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Assembly
California Legislature

ASSEMBLY COMMITTEE ON
ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
BILL QUIRK, CHAIR
ASSEMBLYMEMBER, TWENTIETH DISTRICT

AGENDA

Tuesday, July 11, 2017
1:30 p.m. -- State Capitol, Room 444

SPECIAL ORDER OF BUSINESS

1.	SB 623	Monning	Water quality: Safe and Affordable Drinking Water Fund.

HEARD IN SIGN-IN ORDER

2.	SB 258	Lara	Cleaning Product Right to Know Act of 2017.
3.	SB 377	Monning	Lead-based paint.
4.	SB 774	Leyva	Hazardous substances: California Toxic Substances Board.
5.	SB 778	Hertzberg	Water systems: consolidations: administrative and managerial services.

Date of Hearing: July 11, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 623 (Monning) – As Amended July 3, 2017

SENATE VOTE: 39-0

SUBJECT: Water quality: Safe and Affordable Drinking Water Fund

SUMMARY: Creates the Safe and Affordable Drinking Water Fund, administered by the State Water Resources Control Board (State Water Board), to assist communities and individual domestic well users to address contaminants in drinking water that exceed safe drinking water standards. Specifically, **this bill**:

1) Finds that to ensure that the right of every Californian to have sufficient clean, safe, affordable, and accessible water, it is in the interest in the State of California to identify water quality threats in the state's drinking water supply, whether those supplies serve a public water system, state small water system, or an individual domestic well.

2) Defines "individual domestic well" as a groundwater well used to supply water for the domestic needs of an individual residence or small water systems of four or less service connections.

3) Requires the State Water Board, by January 1, 2019, to promulgate regulations to require state small water systems and individual domestic wells to test their water supply wells for contamination. Requires the State Water Board to prioritize testing based on local water quality conditions and requires the State Water Board to review these regulations at least every five years.

4) Defines "Disadvantaged community" as an entire service area of a community water system, or a community therein, in which the median household income is less than 80 percent of the statewide average.

5) Creates the Safe and Affordable Drinking Water Fund (Fund) in the State Treasury and continuously appropriates all moneys in the Fund to the Office of Sustainable Water Solutions within the State Water Board, without regard to fiscal years.

6) Requires the State Water Board to administer the Fund to provide a stable source of funding to assist communities and individual domestic well users to address contaminants in drinking water that exceed safe drinking water standards. Requires the State Water Board to prioritize the use of this funding to assist low-income communities and low-income individual domestic well users, and to prioritize funding for costs other than those related to capital construction costs. Requires expenditure of the fund to be consistent with the annual fund implementation plan developed by the State Water Board.

7) Requires the State Water Board to expend moneys in the fund for grants, loans, contracts, or services to assist those communities and individual domestic well owners that rely on contaminated drinking water to have access to safe and affordable drinking water. Expenditures can be any of the following: replacement water; long-term solutions to

replacing or treating contaminated wells; testing drinking water quality of individual domestic wells serving low-income households; and, identifying those Californians without access to safe drinking water who are eligible to receive assistance from the Fund and provide outreach to them.

8) Eligible applicants for receiving funds include public agencies, nonprofit organizations, public utilities, federally recognized Indian tribes, state Indian tribes listed on the Native American Heritage Commission's California tribal consultation list, groundwater sustainability agencies, and mutual water companies.

9) States the intent of the Legislature to further amend this bill to subsequently seek specific funding from agricultural operations to assist in providing emergency, interim, and long-term assistance to community water systems and individual domestic wells users whose wells have been impacted by nitrate contamination and whose wells are located in agricultural areas.

10) Requires the State Water Board, annually, to do all of the following:

    a) Prepare and make available a report of expenditures from the Fund;

    b) Adopt, after a public hearing, an assessment of funding needed to ensure all Californians have access to safe drinking water; and,

    c) Adopt, after a public hearing, a Fund implementation plan (Plan) with priorities and guidelines for expenditures of the Fund.

11) Requires the State Water Board to work with a multi-stakeholder advisory group that shall be open to participation by representatives of entities paying into the Fund, public water systems, technical assistance providers, local agencies, affected persons, nongovernmental organizations, and the public, to establish priorities for the Plan. Requires the Plan to prioritize eligibility for expenditures from the Fund based on the following:

    a) A water system, that qualifies as a disadvantaged community, and whose current or projected water rates needed to ensure safe drinking water exceed or will exceed 1.5 percent of the median household income for that water system; and,

    b) An individual domestic well owner, whose costs of providing potable water exceed or will exceed 1.5 percent of its household's income and its household's income is less than 80 percent of the statewide household median income.

12) Defines an "agricultural operation" as either a discharger that is an owner, operator, or both, of land that is irrigated to produce crops or pasture for commercial purposes or a nursery, and is enrolled or named in an irrigated lands regulatory program order adopted by the State Water Board or Regional Water Quality Control Board (Regional Water Board); or a discharger that is an owner, operator, or both, of a facility that is used for the raising or harvesting of livestock, and is enrolled or named in an order regulating discharges of water from a facility to protect ground and surface water, adopted by the State Water Board or Regional Water Board.

13) States that an "agricultural operation" does not include a facility that processes crops or livestock; a facility that manufacturers, synthesizes, or processes fertilizer; or, any portion of land or activities occurring on those portions of land that are not covered by an order adopted by the State Water Board or Regional Water Board.

14) States that discharges of nitrate from agricultural operations could reach groundwater and could cause or contribute to exceedances of drinking water standards for nitrate, and could cause conditions of pollution of or nuisance in those waters.

15) States that nitrate contamination of groundwater impacts drinking water sources for hundreds of thousands of Californians and it is necessary to protect current and future drinking water users from the impacts of nitrate contamination.

16) Requires the Regional Water Boards to continue to regulate discharges to reduce nitrogen loading and protect beneficial uses of water and groundwater basins.

17) Requires the State Water Board, Regional Water Boards, and courts to ensure compliance with orders to regulate discharges to reduce nitrogen loading and to protect beneficial uses of water and groundwater basins.

18) Requires dischargers to pay for mitigation of pollution by funding replacement water for affected communities.

19) States that this bill will be subsequently amended to establish an agricultural assessment to be paid by agricultural operations for a period of 15 years to provide funding, as a portion of the Fund, for alternative supplies of safe drinking water to persons affected by discharges of nitrogen from agricultural operations.

20) States the intent of the Legislature to limit enforcement actions that a Regional Water Board or the State Water Board could otherwise initiate, during a period of 15 years, against an agricultural operation paying the agricultural assessment.

21) Prohibits the State Water Board or Regional Water Boards from undertaking or initiating an enforcement action against an agricultural operation for causing or contributing to an exceedance of a water quality objective for nitrate in groundwater or for causing or contributing to a condition of pollution or nuisance for nitrates in groundwater if an agricultural operation that discharges or threatens to discharge, or has discharged or previously threatened to discharge, nitrate to groundwater demonstrates that it has satisfied all of the following mitigation requirements:

   a) The agricultural operation has timely paid any fee, assessment, or charge into the Fund, or, an applicable agricultural assessment is providing funding into the Fund;

   b) The agricultural operation is in compliance with all applicable provisions prescribed in an order adopted by the State Water Board or Regional Water Board, including but not limited to: requirements to implement best practicable treatment or control; best efforts, monitoring, and reporting requirements; and, timelines.

   c) The agricultural operation is in compliance with an applicable program of implementation for achieving groundwater quality objectives for nitrate that is part of an

applicable water quality control plan adopted by the State Water Board or Regional Water Board.

22) Provides that within the mitigation requirement for an agricultural operation to comply with an order by the State Water Board or Regional Water Board, the order shall not include a prohibition on causing or contributing, or threatening to cause or contribute, to an exceedance of a water quality objective for nitrate in groundwater or a condition of pollution or nuisance for nitrate in groundwater.

23) Provides that an agricultural operation does not meet the mitigation requirements needed for the enforcement exemption if the agricultural operation has been the subject to an enforcement action within the preceding twelve months for any violation of an order authorizing discharges from agricultural operations.

24) Provides that an agricultural operation does meet the mitigation requirements needed for the enforcement exemption if it was subject to an enforcement action commenced after January 1, 2016, and before January 1, 2018, alleging that a discharge from an agricultural operation caused or contributed, or threatened to cause or contribute, to an exceedance of a water quality objective for nitrate in groundwater, conditions of pollution or nuisance for nitrate in groundwater, or both.

25) Prohibits an agricultural operation, that maintains a continuance of a farming operation, from qualifying for the enforcement exemption if it fails to continue to make payments into the Fund.

26) Provides that both of the following apply to a discharge of nitrogen by an agricultural operation that occurs when the discharge is in full compliance with the mitigation requirements:

    a) The discharge shall not be admissible in a future enforcement action against the agricultural operation by the State Water Board or Regional Water Board to support a claim that the agricultural operation is causing or contributing, or threatening to cause or contribute, to an exceedance of a water quality objective for nitrate in groundwater or a condition of pollution or nuisance for nitrate in groundwater; and,

    b) The discharge shall not be considered by the State Water Board or a Regional Water Board to apportion responsibility and shall not be used by any person to diminish responsibility in any enforcement action initiated with respect to discharges of nitrogen, regardless of source, that did not occur in compliance with the mitigation requirements.

27) Provides that the enforcement exemption to agricultural operations does not alter the State Water Board's or Regional Water Board's authority to require or conduct investigations, to require reports on or to establish other requirements for best practicable treatment or control, or to require monitoring and reporting requirements to protect water quality.

28) Provides that the enforcement exemption to agricultural operations does not change or alter a water quality objective that is part of a water quality control plan adopted by the State Water Board or Regional Water Board.

29) Provides that enforcement relief for agricultural operations and mitigation requirements will no longer be in effect as of January 1, 2028.

30) Provides that nothing in the bill limits the liability of a discharger under any other law, including, but not limited to, the state's nuisance laws.

31) Provides for more limited enforcement relief, beginning on January 1, 2028 and ending on January 1, 2033, for agricultural operations, if those agricultural operations meet specified mitigation requirements.

EXISTING LAW:

1) Establishes the California Safe Drinking Water Act (California SDWA) and requires the State Water Board to maintain a drinking water program. (Health & Safety Code (HSC) § 116270, *et seq*.)

2) Requires, pursuant to the federal SDWA and California SDWA, drinking water to meet specified standards for contamination (maximum contaminant levels, or MCLs) as set by the United States Environmental Protection Agency (US EPA) or the State Water Board. (HSC § 116270, et seq.)

3) Establishes as the policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code (WC) § 106.3)

4) Establishes the Porter-Cologne Water Quality Control Act, which prohibits the discharge of pollutants to surface waters unless the discharger obtains a permit from the State Water Board. (WC § 1300 et seq.)

5) Requires a person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, to report the discharge to the Regional Water Board. (WC § 13260).

6) Authorizes the State Water Board and Regional Water Boards to waive discharge requirements as to a specific discharge or type of discharge if the State Water Board or Regional Water Board determines that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest. (WC § 13269)

7) Establishes MCLs for the various forms of nitrate. (California Code of Regulations § 63341)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

> "Section 106.3 of the Water Code declares that every Californian has the right to sufficient clean, safe, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. However, drinking water safety and affordability issues currently affect

California communities across the state, with low-income communities and communities of color experiencing the greatest impact.

Recent data by the State Water board identified roughly 300 California public water systems serving communities and schools that are currently out of compliance with drinking water standards, some of which have been unable to provide safe drinking water for years, including some for more than a decade. These systems serve 692,807 people, or almost 1.8% of all Californians.

The lack of a sustainable funding source means disadvantaged communities and others have no outside support to draw upon, forcing their typically small, rural and/or socioeconomically disadvantaged ratepayer bases to bear the entire cost of ongoing drinking water treatment. As a result, disadvantaged communities and others in need of drinking water treatment may be unable to meet drinking water standards because they are unable to afford the cost of drinking water treatment, or their drinking water rates may be over 1.5% of median household income (MHI), which is the level of affordability incorporated into California's SDWSRF loan forgiveness eligibility standards. What is more, families in these disadvantaged communities may be forced to purchase bottled water in addition to paying their monthly water bill, creating a doubled financial burden.

Ongoing source of operations and maintenance funding for drinking water treatment for disadvantaged communities needs to be stable and sustainable, since communities, particularly disadvantaged communities, cannot afford to build drinking water treatment plants and then have funding disappear. SB 623 seeks to provide an ongoing funding stream to ensure that disadvantaged communities have access to clean, safe, affordable, drinking water."

Human right to water: In 2012, California became the first state to enact a Human Right to Water law, AB 685 (Chapter 524, Statutes of 2012). Public policy continues to be focused on the right of every human being to have safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation. Water supply, contaminants, costs of treatment and distribution systems, the number and nature of small public water systems (PWS), especially in disadvantaged communities, and many other factors will continue to challenge progress in addressing the Human Right to Water.

Drinking water contamination in disadvantaged communities: According to the State Water Board report, "*Communities that Rely on Contaminated Groundwater*," released in January 2013, 682 community public water systems, which serve nearly 21 million people, rely on contaminated groundwater as a primary source of drinking water. The report points out that an additional two million Californians rely on groundwater from either a private domestic well or a smaller groundwater-reliant system that is not regulated by the state, the water quality of which is uncertain. The findings from State Water Board report, and a 2012 University of California at Davis study, "*Addressing Nitrate in California's Drinking Water*," suggest that drinking water contamination in California disproportionally affects small, rural, and low-income communities that depend mostly on groundwater as their drinking water source.

Nitrates: Nitrate is commonly used in fertilizers because plants need nitrates to live and grow. Once consumed, nitrate is converted into nitrite in the body. Nitrogen is applied to cropland in the form of synthetic fertilizers or as animal manure. The nitrogen in these fertilizers transforms

to nitrate and is carried to groundwater by the percolation of water through the soil column, any time water from irrigation or rainfall percolates below the root zone.

The problem with nitrates is that nitrite can interfere with the ability of red blood cells to carry oxygen to the tissues of the body, producing a condition called methemoglobinemia. The greatest threat is to infants, whose immature stomach environment enables conversion of nitrate to nitrite, which is then absorbed into the blood stream. The effects of nitrite are often referred to as the "blue baby syndrome" because their bodies are not absorbing enough oxygen. High nitrate levels may also affect the oxygen-carrying ability of the blood of pregnant women.

Legal limits on nitrates: The current state MCLs for nitrates were adopted by the California Department of Health Services in 1994 based on the US EPA's MCLs promulgated in 1991.

The Office of Environmental Health Hazard Assessment (OEHHA) established its public health goals (PHGs) for nitrate and nitrite in 1997. The PHGs, based on methemoglobinemia in infants, are 45 parts per million (ppm) for nitrate (equivalent to 10 ppm nitrate-nitrogen), 1 ppm for nitrite-nitrogen and 10 ppm for joint nitrate/nitrite (expressed as nitrogen) in drinking water. The PHGs are the same as the drinking water MCLs. Typically PHGs inform the development of MCLs. In this case, the MCL predated the PHG.

Causes of nitrate contamination: High concentrations of nitrate in groundwater are primarily caused by human activities, including fertilizer application (synthetic and manure), animal operations, industrial sources (wastewater treatment and food processing facilities), and septic systems. Agricultural fertilizers and animal wastes applied to cropland are by far the largest regional sources of nitrate in groundwater, although other sources can be locally important.

Where is nitrate contamination?: Nitrate in drinking water is widespread in numerous areas of the state. PWSs, because they are regulated by the State Water Board (unlike private wells), are required to analyze drinking water sources for nitrates and report the results to the State Water Board's Division of Drinking Water. Among regulated contaminants detected at levels greater than their MCLs in California, nitrates rank high.

The 2012 University of California at Davis (UC Davis) report, "*Addressing Nitrate in California's Drinking Water,*" indicated that about 2.6 million people in the four-county Tulare Lake Basin and the Monterey County portion of the Salinas Valley rely on groundwater for drinking water, including those in some of the poorest communities in California. The report found that nitrate contamination is increasing and currently poses public health concerns for about 254,000 people in the study area.

According to the report, *Communities That Rely on a Contaminated Groundwater Source For Drinking Water*, most of the community PWSs with violations of drinking water standards are located in the Southern California Inland Empire, the east side of San Joaquin Valley, the Salinas Valley, and the Santa Maria Valley. In the Salinas Valley, 58% of raw groundwater has been found to be contaminated with nitrates, along with other contaminants including arsenic. Nitrate levels in the groundwater are particularly high south of Salinas, with levels as high as 690 ppm.

An additional two million Californians rely on groundwater from either a private domestic well or a smaller groundwater-reliant system that is not regulated by the state. Most of these residents lack an assessment of their water because they are not required to test its quality.

Costs for nitrate cleanup: The 2012 UC Davis nitrate report calculated that up to $36 million per year is needed for safe drinking water solutions to address nitrate contamination. The report elaborated that, "Costs for safe drinking water solutions to nitrate contamination in the Tulare Lake Basin and Salinas Valley are roughly $20 and $36 million per year for the short- and long-term solutions, respectively. About $17 to $34 million per year will be needed to provide safe drinking water for 85 identified community public and state small water systems in the study area that exceed the nitrate drinking water MCL (serving an estimated 220,000 people). The annualized cost of providing nitrate-compliant drinking water to an estimated 10,000 affected rural households (34,000 people) using private domestic wells or local small water systems is estimated to be at least $2.5 million for point-of-use treatment for drinking use only. The total cost for alternative solutions translates to $80 to $142 per affected person per year, $5 to $9 per irrigated acre per year, or $100 to $180 per ton of fertilizer nitrogen applied in these groundwater basins."

State Water Board settlement with Salinas Valley growers: On April 6, 2017, the State Water Board announced a temporary program to produce a replacement drinking water plan for Salinas Valley residents whose groundwater supplies are contaminated with unsafe levels of nitrate. The program will be organized and funded by the members of the Salinas Basin Agricultural Stewardship Group, a coalition of local agricultural owners and operators, and it will run for up to two years while the parties work toward permanent solutions to respond to the challenges of nitrate accumulation in the Salinas basin groundwater. The temporary program, also known as the Interim Replacement Water Settlement Agreement (Agreement), covers small water systems and some domestic wells used by about 850 residents in the rural area.

The State Water Board's Office of Enforcement and the Central Coast Regional Water Quality Control Board are suspending their current replacement water enforcement actions against parties that join the stewardship group for as long as two years while this new Agreement is instituted. Landowners who wish to become a member of the stewardship group are still able to join. Furthermore, the goal of the Agreement is for the Salinas Basin Agricultural Stewardship Group and State Water Board to work cooperatively towards the development and implementation of a funding mechanism and solutions for the provision of long-term replacement water.

Lack of clean safe drinking water: Although most of the state's residents receive drinking water that meets federal and state drinking water standards, many drinking water systems in the state consistently fail to provide safe drinking water to their customers. Lack of safe drinking water is a problem that disproportionately affects residents of California's disadvantaged communities. More than 300 drinking water systems in disadvantaged communities, serving approximately 200,000 people, are unable to provide safe drinking water. These systems include 30 schools and daycare centers that serve over 12,000 children.

Disadvantaged communities often lack the rate base, as well as the technical, managerial, and financial capacity to show they can afford and effectively manage operations and maintenance costs related to water treatment. Without being able to pay for maintenance, these communities are effectively barred from accessing capital improvement funding. In contrast, larger water systems have the financial capacity both to pay treatment costs and to provide for a well-trained and technically competent workforce of water system operators. SB 623 seeks to provide an on-going funding source specifically to address the drinking water needs in disadvantaged communities.

Identifying Communities Struggling to Provide Clean Drinking Water: In an effort to make the public aware of the problems public water systems are facing when it comes to providing clean and reliable drinking water, the State Water Board has developed a Human Right to Water web portal. This new web portal includes downloadable information and a map that shows water systems that may not meet primary drinking water standards. The site also includes a link to the draft Safe Drinking Water Operations and Maintenance Needs Estimate spreadsheet, and an explanation document which lays out the methodology. Total needs are estimated at $45 million annually, with 309 public water systems included in the analysis, serving approximately 200,000 people statewide.

Irrigated lands regulatory program: Water discharges from agricultural operations in California include: irrigation runoff, flows from tile drains, and storm water runoff. These discharges can affect water quality by transporting pollutants, including pesticides, sediment, nutrients, salts (including selenium and boron), pathogens, and heavy metals, from cultivated fields into surface waters. Many surface water bodies are impaired because of pollutants from agricultural sources. Groundwater bodies have suffered pesticide, nitrate, and salt contamination.

To prevent agricultural discharges from impairing the waters that receive these discharges, the Irrigated Lands Regulatory Program (ILRP), administered by the State Water Board and Regional Water Boards, regulates discharges from irrigated agricultural lands. This is done by issuing waste discharge requirements (WDRs), or conditional waivers of WDRs (Orders), to growers. These Orders contain conditions requiring water quality monitoring of receiving waters and corrective actions when impairments are found. The number of acres of agricultural land enrolled in the ILRP is about six million acres. The number of growers enrolled is approximately 40,000.

Waiver of waste discharge requirements: State law authorizes the State Water Board and Regional Water Boards to conditionally waive WDRs if this is in the public interest. Over the years, the Regional Water Boards issued waivers for more than 40 categories of discharges. Although waivers are always conditional, the historic waivers had few conditions. In general, they required that discharges not cause violations of water quality objectives, but did not require water quality monitoring. Senate Bill 390 (Alpert, Chapter 686, Statutes of 1999), required the Regional Water Boards to review their existing waivers and to renew them or replace them with WDRs. Under SB 390, waivers not reissued automatically expired on January 1, 2003. To comply with SB 390, the Regional Water Boards adopted revised waivers. The most controversial waivers were those for discharges from irrigated agriculture.

Outstanding issues: While SB 623 is very comprehensive, there are still a few issues to work on. The bill identifies, in a few sections, that there will be subsequent changes to impose some type of fee or assessment on agricultural operations as a fund source for the grant/loan program the bill creates. However, it is also likely there will be additional sources of revenue this bill would seek to raise. Additionally, this bill requires the State Water Board to develop regulations, within one year, to test small water systems and individual domestic wells. There may be challenges with meeting this timeframe that the author and the Administration may wish to address. Also, the bill authorizes enforcement relief, which takes effect on January 1, 2018; however, that enforcement relief is contingent upon an agricultural operation making timely payments on a fee or assessment that may not be imposed until 2019 or later. The author may wish to consider syncing up these two timeframes in some manner. Additionally, when providing this enforcement relief, it is important to ensure that the wording correct, so that the

enforcement relief is not broader than intended, preserving all rights of a person to bring a civil claim today, should the bill become law.

SB 623 contains two major provisions, creating a fund source and grant/loan program to provide assistance to small and domestic water wells, in order for them to have clean, safe, affordable drinking water; and providing enforcement relief from the State Water Board and Regional Water Boards for agricultural operations, if they meet certain requirements and pay an assessment that is used to support the new grant/loan program for small and domestic wells that this bill creates. Ensuring that everyone in California has access to clean, safe, affordable drinking water has been a subject of bills heard before this committee in the past and has been a goal shared by many. However, the provision of the bill that provides enforcement relief is a bit more complicated. While an agricultural operation will have to meet many requirements of the State Water Board and Regional Water Board, as well as paying some type of fee or assessment, it is important to understand that this bill will restrict certain enforcement actions by the State Water Board and Regional Water Boards. SB 623 takes a very comprehensive approach to tackle the very challenging issue of nitrate contamination in drinking water and groundwater. This is a very laudable goal.

Related legislation:

AB 1605 (Caballero, 2017). Provides legal relief for signatories participating in a state program to provide drinking water. This bill was held in the Assembly Judiciary Committee as a two-year bill.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance of Child and Family Services
American Heart Association
American Rivers
American Stroke Association
Arvin Community Services District
Asian Pacific Environmental Network
Asociacion de Gente Unida por el Agua
Black Women for Wellness
California Audubon
California Bicycle Coalition
California Environmental Justice Alliance
California Food Policy Advocates
California League of Conservation Voters
California Rural Legal Assistance Foundation
California Pan-Ethnic Health Network
California Water Service
Catholic Charities, Diocese of Stockton
Central California Environmental Network
Center for Race Poverty and the Environment
City of Arvin
City of Porterville

Clean Water Action
Comité Civico del Valle
Community Alliance for Agroecology
Community Water Center
Council for a Strong America
County of Tulare
Cultiva la Salud
Dolores Huerta Foundation
El Quinto Sol de America
Environmental Defense Fund
Esperanza Community Housing Corporation
Faith in the Valley
Friends Committee on Legislation in California
Friends of Calwa
Fresno Building Healthy Communities
Latino Coalition for a Healthy California
Leadership Counsel for Justice and Accountability
League of Women Voters
Lutheran Office of Public Policy
Mission: Readiness
Pacific Institute
Pacific Water Quality Association
Physicians for Social Responsibility Los Angeles
Planning and Conservation League
PolicyLink
Public Health Advocates
Pueblo Unido CDC
Self-Help Enterprises
Service Employees International Union (SEIU)
Strategic Actions for a Just Economy
Strategic Concepts in Organizing & Policy Education
Sunflower Alliance
RCAC
The Nature Conservancy
TransForm
Water Quality Association
Western Center on Law & Poverty
Western Growers Association
Wholly H20

Opposition

Alameda County Water District
American Water Works Association, California-Nevada Section
Association of California Water Agencies
Bella Vista Water District
California Sportfishing Protection Alliance
California Water Impact Network
Calleguas Municipal Water District

City of Fairfield
City of Indio
City of Roseville
Cucamonga Valley Water District
Desert Water Agency
East Valley Water District
Eastern Municipal Water District
Elsinore Valley Municipal Water District
El Dorado Irrigation District
Foresthill Public Utility District
Humboldt Baykeeper
Humboldt Bay Municipal Water District
Indian Wells Valley Water District
Indio Water Authority
Inland Empire Waterkeeper
Kern County Water Agency
La Canada Irrigation District
Las Virgenes Municipal Water District
Mesa Water District
Monte Vista Water District
Monterey Coastkeeper
Pacific Coast Federation of Fishermen's Association
Padre Dam Municipal Water District
Placer County Water Agency
Regional Water Authority
Rincon del Diablo Municipal Water District
Rowland Water District
Russian Riverkeeper
San Gabriel County Water District
San Juan Water District
Santa Barbara Channelkeeper
Santa Margarita Water District
Southern California Water Committee
The Otter Project
Three Valleys Municipal Water District
Valley Center Municipal Water District
Vista Irrigation District
Western Municipal Water District
Yorba Linda Water District

Analysis Prepared by: Josh Tooker / E.S. & T.M. /

Date of Hearing: July 11, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 258 (Lara) – As Amended July 6, 2017

SENATE VOTE: 22-15

SUBJECT: Cleaning Product Right to Know Act of 2017

SUMMARY: 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. Specifically, **this bill**:

1) States the intent of the Legislature to provide consumers and workers with ingredient information about designated products that encourage informed purchasing decisions and reduces public health impacts from exposure to potentially harmful chemicals in designated products by requiring product manufacturers to provide a specific list of chemicals used in their products, and requiring specified employers to provide that information to their employees.

2) Defines "confidential business information" as any ingredient or combination of ingredients that a manufacturer or its suppliers have claimed on the United States Environmental Protection Agency (US EPA) Toxic Substances Control Act (TSCA) Confidential Inventory, or for which the manufacturer or its suppliers claim protection under the Uniform Trade Secrets Act.

3) Defines "designated product" as an air care product, automotive product, general cleaning product, or a polish or floor maintenance product used primarily for commercial janitorial, domestic, or institutional cleaning purposes. Excludes from a designated product: foods, drugs, and cosmetics, including personal care items such as toothpaste, shampoo, and hand soap; industrial products specifically manufactured for, and used in, oil and gas production, steel production, heavy industry manufacturing, industrial water treatment, industrial textile maintenance and processing; and, a trial sample not packaged for individual sale, resale, or retail.

4) Defines "designated trait 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.

5) Defines "general cleaning product" as a soap, detergent, or other chemically formulated consumer product designed or labeled to indicate that the purpose of the product is to clean, disinfect, or otherwise care for fabric, dishes, or other wares.

6) Defines "ingredient" as a chemical that a manufacturer has intentionally added to a designated product and that has a functional or technical effect on the finished designated product.

7) Defines "manufacturer" as a person or entity that manufacturers, assembles, produces, packages, repackages, relabels, or distributes a designated product that is sold or used in the state.

8) Requires a manufacturer of a designated product sold in the state to disclose on the designated product label the information specified in either of the following:

   a) A list of each ingredient contained in the product that is included on a designated trait list, and each fragrance ingredient or colorant that is included on a designated trait list. A list of each ingredient that is present at a concentration at or in exceedance of .01 percent (100 ppm) in the individual finished designated product and is a fragrance allergen included on Annex II of the European Union (EU) Cosmetics Regulation 1223/2009, as adopted by the European Detergents Directive, Regulation (EU) No. 259/2012 Annex VII. An ingredient that is included on a designated trait list pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), on and after January 1, 2023; or,

   b) A list of each ingredient contained in the designated product, except for fragrance ingredients. If an ingredient contained in the designated product is a fragrance allergen included on Annex III of the EU Cosmetics Regulation 1223/2009 as adopted by the European Detergents Directive, Regulation (EU) No. 259/2012 Annex VII and subsequent updates thereto and is present in the finished product as a concentration at or in exceedance of .01 percent (100 ppm), the phrase "Contains fragrance allergen(s)" shall be included on the product label. Chemicals contained in the product as components of fragrances or colorants may be listed on the product label as "fragrances" or "colorants," provided that an ingredient in the fragrance or colorant does not appear on a designated trait list. An ingredient that is included on a designated trait list pursuant to Proposition 65, on and after January 1, 2023.

9) Requires a manufacturer of a designated product sold in the state to disclose the manufacturer's toll-free telephone number and Internet Web site address on the designated product label.

10) Requires a manufacturer of a designated product sold in the state that is regulated by the federal Occupational Safety and Health Administration to, if required by the federal hazard communication standard to include pictograms on the designated product's safety data sheet, include those pictograms on the label of the designated product.

11) Provides that the requirement for the manufacturer to disclose ingredients on the product label does not apply to a product that is a pesticide as defined in state law.

12) Provides that the requirement for the manufacturer to disclose ingredients on a product label shall not be construed to preclude a manufacturer from using technologies, such as electronic or digital ink, in addition to the disclosures required to be printed on a designated product label.

13) Requires a manufacturer of a designated product sold in the state to post on its product-specific Internet Web site, in an electronically readable format, the following information related to the designated product:

a) A list of all ingredients contained in the product, except fragrance ingredients;

b) An ingredient that is included on a designated trait list pursuant to Proposition 65 shall be listed on and after January 1, 2023;

c) Ingredients listed shall be listed in descending order of predominance by weight in the product;

d) A list of all nonfunctional constituents present in the finished product at a concentration at or above .01 percent (100 ppm);

e) 1, 4 dioxane shall be listed if it is present in the finished product at a concentration at or above .001 percent (10 ppm);

f) A list of each nonfunctional constituent that is listed on a designated trait list pursuant to Proposition 65 and that triggers a product warning pursuant to Proposition 65;

g) The Chemical Abstracts Service (CAS) number for any ingredient or nonfunctional constituent required to be listed;

h) The functional purpose served by each ingredient, fragrance ingredient, or colorant for a chemical required to be listed;

i) An electronic link to the relevant designated trait list for any ingredient that is required to be listed; and,

j) The hazard communication safety data sheet for the designated product.

14) Requires a manufacturer of a designated product sold in the state to post on its Internet Web site, in an electronically readable format, the following information related to fragrance mixtures or ingredients contained in the designated product:

a) A list of all fragrance ingredients that are listed on a designated trait list, except for ingredients listed pursuant to Proposition 65;

b) A list of fragrance ingredients, including fragrance ingredients that are confidential business information, that are listed in Annex III of the European Cosmetics Regulation 1223/2009;

c) On and after January 1, 2023, a list of fragrance ingredients, including fragrance ingredients that are confidential business information, that are listed on a designated trait list pursuant to Proposition 65;

d) A list of fragrance ingredients, not otherwise disclosed, that are present in the finished product at a concentration at or above .01 percent (100 ppm);

e) The CAS number for any fragrance ingredient listed; and,

f) The functional purpose for each fragrance ingredient required to be listed, which may be described as "fragrance."

15) Requires a manufacturer of a designated product regulated as a pesticide to comply with the requirement to disclose ingredients on its Internet Website required pursuant to the Act.

16) Provides that, in order to protect confidential business information, the ingredient disclosure requirements on the product label and on the Internet Website shall not be construed to require a manufacturer to disclose the weight or amount of an ingredient or nonfunctional constituent or to disclose how a product is manufactured.

17) Authorizes a manufacturer to protect as confidential business information any ingredient or combination of ingredients listed on the federal TSCA Confidential Inventory List or for which the manufacturer or its supplier claim protection under the Uniform Trade Secrets Act.

18) Requires a manufacturer to maintain justification for protecting confidential business information consistent with the requirements of the Uniform Trade Secrets Act and provide that justification on request for audit by the Attorney General.

19) Provides that the online disclosure requirements apply to a designated product sold in the state on or after January 1, 2020.

20) Provides that the product label disclosure requirements apply to a designated product sold in the state on or after January 1, 2021.

21) Authorizes a manufacturer to label a designated product manufactured before January 1, 2021 consistent with the Act.

22) Provides that a designated product manufactured prior to January 1, 2020, and January 1, 2021, shall be in compliance with the requirements of the Act if the product label includes one of the following: the day, month, and year of manufacture of the product; a code indicating the date of manufacture; or, the manufacturer's code.

23) Requires a manufacturer, within six months of a change to a designated trait list, to make a revision to the information disclosed online pursuant to the Act.

24) Requires a manufacturer, within eighteen months of a change to a designated trait list, to make a revision to the information disclosed on the product label.

25) Prohibits the sale of a designated product in the state unless the designated product and the manufacturer of the designated product comply with the requirements of the Act.

EXISTING LAW:

Under Federal law:

1) Establishes TSCA, which authorizes the US EPA to create a regulatory framework to collect data on chemicals in order to evaluate, assess, mitigate, and control risks that may be posed by their manufacture, processing, and use. (15 United States Code § 2601 et seq.)

2) Requires, pursuant to the federal Fair Packaging and Labeling Act, each package of household "consumer commodities" to bear a label on which there is a statement identifying the commodity, e.g., detergent, sponges, etc.; the name and place of business of the manufacturer, packer, or distributor; and, the net quantity of contents in terms of weight, measure, or numerical count. (16 Code of Federal Regulations Parts 500, 501, 502, 503)

Under Proposition 65:

3) 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. (Health and Safety Code (HSC) § 25249.5)

4) 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. (HSC § 25249.6)

5) Requires the Governor to publish a list of chemicals known to cause cancer or reproductive toxicity and to annually revise the list. (HSC § 25249.8)

Under the California Green Chemistry statutes:

6) 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. (HSC § 25252 (a))

7) 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. (HSC § 25253(a)(1))

8) Authorizes DTSC to take specified regulatory actions to limit exposure or to reduce the level of hazard posed by a chemical of concern. (HSC § 25253(b))

9) Creates the Uniform Trades Secrets Act which establishes a legal framework for the protection of trade secrets for companies in California. (Civil Code § 3426)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

> "Cleaning products are used by millions of Californians every day and contain thousands of chemicals – many of which are toxic and have been associated with cancer, asthma and other respiratory damage, skin allergies, and reproductive, developmental, and hormonal changes.

Many are poisonous; in fact, the majority of poison control calls come from residences; half of those calls concern children ages six and under; bleach and other cleaning products are among the top unintentional poisonings. Unfortunately, families are forced to buy these products without ever knowing what is in them – a situation that can have serious consequences. Studies have also shown that these chemicals can be found in urine, breast milk, and blood, including the umbilical cord blood of newborns.
Just like families check labels on their food, drugs, cosmetics and other items brought into their homes, Californians have the right to know exactly what they are buying in the cleaning aisle. While ingredient labeling is mandatory for most components of food, cosmetics, and drugs, there are minimal requirements for cleaning products. This information allows families to choose products that suit their needs and helps protect consumers diagnosed with asthma or allergies from unintentional exposure. It also assists poison control centers and physicians to properly treat patients.

The cleaning workforce, which is predominantly comprised of women and low-income and minority workers, is disproportionately impacted by exposure to unsafe chemicals in cleaning products. Knowing what chemicals are included in a product is an important factor in helping consumers, workers and employers select products that minimize acute and chronic health impacts, particularly for vulnerable populations such as children, pregnant women, cancer survivors, and individuals with health conditions and sensitivities.

There are no clear and consistent rules in the market for companies that want to voluntarily disclose information about their products – creating confusion and an unfair playing field for businesses that want to do the right thing.

While existing regulatory programs serve an important purpose, they are not a substitute for *full disclosure*, as required in SB 258."

Cleaning products: Cleaning products are ubiquitous, and people may be exposed to chemicals in these products both during and after use. These products are formulated using chemicals that improve the performance of these cleansers, but often these same chemicals can also harm people or our environment. People may get cleaning products directly on their skin or in their eyes, or they can inhale their vapors. Exposure to chemicals such as strong acids or bases in cleaning products can cause skin rashes, severe burns, or asthma attacks. Other chemicals in some cleaning products are endocrine disruptors, reproductive toxicants, or neurotoxicants. Those who use cleaning products at work have higher exposures. According to the National Institute of Occupational Health Sciences (NIOSH), 2.3 million people work in building custodial services occupations in the U.S., and another 1.4 million work as maids in hotels, or in healthcare facilities. NIOSH has made it a priority to support ongoing research to help cleaning professionals recognize and prevent or reduce risks at work. The California Department of Public Health has published reports and factsheets on work-related asthma among workers exposed to cleaning products.

After use, the volatile chemicals in a cleaning product may affect indoor air quality. Wastewater treatment plants are not designed to treat some contaminants in cleaning products that are washed down the drain. This can result in inadvertent chemical or biological reactions that lead to harmful degradation products. In the case of triclosan, for example, dioxin-like compounds, chloroform, and other carcinogenic or cytohazardous chemicals can result – some of which are highly persistent.

Cleaning Products are used in homes, schools, hospitals, restaurants, hotels, offices, and other indoor and outdoor environments.

Both consumers and manufacturers have become increasingly aware of the problems that can be associated with chemicals in cleaning products. Consumers have embraced product lines with less hazardous chemicals. At the same time, more and more manufacturers seek to develop and market products that are safer. The fragrance industry has voluntarily moved to restrict the use of numerous hazardous chemicals used in fragrances. Still, there are thousands of chemical compounds used in fragrances, some of which have hazard traits that may warrant further investigation.

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.

Requiring ingredients to be listed directly on a product's label would be more efficient for providing consumers and workers product information, but disclosure requirements have been long fraught with opposition from the manufacturing and chemical industries. Those stakeholders have argued on past legislative ingredient disclosure bills that consumers will be confused by long chemical names; that listing chemical names can scare consumers away from a product; and that disclosure publicizes trade secret formulas and intellectual property. Accurate disclosure, however, is critical to knowing what is in a product, and what impacts that product can have on a professional using the product based on those ingredients.

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:

1) 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.

2) Priority Products – Priority products are consumer products that contain one or more candidate chemicals. 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.

3) 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 web site. 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.

4) 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.

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.

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, there is no uniform method of disclosing ingredients to consumers in state law or regulation. SB 258

seeks to remedy these deficiencies in existing law by requiring manufacturers of cleaning products to disclose significantly more information about the ingredients and chemicals in their products, including fragrances. This ingredient disclosure will allow families to choose products that suit their needs; protect consumers diagnosed with asthma or allergies from unintentional exposure; and, assist 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, SB 258 will provide valuable information to DTSC, which is not privy to all of the ingredients in cleaning products, as well as allow 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.

Potential amendment: The committee and author may wish to consider a clarification that nothing in this bill prohibits DTSC from regulating any cleaning product covered under SB 258. Specifically, the bill could be amended as follows:

At the end of the bill, insert: "108960. Nothing in this chapter shall be construed to restrict the authority of the Department of Toxic Substances Control to take action on any cleaning product pursuant to its authority under Chapter 6.5 of the Health and Safety Code (commencing with section 25251) and consistent with this Act."

Related legislation:

1) AB 708 (Jones Sawyer, 2015-2016) Would have required the manufacturer of a designated consumer product manufactured after July 1, 2017, for retail sale in California, to disclose the 20 most prevalent ingredients contained in the product on the product label and on the manufacturer's Web site, and required the manufacturer to list any ingredient found on the list of candidate chemicals on the product label. This bill was held on the Assembly Floor.

2) SB 928 (Simitian, 2009-2010) Would have required manufacturers to disclose the chemical content of specified types of cleaning products sold in California. This bill was held on the suspense file in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Academy of Pediatrics, California
American Congress of Obstetricians and Gynecologists
American Lung Association of California
American Sustainable Business Council
Beautycounter
Black Women for Wellness
Blue Green Alliance
Breast Cancer Prevention Partners
California Domestic Workers Coalition
California Environmental Justice Alliance
California Federation of Teachers

California Health Nail Salon Collaborative
California Product Stewardship Council
California Public Interest Research Group
California School Employees Association
California State PTA
California Teachers Association
Center for Environmental Health
Change Coalition
City and County of San Francisco
Clean Production Action
Coalition for Clean Air
Commonweal Biomonitoring Resource Center
Community Action to Fight Asthma
Consumer Federation of California
Clean Water Action
Courage Campaign
Environmental Working Group
Friends of the Earth US
The Honest Company
Institute of Popular Education of Southern California
Meliora Cleaning Products
Natural Resources Defense Council
Pacoima Beautiful
Pesticide Action Network North America
Physicians for Social Responsibility, SF Bay Area
Physicians for Social Responsibility, Los Angeles
Regional Asthma Management and Revention
Service Employees International Union
Seventh Generation
Sheet Metal Occupational Health Institute Trust
Sierra Club
Sierra Club California
Strop Waste
UNITE-HERE
United Steelworkers District 12
Women's Voices for the Earth

Opposition

American Chemistry Council
American Cleaning Institute
American Coatings Association
American Petroleum and Convenience Store Association
Auto Care Association
California Apartment Association
California Chamber of Commerce
California Council for Environmental and Economic Balance
California Grocers Association
California Hospital Association

California Manufacturers and Technology Association
California Paint Council
California Retailers Association
Can Manufacturers Institute
CAWA – Representing the Automotive Parts Industry
Chemical Industry Council of California
Consumer Specialty Products Association
Greater Bakersfield Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
International Fragrance Association, North America
International Franchise Association
Lodi Chamber of Commerce
National Federation of Independent Business
North Orange County Chamber of Commerce
Oceanside Chamber of Commerce
Oxnard Chamber of Commerce
Plastics Industry Association
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce & Tourist Bureau
Responsible Industry for a Sound Environment (RISE)
Ripon Chamber of Commerce
South Bay Association of Chambers of Commerce
Southwest CA Legislative Council
Specialty Equipment Market Association
Torrance Chamber of Commerce
Vacaville Chamber of Commerce
Valley Industry & Commerce Association

Analysis Prepared by: Josh Tooker / E.S & T.M. /

Date of Hearing: July 11, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 377 (Monning) – As Amended June 26, 2017

SENATE VOTE: 24-10

SUBJECT: Lead-based paint

SUMMARY: Requires the Department of Public Health (CDPH) to promulgate regulations governing lead-related construction work to conform to the federal Environmental Protection Agency's (US EPA) Lead Renovation, Repair, and Painting Rule (RRP). Specifically, **this bill**:

1) Requires a firm, which performs renovation, repair, or painting services for compensation in a residential or public building, to have a certificate issued by CDPH when lead-based paint will be disturbed.

2) Requires CDPH, within one year of the Legislature providing funding for implementation, to promulgate regulations to correspond and comply with regulations adopted pursuant to this bill and with the US EPA's RRP.

3) Requires the regulations to include, but not be limited to, requiring a copy of the worker and firm certification to be provided before the start of the job to the prime contractor or other employers on the site and to be posted on the job site beside the Division of Occupational Safety and Health (Cal-OSHA) Lead-Work Pre-Job Notification.

4) Authorizes CDPH to implement and administer this bill through all-county letters or similar instructions from CDPH until regulations are adopted.

5) Requires CDPH to adopt emergency regulations implementing the provisions of the bill within six months of the Legislature providing funding for the purpose of this bill. Authorizes CDPH to re-adopt any emergency regulation pursuant to this bill that is the same as, or substantially equivalent to, an emergency regulation previously adopted pursuant to this bill.

6) Requires the initial adoption of emergency regulations and one re-adoption of emergency regulations to be considered an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare.

7) Requires the initial adoption of emergency regulations and one re-adoption of emergency regulations to be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare and exempts those regulations from the purview of the Office of Administrative Law, but requires those regulations to be submitted to the Office of Administrative Law for filing with the Secretary of State, and requires that each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

8) Requires CDPH to charge a fee for the issuance of a certificate. Requires the fee to be set by CDPH at an amount no greater than the amount required to cover the reasonable and

necessary costs of administering the provisions of the bill. Requires the fee revenues to be deposited into the Lead-Related Construction Fund.

9) States that persons performing routine maintenance and repairs in housing are not required to have a certificate if they are not performing any renovation, repair, or painting services for compensation in a residential or public building.

10) Requires CDPH to assess a civil penalty, not to exceed one thousand dollars ($1,000), on a person or firm that does any of the following:

   a) Performs services for which a certificate is required without a valid certificate;

   b) Falsely represents that the firm or person has a certificate issued; and,

   c) Submits false information or documentation to CDPH in order to obtain or renew a certificate issued.

11) Effectuates this bill when the Legislature appropriates money for implementation.

EXISTING LAW:

1) Establishes the federal Lead-Based Paint Poisoning Prevention Act to create a prohibition against the future use of lead-based paint. (42 United States Code § 4851)

2) Establishes the federal Residential Lead-Based Paint Hazard Reduction Act of 1992 (also known as Title X) to require anyone selling or leasing single- and multi-family housing units built before 1978 to disclose information about lead-based paint hazards to prospective buyers or tenants. (Public Law 102-550)

3) Establishes the US EPA's Lead-Based Paint RRP to require workers to be certified and trained in the use of lead-safe work practices, and requires renovation, repair, and painting firms to be US EPA-certified. (Title 40 Code of Federal Regulations (CFR) § 745)

4) Prohibits the use of lead for residential use in the United States. (Title 16 CFR § 1303)

5) Defines "firm" as a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or, a nonprofit organization. (Title 40 CFR § 745.83)

6) Establishes the Residential Lead-Based Paint Hazard Reduction Program to require any person offering lead-related construction courses to meet CDPH certificate requirements. (Health & Safety Code § 105250)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "SB 377 follows the lead of fourteen other states that have aligned their state's lead laws and the federal RRP regulations. The bill would require the

California Department of Public Health to develop training and certification for lead safe work practices that is specific to California. This California RRP certification would take the place of the U.S. EPA's RRP certification for work done in California. This bill would also improve enforcement by giving state and local enforcement agencies the ability to ensure those doing renovation and repair work on pre-1978 homes are certified on lead safe work practices.

The California Department of Public Health already administers other lead certifications (Abatement workers and Inspectors, for example). Adding certification for lead safe work practices will fit well into this existing structure."

The problem with lead: Lead has been listed under California's Proposition 65 since 1987 as a substance that can cause reproductive damage and birth defects and has been listed as a chemical known to cause cancer since 1992. There is no level of lead that has been proven safe, either for children or for adults.

Lead-based paint history: When lead-based paint was marketed before 1978, it was a legal product in great demand because it was washable and durable. It was repeatedly endorsed by the federal, state, and local governments, and specified for use on government buildings until the mid-1970s. For example, the 1950 California Department of Education vocational book on painting endorsed the use of white lead paint.

As uses of lead pigments in paints evolved, so did the primary pathways through which people were thought to be exposed to lead and the level of exposure thought to be safe. It was not until 1974 that household dust emerged as a possible pathway for lead exposure.

In 1978, the federal government banned consumer uses of lead paint. Although the U.S. Consumer Product Safety Commission banned the use of lead-based paint in 1978, buildings built prior to the ban still likely have lead paint. Due to the significant health issues caused by lead exposure, California requires anyone who performs lead-based paint risk assessment or removal to be certified or accredited by CDPH.

State action on lead paint: In 1991, the California Legislature enacted AB 2038, the Childhood Lead Poisoning Prevention Act of 1991, which established a program within the State Department of Health Services (DHS, which is now CDPH) to meet the requirements of the federal Residential Lead-Based Paint Hazard Reduction Act of 1992 and Title X of the Housing and Community Development Act. It required DHS to adopt regulations regarding accreditation of training providers that engage in or supervise lead-related construction work, and required the establishment of fees for the accreditation of training providers, the certification of individuals, and the licensing of entities engaged in lead-related occupations. The fees are deposited into the Lead-Related Construction Fund.

In 2002, the Legislature enacted SB 460 (Ortiz, Chapter 931, Statutes of 2002) to establish the requirement that lead safe work practices be used in pre-1978 buildings. SB 460 added lead hazards to the conditions that make premises uninhabitable and substandard. It also prohibited an individual from disturbing more than a "de minimis" amount of lead-based paint without "containment" (a system, process, or barrier used to contain lead hazards inside a work area).

SB 460 also required any person being paid for lead construction, including inspection, risk assessment, or designing plans for the abatement of lead hazards, and any person performing

lead inspections or abatement in a public elementary, preschool, or day care center, to have a certificate from DHS.

Lead-Based Paint Renovation, Repair and Painting (RRP) Rule: Common renovation activities like sanding, cutting, and demolition can create hazardous lead dust and chips by disturbing lead-based paint, which can be harmful to adults and children.

On April 22, 2008, the US EPA issued the RRP requiring the use of lead-safe practices and other actions aimed at preventing lead poisoning. Under the RRP, beginning in April 2010, contractors performing renovation, repair, and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. This includes in-house maintenance staff and many types of outside contractors.

Until that time, the U.S. Department of Housing Urban Development and US EPA recommended that anyone performing renovation, repair, and painting projects that disturb lead-based paint in pre-1978 homes, child care facilities, and schools follow lead-safe work practices.

Under the RRP, child-occupied facilities are defined as residential, public, or commercial buildings where children younger than age six are present on a regular basis. The requirements apply to renovation, repair, or painting activities. The RRP does not apply to minor maintenance or repair activities where less than six square feet of lead-based paint is disturbed in a room or where less than 20 square feet of lead-based paint is disturbed on the exterior. Window replacement is not minor maintenance or repair.

A concern with the RRP is that many of the specific training requirements either undermine California's requirements, or create confusion with California's requirements.

While California's lead laws and federal RRP complement each other in many ways, subtle differences and inconsistencies between the two make the regulatory framework on lead in buildings confusing.

According to the cosponsors of the bill, Healthy Homes Collaborative and California Association of Code Enforcement Officers, in some instances, practices that are allowed under the RRP are not allowed in California. Renovators and contractors are required to learn and adhere to one set of rules for the RRP and another for California, and have to figure out the inconsistencies on their own.

To address those conflicts, SB 377 would eliminate the current regulatory confusion regarding certification for lead paint removal by conforming federal and state laws and providing funding for increased enforcement of all laws regarding lead paint.

California's existing regulation on lead-based paint: CDPH has regulations (California Code of Regulations (CCR), Title 17, Sections 35001, et seq) that spell out requirements for lead hazard evaluation and abatement activities, accreditation of training providers, and certification of individuals engaged in lead-based paint activities.

In addition, Cal-OSHA has regulations (CCR, Title 8, Section 1532.1, et seq) which provide worker protection requirements for employees conducting lead-related construction activities.

Cal-OSHA's regulations limit occupational exposure to lead and require employers to use engineering controls, safe work practices, and other control measures. These regulations apply to all employers regardless of what kind of work they perform. Cal-OSHA is currently developing revised lead regulations that they expect will be adopted several years from now, after the commencement of rulemaking. As it relates to coordination with Cal-OSHA's worker safety regulations, Cal-OSHA does not see any conflict with what SB 377 is proposing.

Existing law already authorizes CDPH to have a program that certifies employees that engage in or supervise lead-related construction work, therefore, this proposal fits under CDPH's existing regulatory umbrella for lead-related regulation. According to CDPH, upon enactment of SB 377, CDPH would write and implement new regulations within Title 17, Division 1, Chapter 8, Accreditation, Certification and Work Practices for Lead-Based Paint and Lead Hazards in order to comply with the US EPA RRP program.

Need for emergency regulations: A state agency may adopt emergency regulations in response to a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare, or if a statute deems a situation to be an emergency under the Administrative Procedures Act (APA). Because emergency regulations are intended to avoid serious harm and require immediate action, the emergency rulemaking process is substantially abbreviated compared to the regular rulemaking process.

SB 377 requires CDPH to adopt regulations within one year of the legislature providing funding for implementation of the provisions of the bill. It also requires CDPH to adopt emergency regulations within 6-months of the legislature funding implementation.

It is anticipated that it will take CDPH around 3 years to promulgate the regulations through the standard regulatory process under the APA. Emergency regulations are done through a streamlined process, and remain in effect for a limited time. The intent, according to the author, is to initiate emergency regulations within one year giving CDPH time to develop final regulations, and the emergency regulations would phase-out once regular regulations are adopted.

SB 377 includes emergency regulatory authority because old houses are the biggest risk for lead exposure according to the US EPA, and roughly 6.5 million homes in California are expected to have lead hazards. Given the highly toxic nature of lead and the ubiquity at which it is found in older building stock, having clear, understandable rules in place for lead-paint renovation or abatement is critical. Any delay could result in unnecessary lead exposure because of confusion over state compliance.

In addition, the Trump Administration is proposing to cut the Lead Risk Reduction Program (Program), which trains and certifies renovators in federally approved methods of containing and cleaning up work areas in homes constructed before 1978. The Program applies to a broad range of renovations, including carpet removal and window replacement, in homes inhabited by pregnant women and young children. The Administration's budget also proposes deep cuts – $14 million – that would defund grants to state and tribal programs that also address lead-based paint risks.

The more expeditiously California can update its regulations, the better we will be able to shield Californians from rollbacks at the US EPA under the current presidential administration.

Arguments in support: According to East Los Angeles County Community Corporation, while adding much needed training on Lead Safe Work Practices (LSWP) is a step forward, the US EPA's RRP has elements that are not as protective as California's law. The group contends that because of a lack of enforcement, RRP has not been as effective as it could, leaving children, workers, and families at risk with little immediate recourse. For example, of the more than 280,000 licensed General Contractors in California, fewer than 35,000 individuals have become RRP-certified. SB 377 would follow the lead of fourteen other states and create a California-specific RRP program on LSWP, grant enforcement authority to local agencies already enforcing the state's lead laws, and help prevent lead poisoning in the state.

Arguments in opposition: The Contraction Employers' Association (CEA) argues in opposition that, "the bill imposes significant responsibilities and penalties on employers and at the same time creates a potential cottage industry for lead paint based consultants whom may or may not be qualified." CEA continues, "We would prefer a robust outreach and education program in this area which we believe would be more beneficial and less costly to industry and government."

Related legislation: Last year, SB 1073 (Monning), which was heard and approved by this Committee, intended to create a California-specific program to ensure compliance with the US EPA and eliminate any confusion over the requirements needed for certification in California. SB 1073 would have built off the existing program established under SB 460 and ensure that all persons doing renovation, repair, or painting work in a residential or public building are appropriately certified or accredited to perform work on lead-based paint. That bill was later amended with unrelated content.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Code Enforcement Officers (co-sponsor)
Healthy Homes Collaborative (co-sponsor)
Alameda County Board of Supervisors
American Academy of Pediatrics, California
Barr & Clark, Inc.
California Pan-ethnic Health Network
City of Fremont.
Clean Water Action
East Los Angeles County Community Corporation
Esperanza Community Housing Corporation
HomeSafe Environmental, Inc.
Impact Assessment, Inc.
Koreatown Immigrant Workers Alliance
Learning Rights Law Center
Public Health Institute
Rural Legal Assistance Foundation
Santa Cruz County Health Services Agency
Strategic Actions for a Just Economy
Western Center on Law and Poverty

Opposition

California Department of Public Health
Construction Employers' Association

Analysis Prepared by: Paige Brokaw / E.S. & T.M. /

Date of Hearing: July 11, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 774 (Leyva) – As Amended July 3, 2017

SENATE VOTE: 27-13

SUBJECT: Hazardous substances: California Toxic Substances Board

SUMMARY: Creates the California Toxic Substances Board (Board) within the Department of Toxic Substances Control (DTSC) to provide effective, reliable, transparent, and accountable oversight of California's hazardous waste management and the remediation of contaminated sites. Specifically, **this bill**:

1) Creates the Board within DTSC, consisting of five members appointed by the Governor and confirmed by the Senate. Requires membership to include an attorney admitted to practice law in California who is qualified in the field of environmental law pertaining to hazardous waste, hazardous substances, or site remediation; an environmental scientist qualified in the fields of toxicology, chemistry, geology, industrial hygiene, or engineering; a scientist or medical professional qualified in the area of toxic substances; one person qualified in the area of regulatory permitting; and, one member of the public.

2) Provides that three members of the Board shall constitute a quorum for the transaction of business of the Board.

3) Prohibits a member of the Board from participating in any Board action in which the Board member has a disqualifying financial interest in the decision.

4) Prohibits a member of the Board from participating in a proceeding before the Board as a consultant or in any other capacity on behalf of a waste discharger.

5) Requires that a member of the Board be appointed for a term of four years and a vacancy to be immediately filled by the Governor for the unexpired portion of the term.

6) Provides that the terms of the members of the Board shall be staggered, with the two initial members, as determined by the Governor, serving a two-year term, and the three initial members, as determined by the Governor, serving a four-year term.

7) Provides that a member of the Board may be removed from office by the Legislature, by concurrent resolution adopted by a majority vote of all members elected to each house, for dereliction of duty, corruption, or incompetency.

8) Requires the Board to hold monthly meetings and requires the Governor to designate the time and place for the first meeting of the Board. States that the first meeting of the Board shall be held on August 1, 2018.

9) Requires the Board to conduct monthly public hearings to consider matters before the Board and to make public the agenda for those hearings no less than 30 days prior to the hearing.

10) Requires the Board, when setting the monthly agenda for a hearing, to prioritize hazardous waste facilities permits and sites to be reviewed based on criteria that include, but are not limited to, the following:

    a) The status of the hazardous waste facilities permit;

    b) The nature of the site and any remedial action on the site;

    c) The proximity of the site or hazardous waste facility to vulnerable populations and sensitive receptors;

    d) The potential for a release of a hazardous substance; and,

    e) The amount of time the action has been pending.

11) Authorizes the Board to hear matters under the authority of the Board under its own volition and as follows:

    a) Matters relating to a hazardous waste facilities permit or site upon receipt of a petition requesting a hearing. Authorizes the Board, based on documents submitted, information presented, and testimony taken at a hearing, to direct DTSC to resolve outstanding issues relating to a hazardous waste facilities permit, set a timeline for a resolution or permit decision, require conditions be placed on a hazardous waste facilities permit to address hazards to public health or the environment. Requires DTSC to comply with directives received by the Board.

    b) Matters relating to a site upon receipt of a petition requesting a hearing. Authorizes the Board, based on documents submitted, information presented, and testimony taken at a hearing, to direct DTSC to resolve outstanding issues relating to site cleanup, require investigation of a site, identify potentially responsible parties, set a timeline for a resolution or investigation, seek corrective action or any combination of these. Requires DTSC to comply with directives received by the Board.

12) Requires DTSC to prepare for the Board's hearing in consideration of the Board's agenda. Requires DTSC to prepare to present on any draft regulations, including the status of the regulations, and prepare a complete record of the hazardous waste facility permit or site to be presented at the hearing.

13) Authorizes the Board to adjourn to, or meet solely in, executive session to discuss legal matters, personnel matters, or matters relating to pending enforcement actions. Authorizes the Board to meet with the Attorney General, the DTSC director, and DTSC legal counsel in executive session.

14) Requires the Board, in January of each year, to hold an annual meeting at which DTSC shall provide status reports on DTSC's priorities and work plans for hazardous waste management programs, site remediation programs, and regulation development from the previous year and shall present on its current and pending work plans and priorities. Requires the Board to set an annual agenda for DTSC's priorities and work plans for the current year.

15) Authorizes the Board to review the law on hazardous waste management and site remediation and make recommendations to the Legislature for changes to the law that will enhance management of hazardous waste.

16) Authorizes the Board to create subcommittees of three board members to review and decide matters before the Board pertaining to petitions for hearings received by the Board. Requires the meetings of the subcommittees to be held in compliance with the Bagley-Keene Open Meeting Act.

17) Requires the Board to adopt regulations pursuant to the Hazardous Waste Control Law (HWCL) and the Carpenter-Presley-Tanner Hazardous Substance Account Act (HSAA).

18) Provides that the authority for DTSC to adopt regulations under the HWCL shall instead be construed to authorize or require DTSC to develop draft regulations, and requires the Board to review and adopt those regulations in accordance with the Administrative Procedures Act (APA).

19) Provides that the authority for DTSC to adopt regulations under the HSAA shall instead be construed to authorize or require DTSC to develop draft regulations and requires the Board to review and adopt those regulations in accordance with the APA.

20) Requires the Board to maintain its headquarters in Sacramento.

21) Requires the Governor to designate the Chairperson of the Board and hold the office of chairperson at the pleasure of the Governor.

22) Authorizes the Board to conduct investigations in the state as necessary to carry out the powers vested in the Board.

23) Requires the Board to adopt rules for the conduct of its affairs in conformity, as nearly as practicable, with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

24) Authorizes the Board to use and direct administrative staff, regulatory staff, legal counsel, and other personnel employed by DTSC in areas under which the Board has authority if necessary or convenient for the exercise of its duties and powers authorized by law, consistent with all applicable state human resources laws.

25) Requires the Board to appoint the Director of DTSC, who shall hold office at the pleasure of the Board.

26) Authorizes the Board to expend moneys appropriated for the administration of the Board and all powers and duties granted to it pursuant to the HWCL and HSAA.

27) Requires the Board to publish biennial progress reports relating to activities of the Board.

EXISTING LAW:

1) Creates the HWCL which authorizes DTSC to regulate the management of hazardous wastes in California. (Health and Safety Code (HSC) § 25100 et. seq.)

2) Establishes the HSAA, a program to provide for response authority for releases of hazardous substances, including spills and hazardous waste disposal sites that pose a threat to the public health or the environment. (HSC § 25300 et seq.)

3) Authorizes DTSC to issue hazardous waste facilities permits for the use and operation of one or more hazardous waste management units at a facility that meets the standards adopted pursuant to the HWCL. (HSC § 25200 (a))

4) Requires DTSC to impose conditions on each hazardous waste facility permit specifying the types of hazardous wastes that may be accepted for transfer, storage, treatment, or disposal. (HSC § 25200 (a))

5) Authorizes DTSC to conduct inspections, conduct sampling activities, inspect and copy documents, and take photographs at sites or establishments where hazardous wastes are stored, handled, processed, treated, or disposed. (HSC § 25185)

6) Authorizes DTSC to deny, suspend, or revoke any permit, registration, or certificate applied for, or issued pursuant to the HWCL. (HSC § 25186)

7) Creates a Federal "Superfund" to clean up uncontrolled or abandoned hazardous waste sites, as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Provides the United States Environmental Protection Agency (US EPA) with the authority to seek out those parties responsible for any release and assure their cooperation in the cleanup. (42 United States Code (U.S.C.) § 9601 et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

> "SB 774 ensures lasting accountability and transparency within DTSC by creating the California Toxic Substances Board. This board will oversee the responsibilities of the current DTSC and provide general policy direction. The Board will have five members appointed by the Governor and each will possess qualifications in environmental law and science. Over the last several years, DTSC has been criticized across the state for neglected permitting, cleanup and cost recovery and financial management activities.
>
> Most notably, the Exide facility in the City of Vernon had a hazardous waste facility permit that languished in continued status for nearly 30 years with numerous permit violations. This failure to complete the permitting process came at the price of decades-long severe, on-going and highly-toxic lead pollution of the surrounding community and ultimately resulted in the closure of the facility. The Exide facility is just one of numerous sites that have drawn public attention and legislative scrutiny to DTSC, resulting in oversight hearings, statutory changes and budget augmentations.

In 2015, an Independent Review Panel (IRP) was established (pursuant to SB 83, Chapter 24, Statutes of 2015). The IRP's purpose is to review and make recommendations regarding improvements to DTSC's permitting, enforcement, public outreach, and fiscal management.

The work of the IRP has been invaluable to providing thoughtful and comprehensive improvements for the DTSC. Unfortunately, the IRP will sunset on January 1, 2018." To increase accountability, the IRP recommended the creation of a board to decide on hazardous waste facility permits that DTSC does not timely process, provide improved oversight, and other structural changes. SB 774 creates the Board to oversee DTSC as recommended by the IRP."

Potential impacts of hazardous waste: The potential public health and environmental harm that can be caused by various hazardous substances used in industrial, manufacturing, and other processes has drawn widespread national attention. Information provided by the United States Environmental Protection Agency (US EPA) advises that over the next several decades, federal, state, and local governments, and private industry will commit billions of dollars annually to clean up sites contaminated with hazardous waste and petroleum products from a variety of industrial sources. There could be as many as 355,000 contaminated sites that will require cleanup over the next 30 years and that the cost of this cleanup may amount to as much as $250 billion. Given that there are more than 100,000 entities in California that handle hazardous waste, it is important to ensure that these entities handle the waste safely and according to state and federal law and regulation. Many of our contaminated sites have come from entities that poorly managed or mis-managed the hazardous waste at their sites. The current laws on the books are intended to prevent those types of contamination from happening in the future.

California Hazardous Waste Control Law (HWCL): The HWCL is the state's program that implements and enforces federal hazardous waste law in California and directs DTSC to oversee and implement the state's HWCL. Any person who stores, treats, or disposes of hazardous waste must obtain a permit from DTSC. The HWCL covers the entire management of hazardous waste, from the point the hazardous waste is generated, to management, transportation, and ultimately disposal into a state or federal authorized facility.

DTSC is responsible for ensuring that hazardous wastes generated and handled in California are managed safely and legally to prevent harm to public health and the environment. There are currently 118 facilities permitted by DTSC to store, treat, or landfill hazardous waste in California. Additionally, there are more than 100,000 businesses that generate hazardous waste, and approximately 900 transporters registered with DTSC to transport hazardous waste. Many hazardous waste generators and facilities are located near communities who look to DTSC to protect them from the threats posed by potential releases of harmful chemicals into their air, land, and water. Effective permitting and enforcement of these hazardous waste facilities is paramount to protecting human health and safety and the environment. Many of these permitted hazardous waste facilities are located in communities with vulnerable populations, and inadequate permits or lax enforcement could severely impact the quality of their life.

Carpenter-Presley-Tanner Hazardous Substances Account Act (HSAA): State law provides DTSC with general administrative responsibility for overseeing the state's responses to spills or releases of hazardous substances, and for hazardous waste disposal sites that pose a threat to public health or the environment. DTSC uses the HSAA for cleanup of contaminated sites and the HWCL for the regulation of hazardous waste sites. The HSAA is intended to provide

compensation for out-of-pocket medical expenses and lost wages or business incomes resulting from injuries caused by exposure to hazardous substances. Additionally, DTSC ensures that the state meets the federal requirements that California pay 10-percent of cleanup costs for federal Superfund sites and 100-percent of the operation and maintenance costs after cleanup is complete. The HSAA provides DTSC with the authority, procedures, and standards to investigate, remove, and remediate contamination at sites; to issue and enforce a removal or remedial action order to any responsible party; and, to impose administrative or civil penalties for noncompliance with an order. Federal and state law also authorizes DTSC to recover costs and expenses it incurs in carrying out these activities.

Recent criticism of DTSC: Over the past several years, there have been many criticisms levied at DTSC. Community groups that live near hazardous waste facilities are concerned that DTSC is not properly enforcing state and federal law and allowing facilities to operate with an expired permit or have numerous violations of state law and regulation. Additionally, the regulated community is concerned about the length of time it takes DTSC to process a permit, with processing a permit extending years beyond the expiration date of their permit.

Recent oversight of DTSC: These concerns about DTSC have also reached the Legislature, leading to several legislative oversight hearings of DTSC's programs by this committee, oversight hearings over DTSC's budget, and more than ten pieces of legislation aiming to address the issues of DTSC's permitting and enforcement programs. In 2015, the Legislature passed and the Governor signed SB 83 (Chapter 24, Statutes of 2015), which created a three person Independent Review Panel (IRP) to make recommendations to the Legislature and Governor on DTSC's progress in reducing permitting and enforcement backlogs, improving public outreach, and improving fiscal management. DTSC has responded to these concerns by conducting reviews of its programs, both internally and with outside expertise, requesting additional staff through the budget process, and implementing significant programmatic changes.

Legislative Analyst Office (LAO) overview of DTSC: In May 2017 the LAO posted a summary of recent oversight of DTSC, including progress DTSC has made regarding its permitting and enforcement programs. The post concludes, "Over the past few years, the Legislature has approved funding and personnel resources to address specific deficiencies in DTSC's programs. Even with these new resources, DTSC's own projections show that for some programs it will be years before the deficiencies are fully remedied. Therefore, it will be important for the Legislature to continue to oversee DTSC's progress and hold DTSC accountable for producing results over the next several years. In addition, in cases where the department is not achieving its performance goals, the Legislature may wish to consider further oversight measures. These could include holding hearings to determine the reason for the lack of progress and whether funding and personnel continue to be justified. It could also include having an independent entity—such as the Bureau of State Audits—conduct program reviews to better understand why the program continues to underperform. In our view, such continued oversight is necessary to ensure that the department continues to improve its performance in several key programs."

Is adding a Governing Board the solution?: SB 774 is designed to add transparency and accountability to DTSC's decisions on hazardous waste permits and on cleanup sites. In state government, there are departments and there are boards and each structure has its pro's and con's. However, this bill doesn't seem to intend to re-structure DTSC; instead it seeks to add a layer of oversight and accountability, a hybrid of a board and a department. This bill seems to take the concept of the IRP and make it permanent, and provide it with the authority to direct DTSC to

either complete tasks, or publicly provide a detailed update regarding a particular permit or site. Adding transparency, such as requiring public meetings is a very good thing. Additionally, the accountability this bill seeks would seem to benefit those regulated by DTSC by providing clear public reasoning why a permit has been lagging and provide benefit to communities near hazardous waste facilities or cleanup sites by providing a venue by which they could seek and receive information about such sites.

Issues for further consideration: Protecting Californians from releases of hazardous substances or hazardous waste is a very serious and very complicated endeavor. Ensuring that decisions made by DTSC are done so in an open and transparent manner is a good idea. The bill is seeking to add an oversight board to DTSC, and one of the goals is to improve DTSC decision-making, not to slow down decisions at DTSC. The author may wish to consider the structure and functions of the board to ensure that its oversight functions shine a light on problem areas, while simultaneously doing so in a timely manner; potentially envisioning a more stream-lined version of this oversight board, so that the board itself could set the priorities for the Board and DTSC.

Technical amendments: There are some technical amendments the committee and author may wish to consider:

1) On page 5, on line 35, strike, "confirmed" and insert, "subject to confirmation"

2) On page 7, on line 15 strike, "held" and after, "on" insert: "or before"

3) On page 7, on line 15 strike, "The Governor shall designate the time" and strike line 16.

4) On page 9, on line 18, after "General", insert, "or her or his designee"

Related Legislation:

1) AB 245 (Quirk) requires DTSC to review and approve corrective action cost estimates and financial assurances as a condition for hazardous waste facility operation. This bill also increases the maximum allowable penalty for violations of the hazardous waste control law. AB 245 is pending in the Senate.

2) AB 246 (Santiago) requires DTSC, as a condition for a new hazardous waste facilities permit or a renewal of a hazardous waste facilities permit, to require a permit applicant to obtain a permit from the local air quality management district or air pollution control district and that compliance with the air permit is also a condition of the hazardous waste facilities permit. AB 246 is pending in the Senate.

3) AB 248 (Reyes) makes several statutory changes to improve the permitting process for the permitting of hazardous waste facilities. AB 248 is pending in the Senate.

4) SB 774 (Leyva) creates the Toxic Substances Board, which would succeed to, and be vested with, all of the powers, duties, purposes, responsibilities, and jurisdiction of DTSC. This bill is pending in the Assembly Environmental Safety and Toxic Materials Committee.

5) SB 1325 (de León, Chapter 676, Statutes of 2016) requires DTSC to, on or before January 1, 2018, adopt regulations to impose post-closure plan requirements on the owner or operator of

a hazardous waste facility through the issuance of an enforcement order, an enforceable agreement, or a post-closure permit and deletes a January 1, 2009 sunset date which authorized DTSC to impose post closure plan requirements through an enforcement order or an enforceable agreement.

6) AB 1075 (Alejo, Chapter 460, Statutes of 2015) establishes standards for what constitutes a repeat serious hazardous waste facility violation and specifies the enforcement or permit revocation action to be taken by DTSC.

7) SB 673 (Lara, Chapter 611, Statutes of 2015) requires DTSC, by January 1, 2018, to establish or update criteria for use in determining whether to issue a new or modified hazardous waste facilities permit or a renewal of a hazardous facilities permit, and to develop and implement, by July 1, 2018, programmatic reforms designed to improve the protectiveness, timeliness, legal defensibility, and enforceability of DTSC's permitting program.

8) SB 83 (Committee on Budget and Fiscal Review, Chapter 24, Statutes of 2015) establishes the IRP at DTSC to make recommendations regarding improvements to the department's permitting, enforcement, public outreach, and fiscal management. Also establishes an assistant director for environmental justice to serve as an ombudsperson for disadvantaged communities.

9) SB 712 (Lara, Chapter 833, Statutes of 2014) requires the DTSC, on or before December 31, 2015, to issue a final permit decision on an application for a hazardous waste facilities permit that is submitted by a facility operating under a grant of interim status on or before January 1, 1986, by either issuing a final permit or a final denial of the application.

10) SB 812 (de León, 2014) would have provided permit standards and community involvement in the DTSC permitting process. SB 812 was vetoed by Governor Brown. In his veto message the Governor stated:

> "The delay and complexity that has plagued the Department's permit process over the last few decades has resulted in an inadequate and unresponsive regulatory program.
>
> "Unfortunately, there are provisions in the bill that will unintentionally delay the Department's current plan to revise its program and complete its review of expired permits over the next two years. Instead of risking further delay and confusion, I would like to personally work with the author on modifications to the language, including providing the Department the necessary authority and adequate resources to fulfill our shared objectives of improving the performance of this critically important state program."

11) AB 1329 (V. Manuel Pérez, Chapter 598, Statutes of 2013) requires DTSC to prioritize an enforcement action affecting communities that have been identified by Cal/EPA as being the most impacted environmental justice communities.

REGISTERED SUPPORT / OPPOSITION:

Support

California Environmental Justice Alliance

Californians Against Waste
Center for Community Action and Environmental Justice (CCAEJ)
Center on Race, Poverty & the Environment
Clean Water Action
Environmental Working Group

Opposition

California Chamber of Commerce
California Council for Environmental and Economic Balance
Chemical Industry Council of California
Department of the Navy
Western States Petroleum Association

Analysis Prepared by: Josh Tooker / E.S. & T.M. /

Date of Hearing: July 11, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 778 (Hertzberg) – As Amended May 26, 2017

SENATE VOTE: 38-1

SUBJECT: Water systems: consolidations: administrative and managerial services

SUMMARY: Requires the State Water Resources Control Board (State Water Board) to post information on its Internet Website analyzing the public water consolidations and their successes or failures to date. Specifically, **this bill**:

1) Requires, on or before March 1, 2018, the State Water Board to track and publish on its Internet Website an analysis of all voluntary and ordered consolidations of drinking water systems. Requires the information published to include the resulting outcomes of consolidating the water systems and whether consolidations have succeeded or failed in providing an adequate supply of safe drinking water to the communities served by the consolidated water systems.

2) Sunsets the one-time requirement on March 1, 2022.

EXISTING LAW:

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

2) Pursuant to the California SDWA, requires the State Water Board to regulate drinking water and to enforce the federal SDWA and other regulations. (Health and Safety Code (HSC) § 116275 et seq.)

3) Authorizes the State Water Board, where a public water system or a state small water system within a disadvantaged community, consistently fails to provide an adequate supply of safe drinking water, to order consolidation with a receiving water system. Provides that the consolidation may be physical or operational. (HSC § 116682 (a))

4) Requires any legislation that imposes a reporting requirement to include a provision that repeals the reporting requirement, or makes the reporting requirement inoperative, four years after the date on which the requirement becomes operative. (Government Code § 10231.5)

5) Establishes requirements for disseminating state agency reports to the Legislature. (Government Code § 9795)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"All Californians have a right to safe, clean, and affordable water for drinking, cooking, and cleaning. Thousands of families are in homes with tap water that is so polluted that it cannot be safely consumed. The State Water Resources Control Board [State Water Board] currently maintains a list of under resourced water systems on the Human Right to Water web portal. According to the [State Water Board], 292 public water systems are out of compliance with federal drinking water standards for contaminants such as nitrate and arsenic.

Current law allows the [State Water Board] to identify failing water systems and order consolidation or extension of services with another water system in order to provide an adequate supply of safe drinking water.

SB 778 requires the [State Water Board] to publish on its website the outcomes of voluntary or ordered consolidations and whether they have succeeded or failed in providing an adequate supply of safe drinking water."

Drinking water needs: According to the State Water Board, 98% of Californians are served by public water systems drinking water that meets federal and state drinking water standards, which leaves 2% of Californians with drinking water that fails to meet drinking water standards.

Nitrates, hexavalent chromium, perchlorate, arsenic, and other contaminants are present in water supplies across the state, and water treatment can be very costly. It is estimated that more than 1 million California residents who live in mostly rural areas have unreliable access to safe drinking water. Findings from a 2012 University of California at Davis study, *Addressing Nitrate in California's Drinking Water*, suggest that drinking water contamination in California disproportionally affects small, rural, and low-income communities that depend mostly on groundwater as their drinking water source.

According to the US EPA Small Drinking Water Systems research, drinking water treatment plants are increasingly being challenged by changes in the quality of their source waters and by their aging treatment and distribution system infrastructure. Factors such as shrinking water due to the statewide drought, limited financial resources, climate change, agricultural runoff, harmful algal blooms, and industrial land use increase the probability that chemicals that have not previously been detected in water, or that are being detected at significantly different levels than expected. This is likely to disproportionately affect small drinking water systems due to limited resources and treatment options, among other factors.

Consolidation in California: Consolidation is the joining of two or more water systems, which includes, usually but not always, a smaller system being absorbed into a larger water system. One way to do this is through physical consolidation. For example, a small mobile home park which has its own water system may be near a city and decides it no longer wishes to be responsible for providing drinking water. The city can begin providing water to the mobile home park through an interconnection. The mobile home park can dissolve its water system and no longer be responsible for providing water. In this case, we call the city the "receiving" water system and the mobile home park the "subsumed" water system.

Managerial consolidations also exist. Managerial consolidation is when a small water system becomes part of a larger water system for all managerial purposes, but continues to use their original water supply and distribution system. For example, a small community may once have had an all-volunteer staff. The volunteer staff may be aging and no longer wants to be responsible for the water system. The water system may be too far from the large water system

to make it cost-effective to physically consolidate. The larger water system can legally take over the water system functions such as regulatory reporting, billing, operations, etc., but use its existing infrastructure. The smaller water system dissolves and is no longer legally responsible for water service.

According to the US EPA, restructuring can be an effective means to help small water systems achieve and maintain technical, managerial, and financial capacity, and to reduce the oversight and resources that states need to devote to these systems. The State Water Board maintains that consolidating public water systems and extending service from existing public water systems to communities and areas which currently rely on under-performing or failing small water systems, as well as private wells, reduces costs and improves reliability.

To promote consolidation in California, CDPH, which is the State Water Board's processor to managing the state's drinking water program, established the Consolidation Incentive Program (Program). The Program provided an incentive to encourage larger, compliant water systems to consolidate with nearby noncompliant systems. Previously, CDPH only invited drinking water systems that were out of compliance with drinking water standards to submit applications for Safe Drinking Water State Revolving Fund (SDWSRF) funding. However, through the consolidation incentive process, lower-ranked projects for compliant systems that hadn't previously received SDWSRF invitations became eligible for SDWSRF funding. By agreeing to consolidate with a neighboring noncompliant system, CDPH re-ranked low-ranked, compliant system projects into a fundable category.

In order to provide further support and direction for the state's consolidation efforts, AB 783 (Arambula, Chapter 614, Statutes of 2007) required CDPH to prioritize funding of water projects in disadvantaged communities, and directed CDPH to encourage; provide funds for and studies on; and, prioritize funding for projects that consolidate small public water systems in certain situations.

The State Water Board received authority over the state's drinking water program in July 2014, and since that time, the consolidation of failing drinking water systems in order to supply safe, affordable, and reliable drinking water has been a priority for the State Water Board.

Effective June 24, 2015, Senate Bill 88 (Statutes 2015, Chapter 27) authorized the State Water Board to require certain water systems that consistently fail to provide safe drinking water to consolidate with, or receive an extension of service from, another public water system. The consolidation can be physical or managerial. Although for many years the State's Drinking Water program has encouraged -- and will continue to encourage -- voluntary consolidations of public water systems, this authority will allow the state to mandate consolidation of water systems where appropriate.

The State Water Board's Division of Drinking Water (DDW) will issue letters to water systems to consolidate with, or seek an extension of service, from a public water system. The recipients of such letters have up to six months from the date the letter is issued to voluntarily consolidate with, or receive extension of service from, a public water system.

Under the State Water Board's authority, there have been two mandatory consolidations completed, and there have been more than 100 voluntary consolidations in that time period. And within those, the State Water Board has had varying levels of participation. Some (about 40)

were consolidations the State Water Board helped to fund, some to which the State Water Board provided guidance, and others for which the State Water Board just issued a permit.

Accessing information: SB 778 requires the State Water Board to track and publish on its website an analysis of all voluntary and ordered consolidations of water systems, and an evaluation of whether the consolidations have succeeded or failed in providing an adequate supply of safe drinking water to the communities served by the consolidated water systems.

The State Water Board currently posts information on its website about ordered consolidations. It also tracks and has information on voluntary consolidations.

When a drinking water system voluntarily consolidates, the State Water Board's DDW must be informed and will review the consolidation, and re-issue a new water supply permit to the water system and delete from their system inventory any water system(s) that cease to exist through the consolidation.

Technical amendments:

1) Since the State Water Board currently posts information on its website about consolidations, the bill could require the State Water Board to maintain that practice and regularly post information on voluntary and ordered consolidations on an ongoing basis, instead of only requiring information posted one-time. The Committee may wish to consider making that clarification.

2) The bill does not specify for which period of time the State Water Board should post information when identifying and evaluating consolidations in California.

   CDPH did not transfer information regarding consolidations to the State Water Board because this information was not tracked prior to the administrative move. The State Water Board does not have any comprehensive data on voluntary consolidations that occurred while the program was at CDPH.

   The State Water Board received authority over the Drinking Water Program in July 1, 2014; therefore, the Committee may wish to consider specifying that information should only be posted online on consolidations since that transfer date.

3) While the bill requires the State Water Board to post information on its website, it does not specifically require the State Water Board to submit "a report," which makes the reporting provisions in Sec. 116682 (i) unnecessary. The Committee may wish to delete the reporting requirements.

Related legislation:

1) SB 552 (Wolk, Chapter 773, Statutes of 2016) authorizes the State Water Board to contract with an administrator to provide administrative and managerial services to a designated PWS to assist with the provision of an adequate and affordable supply of safe drinking water.

2) SB 88 (Senate Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2015) enacted the Brown Administration's public water system consolidation proposal and

authorizes the State Water Board to require certain water systems that consistently fail to provide safe drinking water to consolidate with, or receive an extension of service from, another public water system. The consolidation can be physical or managerial. While for many years the state's drinking water program had encouraged voluntary consolidation of public water systems, the new authority allows the state to mandate the consolidation of water systems where appropriate.

REGISTERED SUPPORT / OPPOSITION:

Support

Clean Water Action
Community Water Center
Leadership Counsel for Justice & Accountability

Opposition

None on file.

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