all of which have been detected in the surf zone of the Tijuana River during wet weather. This has been such a pervasive problem that the City of San Diego has declared a continued state of emergency since 1993. Our pristine resources and endangered species cannot survive continued exposure to wastewater and other trash. Our economy cannot continue to be stunted by constant beach closures that drive down the value of our homes and prevent access to our coastal resource. SB 690 addresses this by creating the infrastructure necessary to protect the health and welfare of Californians and controlling pollution at the Tijuana River."

2) *A long history of pollution poses serious threats.* The TRV has a decades-long history of water quality issues. Significant improvements in the arena of wastewater treatment have in recent years improved water quality on both sides of the border. However, stormwater flows continue to bring substantial amounts of sediment and trash and other contaminants into the Valley from sources in both the US and Mexico. The sediment and trash pollutants cause water quality impairments, threaten life and property from flooding, degrade valuable riparian and estuarine habitats, and impact recreational opportunities for residents and visitors.

   Many public agencies and non-profit organizations have worked tirelessly on both sides of the border to resolve the Valley's water quality issues. They have held cleanups, built a sediment basin, piloted trash capture devices, executed ecosystem restoration activities, purchased land, and performed many other projects.

   Cleaning up sediment and trash in the Valley should be a high priority. Since

many of the sources of sediment and trash are outside of the US, continuing to pursue a collaborative, stakeholder-led approach to address these problems makes sense.

3) *State sues the USIBWC.* Despite decades of working with the USIBWC towards a solution, it has repeatedly failed to stop transboundary flows and protect local communities from massive pollutant discharge. As a result, on May 14, 2018, the California Attorney General and the San Diego Water Board submitted a 60-Day Notice of Intent to Sue the USIBWC for violations of the CWA and the USIBWC's NPDES permit for allowing more than 12 million gallons of wastewater, since 2015, that flows from the Tijuana River Watershed in Mexico into California to go untreated.

4) *Needs assessment of TRV.* In 2017, the Legislature passed and the governor signed SB 507 (Hueso) which, among other things, appropriated $500,000 to the County of San Diego for a needs assessment of the TRV related to wastewater and runoff. The draft study, expected later this month, identifies the 26 priority projects. The proposed project in SB 690 is included in the list of priority projects.

5) *Policy/Budget Issues for Consideration.* As currently contemplated, the bill requires the San Diego Water Board to negotiate an agreement with the federal government whereby the Department of Water Resources (DWR) would be responsible for the planning, design, permitting, and construction of the Tijuana River Board Pollution Control Project (Project). The intended project was also identified at the December 12, 2017, USIBWC Workshop as a priority project to address cross-border pollution from USIBWC's facilities and/or conveyances to the TRV. Workshop participants included the Department of Justice, Environmental Protection Agency, Department of State, the cities of Imperial Beach, National City, the County of San Diego, the San Diego Unified Port District, and the San Diego Water Board. The Project is supported by a number of existing planning processes and outlined below:

   Control cross-border pollution in the main channel of the Tijuana River

   a) The USIBWC will construct, operate, and maintain a main river channel solid waste capture and/or runoff interception and diversion structure(s). Such a project should include the following infrastructure or improvements to existing infrastructure:

      i) Sediment basin(s);

ii) Trash boom(s) or other form of solid waste capture;

iii) Conveyance/pumping system to divert dry weather flows and small wet weather flows to the South Bay International Wastewater Treatment Plant (SBIWTP) for treatment;

iv) Expand treatment capacity at SBIWTP.

b) The USIBWC will prioritize securing the funding necessary to complete its feasibility study for sediment basins as described in its December 11, 2017 Scope of Work, with the following additional considerations:

i) The third "sediment basin" to be analyzed should be a canyon collector and/or diversion structure in Yogurt Canyon to convey cross-border flows to SBIWTP; and

ii) The feasibility study should include a trash boom(s) in the main channel, similar to the trash booms installed at Smugglers Gulch.

Staff notes that while the project outline above directs the USIBWC to *construct* the interception and diversion structure, the bill makes DWR responsible. *Since the USIBWC is the lead agency for implementing water treaty obligations with Mexico related to sewage and other pollutants and the associated water quality problems in the Tijuana River watershed, the Committee should consider whether the state and DWR should take on that role or whether it is more appropriate left in the hands of the USIBWC.*

The bill also requires that the agreement with the federal government stipulate the state share of funding for the Project be equal to the federal share. *It is important to note that the funding of such infrastructure projects is more appropriately under the purview of the Budget Committee.* Committee staff understands that the author has a companion request pending before the Senate Budget Subcommittee #2 on Resources, Environmental Protection, Energy, and Transportation requesting $15 million from Proposition 68 for the Project. According to the author, the Project is estimated to cost $30 million.

To address these concerns, the Committee may wish to consider amending the bill to replace Section 2 with the following:

a) The San Diego Regional Water Quality Control Board shall, to the extent feasible, negotiate an interagency agreement with the federal

government that addresses transboundary flows of waste from Mexico. The agreement shall provide that the federal government:

1) Take the lead role in constructing a waste capture and/or runoff interception and diversion structure(s) to significantly reduce waste streams from Mexico.

2) Seek funding authorization to cover the federal share of costs for this purpose.

3) Take responsibility for the ownership, operation, and maintenance of the structure after it has been constructed.

b) The state share of costs for the construction of the structure(s) described in subdivision (a) shall equal the federal share, subject to an appropriation in the state budget.

Related/Prior Legislation

SB 507 (Hueso, Chapter 542, Statutes of 2017) appropriated $500,000 to the County of San Diego to conduct an update to the 2012 Tijuana River Valley Recovery Team's "Recovery Strategy: Living with the Water" to include issues related to wastewater and runoff and a study focused on the improvement and protection of natural lands, including the main river channel, in the TRV.

SCR 90 (Hueso, Resolution Chapter 80, Statutes of 2014) declared the Legislature's intent to work with the TRV Recovery Team to take various actions to protect and preserve the TRV, to encourage collaboration with the team to protect and enhance our natural resources through improved management of sediment and trash, flood control, and ecosystem management.

SOURCE: Author

SUPPORT: Azul

OPPOSITION: None received

-- END --

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

Bill No:	SB 724		
Author:	Stern and Glazer		
Version:	2/22/2019	**Hearing Date:**	4/24/2019
Urgency:	Yes	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: The California Beverage Container Recycling and Litter Reduction Act

DIGEST: Amends California's Bottle Bill Program to provide temporary financial assistance to recycling centers while providing exemptions to dealers from various consumer redemption opportunities.

ANALYSIS:

Existing law, the California Beverage Container Recycling and Litter Reduction Act (Bottle Bill):

1) Requires beverage containers, as defined, sold in-state to have a California redemption value (CRV), as specified (Public Resources Code (PRC) §145560).

2) Requires the California Department of Resources Recycling and Recovery (CalRecycle) to annually designate all "convenience zones." (PRC §§14509.4, 14571.1) and requires, in a unserved convenience zone, dealers in the zone to either: a) redeem empty beverage containers; or, b) pay CalRecycle an in-lieu fee of $100/day until a recycling location is established (PRC §14571.6).

3) Authorizes CalRecycle to grant an exemption for a convenience zone based on specified conditions (PRC §14571.8).

4) Requires CalRecycle to establish a processing fees and processing payments (PRC §14575).

5) Requires CalRecycle to pay handling fees to certain types of recyclers to provide an incentive for the redemption of empty beverage containers in a convenience zone (PRC §14585).

6) Requires CalRecycle to pay handling fees to supermarket sites, non-profit convenience zone recyclers, and rural region recyclers to provide an incentive for the redemption of empty beverage containers in a convenience zone (PRC §14585).

This bill:

1) Exempts specified dealers from the requirement that dealers within an unserved zone either (a) redeem empty beverage containers or (b) pay a per day fee.

2) Exempts specified dealers that are located in specific recently unserved convenience zones from Bottle Bill redemption requirements until 2022.

3) Creates an automatic exemption for a convenience zone that has a certified recycling center located within one mile of the zone and limits the number of exemptions that can be granted to 50% of the total number of eligible zones.

4) Requires, for purposes of calculating processing payments, CalRecycle to use the costs of recycling that were in effect on December 30, 2015, and to use a certain formula in calculating the reasonable financial return. Prohibits, until December 31, 2019, CalRecycle from imposing a processing fee on beverage manufacturers that is higher than what would be imposed under existing law.

5) Requires CalRecycle to offer a handling fee to a recycler that begins operating a recycling center within an unserved zone, regardless of physical location of the recycling center.

6) Authorizes supplemental handling fee payments to low-volume recycling centers and recyclers willing to open a recycling center in a recently unserved convenience zone.

7) Authorizes CalRecycle to withhold payments to curbside programs and neighborhood dropoff programs in local jurisdictions that have prohibited the siting of a recycling center, caused a recycling center to close, or adopted a land use policy that restricts or prohibits the siting of a recycling center within its jurisdiction.

8) Requires CalRecycle to convene a public hearing to discuss guidelines for when CalRecycle could withhold payment to a local jurisdiction that prohibited the siting of a supermarket site, caused a supermarket site to close its business,

or adopted a land use policy that restricts or prohibits the siting of a supermarket site.

9) Declares this bill an urgency measure.

Background

1) *Background on the Bottle Bill program.* The Bottle Bill was established by AB 2020 (Margolin, Chapter 1290, Statutes of 1986) to be a self-funded program that encourages consumers to recycle beverage containers to prevent littering. The program accomplishes this goal by requiring consumers to pay a deposit CRVfor each eligible container purchased that is refunded when an eligible container is returned to a certified recycler. Statute includes two main goals for the program: (1) reducing litter; and, (2) achieving a recycling rate of 80% for eligible containers.

   Over the years, various concerns about the program have been raised such as the structural deficit, the effectiveness of some supplemental programs supported by the program, fraud, and whether some offsets support the goals of the program.

2) *Recycling convenience zones.* Convenience zones are intended to provide consumers opportunities to redeem containers near where beverages are purchased. According to CalRecycle, a convenience zone is typically a half-mile radius with the center point originating at a supermarket that: a) Is identified in the Progressive Grocer Marketing Guidebook; b) Has gross annual sales of $2 million or more; and, c) Is considered a "full-line" store that sells a line of dry groceries, canned goods, or non-food items and perishable items.

   In some instances, a convenience zone may be larger than a half mile. For example, an interested person may petition CalRecycle for a three-mile convenience zone to be created in a rural region when there are at least two dealers within three miles of a singular recycling center, and where the dealers are a mile or less apart and have an aggregate sales volume of at least $2 million gross annual sales.

   Recycling centers are privately owned and operated by individuals, profit, and nonprofit organizations. They are certified by CalRecycle and must adhere to standards to help provide the public the service they need (e.g. operating at least 30 hours per week and signs depicting prices paid for beverage containers).

6) *Market challenges for recyclable materials.* The US has not developed significant markets for recycled content materials, including plastic and mixed paper. Historically, China has been the largest importer of recyclable materials. According to the International Solid Waste Association, China accepted 56% by weight of global recycled plastic exports. In California, approximately one-third of recyclable material is exported; and, until recently, 85% of the state's recyclable 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 recyclable 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 recyclable materials that are not banned will be required to include no more than 0.5% contamination. Other southeast Asia countries, such as Vietnam and Indonesia, that have historically accepted recyclable materials from the United States, are beginning to follow China's lead and implement their own restrictions on imported recyclable commodities.

In January of this year, the 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 2019, 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 (PP), and more. After China's implementation of National Sword policy, India 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.

Comments

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

"California's beverage container recycling infrastructure and consumers opportunity to recycle is in the midst of a three year crisis initiated by a global decline in scrap values but perpetuated by the failure of California program payments to keep pace and offset revenue loss.

"The crisis has seen a closure of 38% of recycling centers—more than 127 cities and 2 counties have no operating centers, and hundreds of other communities are underserved. The closures have resulted in a 10% drop in recycling rates.

"The crisis has underscored the fact that more than half of beverage containers generated in the state are consumed outside the home and, thus, not available to the curbside system. In addition to consumer redemption, the buyback network supports container recycling by school and church groups, litter clean-up efforts, non-profits and commercial collection. According to CalRecycle, just 10% of beverage container recycling occurs via curbside.

"SB 724 is aimed at addressing this crisis by restoring support for the recycling infrastructure to 2015 levels, and providing CalRecycle with new incentives and authority returning recycling to unserved/underserved communities. This measure will help maximize beverage container recovery, expand consumer convenience, and ensure that every container generated has the opportunity to be recycled into a new product. To do so, the bill contains three key elements to stabilize the recycling marketplace:

1. Restore recycling incentives to the infrastructure (buy back, drop-off, collection and curbside) to 2015 level (reflective of statutory cost-of-living and the reasonable financial return adjustments);
2. Refocus CalRecycle resources on bringing recycling opportunities to unserved communities, while providing temporary relief to some dealers faced with take-back requirements at no fault of their own; and
3. Require CalRecycle to develop recommendations to the Legislature to ensure that program payments are adequate to maintain the state's recycling infrastructure.

"This bill is virtually identical to SB 452 which was vetoed by Governor Brown in 2018. SB 452 had bipartisan support and only 2 no votes. It was apparently

vetoed because it lacked a solution to a potential future program budget shortfall. However, the most recent Financial Report to the legislature indicates that the programs account Fund Balances presently exceed $370 million, and the Department is projecting that in the 2019-20 Budget year the program will add an additional $64 million.

"This bill is not intended to be a comprehensive solution, but I am interested in working with the Administration to develop one. This bill would stabilize the recycling marketplace, provide immediate, temporary relief to California's retailers and grocers affected by the 2016 recycling center closures, and ensure consumers have local redemption opportunities. These are issues that need to be resolved today and buy us the time needed to look more broadly at the program."

2) *Nearly identical to SB 452 (Glazer, 2018).* During the last week of session last year, this committee heard SB 452. The committee analysis for that bill discussed many concerns of the bill including, among others, significantly reducing the consumer's ability to conveniently redeem their CRV deposit, conflicting provisions that would be impossible for CalRecycle to implement, and removing many dealers from the program, thus no longer providing those dealers with an incentive to be a part of the discussion when it comes to comprehensive reform. Because this bill is nearly identical to SB 452, those same concerns apply to this bill.

   According to the author's statement, SB 452 was vetoed because "it lacked a solution to a potential future program budget shortfall." In his veto message, Governor Brown stated,

   > "SB 452 is inconsistent with the Administration's principles for reforming and modernizing this program, which was created in 1986. Any legislation to update these statutes should balance three different components: fiscal sustainability, improved collection and incentives for innovative recycling. … This bill does not accomplish any of these goals."

   Due to time constraints last year, this committee was unable to suggest amendments to address the various concerns brought up in its analysis. Rather than rehash all of those concerns, which still apply to SB 724, this analysis will include potential amendments to address those concerns.

3) *Three year relief for recycling centers.* SB 724, like SB 452, attempts to prevent the closure of recycling centers by temporarily (1) fixing the cost of recycling at a certain rate to affect the amount of the processing payment that is

paid to the recycling centers, (2) freezing the handling fee at a certain rate, and (3) providing supplemental handling fees to low-volume recyclers and recyclers willing to open a recycling center in an unserved convenience zone.

The concern with temporarily fixing the cost of recycling to manipulate a higher processing payment and freezing the handling fee at a certain rate is that these temporary fixes don't help the Bottle Bill program, as a whole, run better. Instead, these "band-aids" kick the can down the road, in hopes that it is enough to keep recycling centers open and that a comprehensive reform will be figured out by then.

4) *Dealers – a backstop if there are no recycling centers available.* Current law provides that when a convenience zone does not have a recycling center operating, the responsibility to redeem then falls on the dealer (i.e. retail establishments that sell the beverage containers). Most commonly, these are grocers but other dealers include gas stations, liquor stores, Targets, and membership bulk stores that sell beverages that are subject to a CRV. Some argue that smaller dealers, such as gas stations, convenience stores, and liquor stores, were never intended to be subject to the takeback requirements of the bottle bill. SB 724 would exempt small dealers from these takeback requirements.

5) *Exempt convenience zones.* SB 724 exempts unserved convenience zones that have a certified recycling center located within one mile of the unserved zone. In August 2018, there were an estimated 1,686 convenience zones that would qualify for this automatic exemption. Additionally, SB 724 would limit the number of convenience zone exemptions CalRecycle can grant to 50% of the eligible zones. In August of 2018, there were 2,442 eligible zones identified, therefore CalRecycle would have been limited to granting 1,221 exemptions. Thus, CalRecycle would have been required to grant 1,686 convenience zone exemptions under one provision, but at the same time only permitted to grant 1,221 convenience zone exemptions under another provision.

The intent behind these provisions is likely to address the fact that many convenience zones overlap, and to provide some relief to dealers from the takeback requirements. As shown, however, this has the potential to be an unworkable method.

The committee may wish to amend the bill to remove the paradox by removing the provision requiring CalRecycle to grant an exemption for an unserved convenience zone that has a recycling center within one mile of the zone.

6) *Dealing with National Sword.* The shift in policy of international markets have resulted in a major disruption in recycling commodities markets, making it apparent that California can no longer be primarily reliant on exports to manage its recyclable materials. National Sword's imposition of a ½ percent contamination limit makes many of California's recyclable material ineligible for exportation to that country, contributing to stockpiling of recyclable materials or recyclable materials going to landfills.

   Beverage containers that are collected through curbside recycling often exceed the contamination limit due to food contamination and being mixed with other types of materials, and thus are ineligible for export. In comparison, the beverage containers that are collected through CRV redemption have lower contamination rates due to the separation of materials.

   The further decrease of redemption opportunities through recycling centers could hinder the state's ability to export recyclable materials to foreign markets, contributing to the state's current recycling dilemma.

Related/Prior Legislation

SB 452 (Glazer, 2018) is nearly identical to this bill. The committee heard the bill under Senate Rule 29.10 and the bill passed this committee with a vote of 7 – 0. SB 452 was vetoed by the Governor.

SOURCE: Californians Against Waste

SUPPORT:
1 x 1 Recycling Company
Action Metal Recycling, Inc.
AMD Recycling, Inc.
American Recycling
Blue Font Recycling
California Association of Local Conservation Corps (CALCC)
California Fuels & Convenience Alliance
California Grocers Association
California League of Conservation Voters
California Recycling Services Corp.
California Refuse Recycling Council (CRRC), Northern District
California Retailers Association
California State Association of Counties

Californians Against Waste
Campo Recycling Center
Capital City Recycling
CB's Wrightwood Recycling
Ceres Recycling
City and County of San Francisco, Department of the Environment
City of Los Angeles, City Council Member, 5th District
Contreras Recycling
CR&R Recycling
Crown Metals
D.C. Metals & Recycling
Dan Regan Recycling
Delta Scrap and Salvage
First Blessed Recycling
GE Recycling Company
Green Bull Recycling
Green Earth Recycling
Green Zone Recycling
Lakeside Metals
Martins Recycling
Merced Recycling
Ming's Resource East Bay Corp.
Modesto Junk
Northern District of the California Refuse Recycling Council (CRRC)
Northern Recycling & Waste Services
One by One Recycling
Our Planet Recycling
Protect CRV
Recology
Recycling Industries
Recycling Zone
rePlanet
Republic Services, Inc.
Rural County Representatives of California
S & L Recycling
Salinas Recycling, Inc.
San Francisco Community Recyclers
San Lorenzo Valley Redemption and Recycling Centers
SDR Company, Inc.
Sierra Club California

SoCal Recycling Industries
Solid Waste Association of North America
Solorzano Recycling
TOMRA Systems
Torres Recycling
Tri-CED Community Recycling
Tri-City Economic Development Corporation
Trinity Recycling Center
United Food and Commercial Workers Union (UFCW)
Universal Service Recycling
West Coast Waste
Whittier Recycling
Wilmington Recyclers
Work Training Center
Yreka Transfer

OPPOSITION: Consumer Watchdog

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

"Outdated statutory provisions, inflexible regulation and falling commodity prices have combined to cost California's recycling infrastructure more than $60 million in the last 30 months, with no end in sight. Nearly 1,000 recycling centers (38% of the statewide total) have closed. Recycling rates, once top in the nation at 85%, have dropped to just 75% for the first time since 2008. More than 127 cities and 2 counties have no operating centers. Many consumers, particularly in rural and underserved areas, have lost the opportunity to claim their refund value."

ARGUMENTS IN OPPOSITION: According to Consumer Watchdog,

"SB 724 is merely a band-aid that treats symptoms, ignores the underlying causational issues, gives grocers and big box chains a get-out-of-jail free card, and proposes remedies that would exacerbate the problems, not solve them.

"California's recycling centers do desperately need new revenue, as your proposal acknowledges, but not in exchange for greater exemptions from consumer convenience and access requirement to a grocery and retail industry that has shirked its responsibilities. We sak that you amend SB 724 to acknowledge the new research Consumer Watchdog has recently completed in this area. Consumer Watchdog recently conducted a three-month investigation and found that the state

recycling system is failing for many reasons. A primary reason is because the state recycling system leaves consumers fewer options every year on where to redeem their empties. At the same time, the system lets special interests – from grocery chains to beverage distributors and trash haulers – get rich at the consumer's expense."

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

Bill No:	SB 726		
Author:	Caballero		
Version:	4/3/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: Hazardous waste: public agencies: materials exchange program

DIGEST: This bill additionally authorizes a public agency's contractor to conduct household hazardous waste materials exchange programs and makes various other clarifying changes.

ANALYSIS:

Existing law:

1) Authorizes a public agency or its contractor to operate a household hazardous waste (HHW) collection facility for the purpose of collecting, handling, treating, storing, recycling, or disposing of HHW.

2) Authorizes a public agency to conduct a materials exchange program as a part of its HHW collection program if the public agency determines which reusable household hazardous products or materials are suitable and acceptable for distribution to the public in accordance with a quality assurance plan prepared by the public agency.

3) Requires a public agency to instruct a recipient to use the product in a manner consistent with the instructions label.

4) Stipulates that violation of a hazardous waste control laws is a crime.

5) Requires hazardous waste to be transported to a household hazardous waste collection facility by specified entities.

6) Prohibits an individual from transporting hazardous waste that exceeds a specified maximum volume or weight.

7) Requires a recipient of a household hazardous product or material that is a business or employer to be responsible for obtaining any written information

necessary for compliance with the Hazardous Substances Information and Training Act.

This bill:

1) Additionally authorizes a public agency's contractor to conduct that materials exchange program and would require that contractor to provide those same instructions to a recipient.

2) Authorizes the operation of a hazardous waste collection facility for the additional purpose of accepting reusable household hazardous products or materials and providing those products or materials to recipients.

3) Requires reusable household products or materials to be transported by those same entities and would additionally authorize a permanent household hazardous waste collection facility to transport hazardous waste or reusable household products or materials.

4) Prohibits an individual from transporting reusable household hazardous products or materials that exceed existing maximum volume and weight limits.

5) Additionally requires a recipient of a household hazardous product or material be responsible for using the product or material in conformance with its label, using appropriate personal protection, and managing unused products or materials as required by applicable state laws.

Background

1) *Priority to Reduce and Reuse.* California's Integrated Waste Management Act, AB 939 from 1989, addresses solid and HHW, setting the waste reduction hierarchy as source reduction first, then recycling and disposal. California's intent is to encourage waste reduction and reuse while ensuring that waste is disposed of in the most environmentally responsible manner possible.

   Existing hazardous waste reduction law also favors source reduction and preferred management practices. The Department of Toxic Substances Control (DTSC) has a Community Protection and Hazardous Waste Reduction Initiative that seeks to accomplish the following:

   a) identify hazardous waste;
   b) reduce hazardous waste that is generated, treated, and disposed in significant quantities in California; and

c) identify hazardous waste that can pose substantial risks or hazards to human health or the environment.

2) *HHW Management and Collection.* HHW is hazardous waste commonly generated by households and includes such items as batteries, pesticides, electronics, fluorescent lamps, used oil, solvents, and cleaners. If these products are handled or disposed of incorrectly, they can pose a threat to the health and safety and the environment. When these products are discarded, they become "household hazardous waste." In California, it is illegal to dispose of HHW in the trash, down the drain, or by abandonment. HHW needs to be disposed of through a HHW program. There are many different approaches to the collection and management of HHW, all are permitted by DTSC and most are operated by local jurisdictions.

While existing law authorizes local jurisdictions to conduct materials exchange programs, it is estimated that less than half of HHW Programs provide such an option. As a result, only three percent of all household products collected annually is being reused, when roughly 15% are actually reusable. Thus, nearly all HHW is disposed of through incineration or hazardous waste landfill, often outside of the state.

Comments

1) *Purpose of Bill.* According to the author, "California's waste regulations set a clear goal of reducing and reusing Household Hazardous Waste in an environmentally responsible manner. However, unclear existing regulations have stifled local governments from implementing effective reuse programs. Thanks to the advent of modern technologies, we can now identify which hazardous household waste products can be reused. These reusable items, like deck sealers and paint thinners, can often be diverted from out-of-state landfills or incineration and reused by consumers or non-profits like Habitat for Humanity. SB 726 gives California the opportunity to reduce hazardous household waste by updating current law to enable reuse programs to improve and expand current their operations."

2) *Could Help Expand Local Reuse Programs.* This bill is intended to assist local jurisdictions expand their HHW reuse programs by allowing contractors to additionally conduct materials exchange programs and clarifying some terms in statute to enable locals to more effectively implement reuse programs. Efforts to increase the reuse of HHW, thereby diverting waste from landfills or incineration, are consistent with state statute and should be encouraged.

According to the sponsor, this bill was developed in close consultation with HHW facility managers and through meetings with the DTSC.

Related/Prior Legislation

SB 552 (Archuleta) deletes the January 1, 2020 sunset date thereby allowing HHW gathered by a door-to-door HHW collection program to continue to be transported using a consolidated manifest and to be taken to a HHW collection facility or a hazardous waste facility. Pending before the Senate Appropriations Committee.

SB 456 (Huff, Chapter 602, Statutes of 2011) allows HHW gathered by a door-to-door HHW collection program to be transported using a consolidated manifest and to be taken to a HHW collection facility or a hazardous waste facility.

SOURCE: National Stewardship Action Council (NSAC)
California Product Stewardship Council (CPSC)

SUPPORT: ACR Solar
Alameda County, County Supervisor, District 4
California Resource Recovery Association
National Stewardship Action Council
Sea Hugger
Seventh Generation Advisors
The Offset Project

OPPOSITION:

None received

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

Bill No:	SB 744		
Author:	Caballero		
Version:	4/11/2019	**Hearing Date:**	4/24/2019
Urgency:	No	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: Planning and zoning: California Environmental Quality Act: permanent supportive housing: No Place Like Home Program

DIGEST: Makes changes to the existing use by-right approval process for supportive housing projects and, for No Place Like Home Projects that are not eligible for the use by-right approval process, establishes certain administrative review and expedited judicial review requirements. Prohibits the court from awarding attorney's fees to a prevailing petitioner in a No Place Like Home action or proceeding unless the Attorney General, within 45 days, finds that the action or proceeding was brought to protect a public interest.

ANALYSIS:

1) Existing law, the Planning and Zoning Law:

   a) Requires cities and counties to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element is required to include an identification and analysis of existing and projected housing needs and a statement of goals, policy objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing (Government Code (Gov. C.) §65583).

   b) Requires supportive housing to be a use by right in zones where multifamily and mixed uses are permitted, including in non-residential zones permitting multifamily uses, if the proposed housing development satisfies specified requirements relating to affordability, supportive services, and amenities included in each dwelling unit (Gov. C. §65651(a)).

   c) Provides that in a city or the unincorporated area of the county where the population is 200,000 or less and the homeless population based on the annual point-in-time count (PIT) is 1,500 or less, use by right applies to developments of 50 units or less. A city or county meeting this description may adopt a policy to approve developments by right above 50 units (Gov.

C. §65651(d)).

d) Allows a local government to require a supportive housing development to comply with objective, written development standards and policies; provided, however, that the development shall only be subject to the objective standards and policies that apply to other multifamily development within the same zone (Gov. C. §65651(b)).

2) Existing law, the California Environmental Quality Act (CEQA),

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

b) Authorizes judicial review of CEQA actions taken by public agencies, following the agency's decision to carry out or approve the project. Challenges alleging improper determinations that a project may have a significant effect on the environment, or alleging an EIR doesn't comply with CEQA, must be filed with the Superior Court within 30 days of filing of the notice of approval (PRC §21167).

3) Authorizes a court, upon motion, to award attorney's fees to a prevailing party in any action that has resulted in the enforcement of an important right affecting the public interest, if specified conditions are met (Code of Civil Procedure (CCP) §1021.5).

This bill:

1) States that a policy to approve as a use by right proposed housing developments with a limit higher than 50 units does not constitute a "project" for purposes of CEQA.

2) Prohibits a local government from adopting an ordinance requiring a project that qualifies as a use by right under the supportive housing provisions to be subject to design review unless the design review is objective and strictly focused on assessing compliance with criteria required for supportive housing developments and the local government applies those objective design review

standards broadly to development within the jurisdiction.

3) Prohibits a local government from requiring a supportive housing development to comply with objective development standards and policies that are not otherwise applied to other multifamily development within the same zone.

4) States that a decision by a public agency to seek funding from, or the Department of Housing and Community Development's awarding of funding to, the NPLH program is not a "project" for purposes of CEQA.

5) If a NPLH project does not qualify as a use by right, allows the development applicant to request that the lead agency prepare and certify the record of proceeding for the environmental review of the project in a specified manner, including preparing the record of proceedings concurrently with the administrative process and requiring all documents and other materials placed in the record of proceedings be posted online.

6) Requires the lead agency, if it approves or determines to carry out a NPLH project, to file and post the notice of determination (NOD) within two, instead of five, working days.

7) Requires an action or proceeding to attack, review, set aside, void, or annual the acts or decision of a public agency on the grounds of noncompliance with CEQA for a NPLH project to commence as follows:

   a) Within 10 days that the NOD is filed if the project is subject to CEQA.

   b) Within 10 days of the date the public agency decides to carry out or approve the project, if the project is not subject to CEQA.

8) Requires a person bringing an action or proceeding against a NPLH project to file a copy of the pleading with the Attorney General concurrent with the filing of the petition. Requires the lead agency to file a copy of the record of proceeding with the Attorney General concurrent with the filing of the certified record of proceeding with the Superior Court.

   a) Requires the Attorney General, within 45 days of receiving the record of proceeding, to determine whether the lawsuit is brought to protect public interest.

   b) Prohibits the court from awarding attorney's fees to a prevailing petitioner in an action brought to enforce an important right affecting the public

interest if the Attorney General determines that the lawsuit is not brought in the public interest or fails to make a determination within the 45-day period.

9) Establishes special procedures applicable to an action or proceeding brought to attack, review, set aside, void, or annul the certification or adaptation of an environmental review document for a NPLH project or the granting of any approval of that project, including requiring the Judicial Council to amend the Rules of Court, by September 1, 2020, requiring lawsuits and any appeals to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings.

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 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.

d) *Enforcement of CEQA*. CEQA is enforced through judicial review. CEQA actions taken by public agencies can be challenged in the Superior Court once the agency approves or determines to carry out the project. CEQA appeals are subject to unusually short statute of limitations. Under current law, court challenges of CEQA decisions generally must be filed within 30 to 35 days, depending on the type of decision. The courts are required to give CEQA actions preference over all other civil actions.

2) *Private Attorney General Statute*. In 1977, the Legislature enacted CCP §1021.5 authorizing courts to award attorney's fees in actions to enforce important rights in the public interest and was intended to encourage litigation deemed to be in the public interest by persons acting as a private attorney general.

The standard for awarding attorney's fees is demanding; and the plaintiff must not only prevail, he or she must further prove that: (1) a significant benefit has been conferred on the general public or a large class of persons; (2) the necessity and financial burden of private enforcement, or of enforcement by

one public entity against another public entity, are such as to make the award appropriate; and (3) those fees should not in the interest of justice be paid out of the recovery, if any.

The basic purpose of the private attorney statute is to make private actions to enforce important public policies economically feasible. In *Woodland Hills Residents Association v. City Council of Los Angeles* (1979) 23 Cal.3d 917, 933, the Supreme Court explained that,

> "...[t]he fundamental objective of the private attorney general doctrine of fees is 'to encourage suits effectuating a strong [public] policy by awarding substantial attorneys' fees ... to those who successfully bring such suits and thereby bring about benefits to a broad class of citizens' . . . privately initiated lawsuits are often essential to the effectuation of fundamental public policies embodied in constitutional or statutory provisions . . . without some mechanism authorizing the award of attorneys' fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible."

In *San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 756, the California Third District Court of Appeal held that private attorney general fees are "not intended to punish those who violate the law but rather to ensure that those who have acted to protect the public interest will not be forced to shoulder the cost of litigation." *Sundance v. Municipal Court* (1987) 192 Cal.App.3d 268, 273, held that an award of attorneys' fees is not a gift. It is just compensation for expenses actually incurred in vindicating a public right."

3) *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.

4) *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 that are permitted "by right" – 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 or as a by right, 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.

5) *Housing law.* State housing law requires a local government's housing element to identify zones where emergency shelters are permitted by right (SB 2, Cedillo, 2007) and requires cities and counties to treat transitional and supportive housing projects as a residential use of property. Local governments can only impose the same standards on emergency shelters that apply to other residential and commercial development within the same zone, plus specified written, objective standards.

   State law applies similar treatment to supportive housing—longer-term housing assistance that focuses on providing stable housing to homeless persons or families. AB 2162 (Chiu, 2018) established supportive housing as a use by right in all zones that allow residential uses, including mixed use zones, if they meet certain requirements including that 100% of the units are affordable and a certain percentage of units be supportive housing units. AB 2162 limited the by right approval to projects of 50 units or fewer in jurisdictions with both a population of fewer than 200,000 and homeless counts below 1,500.

6) *Other relevant CEQA applications.*

   a) Residential projects that are consistent with a specific plan. A residential project, such as a NPLH project or other supportive housing development, 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).

7) *Homelessness in California.* California is facing a homelessness crisis. Our state is home to 25% of our nation's homeless population and 42% of our nation's chronically homeless. Already home to the largest homeless population in the country, from 2016 to 2017 California experienced the largest increase in the number of residents experiencing homelessness – over 16,000 individuals. Virtually every community in the state has been impacted. San Diego and Los Angeles have experienced deadly Hepatitis A outbreaks and the American River has been contaminated with E. coli. Wildfires across the state have exacerbated homelessness.

   Despite growing local, state, and federal recognition of supportive housing as an evidence-based intervention for homeless residents, planners and local policymakers face opposition to supportive housing projects. Under the current approval process, supportive housing projects can take up to three or more years to develop.

8) *2016 "No Place Like Home" Initiative.* On July 1, 2016, Governor Brown signed landmark legislation enacting the No Place Like Home program to

dedicate $2 billion in bond funds and leverage additional dollars from other local, state, and federal funding for purposes of providing housing for chronically homeless persons with mental illness. The initiative includes proposals to construct permanent supportive housing for chronically homeless persons with mental illness, provide $200 million over four years in shorter-term, rent subsidies while the permanent housing is constructed or rehabilitated, and support for special housing programs that will assist families that are part of the child welfare system or are enrolled in California Work Opportunity and Responsibility to Kids (CalWORKs) Housing Support Program.

Comments

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

"California is in a state of emergency with a growing population of homeless individuals who are living with a serious mental illness. In 2018, voters across the state recognized this crisis and widely supported Proposition 2, which allows for $2 billion to fund supportive housing for those suffering with mental illness. Given this charge, the state must do all that we can to ensure counties are able to build permanent supportive housing units as quickly as possible. SB 744 responds to California voters' sense of urgency about the need to build and provides services using the housing first model."

2) *Expanding AB 2162's use by-right exemption.* AB 2162 authorized local governments to adopt a policy for supportive housing developments as a use by right that exceeded the 50 unit threshold; SB 744 declares that the adoption of such policy is not a "project" for purposes of CEQA. A project, under CEQA, is an activity carried out, supported by, or authorized by a public agency, "which may cause either a direct or indirect physical change to the environment, or a reasonably foreseeable indirect physical change in the environment" (PRC §21065). An activity directly undertaken by a public agency covers a wide range of activities implemented or carried out by public agencies from *adoption of policies* to government development projects. SB 744, by declaring the adoption of these policies is not a project under CEQA, creates a new exemption.

3) *A balancing act.* Often groups will seek a CEQA exemption in order to expedite construction of a particular type of project and reduce costs. In this case, a use by right CEQA exemption is sought to avoid "Not In My Backyard" (NIMBY) opponents of a supportive housing development. Providing an exemption, however, can overlook 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 build permanent supportive housing units as quickly as possible, and not allow projects to be delayed by NIMBY opponents, CEQA ensures that projects are approved in accordance with informed and responsible decisionmaking. It ensures that decisionmakers, project proponents, and the public know of the potential short-term, long-term, and maybe permanent environmental consequences of a particular project before it is approved. CEQA gives local governments and project proponents the opportunity to examine the environmental impacts in context of one another and to mitigate, or avoid if possible, those impacts.

In the context of approving a policy to approve as a use by right supportive housing with limits that exceed 50 units, a local government would not be required to consider, or be given the opportunity to avoid or mitigate, the environmental impacts associated with the development. Such considerations may include, but are not limited to:

- Whether the development would impair or interfere with an adopted emergency response plan or emergency evacuation plan.
- Whether the development would require or result in the relocation or construction of new or expanded water or wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunications facilities.
- Whether sufficient water supplies are available to serve the project.
- Whether the development would generate solid waste in excess of the capacity of local infrastructure.

The impacts of 50 or fewer units could be significantly different than impacts of 75 units, or 100 units, or 200 units. It is assumed that the only restriction on units would be those imposed by the local jurisdiction's own density and planning requirements. Otherwise, there is no limit to units which the approved policy could apply to, and yet regardless of the number of units, would not be subject to environmental review.

Without environmental review, local governments will be unable to weigh the environmental impacts that may be associated with supportive housing

development that is more than 50 units and balance it with the need for a specific project that would provide the state's homeless population with supportive services.

4) *Limiting public participation.* SB 744 requires an action or proceeding relating to a NPLH project to commence within 10 days of the local agency filing a NOD if the project is subject to CEQA or within 10 days of the public agency's decision to carry out or approve the project if the project is not subject to CEQA (approved as a use by right).

Projects that are subject to CEQA. This timeframe is significantly shorter compared to the 30 days required for most CEQA challenges. *Is 10 days sufficient time to know whether there has been a violation of CEQA? Is this enough time for a small - and perhaps unsophisticated - community group who, although participated in the administrative proceedings, needs to find counsel to represent their concerns? Is it enough time for nongovernmental organizations that represent those community groups to go through their own internal administrative procedures in determining whether to represent a particular group?*

Projects not subject to CEQA. According to the sponsor, 10 days was chosen to align with most local government processes which require a party to appeal a local government decision within 10 days. However, that timeframe is specific to non-CEQA related matters. Filing a non-CEQA related appeal differs from filing a CEQA lawsuit. The appeal in non-CEQA related matters is handled by the local agency, the process is more administrative in nature, and does not require filing a lawsuit. In comparison to a CEQA-related claim, at issue here, which involves the filing of a lawsuit, a presumably more complicated and longer process. And while the sponsor points out that it is not unusual for a petitioner attorney to file barebones complaints and amend at a later date, *is it fair to compare the two and expect the same timeframe to be appropriate?*

Local approvals of use by right. Most local government decisions are made at a public hearing, following public notice of the hearing. However, approval of a supportive housing project, including NPLH projects, as a use by right may not be subject to a hearing process nor is public notice required. And while a party that has been following the project can request to be notified by the agency upon project approval, if the request is never made, the notice will never be given. A party may not learn about the project until well after the 10 day statute of limitations proposed under this bill has run or even until construction has commenced.

To remain consistent with existing timeframes and to give notice to the public of NPHL projects approved as a use by right, the committee may wish to amend the bill to require an action to commence within 30 days and to require the lead agency, upon approval of a NPHL as a supportive housing use by right, to file a notice of exemption with the clerk of the county in which the project is located and with OPR.

5) Limiting attorney's fees. SB 744 would prohibit a court from awarding attorney's fees pursuant to the private attorney general statute if the Attorney General, within 45 days, makes a finding that the action or proceeding was not brought to protect a public interest or if the Attorney General fails to make a determination within that timeframe. Thus, even in a successful challenge where the court finds CEQA noncompliance, the petitioner would *only* be entitled to attorney's fees if the Attorney General makes a specific finding. Many questions stem from this limitation:

   - Would the pleadings and record of proceeding be able to provide enough information to the Attorney General to make such a determination since those documents were prepared for the purpose of determining whether CEQA has been complied with, not for the purpose of showing "public interest"?
   - Unlike a court who would be able to request additional information from the parties, how does the Attorney General get additional information if it is needed?
   - What standard will the Attorney General use to determine public interest? How much discretion does the Attorney General have in making this determination?
   - Is this a quasi-judicial action by a public agency? Does it comply with existing law's administrative adjudication provisions?
   - Because there is no hearing and no opportunity to present evidence, does this further the interests of justice?
   - What if the Attorney General's determination is challenged? Is there a process for that?
   - Does the Attorney General have the resources available to be able to make that determination within 45 days? What if the resources are not available?
   - Does this cause all other matters before the Attorney General to be given lower priority?

   Further, it should be noted that, even if a petitioner meets the high standards to qualify for attorney's fees under the private attorney general statute, including that a significant benefit has been conferred on the general public, the court

would be required to deny those fees if the Attorney General simply does not act.

According to the sponsor, these provisions were included to dissuade the "bad faith" litigant who may be challenging projects for purposes other than environmental concerns. This seems to be at odds with the fact that in order for a petitioner to be eligible for attorney's fees under the private attorney general statute, not only did the petitioner have to prevail, but they also had to prove that a significant benefit was conferred on the general public. To otherwise deny attorney's fees does not seem to be in line with furthering the interests of justice and undermines the purpose of the statute.

The committee may wish to amend the bill to remove these Attorney General provisions.

6) *Application of the expedited judicial review*. The application of SB 744 is much broader than previous legislation that provided expedited judicial review as it applies to an *environmental review document* in comparison to prior legislation which applied it only to EIRs. According to the sponsor, the language is intended to encompass *all* environmental documents, including, but not limited to, EIRs, NDs, MNDs, challenges to determination of exemption, and even sustainable communities environmental analyses. Thus, the application of the type of documents the 270-day timeframe applies to is much larger in scope, and undefined.

SB 744 also applies the 270-day review period to the granting of *any approval for that project*. Similar language has been used in prior legislation, giving expedited judicial review to environmental leadership projects and sports stadiums.

It has recently been suggested that the phrase "or the granting of any approval" encompasses any land-use approval, such as a building permit, conditional use permit, or a zoning variance. Consequently, it has been argued that such language applies the expedited review provisions to non-CEQA claims against eligible projects. According to the sponsor, it is the intent that this phrase be applied to all approvals, even those non-CEQA related, and that as a practical matter, courts will consolidate all claims to be heard within the 270-day timeframe.

While the phrase is broad, this interpretation does not comport with the principles of statutory construction, as it ignores the statutory context in which the provision is situated, and its implication would be that numerous provisions

outside the Public Resources Code have been indirectly amended. In *Turner v. Association of American Medical Colleges* (2011) 193 Cal.App.4th 1047, 1067 the Fourth District Court of Appeal stated that interpretations that impliedly amend other sections are to be avoided. Section 9 of Article IV of the California Constitution also provides that "[a]section of a statute may not be amended unless the section is re-enacted as amended." Additionally, the interpretation would not be consistent with the longstanding contemporaneous administrative construction embodied in the rules adopted by the Judicial Council that govern challenges to projects which have similar expedited review provisions. (See Cal. Rules Ct. § 3.2200 ["the rules in this chapter apply to all actions brought under the California Environmental Quality Act"].) Nor has this broad construction been contemplated in the legislative history of similar provisions. Finally, in previous actions for projects that contained similar judicial review language, the court bifurcated CEQA claims and non-CEQA claims, resolving the latter on a normal timeline. This indicates that the court did not view the analogous expedited review provision of that project as expansively as this interpretation would suggest.

Thus, the 270-day review provision only applies to CEQA claims.

7) *Diminishing returns?* A recent report entitled *Review of Environmental Leadership Development Projects* from the Senate Office of Research reviewed litigation under AB 900 and SB 743, which both contained similar expedited judicial review processes, in depth and found the following timelines, which under then-existing law began when the administrative record is certified and include the trial court, court of appeal, and the Supreme Court's denial of review, for those cases:

Project	**Business days**	**Calendar days**
Kings arena	243	352
Warriors arena	257	376
8150 Sunset Boulevard	395	578

The report concludes that these projects were reviewed under a faster timeline than normally would apply, benefiting the developers and providing upfront financial security. The report also stated that "the impacts to the court from such a short timeline also should be taken into consideration when determining how fast the Legislature would like [AB 900] cases resolved," and suggested a longer timeline may be appropriate.

Unlike AB 900, which has only led to 12 certified projects, and unlike the stadium-specific bills, this bill would apply to specific category of projects.

Although it is difficult to estimate how many projects could ultimately qualify for accelerated review, if numerous projects are propelled to the forefront of judicial calendars, courts may be forced to repeatedly miss the 270-day deadline, and, at some point, altogether ignore it.

In a sense, this bill, along with other similar bills proposing expedited judicial review for CEQA challenges, could be a victim of their own success: at some point, the more projects that are eligible to benefit from accelerated judicial review, the smaller the impact of that benefit.

Related/Prior Legislation

SB 48 (Weiner) establishes certain kinds of emergency shelters, known as interim housing intervention developments, as a use by-right in areas zoned for mixed use. Also makes changes to housing element law with regards to zoning where emergency shelters are allowed as a permitted use without a conditional use or discretionary permit, as specified. The Committee will hear this bill April 24, 2019.

AB 2162 (Chiu, Chapter 753, Statutes of 2017)) exempts from CEQA supportive housing in zones where multifamily and mixed uses are permitted if the proposed housing development meets specified criteria.

TRIPLE REFERRAL

SB 744 was also referred to the Senate Committee on Housing and the Senate Committee on Governance and Finance. The Senate Housing Committee heard the bill on April 2, 2019, and the bill was passed out of committee with a vote of 8 – 1. The Senate Governance and Finance Committee heard the bill on April 10, 2019, and the bill was passed out of committee with a vote of 6 – 1.

SOURCE: Steinberg Institute

SUPPORT:

Steinberg Institute

OPPOSITION:

Center for Biological Diversity
Judicial Council
Sierra Club of California

ARGUMENTS IN SUPPORT: According to the Steinberg Institute,

"California faces an immense homeless and affordable housing emergency. With upwards of 134,000 homeless living on our streets, and as many as one third of those suffering from mental illness, homelessness and access to affordable housing are amongst California's most critical challenges today, Research shows that permanent supportive housing will significantly lower the cost of public health and greatly improve the well-being of those who are suffering from mental illness and homelessness. Stable housing combined with mental health support will promote lasting health for some of California's most vulnerable.

"Proposition 2 received substantial support amongst voters last November and enables the state to distribute $2 billion to fund the "No Place Like Home" initiative. SB 744 will accelerate the siting process for over 20,000 housing units pledged by NPLH to secure this voter mandate. This bill would be a humane and effective solution to ending homelessness in California by requiring local governments to authorize these supportive housing projects. SB 744 will streamline the supportive housing project review processes which will allow for a quicker dispersal of NPLH funds."

ARGUMENTS IN OPPOSITION: According to Judicial Council,

"SB 744's requirement that any CEQA lawsuit challenging specified supported housing projects, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, CEQA actions are already entitled under current law to calendar preference in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline on top of the existing preference is arbitrary and likely to be unworkable in practice.

"Second, the expedited judicial review for all of the projects covered by SB 744 will likely have an adverse impact on other cases. Like other types of calendar preferences, which the Judicial Council has historically opposed, setting an extremely tight timeline for deciding this particular type of case has the practical effect of pushing other cases on the courts' dockets to the back of the line. This means that other cases, including cases that have statutorily mandated calendar preferences, such as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, will take longer to decide.

"Finally, providing expedited judicial review for all of the projects covered by SB 744 while other cases proceed under the usual civil procedure rules and timelines undermines equal access to justice. The courts are charged with dispensing equal

access to justice for each and every case on their dockets. Singling out this particular type of case for such preferential treatment is fundamentally at odds with how our justice system has historically functioned."

-- END --