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California State Assembly

ENVIRONMENTAL SAFETY AND TOXIC MATERIALS



ALEX LEE
CHAIR

AGENDA

Tuesday, June 20, 2023
1:30 p.m. – State Capitol, Room 444

Chief Consultant
Josh Tooker

Senior Consultant
Shannon McKinney
Naomi Ondrasek

Committee Secretary
Pia Estrada

HEARD IN FILE ORDER

- | | | | |
|----|--------|---------|---|
| 1. | SB 3 | Dodd | Discontinuation of residential water service: community water system. |
| 2. | SB 568 | Newman | Electronic waste: export. |
| 3. | SB 642 | Cortese | Hazardous materials: enforcement: county counsel. |
| 4. | SB 745 | Cortese | The Drought-Resistant Buildings Act. |

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Alex Lee, Chair

SB 3 (Dodd) – As Amended June 15, 2023

SENATE VOTE: 31-7

SUBJECT: Discontinuation of residential water service: community water system

SUMMARY: Requires, on and after August 1, 2024, community water systems that supply water to 200 service connections or less to have a written policy on the discontinuation of residential water service. Requires that policy be provided in writing in multiple languages. Prohibits community water systems from shutting off water service for certain customers that meet specified criteria and prohibits the shutoff of water service until the bill has been delinquent for 60 days. Enacts a cap on reconnection fees a community water system can charge for restoring water service. Specifically, **this bill:**

- 1) Requires, on and after August 1, 2024, a community water system that supplies water to 200 service connections or fewer to have a written policy on discontinuation of residential service for nonpayment available in English, any language spoken by at least 10 percent of the people residing in its service area, and upon request of a customer any of the languages listed in Section 1632 of the Civil Code. Allows a community water system to provide the written policy in any other language.
- 2) Prohibits a community water system from discontinuing residential service for nonpayment until payment by a customer has been delinquent for at least 60 days.
- 3) Prohibits a community water system from discontinuing residential service for nonpayment if all of the following conditions are met: the customer, or tenant of a customer, submits to the community water system the certification of a primary care provider that discontinuation of residential service will be life threatening to, or pose a serious threat to, the health and safety of a resident of the premises where residential service is provided; the customer demonstrates that he or she is financially unable to pay for residential service within the community water system's normal billing cycle; and, the customer is willing to enter into an amortization agreement, alternative payment schedule, or plan for deferred or reduced payment with respect to all delinquent charges.
- 4) Requires a community water system that discontinues residential service for nonpayment to provide the customer with information on how to restore residential service and how to petition for a waiver of reconnection fees.
- 5) Requires a community water system to waive reconnection fees and offer a reduction or waiver of interest charges on delinquent bills once every 12 months for a residential customer who demonstrates that they have income below 200 percent of the federal poverty line.
- 6) Authorizes a community water system to set a reconnection of service fee at fifty dollars (\$50), but not to exceed the actual cost of reconnection if it is less for residential customers that do not meet the criteria for having reconnection fees waived.

- 7) Requires a community water system to make every good faith effort to inform the residential occupants, by means of written notice, of a single-family dwelling, multiunit residential structure, mobile-home park or permanent resident structure in a labor camp, when the residential occupant is the tenant and the owner of the property's account is in arrears and service is going to be terminated.
- 8) Requires a community water system to make service available to residential occupants who are the tenant of a property whose account is in arrears, if the residential occupant is willing and able to assume responsibility for charges to the account to the satisfaction of the community water system.
- 9) Requires a community water system to report the number of annual discontinuations of residential service for inability to pay on the community water system's Internet Web site and to the State Water Resources Control Board (State Water Board). Requires the State Water Board to post this information on its Internet Web site.
- 10) Authorizes the Attorney General, at the request of the State Water Board or upon his or her own motion, to bring an action in state court to restrain by temporary or permanent injunction the provisions of this bill.
- 11) States that the provisions of the bill do not apply to the termination of a service connection by a community water system due to an unauthorized action of a customer.
- 12) Authorizes the State Water Board, upon appropriation by the Legislature, to expend moneys from the Safe and Affordable Drinking Water Fund, to provide training statewide to community water systems with between 15 and 200 service connections to comply with the provisions of this bill.

EXISTING LAW:

- 1) Vests the State Water Board with all of the authority, duties, powers, purposes, functions, responsibilities, to enforce the State Drinking Water Act (SDWA). (Health and Safety Code (HSC) § 116271)
- 2) Defines "urban and community water system" as a public water system that supplies water to more than 200 service connections. (HSC § 116902)
- 3) Requires an urban and community water system that supplies water to more than 200 service connections to have a written policy on discontinuation of residential service for nonpayment available in English, the languages listed in Section 1632 of the Civil Code, and any other language spoken by at least 10 percent of the people residing in its service area. (HSC § 116906)
- 4) Prohibits an urban and community water system from discontinuing residential service for nonpayment until payment by a customer has been delinquent for at least 60 days. (HSC § 116908)
- 5) Requires any person who owns a public water system to ensure that the system does all of the following:

- a) Complies with primary and secondary drinking water standards;
 - b) Will not be subject to backflow under normal operating conditions;
 - c) Provides a reliable and adequate supply of pure, wholesome, healthful, and potable water;
 - d) Employs or utilizes only water treatment operators or water treatment operators-in-training that have been certified by the State Water Board at the appropriate grade; and,
 - e) Complies with the operator certification program. (HSC § 116555 (a))
- 6) Defines a "public water system" as a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. (HSC § 116275 (h))
- 7) Defines "community water system" as a public water system that serves at least 15 service connections used by yearlong residents or regularly serves at least 25 yearlong residents of the area served by the system. (HSC § 116275(i))
- 8) Defines "service connection" as the point of connection between the customer's piping or constructed conveyance, and the water system's meter, service pipe, or constructed conveyance. (HSC § 116275(s))
- 9) Defines "resident" as a person who physically occupies, whether by ownership, rental, lease, or other means, the same dwelling for at least 60 days of the year. (HSC § 116275(t))
- 10) Authorizes the State Water Board to delegate primary responsibility of administration and enforcement of public water system compliance to local health officers in a county through a local primacy delegation agreement. Declares that the delegation shall not include community water systems serving 200 or more service connections. (HSC § 116330 et seq.)
- 11) Declares the established policy of the state to be that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code § 106.3)
- 12) Provides that any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, in the course of entering into a contract, as specified, shall deliver to the other party to the contract or agreement and prior to the execution thereof, a translation of the contract or agreement in the language in which the contract or agreement was negotiated, including a translation of every term and condition in that contract or agreement. (Civil Code § 1632)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author: "The pandemic demonstrated both the importance of affordable and accessible water for drinking and sanitation, and the challenge that many Californians face in affording this necessity. A half-million households received one-time assistance to address their arrearages, but data from the CPUC and water agencies tells us that

consumers continue to fall behind on their bills. The implementation of SB 998, passed in 2018, will help maintain access to water by requiring most water systems to provide notice and opportunity to enroll in a payment plan prior to shutting off water for nonpayment. SB 3 builds on SB 998 by ensuring that all Californians served by community water systems benefit from these common-sense protections, regardless of system size."

Federal Safe Drinking Water Act (SDWA): The federal SDWA was enacted in 1974 to protect public health by regulating drinking water. California has enacted its own safe drinking water act to implement the federal law and establish state standards under the state SDWA. The United States Environmental Protection Agency (US EPA) enforces the federal SDWA at the national level. Most states, including California, have been granted "primacy" by the US EPA, giving them the authority to implement and enforce the federal SDWA at the state level. In accordance with the federal SDWA, the US EPA provides funds to states for their drinking water loan programs, conducts an annual oversight review of each state's program, and issues an annual program evaluation report.

California's drinking water program: The State Water Board has regulatory oversight of approximately 7,500 public drinking water systems in California. The State Water Board directly enforces the federal SDWA for all large water systems (those with 200 or more service connections), including those water systems regulated under the California Public Utilities Commission (CPUC), the Department of Financial Protection and Innovation (DFPI), or the Department of Housing and Community Development (DHCD).

For small water systems (those with less than 200 connections), local health departments can be delegated, by the State Water Board, to have regulatory authority as the local primacy agency (LPA). 30 of California's 58 counties have LPA delegation agreements with the State Water Board, and therefore have primary responsibility of regulatory oversight of the public drinking water systems in their counties. LPA counties regulate a total of approximately 4,500 public drinking water systems, which consist of community water systems with more than 14 and less than 200 connections, non-community non-transient systems, and non-community transient systems. In the remaining 28 counties, all public water systems, regardless of size, are directly overseen by the State Water Board.

The State Water Board has adopted regulations for drinking water standards, monitoring requirements, cross-connections, design and operational standards, and operator certification. The implementation of the drinking water program involves: (1) establishment of drinking water standards, (2) certification of operators and point-of-use treatment devices, and (3) direct regulation of public water systems with the authority to delegate oversight responsibility of small water systems to local county health departments. The regulation of public water systems includes: (1) issuance of permits covering the approval of water system design and operation procedures, (2) inspection of water systems, (3) the enforcement of laws and regulations to assure that all public water systems routinely monitor water quality and meet current standards, and (4) assuring notification is provided to consumers when standards are not being met.

According to the State Drinking Water Plan for California, June 2015, "Over the last two decades, water costs have, on average, increased about 45 percent within all size groups of water systems (range of 42 to 47 percent). Average water costs remain highest in the San Francisco Bay Area, Central Coast, and Southern California, and lowest in the Central Valley/Agricultural (including Imperial County), Foothill, and Mountain/Desert regions. On average, customers of

small water systems (serving less than 200 service connections) pay approximately 20 percent more for water than those customers served by larger systems. Many disadvantaged communities are served by small water systems. As a result, water affordability has become a significant issue among residents in these communities."

What is a public water system? A public water system is defined as a system that provides water for human consumption to 15 or more connections or regularly serves 25 or more people daily for at least 60 days out of the year. Many people think of public water systems as large city or regional water suppliers, but they also include small housing communities, businesses, and even schools and restaurants that provide water. A public water system is not necessarily a public entity, and most public water systems are privately owned. There are three legal distinctions between the types of public water systems: community, non-transient non-community, and transient. The type of water system is based on how often people consume the water. Drinking water regulations impose the most stringent monitoring requirements on community and non-transient non-community water systems because the people they serve obtain all or much of their water from that system each day. Community water systems are city, county, regulated utilities, regional water systems, and even small water companies and districts where people live.

Being a public water system means providing affordable, safe drinking water to customers 24 hours a day, 7 days a week, 365 day a year. This includes the associated legal, fiscal, and operational responsibilities, and future planning. Public water systems typically are run more efficiently when costs can be spread out over a large group of people to obtain good economies of scale. Small public water systems without a very high level of managerial, technical, and financial capacity tend to be unsustainable.

Human right to water: In 2012, California became the first state to enact a Human Right to Water law, AB 685 (Eng, 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, especially in disadvantaged communities, and many other factors will continue to challenge progress in addressing the Human Right to Water.

Recent legislation regarding discontinuation of water service: SB 998 (Dodd, Chapter 891, Statutes of 2018) requires all public water systems (with more than 200 connections) to have a written policy on the discontinuation of residential water service and to provide that policy in multiple languages. SB 998 prohibits a public water system from shutting off water for those customers that can demonstrate that losing water service will be life threatening; the customer is unable to pay during the water system's normal billing cycle; and if the customer is willing to enter into a payment schedule for all delinquent charges.

SB 998 not only requires a public water system to have a written policy on the discontinuation of water service for residential customers, it requires the public water systems to give the residential customer 60 days before the water can be shutoff and caps the amount of the reconnection fee that can be charged to the customer at \$50 during normal business hours and \$150 for non-operational hours. It waives the reconnection fee for those customers that can demonstrate they have a household income below 200 percent of the federal poverty line. Additionally, SB 998 requires that the tenant be informed by the water system before the water is shut off and creates a

process where the tenant can take over paying the bill, to the satisfaction of the water system, when the landlord has not paid the bill.

This bill: SB 3 applies the same requirements on community water systems with less than 200 service connections that currently apply to community water systems with 200 or more service connections. Specifically, SB 3 requires community water systems with less than 200 service connections to provide a written policy on the discontinuation of residential water service, provide that policy in multiple languages, include provisions for not shutting off water for certain customers that meet specified criteria, prohibit the shutoff of water service until the bill has been delinquent for 60 days, and caps the reconnection fees for restoring water service to water systems. It makes sense to apply uniform rules for the discontinuation of residential water service to all water systems in the state. SB 3 ensures that those protections are in place for customers of water systems with fewer than 200 connections.

Arguments in support: According to a coalition in support of the bill, including Clean Water Action, the Community Water Center, and the Western Center on Law and Poverty, "Access to safe and affordable drinking water and sanitation is a human right. (AB 685, 2012.) It is also essential to public health, with recent studies demonstrating a link between policies that maintain access to drinking water and reductions in COVID-19 infection and death.¹ As such, no Californian should lose access to tap water because of an inability to pay. Yet, in 2018 and again in 2019, more than 500,000 Californians lost access to tap water due to a water shutoff for nonpayment. Now that the COVID-19 water shutoff moratorium (which had been in place from April 2020 to December 2021) has expired, shutoffs for nonpayment have resumed.

In response to Senator Dodd's leadership on this issue, the state recently acted by passing SB 998 (2018), which established common-sense protections to limit water shutoffs. Now that SB 998 is fully implemented, it is time to expand the bill to reach small community water systems serving 200 or fewer connections. These systems can use information created by other systems to comply with SB 998 (such as shutoff policies, resolutions, and past due notices) to simplify compliance. It is fundamental that, regardless of community size, all people should have basic due process before losing access to essential drinking water for missing a payment. SB 3 would eliminate the gap in existing legal protections."

Arguments in opposition: According to the California Association of Mutual Water Companies (CalMutuals), "CalMutuals remains opposed to SB 3. We appreciate that your staff took the time to meet with us early in the legislative session to hear our concerns. During that meeting, we identified two primary concerns for small systems with limited financial and managerial capacity: 1) the bill would require dedicated resources for small systems to implement its provisions successfully, and 2) access to funding to mitigate the financial impact resulting from the delayed collection of arrearages. Unfortunately, the offered amendments do not address either of these concerns. This bill amends the code sections added by SB 998, originally passed in 2018, for larger systems, i.e., those with more than 200 service connections. However, the cost burden and implications differ for small systems, whose budgets are modest and oftentimes are managed by volunteers with contract operators. We remain committed to supporting legislative efforts to help the State deliver on its promise that every person has the right to clean, safe, and affordable drinking water. Ensuring the overall health of our water systems is crucial in delivering this vital resource to our communities while maintaining affordability for all families. We do not believe SB 3 furthers this noble goal and are concerned the bill may end up doing more harm than good."

Related legislation:

SB 998 (Dodd, Chapter 891, Statutes of 2018). Requires all public water systems (with more than 200 connections) to have a written policy on discontinuation of residential water service and to provide that policy in multiple languages. Prohibits a public water system from shutting off water service for certain customers that meet specified criteria and prohibits the shutoff of water service until the bill has been delinquent for 60 days. Caps the reconnection fees a public water system can charge for restoring water service.

REGISTERED SUPPORT / OPPOSITION:

Support

California Coastkeeper Alliance
California Environmental Voters (formerly CLCV)
Carbon Cycle Institute
Center on Race, Poverty & the Environment
Central California Environmental Justice Network
Central Coast Energy Services
Clean Water Action
Community Water Center
Environmental Working Group
Friends Committee on Legislation of California
LAANE (Los Angeles Alliance for A New Economy)
Leadership Counsel for Justice & Accountability
League of Women Voters of California
Natural Resources Defense Council (NRDC)
Physicians for Social Responsibility - Los Angeles
Pueblo Unido CDC
San Francisco Peninsula Energy Services
Spur
Union of Concerned Scientists
Western Center on Law & Poverty

Opposition

California Association of Mutual Water Companies

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

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Alex Lee, Chair

SB 568 (Newman) – As Amended June 13, 2023

SENATE VOTE: 33-6

SUBJECT: Electronic waste: export

SUMMARY: Requires a person exporting covered electronic waste (e-waste) or a covered electronic device intended for recycling or disposal to include, in a report submitted to the Department of Toxic Substances Control (DTSC), a demonstration that before export, they attempted to locate an in-state covered e-waste recycler, and that the waste or device could not be managed by an in-state covered e-waste recycler.

EXISTING LAW:

- 1) Establishes the Electronic Waste Recycling Act of 2003 (EWRA), which enacts a comprehensive system for the reuse, recycling, and proper and legal disposal of covered electronic devices, as provided. (Public Resources Code (PRC) § 42460-42486)
- 2) Requires the Department of Resources, Recycling, and Recovery (CalRecycle) to administer and enforce the EWRA in consultation with DTSC. (PRC § 42475)
- 3) Creates the Hazardous Waste Control Law (HWCL) and provides DTSC with responsibility for overseeing the management of hazardous waste in California. (Health and Safety Code (HSC) § 25100 et seq.)
- 4) Defines "person" to mean an individual, trust firm, joint stock company, business concern, and corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. Specifies that "person" also includes a city, county, city and county, district, commission, the state or a department, agency, or political subdivision thereof, an interstate body, and the United States (U.S.) and its agencies and instrumentalities, to the extent permitted by law. (PRC § 42463(r))
- 5) Defines "covered electronic device" to mean either of the following (PRC § 42463(g)(1)):
 - a) A video display device containing a screen greater than four inches, measured diagonally, that is identified in regulations adopted by DTSC; or,
 - b) Any covered battery-embedded product.
- 6) Defines "covered electronic waste" or "covered e-waste" to mean a covered electronic device that is discarded. (PRC § 42463(h))
- 7) Defines—for the purposes of fees, taxes, and charges imposed under the HWCL—"recycling" to mean the collecting, transporting, storing, transferring, handling, segregating, processing, using or reusing, or reclaiming of recyclable material to produce recycled material. (HSC § 25121.1(b))

- 8) Defines "covered electronic waste recycler" to mean any of the following (PRC § 42463(j)):
- a) A person who engages in the manual or mechanical separation of covered electronic devices to recover components and commodities for the purpose of reuse or recycling;
 - b) A person who changes the physical or chemical composition of a covered electronic device by deconstructing, size reduction, crushing, cutting, sawing, compacting, shredding, or refining for the purposes of recovering or recycling components, and who arranges for the transport of those components to an end user; or,
 - c) A manufacturer who meets any conditions established by the EWRA and HWCL for the collection or recycling of covered e-waste.
- 9) Requires a person who exports covered e-waste, or a covered electronic device intended for recycling or disposal, to a foreign country, or to another state for ultimate export to a foreign country, to demonstrate all of the following at least 60 days before export (PRC § 42476.5):
- a) That the waste or device is being exported for recycling or disposal;
 - b) That importation of the waste or device is not prohibited in the state or country of destination and that any import will be conducted in accordance with applicable laws;
 - c) That exportation of the waste or device is conducted in accordance with applicable U.S. or international laws; and,
 - d) That the waste or device will be managed within the country of destination only at facilities with operations that meet or exceed the decisions and guidelines of the Organization for Economic Cooperation and Development (OECD) for the environmentally sound management of the waste or device being exported.

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author:

"Globally, less than 20% of e-waste is properly recycled, with the remaining 80% of e-waste ending up either in landfills or improperly recycled. Much of this waste is ultimately processed by hand in developing countries, exposing workers in those places to hazardous or carcinogenic substances such as mercury, lead, and cadmium. E-waste which makes its way into landfills contaminates soil and groundwater, putting food supply systems and water sources at risk. In addition to health and pollution impacts, improper management of e-waste results in a significant loss of scarce and valuable raw materials such as gold, platinum, cobalt, and other rare earth elements.

Rather than relying on often unsubstantiated assertions that entities abroad are following OECD standards, SB 568 adds a common-sense export requirement that would increase the share of precious resources in the state, thereby supporting California's e-waste recycling

industry and reducing California's impact on developing countries, where e-waste is often processed and disposed of."

What is e-waste? According to DTSC, "e-waste" refers to any unwanted electronic device or cathode ray tube (CRT). E-waste frequently contains hazardous materials, predominantly lead and mercury, and is produced by households, businesses, governments, and industries. Typical e-waste devices include televisions, computers, printers, VCRs, portable DVD players, cell phones, and radios.

E-waste is hazardous waste. A hazardous waste is a solid, liquid, or contained gaseous waste with properties that make it potentially harmful to human health or the environment. The criteria for classifying a waste as a hazardous waste are regulated at both the state and federal levels. Specifically, a waste is identified as hazardous if it appears on one of five regulatory lists, or if it exhibits toxicity, corrosivity, reactivity, and/or ignitability.

Although e-waste is hazardous waste, DTSC has adopted regulations designating e-waste as a type of universal waste, which can be handled and transported under more relaxed rules because they pose lower immediate risk to people and the environment when managed properly. The more relaxed requirements were adopted to increase compliance and ensure that universal wastes are managed safely and not disposed of in the trash.

According to DTSC, in 2019, 7 million tons of e-waste (about 46 pounds per person) were generated in the United States, and the recycling rate stood at only 15%.

The EWRA and the regulation of e-waste: Due to ongoing technological advancement, many electronic products become obsolete within a very short time period, creating a large surplus of e-waste. Disposing of e-waste in landfills has the potential to cause severe risk to human and environmental health. To meet the challenge of managing e-waste, California enacted the EWRA through SB 20 (Sher, Chapter 526, Statutes of 2003) to establish a program for consumers to return, recycle, and ensure the safe and environmentally sound disposal of video display devices (or "covered electronic devices"), such as televisions and computer monitors, that are deemed hazardous waste when discarded. In 2022, California expanded the EWRA through SB 1215 (Newman, Chapter 370) to include covered battery-embedded products. The primary aims of the EWRA are to limit the amount of toxic substances (such as lead, mercury, cadmium, and hexavalent chromium) in certain electronic products sold in the state, and to establish a funding system for the collection and recycling of discarded covered electronic devices.

In California, DTSC regulates and enforces hazardous waste control laws and regulations, while CalRecycle manages the Covered Electronic Waste (CEW) Recycling Program, established under the EWRA to offset the costs of handling unwanted electronic devices. Under the CEW Recycling Program, California consumers pay a fee when purchasing certain video display devices. These fees are deposited into a special account that is used to pay qualified e-waste collectors and recyclers to cover their costs of managing e-waste. In its 2018 report, *Future of Electronic Waste Management in California*, CalRecycle states that the CEW recycling program was, at that time, providing payments to about 23 recyclers and 385 collectors.

Recycling, disposal, and export of e-waste. E-waste must be taken to a designated collector or recycler for disposal or recycling. State regulations define a collector, or "universal waste

handler," as the owner or operator of a facility who is authorized to manage universal waste, or as the owner or operator of a facility that receives waste (including e-waste) from other universal waste handlers, accumulates universal waste, and sends universal waste to another handler, facility, or foreign destination. According to DTSC, a "recycler" is a universal waste handler who performs treatment to change the composition of electronic devices, CRTs, CRT glass, or residual printed circuit boards.

In its 2018 report, CalRecycle notes that improper handling and disposal of electronic devices, which often contain hazardous materials, can have harmful consequences, and that when recycling facilities shred batteries hidden inside electronic devices, workers and the public may be put at risk due to fires and explosions. At the same time, electronic devices often contain valuable materials such as gold, silver, and copper, and an estimated \$55 billion is lost worldwide each year as a result of electronics being trashed instead of recycled.

In California, state law and regulations govern the exportation of e-waste. Persons planning to export CRT materials or electronic devices must notify DTSC and the applicable Certified Unified Program Agency (a local agency certified by the California Environmental Protection Agency to implement and enforce certain hazardous waste and hazardous materials regulatory management programs) at least 60 days before export. A person exporting covered electronic devices or waste must also comply with additional reporting requirements, including demonstrating that importation of the waste or device is not prohibited in the state or country of destination, and that the waste or device will be managed in the country of destination at facilities with operations that meet or exceed guidelines established by the OECD for the environmentally sound management of the waste or device.

Potential equity issues raised by the export of e-waste: According to the United States Environmental Protection Agency (US EPA), an undetermined amount of used electronics is shipped from the U.S. and other developed countries to developing countries. Without proper standards and enforcement, the export of used electronics and e-waste can result in human health and environmental harm. For example, the US EPA states that "there are problems with open-air burning and acid baths being used to recover valuable materials from electronic components, which expose workers to harmful substances. There are also problems with toxic materials leaching into the environment. These practices can expose workers to high levels of contaminants such as lead, mercury, cadmium and arsenic, which can lead to irreversible health effects, including cancers, miscarriages, neurological damage and diminished IQs."

In 2016, the Basel Action Network (a Seattle-based e-waste watchdog group) reported the results of an investigation conducted in partnership with the Massachusetts Institute of Technology, in which 200 geolocating tracking devices were placed inside old computers, TVs, and printers that were then dropped off nationwide at donation centers, recyclers, and electronic take-back programs. The investigation showed that about a third of the tracked electronics went overseas, ending up in Mexico, Taiwan, China, Pakistan, Thailand, the Dominican Republic, Canada, and Kenya.

Developing domestic supply chains for strategic minerals. Developing sustainable domestic supply chains for strategic minerals and precious metals, including critical minerals and rare earth metals, has become a national security and state priority. Key minerals found in batteries, computers, household appliances, and other electronic devices include lithium, cobalt, copper, nickel, gold, and rare earth minerals.

In June 2021, the White House released a report, *Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth*, which assesses supply chain vulnerabilities across four key products, including critical minerals and materials. A fact sheet summarizing the report's findings states the following:

"To secure a reliable, sustainable supply of critical minerals and materials, the United States must work with allies and partners to diversify supply chains away from adversarial nations and sources with unacceptable environmental and labor standards. U.S. investments abroad must incentivize environmentally and socially responsible production. The United States must also invest in sustainable production, refining, and recycling capacity domestically, while ensuring strong environmental, environmental justice, and labor standards and meaningful community consultation, including with Tribal Nations through government-to-government collaboration."

While primarily focused on lithium, California is also increasingly prioritizing the development of critical mineral supply chains in the state, including production and extraction, as well as recycling, through the Lithium Valley Commission and other efforts.

This bill: SB 568 requires persons exporting electronic devices or e-waste covered under the EWRA to include, in a report submitted to DTSC, a demonstration that before export they attempted to locate, and that the waste or device could not be managed by, an in-state covered e-waste recycler. This requirement could encourage companies to seek out in-state recyclers before resorting to export, which in turn could support state efforts to develop sustainable in-state supply chains and reduce export to developing countries, where imported e-waste can have negative implications for human health and the environment.

Arguments in support: According to Camston Wrather, an e-waste recycler and the sponsor of this bill:

"SB 568...will require that an individual or entity must demonstrate that the capacity to safely and responsibly recycle electronic waste (e-waste) within California does not currently exist before exporting that product. This will keep valuable recyclable minerals and materials found within e-waste within the state, ensure environmental stewardship in-line with California standards, and support a growing domestic supply chain for precious metals and strategic minerals."

Arguments in opposition: None on file.

Double referral: Should the Assembly Environmental Safety and Toxic Materials Committee approve this bill, it will be re-referred to the Assembly Natural Resources Committee.

Related legislation:

- 1) SB 1215 (Newman, Chapter 370, Statutes of 2022). Expands the EWRA to include battery-embedded products.

- 2) AB 2440 (Irwin, Chapter 351, Statutes of 2022). Establishes the Responsible Battery Recycling Act of 2022, which establishes a stewardship program for the collection and recycling of certain batteries, as defined.
- 3) SB 20 (Sher, Chapter 526, Statutes of 2003). Enacts the EWRA of 2003 to provide for the convenient recycling of covered electronic devices in California.

REGISTERED SUPPORT / OPPOSITION:

Support

Camston Wrather (Sponsor)
Californians Against Waste

Opposition

None on file.

Analysis Prepared by: Naomi Ondrasek / E.S. & T.M. /

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Alex Lee, Chair

SB 642 (Cortese) – As Amended June 12, 2023

SENATE VOTE: 35-3

SUBJECT: Hazardous materials: enforcement: county counsel

SUMMARY: Provides the county counsel with enforcement authority for violations of aboveground storage tank law, underground storage tank law, business and area plan law, and medical waste law and updates county counsel enforcement provisions of the Hazardous Waste Control Law (HWCL). Specifically, **this bill:**

- 1) Authorizes county counsels, at the request of the Department of Toxic Substances Control (DTSC) or a certified unified program agency (CUPA), to bring an action seeking an injunction for a violation of hazardous waste control law.
- 2) Updates HWCL by replacing the term "county attorney" with "county counsel" and adds the county counsel to related enforcement provisions of the HWCL.
- 3) Authorizes the county counsel to bring an action to enforce requirements related to aboveground storage tank law, underground storage tank law, business and area plan law, and medical waste law.
- 4) Requires, for civil actions taken to enforce hazardous waste law, aboveground storage tank law, underground storage tank law, business and area plan law, and medical waste law, the county counsel or district attorney, within 7 days of filing the action, to give notice to the district attorney or county counsel, as applicable, of the related county.
- 5) Makes other clarifying and conforming changes to existing related statute.

EXISTING LAW:

- 1) Establishes the HWCL in order to protect the public health and the environment and to conserve natural resources. (Health and Safety Code (HSC) §§ 25100 – 25259)
- 2) Authorizes the city attorney, district attorney, and the Attorney General, at the request of DTSC or a CUPA, to bring an action seeking an injunction for violation of HWCL. (HSC § 25181)
- 3) Specifies that every civil action brought at the request of DTSC or a CUPA is to be brought by the city attorney, the county attorney, the district attorney, or the Attorney General in the name of the people of the State of California and that those actions relating to the same processing or disposal of hazardous waste may be joined or consolidated. (HSC § 25182)
- 4) Regulates the operation of aboveground storage tanks and authorizes the city attorney, district attorney, and the Attorney General to bring an action to enforce these requirements. (HSC §§ 25270 to 25170.13)

- 5) Regulates the operation of underground storage tanks and authorizes the city attorney, district attorney, and the Attorney General to bring an action to enforce these requirements. (HSC §§ 25280 to 25299.8)
- 6) Requires certain businesses that handle hazardous materials to prepare a business and area plan relating to the handling and release or threatened release of hazardous materials and authorizes the city attorney, district attorney, and Attorney General to bring an action to enforce these requirements. (HSC §§ 25500 to 25519)
- 7) Authorizes an enforcement agency, district attorney, city attorney, or city prosecutor to bring an action to enjoin the violation, or threatened violation, of medical waste management law or regulations, in the superior court in the county where the violation occurred or is about to occur. (HSC § 118325)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"Hazardous waste violations and pollution directly impact the safety of the public, particularly low-income communities and communities of color. While city attorneys, district attorneys, and the Attorney General are authorized to prosecute hazardous waste violations, county counsels have incomplete enforcement authority.

To augment civil enforcement of hazardous waste violations, the Legislature passed AB 1934 (Richter, 1993) which specifically mentions the intent to authorize county counsels to prosecute hazardous waste regulatory laws to help ensure adequate enforcement and eliminate unfair competitive advantages enjoyed by non-compliant businesses.

However, the Legislature did not make conforming changes to several related statutes. SB 642 seeks to follow through on the Legislature's intent to add another hazardous waste enforcement option by granting county counsels complete civil enforcement authority over hazardous waste violations.

This is similar to recently enacted bills that gave and augmented county counsel enforcement powers under the Unfair Competition Law—SB 461 (Cortese, 2021) and AB 2766 (Maienschein, 2022)—and reflects the growing role of county counsels in enforcing important public rights.

This bill provides another avenue to ensure more consistent enforcement statewide so that Californians can have the clean environment they deserve."

County counsels: According to the California State Association of Counties (CSAC), the county counsel is the chief civil law officer of the county and provides legal services to the board of supervisors, county and court officials, and other agencies and districts. The county counsel is a statutory officer appointed by the board of supervisors and serves a four-year term in general law counties and without a term in some charter counties.

CSAC reports that many of the official duties of the county counsel are prescribed by state law. The county counsel must render legal services to the county and may provide legal services to school districts and other local public entities as requested. Such services include legal opinions and advice, as well as preparation of contracts, ordinances, and resolutions. As the legal advisor to the board of supervisors, the county counsel attends its meetings, both public and closed sessions. Upon request of the county auditor or treasurer, county counsel defends or prosecutes any action brought by or against these officers relating to the payment of funds when it is consistent with the county's interest. Upon request of any judge of the superior, municipal, or justice court, the county counsel represents the court or judge, unless there is a conflict. In most counties, the county counsel provides legal advice to the grand jury on civil matters.

CSAC states that the county counsel in most counties defends or prosecutes all civil actions and proceedings in which the county or any of its officers is concerned or is a party in an official capacity. In some counties, the county counsel handles most of the civil litigation involving the county or its officers, while in others the board of supervisors hires private attorneys to do some or all of this work under the county counsel's general supervision. In addition to administrative and judicial proceedings, the county counsel represents county officers in probate and conservatorship proceedings, and in guardianship and juvenile cases.

Hazardous waste: Hazardous waste is a waste with properties that make it potentially dangerous or capable of having a harmful effect on human health or the environment. The universe of hazardous wastes is large and diverse, and hazardous waste is generated from many sources, including as byproducts of manufacturing processes, discarded used materials, or discarded unused commercial products, such as cleaning fluids (solvents) or pesticides. Hazardous waste comes in various forms, including liquids, solids gases, and sludges.

Hazardous Waste Control Law (HWCL): There are two sets of waste classification statutes (laws) and regulations used in California for hazardous waste: federal and state. Federal hazardous waste regulations adopted by the United States Environmental Protection Agency (US EPA) are implemented under the Resource Conservation and Recovery Act, also known as RCRA.

RCRA, passed in 1976, gives the US EPA the authority to control hazardous waste from the "cradle-to-grave," which includes the generation, transportation, treatment, storage and disposal of hazardous waste. To achieve this, US EPA develops regulations, guidance, and policies that ensure the safe management and cleanup of solid and hazardous waste, and programs that encourage source reduction and beneficial reuse.

California laws governing hazardous waste are outlined in state statute, under the HWCL, which closely parallels RCRA in regulating the identification, generation, storage, transportation, treatment, and disposal of hazardous waste in the state. The primary authority for enforcement of HWCL and RCRA lies with DTSC. The state of California is granted authorization by the US EPA to administer regulations under both RCRA and the state's HWCL.

Enforcement of the HWCL: The stated findings of existing HWCL law indicate that it was created in response to increasing quantities of hazardous waste being generated in the state, which leads to long-term threats to public health and to air and water quality and creates immense costs for the state as a result of improper hazardous waste handling and disposal practices. To protect public health and the environment and to conserve natural resources, the Legislature found it was in the public interest to establish regulations and incentives that ensure

that generators of hazardous waste employ technology and management practices for the safe handling, treatment, recycling, and destruction of their hazardous wastes prior to disposal. In order to protect the public and particularly the communities where hazardous wastes are treated and disposed, the Legislature further found it essential to assure full compensation of all people injured or damaged by hazardous wastes by, in part, establishing mechanisms for establishing liability to achieve this result.

According to the Senate Judiciary Committee analysis, civil actions to enforce the HWCL were initially authorized to be brought, at the request of DTSC, by the Attorney General, district attorneys, and city attorneys. However, 30 years ago, AB 1934 (Richter, Chapter 44, Statutes of 1993) sought to bolster enforcement of hazardous waste laws by adding authority for county counsel (referred to in statute as "county attorney") to bring civil actions to enforce the HWCL.

Currently, the HWCL authorizes the city attorney, the county attorney, the district attorney, and the Attorney General, at the request of DTSC or a CUPA, to bring an action seeking to enjoin a violation of laws and regulations governing the processing or disposal of hazardous wastes. The legislation that extended this authority to county counsel, AB 1934, did not extend it throughout the provisions of the HWCL.

This bill: This bill seeks to make enforcement uniform throughout the HWCL by including county counsel throughout the enforcement provisions of the HWCL. It also adds provisions to the HWCL requiring the county counsel or district attorney, within 7 days of filing a civil enforcement action, to give notice to the district attorney or county counsel, as applicable, of the related county.

The Aboveground Petroleum Storage Act: The Aboveground Petroleum Storage Act (APSA) was established to protect public health, the environment, and groundwater from potential contamination or adverse effects associated with unintended releases from the aboveground storage of petroleum-based hazardous materials and wastes. APSA regulates facilities with aggregate aboveground petroleum storage capacities of 1,320 gallons or more, which include aboveground storage containers or tanks with petroleum storage capacities of 55 gallons or greater. These facilities typically include large petroleum tank facilities, aboveground fuel tank stations, and vehicle repair shops with aboveground petroleum storage tanks. The CAL FIRE-Office of the State Fire Marshal is responsible for ensuring the implementation of the APSA program element of the CUPA program.

Enforcement of the ASPA Program: Current statute authorizes the city attorney, district attorney, and the Attorney General to bring an action to enforce the requirements of the ASPA.

This bill: This bill extends enforcement authority of violations of ASPA to the county counsel, and adds provisions to the ASPA that require the county counsel or district attorney, within 7 days of filing an enforcement action, to give notice to the district attorney or county counsel, as applicable, of the related county.

The Underground Storage Tank (UST) Program: The statewide UST Program was established to protect public health and safety and the environment from releases of petroleum and other hazardous substances from USTs. An UST is defined by law as "any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and that is substantially or totally beneath the surface of the ground" (HSC § 25281 (y)(1)). The

UST Program is implemented by the State Water Resources Control Board, the Regional Water Quality Control Boards, and the CUPAs.

Enforcement of UST Program requirements: Current statute authorizes the city attorney, district attorney, and the Attorney General to bring an action to enforce the requirements of the UST law.

This bill: This bill extends enforcement authority of violations of UST law to the county counsel, and adds provisions to UST law that require the county counsel or district attorney, within 7 days of filing an enforcement action, to give notice to the district attorney or county counsel, as applicable, of the related county.

Business and Area Plans: The Hazardous Materials Business Plan (HMBP) program requires a business that handles a hazardous material at or above a specified threshold to establish and implement a HMBP. An HMBP also meets the requirements of the Emergency Planning and Community Right-to-Know Act, which requires emergency planning and reporting on hazardous and toxic chemicals for federal, state, and local government, tribes, and industry. HMBPs provide CUPAs, local fire agencies, and the public with information on hazardous materials handled at businesses in order to prevent or mitigate harm to public health and safety and to the environment caused by a release or threatened release of hazardous materials into the workplace or environment. The California Environmental Protection Agency (CalEPA) oversees implementation of the HMBP program at the state level. CUPAs and Participating Agencies implement the program at the local level and are responsible for enforcement and administration in their respective jurisdictions.

As part of the HMBP program, CUPAs and/or Participating Agencies, in coordination with local emergency response agencies, are responsible for developing an Area Plan to establish an emergency response plan in the event of a release or threatened release of a hazardous material within their jurisdiction. The Area Plan is used to respond to, and to minimize impacts from, a release or threatened release of hazardous materials within a city or county.

Enforcement of Business and Area Plan law requirements: Current statute authorizes the city attorney, district attorney, and the Attorney General to bring an action to enforce the requirements of the Business and Area Plan law.

This bill: This bill extends enforcement authority of violations of Business and Area Plan law to county counsels, and adds provisions to Business and Area Plan law that require the county counsel or district attorney, within 7 days of filing an enforcement action, to give notice to the district attorney or county counsel, as applicable, of the related county.

Medical waste: To protect the public and the environment from potentially infectious disease causing agents, the Medical Waste Management Program (MWMP) regulates the generation, handling, storage, treatment, and disposal of medical waste. The MWMP permits and inspects all medical waste offsite treatment facilities and medical waste transfer stations. The MWMP also acts as the local enforcement agency in a number of local jurisdictions that elected to have the State implement the large quantity generator inspection programs for medical waste management. The MWMP is implemented by the Environmental Management Branch of the California Department of Public Health as part of its oversight of the implementation of the Medical Waste Management Act.

Enforcement of the MWMA: Current statute authorizes an enforcement agency, district attorney, city attorney, or city prosecutor to bring an action to enjoin the violation, or threatened violation, of the MWMA.

This bill: This bill extends enforcement authority for violations of the MWMA to the county counsel, and adds provisions to MWMA law that require the county counsel or district attorney, within 7 days of filing an enforcement action, to give notice to the district attorney or county counsel, as applicable, of the related county.

Recent related legislation extending authority to the county counsel: The Legislature has repeatedly extended the authority of county counsel in California to ensure the enforcement of laws affecting consumers and health and safety. Recently, SB 461 (Cortese, Chapter 140, Statutes of 2021) extended the authority to independently bring cases under the Unfair Competition Law to the county counsel of any county within which a city has a population in excess of 750,000. Currently this provides authority to county counsel in three California counties, those in San Diego County, Los Angeles County, and Santa Clara County, as the cities of San Diego, Los Angeles, and San Jose have populations over 750,000. Last year, AB 2766 (Maienschein, Chapter 698, Statutes of 2022) granted certain city attorneys and county counsel the power to conduct investigations, including the ability to issue pre-litigation subpoenas, when they reasonably believe there has been a violation of California's Unfair Competition Law. The sponsors of SB 642 point to about 20 other bills introduced this year that extend enforcement authority to county counsel and district attorneys.

This bill: This bill similarly provides another tool to enforce violations of specified environmental and public health protection laws. Providing county counsel additional enforcement authority over these laws will enable localities to more robustly address hazardous and medical waste violations in their communities.

Arguments in support: The cosponsors of the bill, the County of Santa Clara, Rural County Representatives of California (RCRC), and CSAC, write in support of the bill,

"This bill will provide county counsels with complete civil enforcement authority over hazardous waste violations, as originally intended by the Legislature. Health and Safety Code section 25182 provides that "[e]very civil action brought under [the Hazardous Waste Control Act] at the request of the [Department of Toxic Substances Control] or a unified program agency shall be brought by the city attorney, the county attorney, the district attorney, or the Attorney General in the name of the people of the State of California . . ." The legislative history of this provision specifically mentions the intent to authorize county counsels to prosecute hazardous waste regulatory laws to help ensure adequate enforcement and eliminate unfair competitive advantages enjoyed by noncompliant businesses.

However, the Legislature did not make conforming changes to several related statutes, including provisions governing hazardous waste prosecutions, the Hazardous Materials Business Plan Program, the Underground Storage Tank Program, and the Aboveground Petroleum Storage Act Program. As a result, county counsels remain a largely untapped tool in the enforcement of hazardous waste laws. In counties where district attorneys have limited resources and large criminal caseloads—particularly in unincorporated areas outside of city attorney jurisdiction—there may be insufficient recourse for civil enforcement of

recalcitrant violators. This places at risk the public, especially low-income areas and communities of color, and gives an unfair business advantage to chronically non-compliant actors.

SB 642 seeks to follow through on the Legislature's intent to add another hazardous waste enforcement option by granting county counsels complete civil enforcement authority over hazardous waste violations."

Arguments in opposition: The California District Attorneys Association (CDAA) writes in an "oppose unless amended" position to the bill,

"The California District Attorneys Association (CDAA) must respectfully oppose your SB 642 (Cortese) unless amended to: (1) limit applicability to County Counsels for counties that contain a city with a population of more than 750,000 (currently Santa Clara, San Diego and Los Angeles Counties); and (2) allow those County Counsels to bring their own actions only after they provide the local county DA with at least 60 days' notice of the alleged violation and the local county DA has not already commenced its own action against that alleged violation, except for in cases where a [temporary restraining order] is sought at the time a complaint is filed, in which case only notice is required.

While CDAA is supportive of the goal of ensuring enforcement of all environment violations involving hazardous materials, we also believe it is important that these laws are enforced consistently throughout the state, and whenever possible by prosecutors who are directly accountable to voters, are governed by heightened prosecutorial ethical standards, and who do not use contingency fee arrangements that could undermine their neutrality. Our amendments would ensure these enforcement actions are most often conducted by prosecutors, but also allow large counties with adequate resources to fill gaps in enforcement to better protect their communities from the unlawful transportation and disposal of hazardous materials."

Double referral: Should the Assembly Environmental Safety and Toxic Materials Committee approve this bill, it will be re-referred to the Assembly Judiciary Committee.

Previous related legislation:

- 1) AB 2766 (Maienschein, Chapter 698, Statutes of 2022). Grants certain city attorneys and county counsel the power to conduct investigations, including the ability to issue pre-litigation subpoenas, when they reasonably believe there has been a violation of California's Unfair Competition Law.
- 2) SB 461 (Cortese, Chapter 140, Statutes of 2021). Authorizes a county counsel of a county within which a city has a population in excess of 750,000 people to bring an action under California's Unfair Competition Law.
- 3) AB 1934 (Richter, Chapter 44, Statutes of 1993). Provides county attorneys with civil enforcement authority under the HWCL.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Association of Counties (CSAC) (Co-Sponsor)
County of Santa Clara (Co-Sponsor)
Rural County Representatives of California (RCRC) (Co-Sponsor)
California Environmental Voters (formerly CLCV)
County of Monterey
Los Angeles County District Attorney's Office
Solano County Board of Supervisors
Urban Counties Caucus

Opposition

California District Attorneys Association

Analysis Prepared by: Shannon McKinney / E.S. & T.M. /

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Alex Lee, Chair

SB 745 (Cortese) – As Amended June 13, 2023

SENATE VOTE: 31-9

SUBJECT: The Drought-Resistant Buildings Act

SUMMARY: Requires, commencing with the next triennial edition of the California Building Standards Code, the Department of Housing and Community Development (HCD) and the Building Standards Commission (Commission) to research, develop, and propose building standards to reduce potable water use in new residential buildings and non-residential respectively, including consideration of requiring the installation of water reuse systems and consideration of requiring preplumbing of buildings to allow future use of recycled water, onsite treated graywater, or other alternative water sources. Specifically, **this bill:**

- 1) Provides that a water reuse system includes a system approved for installation under the California Building Standards Code that uses recycled water, graywater, rainwater, or other nonpotable water sources for nonpotable indoor or outdoor building use, and a system approved for installation under the California Building Standards Code that captures graywater, rainwater, building foundation water drainage, or other onsite alternative water sources for nonpotable reuse onsite.
- 2) Requires HCD, commencing with the next triennial edition of the California Building Standards Code, to research, develop, and propose building standards, to reduce potable water use in new residential buildings, including consideration of requiring the installation of water reuse systems and consideration of requiring preplumbing of buildings to allow future use of recycled water, onsite treated graywater, or other alternative water sources.
- 3) Requires the Commission, commencing with the next triennial edition of the California Building Standards Code, to research, develop, and propose building standards, to reduce potable water use in new non-residential buildings, including consideration of requiring the installation of water reuse systems and consideration of requiring preplumbing of buildings to allow future use of recycled water, onsite treated graywater, or other alternative water sources.
- 4) Requires the Commission to perform a review of water efficiency and water reuse standards in the California Building Standards Code every three years thereafter and update as needed.
- 5) Requires, no later than December 31, 2024, the Commission, in consultation with the State Water Resources Control Board (State Water Board), to develop a guidance document and a model local ordinance to help local jurisdictions adopt regulatory programs for onsite nonpotable water treatment systems. Authorizes the Commission, in developing the model ordinance, to use or build upon any existing model ordinance for onsite nonpotable water treatment systems.

- 6) Authorizes the Commission, in developing and proposing building standards pursuant to this bill, to expend funds, upon appropriation, from the Building Standards Administration Special Revolving Fund.
- 7) Requires - within twelve months of the State Water Board adopting regulations for risk-based water quality standards for onsite treatment and reuse of nonpotable water for nonpotable end uses in multifamily residential, commercial, and mixed-use building the HCD, in consultation with the State Water Board, to develop and propose for adoption any necessary corresponding building standards to support the risk-based water quality standards for onsite treatment and reuse of nonpotable water established by the State Water Board via regulation.

EXISTING LAW:

- 1) Establishes the Water Recycling Act of 1991, creating a statewide goal to recycle a total of 700,000 acre-feet of water per year by the year 2000 and 1,000,000 acre-feet of water per year by the year 2010. Requires each urban water supplier to prepare, and update every five years, an urban water management plan with specified components, including information on recycled water and its potential for use as a water source in the service area of the urban water supplier. (Water Code (WC) § 13577)
- 2) Makes findings regarding the State Water Board's updated water recycling goals adopted by resolution, which update the above goals to increase the use of recycled water from 714,000 acre-feet per year in 2015 to 1.5 million acre feet per year by 2020 and to 2.5 million acre feet per year by 2030. (State Water Board Resolution 2018-0057, December 11, 2018)
- 3) Requires the State Water Board to establish uniform statewide recycling criteria for each varying type of use of recycled water where the use involves the protection of public health. (WC § 13521)
- 4) Makes legislative findings that the use of potable domestic water for nonpotable uses, including, but not limited to, cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses, is a waste or an unreasonable use of the water if recycled water is available which meets certain conditions, as determined by the State Water Board, after notice, provided to any person or entity who may be ordered to use recycled water or to cease using potable water, and a hearing. (WC § 13550)
- 5) Requires, on or before December 31, 2023, the State Water Board to adopt uniform water recycling criteria for direct potable reuse through raw water augmentation. (WC § 13561.2)
- 6) Declares that the people of the state have a primary interest in the development of facilities to recycle water containing waste to supplement existing surface and underground water supplies and to assist in meeting the future water requirements of the state. (WC § 13510)
- 7) Makes legislative findings that a substantial portion of the future water requirements of this state may be economically met by beneficial use of recycled water. Finds that the utilization of recycled water by local communities for domestic, agricultural, industrial, recreational, and fish and wildlife purposes will contribute to the peace, health, safety and welfare of the people of the state. States that the use of recycled water constitutes the development of "new basic water supplies" as defined. (WC § 13511)

- 8) Declares that it is the intent of the Legislature that the state undertake all possible steps to encourage the development of water recycling facilities so that recycled water may be made available to help meet the growing water requirements of the state. (WC § 13512)
- 9) Requires, by December 1, 2022, the State Water Board, in consultation with the Commission and HCD, to adopt regulations for risk-based water quality standards for the onsite treatment and reuse of nonpotable water for nonpotable end uses in multifamily residential, commercial, and mixed-use buildings. (Water Code § 13558(a))
- 10) Establishes requirements for a local jurisdiction that elects to establish a program for onsite treated nonpotable water systems, including adopting a local ordinance that includes the risk-based water quality standards established by the State Water Board. (Water Code § 13558 (b))
- 11) Requires the Commission to adopt building standards for the construction, installation, and alteration of graywater systems for indoor and outdoor uses in nonresidential occupancies. Governs the use of recycled water from sources that contain domestic waste, in whole or in part. (California Code of Regulations (CCR) Title 22 , Division 4, Chapter 3)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author: "Hotter and drier weather conditions from climate change are projected to reduce California's water supplies by up to 10% by the year 2040. The California Building Standards Code sets forth standards for constructing buildings with dual plumbing to use graywater for landscape irrigation and to use recycled water or onsite treated graywater for non-potable water uses such as toilets and cooling towers. To address projected water shortages in California due to global climate change, SB 745 directs the California Building Standards Commission to develop mandatory building standards to reduce the designed potable water demand of new buildings by 25%. In addition, SB 745 requires adoption of model ordinance language and guidance to streamline local implementation of the onsite treated graywater local program requirements set forth in Water Code Section 13558. These actions would be funded by the existing Building Standards Administration Special Revolving Fund, which provides the California Building Standards Commission funds for development of green building standards."

California drought: The five-year drought that spanned 2012 through 2016 included the driest four-year statewide precipitation on record and the smallest Sierra-Cascades snowpack on record. Due to the severity of water deficits over those years, many of California's reservoirs and groundwater basins were depleted, and the need for water conservation and efficiency became ever more critical.

Due to a high precipitation year in 2017, Governor Jerry Brown issued Executive Order B-40-17 rescinding drought-induced mandated water use cuts, but acknowledged, "increasing long-term water conservation among Californians, improving water use efficiency within the state's communities and agricultural production, and strengthening local and regional drought planning are critical to California's resilience to drought and climate change."

Climate change: Climate change is exacerbating the state's droughts (and wildfires). Unpredictable weather conditions which are forecast for the foreseeable future, are forcing Californians to move beyond temporary emergency drought measures and adopt permanent changes to use water more efficiently and prepare for more frequent and persistent periods of limited water supply.

Recycled water and other alternative water supplies will become a more important factor as the state's population grows and as drought conditions threaten the reliability of California's traditional water supplies.

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

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

Benefits of water recycling: Recycled water can provide a dependable, locally-controlled water supply and can provide other environmental benefits. By providing an additional source of water, water recycling can help reduce the diversion of water from constrained water sources and could result in energy savings. Other benefits include decreasing wastewater discharges to rivers, estuaries, or bays, thereby reducing or preventing effluent pollution. By using recycled water for indirect potable reuses, such as groundwater recharge and surface water supply augmentation, recycled water replenishes over-subscribed water supply sources.

State water recycling policy: The State Water Board supports and encourages the use of recycled water to promote the conservation of water resources. The Policy for Water Quality Control for Recycled Water (Recycled Water Policy) was developed to increase the use of recycled water from municipal wastewater sources in a manner that is protective of public health and the environment. The Recycled Water Policy provides goals for recycled water use in California, guidance for use of recycled water that considers protection of water quality, criteria for streamlined permitting of recycled water projects, and requirements for monitoring recycled water for constituents of emerging concern.

State water recycling goals: The Water Recycling Act of 1991 set California water recycling goals at 700,000 acre-feet/year by 2000 and 1 million acre-feet by 2010. Ten years later, Assembly Bill 331 (Goldberg, Chapter 590, Statutes of 2001) was enacted to require the Department of Water Resources to convene the Recycled Water Task Force (Task Force) to investigate the opportunities and constraints for increasing the industrial and commercial use of recycled water. The Task Force projected that by 2030, if financial resources become available to water recycling projects, the total recycled water use would increase from the current amount of about 525,000 acre-feet to more than 2 million acre-feet a year.

The 2018 Recycled Water Policy updated these goals to increase the use of recycled water in California to 1.5 million acre feet per year by 2020 and to 2.5 million acre-feet per year by 2030.

Existing state standards for water recycling: The State Water Board regulates use of recycled water pursuant to the Uniform Statewide Recycling Criteria (Criteria) (CCR, Title 22, Division 4, Chapter 3), which contain requirements for recycled water quality and wastewater treatment requirements for the various types of allowed uses, including irrigation, impoundments (such as reservoirs and ponds), and industrial facility cooling. The Criteria are generally for municipal-scale projects that treat wastewater in treatment plants and use that water offsite, not for onsite indoor use.

For nonpotable reuse applications, there are four types of recycled water based on levels of treatment: 1) non-disinfected secondary, 2) disinfected secondary-23, 3) disinfected secondary 2.2, and 4) disinfected tertiary. The level of treatment used is based on how the recycled water is intended to be used. In uses where there is a greater chance of human exposure to the water, more treatment is required.

Non-disinfected secondary recycled water is water with the lowest level of treatment, suitable for applications that have a very minimal public exposure level, such as irrigation for fodder crops. The Criteria have additional eligible uses for recycled water that is disinfected tertiary recycled water, including, but not limited to, flushing toilets and urinals, decorative fountains, commercial laundries, artificial snow making for commercial outdoor use, and commercial car washes. Disinfected tertiary recycled water goes through higher levels of treatment, sufficient for applications with more public exposure, such as irrigation of parks, decorative fountains, or artificial snowmaking for commercial outdoor use.

Existing onsite water reuse policy: In 2018, the Legislature enacted SB 966 (Weiner, Chapter 890, Statutes of 2018) to require the State Water Board, in consultation with the Commission, and HCD, to adopt regulations for risk-based water quality standards for the onsite treatment and reuse of nonpotable water by December 1, 2022. SB 966 also requires a local jurisdiction that elects to establish a program for onsite treated nonpotable water systems to, among other things, adopt, through ordinance, a local program that includes the risk-based water quality standards established by the State Water Board. Lastly, it requires HCD, in consultation with State Water Board, to develop and propose for adoption any necessary corresponding building standards by December 1, 2023, to support the risk-based water quality standards established by State Water Board.

Why was there a requirement for a local program to consult with water service provider within SB 966?: During the debate of SB 966, some local water agencies were concerned about the potential adverse impacts of onsite water recycled systems that were built without consulting the local water agency. For example, the Desert Water Agency and the El Dorado Irrigation District were concerned that by allowing a city or county to adopt a program to permit onsite treated nonpotable water systems, it could lead to a reduction of wastewater flows into the community sewer system, which could increase the salt load of the remaining wastewater flows, and impact and ultimately reduce the production of those districts' recycled water production. Therefore, SB 966 was amended to include consultation with a water service provider or a sewer service provider by a local jurisdiction before the local jurisdiction could adopt a local program.

Some wastewater agencies have reported that they have seen a 30 percent reduction in flow over the last 15 years as a result of conservation efforts. Because reducing flow even further with additional recycled water projects could strain the flow on these wastewater systems, communication and planning is needed for future recycled water projects.

The regulations to implement SB 966 have not yet been adopted. However, they are currently in development at the State Water Board. According to the State Water Board's website, the proposed rulemaking to implement SB 966 was expected to be submitted to the Office of Administrative Law by late Spring 2023.

Difference between this bill and SB 966: SB 966 authorizes HCD, in consultation with the State Water Board, to develop and propose for adoption any necessary corresponding building standards to support the risk-based water quality standards for onsite nonpotable treatment systems. The language in SB 966 was negotiated so that any building standards were not mandatory. SB 745 does not mandate building standards, however it differs slightly from SB 966, in that it authorizes HCD and the Commission to consider requiring building standards for water reuse systems. As SB 745 moves through the process, there is a chance that stakeholders will continue to engage in discussions on the wording around how any building standards may be proposed.

Plumbing recycled water: Since the 1990s, California's Building Code has included provisions that authorized the installation and use of graywater systems, but the regulations were seen to be restrictive and complicated.

In 2008, the California Legislature enacted SB 1258 (Lowenthal, Chapter 172, Statutes of 2008), which required HCD to revise building standards for the construction, installation, and alteration of graywater systems for indoor and outdoor uses.

HCD promulgated the new standard and incorporated it into the 2007 California Plumbing Code. The new standard is intended to conserve water by facilitating greater reuse of laundry, shower, lavatory, and similar sources of discharge for irrigation and/or indoor use; reduce the number of non-compliant graywater systems by making legal compliance more easily achievable; provide guidance for avoiding potentially unhealthful conditions; and, provide an alternative way to relieve stress on private sewage disposal systems by diverting the graywater.

In addition, the California Plumbing Code contains design standards to safely plumb buildings with both potable and recycled water systems. These statewide standards apply for installing both potable and recycled water plumbing systems in commercial, retail, and office buildings, theaters, auditoriums, condominiums, schools, hotels, apartments, barracks, dormitories, jails, prisons, and reformatories. These standards are found in the 2013 California Plumbing Code (CCR, Title 24, Part 5).

This bill: SB 745 requires HCD and the Commission to research, develop, and propose building standards, to reduce potable water use in new residential buildings and non-residential buildings respectively, including consideration of requiring the installation of water reuse systems and consideration of requiring preplumbing of buildings to allow future use of recycling water, onsite treated graywater, or other alternative water sources. Improving the ability to recycle water in California is important and a shared goal among all stakeholders. However, how the state is plumbed and how it delivers drinking water, recycled water, and how it moves wastewater is

complicated. Involving all of the parties that move water and that recycle water is a key element to ensuring success.

Arguments in support: The California State Pipes Trade Council, writing in support states, "The Pipe Trades Council is a sponsor of this legislation. SB 745 addresses projected water shortages in California due to global climate change by requiring the adoption of building standards to reduce the designed potable water demand of new buildings. It also directs the California Building Standards Commission to develop model ordinance language and guidance to streamline local implementation of Water Code Section 13558, which allows builders to install onsite treated non-potable water systems for indoor building water uses where a local approval program has been adopted.

SB 745 will direct the California Building Standards Commission and the Department of Housing and Community Development to develop building standards to reduce the designed potable water demand of new buildings and to minimize the use of potable water for non-potable uses. SB 745 does not, itself, impose any mandates on the installation of water reuse systems, but rather gives broad discretion to the adopting agencies to determine, through the normal code adoption process, which type of water reuse systems make sense to require in what circumstances and for what type of buildings. SB 745 recognizes that these are precisely the type of policy judgments that are best left to the regulatory process to ensure stakeholder input and the development of details by the relevant expert agencies and their staff."

Arguments in opposition: A coalition including WaterReuse, the California Association of Sanitation Agencies, and the California Municipal Utilities Association, writing in opposition states, "The undersigned associations must respectfully oppose SB 745 (Cortese) unless amended to remove any references to mandates. Simply, the measure is premature, as the regulations for SB 966 (Wiener, 2018) are still under development and the State Water Resources Control Board (Water Board) is also currently implementing the landmark water-use efficiency legislation that set efficiency standards for residential, commercial, and industrial water users.

The Department of Water Resources and the Water Board are in the final process of implementing AB 1668 (Friedman, 2018), SB 606 (Hertzberg 2018), and SB 1157 (Hertzberg, 2022) which established a framework for long-term improvements in urban water use efficiency and drought planning. Together, these laws require urban retail water agencies to adhere to an Urban Water Use Objective that is comprised of indoor residential water use, outdoor water use, efficient outdoor irrigation of landscape in connection with commercial, industrial, institutional use, and estimated water loss.

The Urban Water Use Objective achieves the efficiency and water-use objectives and performance measures that SB 745 intends without requiring four sets of pipes to be constructed in each new residential, commercial and industrial building."

Double-referral: Should this bill pass out of the Assembly Environmental Safety and Toxic Materials Committee it will be referred to the Assembly Housing and Community Development Committee.

Related legislation:

- 1) AB 2811 (Bennet, 2022). Would have required the Commission to establish mandatory building standards requiring newly constructed nonresidential buildings be constructed with dual plumbing to allow the use of recycled water for all applicable nonpotable water demands. This bill was not heard in the Assembly Environmental Safety and Toxic Materials Committee.
- 2) AB 836 (Gabriel, 2021). Would have required the Building Standards Commission (Commission) to establish mandatory building standards requiring newly constructed nonresidential buildings be constructed with dual plumbing to allow the use of recycled water for all applicable nonpotable water demands. This bill was not heard in the Assembly Environmental Safety and Toxic Materials Committee.
- 3) SB 966 (Weiner, Chapter 890, Statutes of 2018). Requires, by December 1, 2022, the State Water Board to develop standards for onsite nonpotable water treatment and reuse and authorizes local jurisdictions to adopt programs to permit onsite nonpotable water treatment and reuse using those standards.
- 4) SB 740 (Weiner, 2017). Would have required the State Water Board, on or before December 1, 2018, and in consultation with other state agencies, to adopt regulations to provide comprehensive risk-based standards for local permitting programs for onsite water recycling. SB 740 was held in the Senate Appropriations Committee.
- 5) AB 574 (Quirk, Chapter 528, Statutes of 2017). Requires the State Water Board to, on or before December 31, 2023, adopt uniform water recycling criteria for potable reuse through raw water augmentation.
- 6) AB 2076 (C. Garcia, 2016). Would have required the State Water Board to adopt uniform water recycling criteria for the use of recycled water in the manufacture of beer and wine. AB 2076 was amended with unrelated content before being heard in its first policy committee.
- 7) AB 2282 (Gatto, Chapter 606, Statutes of 2014). Required the Commission to adopt mandatory building standards for the installation of recycled water infrastructure in newly constructed residential, commercial, and public buildings during its triennial update for the 2019 building code for both outdoor and indoor uses. The resultant regulations were invalidated and vacated in May 2019.

REGISTERED SUPPORT / OPPOSITION:**Support**

Building Decarbonization Coalition
California Environmental Voters (formerly CLCV)
California State Pipe Trades Council

Opposition

Association of California Water Agencies (ACWA)
California Association of Sanitation Agencies

California Municipal Utilities Association
California Special Districts Association
Irvine Ranch Water District
Los Angeles County Sanitation Districts
WaterReuse Association

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

