

Vice-Chair
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Holden, Chris R.
Mathis, Devon J.
Muratsuchi, AI

California State Assembly

ENVIRONMENTAL SAFETY AND TOXIC MATERIALS



BILL QUIRK
CHAIR

AGENDA

Wednesday, June 30, 2021
9 a.m. -- State Capitol, Room 4202

Chief Consultant
Josh Tooker

Senior Consultant
Paige Brokaw
Shannon McKinney

Consultant
Marika Nell

Committee Secretary
Pia Estrada

BILLS HEARD IN FILE ORDER

1. SB 776 Gonzalez Safe drinking water and water quality.
2. SB 273 Hertzberg Water quality: municipal wastewater agencies.
3. SB 42 Wieckowski Department of Toxic Substances Control: Board of Environmental Safety.

PROPOSED CONSENT

4. SB 207 Dahle Photovoltaic Recycling Advisory Group.

Date of Hearing: June 30, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 776 (Gonzalez) – As Amended April 29, 2021

SENATE VOTE: 32-8

SUBJECT: Safe drinking water and water quality

SUMMARY: Makes various statutory changes to the implementation of the Safe and Affordable Drinking Water Act, including consolidating the authority available to the State Water Resources Control Board (State Water Board) to enforce the terms, conditions, and requirements of its financial assistance programs. Specifically, **this bill:**

- 1) Authorizes the State Water Board to apply existing authority over public water systems to "state small water systems" including:
 - a) Requiring state small water systems to provide technical reports and other information to the State Water Board upon request;
 - b) Allowing the State Water Board to petition a court to appoint a receiver to assume possession of and to operate a water system that is unable or unwilling to adequately serve its users, has been actually or effectively abandoned by its owners, or is unresponsive to the rules or orders of the State Water Board; and,
 - c) Authorizing a representative of the State Water Board to inspect the water system and its records, set up monitoring equipment, obtain samples, and photograph the system.
- 2) Authorizes the State Water Board to adopt regulations pursuant to the form and intervals at which a public water system provides water analysis to the State Water Board as emergency regulations under the Administrative Procedure Act and requires the State Water Board to hold a hearing before adopting those emergency regulations.
- 3) Authorizes the State Water Board to award moneys from the Safe and Affordable Drinking Water (SADW) Fund of \$10,000 or less without a written agreement to address a drinking water emergency and exempts contracts entered into pursuant to the SADW Fund provisions from specified existing law.
- 4) Consolidates the administrative enforcement authority available to the State Water Board to enforce the terms, conditions, and requirements of its financial assistance programs, as specified.
- 5) For purposes of the consolidated administrative enforcement authority under the Safe and Affordable Drinking Water Act, defines the following:
 - a) "Agreement" is any agreement or contract for financial assistance from the State Water Board to an eligible recipient, including, but not limited to, a loan, grant, installment sale agreement, contract, or other form of agreement made for the purpose of providing financial assistance; and,

- b) "Recipient" is any person or entity that receives any financial assistance from the State Water Board, including, but not limited to, a recipient's contractors or consultants who perform work for the recipient.
- 6) Authorizes the State Water Board, as part of the consolidation of enforcement authority in this bill, to recover any costs incurred in the enforcement of an agreement, including any criminal, civil, or administrative action related to the agreement, as follows:
- a) The State Water Board may recover any amount of financial assistance provided to a recipient not expended for purposes authorized by the agreement, up to the full amount of the agreement;
 - b) The Attorney General, on the request of the State Water Board, shall bring an action in superior court to recover costs under this section; and,
 - c) The State Water Board may recover costs administratively as civil liability.
- 7) Provides that, in connection with costs recovered, the amount of costs constitutes a lien on any property obtained through, or improved with the proceeds of, an agreement, which shall attach for a period of ten years and may be renewed unless the lien is released or discharged.
- 8) Authorizes the State Water Board to permanently disqualify a person from receiving financial assistance from the State Water Board if that person is criminally convicted or found to be liable for a civil penalty under certain provisions for violations of the Safe and Affordable Drinking Water Act. If the State Water Board determines that the disqualified person is a contractor or consultant, the recipient shall not submit invoices for any work performed or directed.
- 9) Authorizes the State Water Board to permanently disqualify a recipient from further receipt of financial assistance from the State Water Board when:
- a) The recipient has been convicted of, or found liable for a civil penalty for, making misrepresentations in connection with an application for funds under the Safe and Affordable Drinking Water Act; and,
 - b) The State Water Board makes a finding that the alleged violation was knowing, willful, or intentional, taking into account the nature, circumstances, extent, and gravity of the violation, any prior history of misrepresentations, any economic benefits or savings that resulted or would have resulted from the false statement, and any other matters as justice may require.
- 10) Provides that, upon motion and sufficient showing by any party, a superior court or the State Water Board shall join to a court or administrative action a person who may be liable for costs or expenditures of the type recoverable for violation of an agreement.
- 11) Provides that the standard of liability for any costs recoverable is strict liability.

- 12) Provides that an indemnification, hold harmless, conveyance, or similar contract shall not preclude any liability for costs recoverable by the State Water Board, but that such contracts are not barred.
- 13) Provides that the entry of judgment against any party to a recovery action does not bar any future action by the State Water Board against any person who is later discovered to be potentially liable for costs incurred by the State Water Board related to any financial assistance program.
- 14) Makes any person who violates any requirement or term of a financial assistance agreement liable for a civil penalty for not more than \$1,000 per day of the violation, not to exceed 25 percent of the total amount of the financial assistance agreement. Authorizes the penalty to be recovered in a civil action by the Attorney General upon request of the State Water Board, and authorizes the State Water Board to impose the penalty administratively.
- 15) Requires a recipient to furnish, under penalty of perjury, any information relating to funds disbursed or costs claimed for reimbursement related to a financial assistance agreement. States that any person who fails or refuses to furnish such information is subject to civil liability of not more than \$10,000 per violation, where the violation was knowing, willful, or intentional, the recipient received a material economic benefit from the alleged violation, or the alleged violation is chronic and/or the recipient is a repeat violator. Authorizes the penalty to be recovered in a civil action by the Attorney General upon request of the State Water Board and authorizes the State Water Board to impose the penalty administratively.
- 16) Makes a person who makes a misrepresentation in any submittal to the State Water Board for assistance under the Safe and Affordable Drinking Water Act, including, but not limited to, an application or other document submitted in connection with a financial assistance agreement, subject to civil liability of not more than \$500,000 for each violation. Authorizes the penalty to be recovered in a civil action by the Attorney General upon request of the State Water Board and authorizes the State Water Board to impose the penalty administratively.
- 17) Sets punishments for a person convicted of knowingly making or causing to be made any false statement, material misrepresentation, or false certification to the State Water Board relating to an agreement for assistance under the Safe and Affordable Drinking Water Act. The punishments include a criminal fine of not more than \$10,000, imprisonment in a county jail for not more than one year, imprisonment in state prison for 16 months, two years, or three years, or a combination of a fine and imprisonment. Authorizes the Attorney General or a district attorney to, upon request of the State Water Board, bring an action to impose the criminal penalty.
- 18) Clarifies that the remedies set forth in the bill are in addition to, and do not supersede, any other remedies available to the State Water Board by statute or in an agreement, except that civil liability shall not be imposed both administratively and by the superior court for the same action, and requires, in determining the amount of liability for a violation, the court or State Water Board to take into consideration all relevant circumstances, including any corrective action taken by the violator.
- 19) Requires all moneys collected as a result of this bill to be deposited into the SADW Fund (the fund from which the financial assistance agreement that is the subject of the action

originated), unless the State Water Board determines that deposit in another fund would be more effective for providing financial assistance.

EXISTING LAW:

- 1) 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 § 106.3)
- 2) Establishes the California Safe Drinking Water Act (SDWA) and requires the State Water Board to maintain a drinking water program. (Health & Safety Code (HSC) § 116270, *et seq.*)
- 3) Provides that the California SDWA does not apply to small state water systems, except as specified. (Government Code § 11352)
- 4) Defines a "state small water system" as a system for the provision of piped water to the public for human consumption that serves at least five, but not more than fourteen, service connections and does not regularly serve drinking water to more than an average of 25 individuals daily for more than 60 days out of the year. (HSC § 116275(n).)
- 5) Requires any person operating a public water system to obtain and provide at that person's expense an analysis of the water to the State Water Board, performed by a state-certified certified laboratory, in any form and containing any information as the State Water Board requires. (HSC § 116385.)
- 6) Establishes the SADW Fund in the State Treasury to help water systems provide an adequate and affordable supply of safe drinking water in both the near and long terms. (HSC § 116766)
- 7) Authorizes the State Water Board to provide for the deposit into the SADW Fund of certain moneys and continuously appropriates the moneys in the fund to the State Water Board for grants, loans, contracts, or services to assist eligible recipients. (HSC § 116766)
- 8) Generally authorizes the State Water Board to enforce its programs, and provides that a party may seek relief from a State Water Board order in superior court. (e.g. HSC §§ 25299.78, 116500, 116650, 116700-116701.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"There are close to 300 low-income communities across California that do not have reliable access to safe, clean, and affordable drinking water, and another 600 that are at-risk of failing. In 2019, however, the Governor signed SB 200 (Monning, Ch. 120, Stats. 2019), which established the Safe and Affordable Drinking Water Fund to help the State Water

Resources Control Board fund its efforts to provide safe drinking water for the hundreds of communities without access to it.

Through its implementation of SB 200, however, the State Water Board has identified a number of clarifying statutory changes that are needed to enable a more effective and efficient implementation of the SB 200 program, the Safe Drinking Water Act, and the goals of the Human Right to Water policy.

SB 776 proposes a number of statutory changes that primarily seek to improve Fund accountability, provide greater administrative oversight, and implement program efficiencies to get help to communities faster. These changes are critically needed to better help suffering communities that need safe drinking water, including those sheltering at home during the COVID-19 pandemic. SB 776 will allow the State Water Board to move quickly and effectively to implement the goals of the Safe and Affordable Drinking Water Fund, while ensuring the state has proper enforcement mechanisms to prevent taxpayer funds from being misused."

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.

Regulation of drinking water: The federal SDWA was enacted in 1974 to protect public health by regulating drinking water. California has enacted its own SDWA to implement the federal law and establish state standards. The United State Environmental Protection Agency (U.S. EPA) enforces the federal SDWA at the national level. However, most states, including California, have been granted "primacy" by the U.S. EPA, giving them authority to implement and enforce the federal SDWA at the state level.

The State Water Board regulates approximately 7,500 public water systems that provide water for human consumption and have 15 or more service connections, or regularly serve at least 25 individuals daily at least 60 days out of the year. (A "service connection" is usually the point of access between a water system's service pipe and a user's piping.) At the local level, 30 of the 58 county environmental health departments in California have been delegated primacy—known as Local Primacy Agencies (LPAs)—by the State Water Board to regulate systems with between 15 and 200 connections within their jurisdiction.

"State small water systems" serve more than 5 and less than 14 service connections and do not regularly serve drinking water to more than an average of 25 individuals daily for more than 60 days per year. These water systems are not considered public and are not regulated by the State Water Board. Instead, state small water systems are regulated by county health officials, regardless of LPA status. Private domestic wells (systems with 1-4 service connections) are currently not regulated by any entity. The number of smaller systems—specifically, those with 14 or fewer connections—is unknown but estimated to be in the thousands.

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.

Disadvantaged communities often lack the rate base, as well as the technical, managerial, and financial capacity to 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.

The Safe and Affordable Funding for Equity and Resilience (SAFER) program: SB 200 (Monning, Chapter 120, Statutes of 2019) created SAFER and the SADW Fund. The SAFER program supports permanent and sustainable drinking water solutions that ensure all Californians have access to safe, affordable, and reliable drinking water. The SADW Fund was established to address funding gaps and provide solutions to water systems, especially those serving disadvantaged communities, to address both their short- and long-term drinking water needs. SB 200 requires the annual transfer of 5 percent of the Greenhouse Gas Reduction Fund (GGRF) (up to \$130 million) into the SADW Fund until June 30, 2030. Money transferred into the SADW Fund is continuously appropriated and must be expended consistent with the Expenditure Plan, which is adopted annually by the State Water Board. The Expenditure Plan is based on a drinking water needs assessment and will document past and planned expenditures and prioritize projects for funding. Potential options for funding include consolidation with larger water systems, operations and maintenance costs, building local technical and managerial capacity, providing interim replacement water, and administrators to run the small systems. Additionally, SAFER funds will provide short-term operation and maintenance support as a bridge until long-term sustainable solutions are in place, and providing long-term operation and maintenance support when necessary.

SADW Fund Expenditure Plan (Plan): The Plan is adopted annually by the State Water Board, and directs how money from the SADW Fund can be spent. The Plan will be based on a drinking water needs assessment, documents past and planned expenditures, prioritizes projects for funding, and includes the following elements:

- Identify public water systems, community water systems, state small water systems and regions where domestic wells consistently fail or are at risk of failing to provide adequate safe drinking water, the causes of failure, and appropriate remedies;
- Determine the amounts and sources of funding needed to provide safe drinking water or eliminate the risk of failure to provide safe drinking water; and,
- Identify gaps in supplying safe and affordable drinking water and determine the amounts and potential sources of funding to eliminate those gaps.

Drinking Water Needs Assessment (Needs Assessment): The annual Needs Assessment required to be carried out by the SAFER Program provides foundational information and recommendations to guide the Plan. The Needs Assessment is comprised of Risk Assessment, Affordability Assessment, and Cost Assessment components. Development of the 2021 Needs Assessment consisted of stages between September 2019 and March 2021.

The results from the 2021 Needs Assessment illustrate the breadth and depth of challenges to safe and affordable water supply provision across system types in California for the first time. The Needs Assessment identifies water systems that are failing and those that are at-risk of failing to provide safe and affordable drinking water. The 2021 Risk Assessment was conducted for 2,779 public water systems and evaluated their performance across 19 risk indicators within the following four categories: Water Quality, Accessibility, Affordability, and Technical, Managerial, and Financial (TMF) Capacity. The results identified 326 water systems as failing; 617 water systems at-risk of failing, 552 water systems potentially at-risk of failing, and 1,284 water systems not at-risk of failing. Water systems are deemed to be failing if they consistently fail to meet primary drinking water standards or have *E. coli* violations, treatment technique violations, and/or repeated/unresolved monitoring and reporting violations. Additionally, approximately 610 state small water systems and 80,000 domestic wells were assessed via modelling as having a high risk of exceeding health-based drinking water standards due to their reliance on aquifers with a high risk of groundwater contaminants.

Fraud prevention and recovery of funds: This bill would provide the State Water Board with authority to help prevent fraud in the SADW Fund and help recover monetary losses to the SADW Fund due to fraud and misrepresentation. The bill would accomplish this by authorizing the State Water Board to: 1) impose administrative and civil liability on persons who make fraudulent claims and misrepresentations to the SADW Fund; 2) bar claimants and consultants convicted of fraud against the SADW Fund from further participation in the SADW Fund; and, 3) recover the costs associated with investigating and prosecuting fraud cases against the SADW Fund from persons who were proven to have engaged in fraud. This bill also specifies that making fraudulent statements to the State Water Board can be punished with specified criminal fines, imprisonment, or both (upon conviction).

Current law does not provide the State Water Board with the necessary enforcement tools to effectively prevent fraud in the SADW program or to recover funds in a timely, cost-effective manner from those who defraud the State. The measures enacted in this bill are similar to those enacted by SB 445 (Hill, Chapter 547, Statutes of 2014) to prevent fraudulent claims to the Underground Storage Tank (UST) Cleanup Fund. Prior to the implementation of SB 445, this lack of authority appeared to result in numerous cases of fraudulent claims being submitted to the UST Cleanup Fund by UST owners and operators. Every dollar fraudulently obtained from the SADW Fund is one dollar less that is available for legitimate and necessary claims to protect citizens from unsafe drinking water.

Advance payments: This bill would provide the State Water Board with the authority to make advance payments to entities that are authorized to receive SADW Funds. Under existing procedures, the State Water Board makes payments to grantees on a reimbursement basis, where the grantee submits an invoice for costs incurred and the State Water Board reviews the invoice and makes payment for eligible costs. This process requires grantees to pay vendors up front and can create a significant financial burden for some entities, particularly small disadvantaged communities that have limited cash flow. In some cases, the State Water Board has had to pay costs associated with bridge financing where recipients do not have adequate cash flows to cover the time it takes to get reimbursed. This bill proposes to add limited authority for the State Water Board to authorize advance payments of up to \$10,000 from the SADW Fund to address a drinking water emergency, which would alleviate the financial burden on grant recipients who may not have the funds on hand to address urgent issues.

State small water systems: This bill would apply some of the tools that the State Water Board uses to regulate public water systems to the regulation of state small water systems. This bill would require state small water systems to provide technical and monitoring reports to the State Water Board, allow the State Water Board to inspect these water systems, and allow the State Water Board to petition a court to appoint a receiver to assume possession of and operate state small water systems under certain conditions. These measures will enable the State Water Board to more effectively assist state small water systems that are failing to deliver safe drinking water, which could include the 610 state small water systems that are estimated to have a high risk for exceeding drinking water standards.

Exemption from state contracting requirements: This bill would provide the State Water Board with limited exemptions from certain state contracting requirements to facilitate the timely implementation of the SAFER program. Similar language was included in the 2019-2020 Budget Act, which appropriated \$130 million to the State Water Board to begin implementation of the SAFER program. However, SB 200 did not include exemptions from state contracting requirements and, as a result, the State Water Board will be required to comply with all state contracting requirements without the passage of SB 776. This could slow the Board's ability to implement the SAFER Program and could delay the delivery of safe drinking water for Californians who are currently supplied by failing water systems.

SB 776: This bill makes changes to the implementation of the Safe and Affordable Drinking Water Act to ensure that funding from the SADW Fund quickly reaches water systems in need and that these funds are used appropriately to bring safe drinking water to the hundreds of thousands of Californians who are served by water systems that fail to meet drinking water standards. This bill provides new means for the State Water Board to quickly provide assistance to water systems including small monetary advances that benefit systems in disadvantaged communities with limited cash resources on hand. This bill also promotes appropriate use of funding by replicating the fraud prevention measures employed by the State Water Board to prevent fraudulent use of the UST Cleanup Fund since 2014. Overall, the measures provided in this bill allow the State Water Board to better assist both state small and public water systems and efficiently and effectively distribute SADW funds.

Arguments in Support: According to the sponsor, the State Water Board, "SB 776 will align the State Water Board's drinking water authorities with its existing authorities to enforce water quality laws and better allow the Water Board to move quickly and efficiently to help communities' secure safe and affordable drinking water. This bill will also protect the Safe and Affordable Drinking Water Program Fund and the communities which rely on it from potential fraud by authorizing the State Water Board to recover misused funds, recover the costs of investigating and prosecuting fraud and misuse of funds, and prohibit entities and individuals found to have misused funds from being able to obtain future grants or loans from the State Water Board. These provisions mirror existing authorities currently exercised by the Water Board and are important to protect communities and achieve our shared clean drinking water goals."

Double-Referral: Should this bill pass out of the Assembly Environmental Safety and Toxic Materials Committee, it will be re-referred to the Assembly Judiciary Committee.

Related legislation:

- 1) SB 200 (Monning, Chapter 120, Statutes of 2019). Established the SADW Fund to help water systems provide an adequate and affordable supply of safe drinking water in both the near and long term. Beginning in fiscal year 2020-2021 and until June 30, 2030, transfers 5% of the proceeds from the GGRF to the SADW Fund, up to \$130 million. Requires the State Water Board to adopt a fund implementation plan and requires expenditures of the fund to be consistent with the plan.
- 2) SB 414 (Caballero, 2019). Would have established the Small System Water Authority Act of 2019, which would have authorized the creation of small system water authorities and required consolidation of failing water systems. This bill was held on suspense in the Assembly Appropriations Committee.
- 3) AB 134 (Bloom, 2019). Would have required that the Governor's annual budget show expenditures from SADW Fund and that the Legislative Analyst's Office review the effectiveness of expenditures from the SADW Fund. This bill was held in the Senate Environmental Quality Committee at the request of the author.
- 4) AB 217 (E. Garcia, 2019). Would have created the Safe Drinking Water for All Act, which would have established the SADW Fund to provide a source of funding for safe drinking water for all Californians and long-term sustainability of drinking water systems. Would have imposed several fees on agricultural activities and a charge on retail water systems that together would have provided the source of revenue to the SADW Fund. This bill was subsequently amended into another subject.
- 5) SB 669 (Caballero, 2019). Would have established the Safe Drinking Water Fund to assist community water systems in disadvantaged communities that are chronically noncompliant. Would have created Safe Drinking Water Trust Fund to receive funding from the state and provide the fund source to the Safe Drinking Water Fund. This bill was held in the Senate Appropriations Committee.
- 6) SB 623 (Monning, 2017). Would have created the Safe and Affordable Drinking Water Fund, administered by the State Water Board, and would have imposed water, fertilizer, and dairy fees to fund safe drinking water programs. This bill was held in the Assembly Rules Committee.

REGISTERED SUPPORT / OPPOSITION:**Support**

State Water Resources Control Board (Sponsor)
Clean Water Action
Community Water Center
Leadership Counsel for Justice & Accountability

Opposition

None on file.

Analysis Prepared by: Marika Nell / E.S. & T.M. /

Date of Hearing: June 30, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 273 (Hertzberg) – As Amended June 21, 2021

SENATE VOTE: 38-0

SUBJECT: Water quality: municipal wastewater agencies

SUMMARY: Authorizes a municipal wastewater agency to acquire, construct, expand, operate, maintain, and provide facilities to manage and treat stormwater and dry weather runoff.

Specifically, **this bill:**

- 1) Finds and declares that stormwater capture, treatment, and use is increasingly viewed as an innovative opportunity to improve water quality.
- 2) Finds and declares that municipal wastewater agencies have existing infrastructure, capacity and expertise to help meet the state's water supply goals, but that municipal wastewater agencies may need explicit legislative authority for certain types of projects.
- 3) Finds and declares that it would be beneficial if municipal wastewater agencies were allowed to enter into voluntary agreements for stormwater projects in order to promote interagency cooperation, improve water quality in the state, and make efficient use of public infrastructure.
- 4) Authorizes municipal wastewater agencies to enter into agreements with entities responsible for stormwater management for purposes of managing stormwater and dry weather runoff.
- 5) Authorizes municipal wastewater agencies to acquire, construct, expand, operate, maintain, and provide facilities for any of the following purposes:
 - a) Diversion of stormwater from the stormwater system to the wastewater collection or treatment system;
 - b) Management and treatment of stormwater and dry weather runoff;
 - c) Discharge of treated dry weather runoff and stormwater to the stormwater drainage system or receiving waters; and,
 - d) Beneficial reuse of captured dry weather runoff and stormwater.
- 6) Authorizes municipal wastewater agencies to:
 - a) Authorize the discharge of stormwater or dry weather runoff captured at industrial and commercial sites to the wastewater collection or treatment system, subject to the requirements imposed by the municipal agency and to the extent permitted by federal law;

- b) Exercise powers granted by law including enforcing compliance with local, state, and federal water quality requirements and ensuring that the project or program is consistent with local watershed priorities, obligations, and circumstances; and,
 - c) Exercise existing authority to fund projects including levying taxes, fees, and charges.
- 7) Specifies that the use of any new authority under this bill must comply with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. (Government Code §56000 et seq.)
- 8) Requires municipal wastewater agencies who enter into or amend an agreement under this chapter after January 1, 2022 to file a copy of the agreement or the amendment with the local agency formation commission (LAFCO) in each county where the municipal wastewater agency's territory is located. Exempts these agreements and amendment from LAFCO approval except as required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.
- 9) Clarifies that the intent of this bill is to allow local agencies the ability to pursue wastewater management projects, should they choose, without requiring additional legislative changes to their authorizing statutes.
- 10) States that this bill shall not be construed to alter or interfere with:
- a) Any existing programs, projects, authorities, or obligations of municipal wastewater agencies or stormwater dischargers; and,
 - b) Existing water rights, water rights law, or rights, remedies, or obligations that may exist pursuant to state laws governing permitting of the use of water rights.
- 11) Defines municipal wastewater agency to be any city, county, special district, joint powers authority, sanitary district, sanitation district, county sanitation district, community services district, or municipal utility district that chooses to exercise any authority granted by this bill.

EXISTING LAW:

- 1) Establishes the federal Clean Water Act (CWA) to regulate discharges of pollutants into the waters of the United States (US) and to regulate quality standards for surface waters. Establishes the National Pollutant Discharge Elimination System (NPDES) permit program to regulate the discharge of pollutants in stormwater, including municipal stormwater systems. (33 Unites States Code §1251 et seq.)
- 2) Defines the following terms, pursuant to the Water Code:
- a) "Stormwater" to mean "temporary surface water runoff and drainage generated by immediately preceding storms"; and,
 - b) "Dry weather runoff" to mean "surface waterflow and waterflow in storm drains, flood control channels, or other means of runoff conveyance produced by nonstormwater resulting from irrigation, residential, commercial, and industrial activities." (Water Code (WC) §10561.5)

- 3) Provides the State Water Resources Control Board (State Water Board) authority over state water rights and water quality policy and establishes eight regional water quality control boards (regional boards) to oversee water quality at the local/regional level, under the California Porter-Cologne Water Quality Control Act. (WC §13020 et seq.)
- 4) Authorizes the Irvine Ranch Water District and Santa Margarita Water District to acquire, construct, operate maintain, and furnish facilities for the diversion, treatment, and beneficial reuse of urban runoff. (WC §35539.10 et seq.)
- 5) Authorizes the Orange County Sanitation District to acquire, operate, maintain, and furnish facilities for the diversion of urban runoff from drainage courses within the district, the treatment of the urban runoff, the return of the water to the drainage courses, or the beneficial use of the water. (HSC §4730.66)
- 6) Authorizes specified sanitation districts in Los Angeles County to divert, manage, treat, and discharge stormwater and dry weather runoff, as well as make beneficial use of the water. (Health and Safety Code (HSC) §4730.68)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "The historic 2012-2016 drought provided a glimpse into the looming challenges facing California's water sector. It is clear that as climate change creates hotter and drier conditions, a diversified and flexible water portfolio is essential. Stormwater is a highly valuable and underutilized resource that, if carefully managed, can augment state and local water supply. Our current drought conditions make it clear creative solutions are needed now more than ever.

Obtained through piecemeal legislation, only a handful of municipal wastewater agencies are granted the explicit authority to capture and treat stormwater under existing law. SB 273 cuts the red tape and authorizes all municipal wastewater agencies to enter into voluntary agreements with entities responsible for stormwater management. Permitting wastewater agencies to perform stormwater capture and treatment diverts polluted stormwater and urban runoff from entering our natural lands, while also providing the co-benefits of increasing the state's water supply and reducing flood risk."

Stormwater and dry weather runoff: Runoff is water that runs over land and impervious surfaces like roofs, parking lots, and paved roads and does not soak into the ground. Stormwater is runoff generated from rain and snowmelt while dry weather runoff comes from any flow that is not related to precipitation. For example, dry weather runoff can come from naturally flowing springs, draining swimming pools, landscape irrigation, or accidental or deliberate fluid spills. Stormwater and dry weather runoff pick up pollutants as they flow over land and can degrade water quality and cause flooding if they are not properly managed.

Historically, stormwater management systems were designed to primarily prevent flooding in urban areas. This typically involves routing stormwater into water bodies as quickly and efficiently as possible. In California, stormwater and dry weather runoff are commonly transported through municipal separate storm sewer systems (MS4s). An MS4 is a conveyance

or system of conveyances (e.g. storm drains, pipes, ditches) that are designed to collect or convey stormwater.

MS4s are separate from those that carry domestic sewage or industrial wastewater. MS4s are not combined sewer systems (CSSs) and are not part of a sewage treatment plant or publicly owned treatment works. The separation of wastewater and stormwater infrastructure protects water bodies from receiving untreated domestic or industrial wastewater, which can happen in CSSs when a large rainfall overwhelms the infrastructure's capacity and untreated or partially treated wastewater overflows. However, the waters carried in an MS4 system are typically discharged into local water bodies without any treatment to remove pollutants.

Stormwater pollution in California's water bodies: Stormwater and dry weather runoff contain a complex mixture of pollutants and are frequently discharged directly into water bodies. As a result, stormwater and dry weather runoff combined are a major source of chemical pollution to aquatic habitats and significantly contributes to the impairment of water bodies. Trash, nutrients, heavy metals, bacteria (including possibly pathogens), pesticides, and other chemical contaminants have been widely found in stormwater. Stormwater has been shown to negatively impact aquatic life in urban creeks and can pose risks to humans and pets as well. For example, nutrients can cause harmful algal blooms that kill fish and aquatic life and expose pets and humans who recreate in affected bodies to toxins. Similarly, pathogens from animal and human waste in stormwater pose risks of illness to humans who recreate in affected water bodies and can force the closure of swimming areas.

Stormwater is also a significant source of emerging contaminants in the aquatic environment. A 2019 study by the U.S. Geological Survey of over 20 sites across the United States found that stormwater frequently contained pharmaceuticals, pesticides, corrosion inhibitors, personal care products, and many other organic pollutants, raising concerns about negative environmental impacts. Studies by the San Francisco Estuary Institute demonstrated that stormwater is the dominant source of microplastics in San Francisco Bay and detected chemicals linked to stormwater in San Leandro Bay, including wood preservatives, a chemical found in rubber/tires, and flame retardants. The full extent of the environmental impacts of emerging contaminants like microplastics, pharmaceuticals, and personal care products is still under active investigation. However, studies have linked chemicals that come from road runoff to adult mortality syndrome in coho salmon in Washington.

Stormwater regulation: According to the State Water Board, the federal CWA provides the state and regional water boards in California with the authority and framework for regulating stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) Permitting Program. Cities and local jurisdictions that operate municipal stormwater systems must obtain NPDES permits for discharges of municipal stormwater to waters of the US. Similarly, industrial sites or activities must have NPDES permits for stormwater from their industrial sites, and construction contractors must have NPDES permits for stormwater from construction sites that disturb more than an acre of land.

Water supply challenges in California: California's current water supply is largely sourced from surface water (e.g. rivers and lakes) and groundwater. However, the state is seeking to diversify the water supply portfolio to improve reliability and withstand droughts. California's statewide precipitation is highly variable, with droughts and flooding both naturally-occurring parts of the hydrology. 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. The need for a diverse and resilient water supply portfolio will only become more critical as the state's population grows and climate change exacerbates the state's droughts.

Stormwater and dry weather runoff as water resources: Stormwater/dry weather runoff capture and reuse presents an opportunity to leverage a relatively untapped water resource and solve multiple problems facing California. Stormwater/dry weather runoff control measures can be used to minimize pollution to water bodies, prevent flooding, collect stormwater/dry weather runoff for reuse, and increase groundwater recharge. Beneficial reuse includes indirect potable reuse (where treated stormwater is used to replenish groundwater resources), use for irrigation, and creation of stormwater-retention ponds and wetlands that create habitat and provide green space for recreation. However, changing stormwater infrastructure requires financing and cooperation between regional authorities, including those who are responsible for stormwater management and wastewater treatment. This can be particularly challenging because the MS4 systems that carry stormwater are separate from wastewater infrastructure and municipal wastewater agencies have not been granted the explicit authority to construct and finance infrastructure projects related to stormwater/dry weather runoff capture and reuse.

The state of California has recognized that stormwater/dry weather runoff reuse could alleviate water shortages and help meet increasing water demand. In 2016, the State Water Board identified stormwater as a water resource and set a goal of increasing stormwater use by one million acre-ft/year by 2030. In April 2019, Governor Newsom directed state agencies through Executive Order N-10-19 to develop a water resilience portfolio that would propose actions to meet California's water needs through the 21st century. The resulting 2020 California Water Resilience Portfolio included a proposal to support cities and counties in making stormwater a growing share of their water supply. This proposal included providing statewide authority for wastewater facilities to accept stormwater and incentivize stormwater permittees to divert their captured stormwater at times when wastewater facilities have the capacity to accept such diversions.

SB 273: This bill seeks to provide the recommended statewide authority for municipal wastewater agencies to enter into agreements to capture and treat stormwater. This authority would allow municipal wastewater agencies to more easily develop stormwater/dry weather runoff capture and reuse as an alternative water supply to reduce stress on surface water and groundwater. The bill does not change existing water quality regulations and is modeled after previous legislation that granted this authority to specific sanitation districts.

Successful treatment and management of stormwater and dry weather runoff can solve multiple problems facing California—pollution of waterbodies caused by stormwater and a lack of water resources to meet the state's growing water demands. The authority granted in this bill can help municipalities around the state move towards building more resilient water portfolios and improving water quality in their respective regions.

Arguments in support: The California Coastkeeper Alliance writes in support, "Stormwater is a highly valuable resource that, if carefully managed, can augment and increase the resilience of state and local water supply. The capture and treatment of stormwater and dry weather runoff has significant environmental benefits, and can be used to augment recycled water supplies for

groundwater recharge, landscape and agricultural irrigation, and surface water augmentation. While local governments would benefit from utilizing innovative approaches to stormwater capture and reuse, they often face several barriers to funding and maintaining stormwater projects. SB 273 removes barriers to innovative projects by authorizing municipal wastewater agencies to divert, capture, and treat stormwater and the runoff of water from our streets – to improve water quality and encourage local water recycling."

A coalition of organizations led by the California Associations of Sanitation Agencies writes in support, "SB 273 would extend the authority to voluntarily enter into projects involving the diversion and treatment of stormwater or dry weather runoff to all wastewater providers in California. Furthermore, it would ensure that exercise of this authority requires full voluntary agreement between all of the governmental entities involved in a proposed project, and affords the protocols and protections required by existing law for these kinds of projects (including existing ratepayer processes). Together, we believe this legislation promotes regional water management innovation and creates an additional tool for local control."

Related legislation:

- 1) SB 1052 (Hertzberg, 2020). Would have allowed a municipal wastewater agency to enter into agreements with entities responsible for stormwater management in order to manage and reuse stormwater and dry weather runoff. This bill did not receive a hearing in the Senate Environmental Quality Committee due to time constraints related to the COVID-19 pandemic.
- 2) SB 541 (Allen, Chapter 811, Statutes of 2017). Required the State Water Board, in consultation with the regional water quality control boards, and the Division of the State Architect within the Department of General Services, to recommend best design and use practices for stormwater and dry weather runoff capture practices that can be applied to new, reconstructed, or altered public schools, including school grounds.
- 3) SB 485 (Hernández, Chapter 678, Statutes of 2015). Authorized the Los Angeles County Sanitation Districts to divert, manage, treat, and discharge stormwater and dry weather runoff, as well as make beneficial use of the water.
- 4) AB 1892 (Hartman, Chapter 78, Statutes of 2002). Authorized the Orange County Sanitation District to acquire, construct, operate, maintain and furnish facilities for the diversion, treatment, and reuse of urban runoff.
- 5) AB 810 (Campbell, Chapter 209, Statutes of 2001). Authorized the Irvine Ranch Water District and the Santa Margarita Water District to acquire, construct, operate, maintain and furnish facilities for the diversion, treatment and reuse of urban runoff.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Water Agencies (ACWA)
CA Association of Local Agency Formation Commissions
California Association of Sanitation Agencies
California Coastkeeper Alliance

California Health Coalition Advocacy (UNREG)
California Municipal Utilities Association (CMUA)
California Special Districts Association
California Stormwater Quality Association
Inland Empire Utilities Agency
Orange County Local Agency Formation Commission
Orange County Water District
Roseville; City of
Southern California Water Coalition
Thousand Oaks; City of
Upper San Gabriel Valley Municipal Water District

Opposition

None on file.

Analysis Prepared by: Marika Nell / E.S. & T.M. /

Date of Hearing: June 30, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

SB 42 (Wieckowski) – As Introduced December 7, 2020

SENATE VOTE: 39-0

SUBJECT: Department of Toxic Substances Control: Board of Environmental Safety

SUMMARY: Establishes the Board of Environmental Safety (Board), consisting of five members appointed by the Governor, within the Department of Toxic Substances Control (DTSC). Specifically, **this bill:**

- 1) Establishes the Board consisting of five members appointed by the Governor within DTSC.
- 2) Establishes the membership of the Board to include: one member that is an attorney qualified in the field of environmental law; one member that is an environmental scientist qualified in the field of toxicology, chemistry, geology, industrial hygiene, or engineering; one member that has expertise in public health; one member that has expertise in cumulative impact assessment and management; and, one member of the general public.
- 3) Requires the Chair of the Board to be appointed by the Governor. Requires that the Chair be full time and the other Board member serve half-time. Requires that the Board members be appointed for a term of four years.
- 4) Requires the Board to conduct no fewer than six public meetings per year, with at least three of the meetings being held outside of the greater Sacramento area.
- 5) Requires the Board to: hear and decide appeals of hazardous waste facility permits; provide opportunities for public hearings on individual permitted sites or remediation sites; evaluate alternatives and develop recommendations to propose to the director of DTSC (director) for the development and creation of a contemporary hazardous waste management plan; review and approve of the director's annual priorities for each program under DTSC at a public hearing, including clear performance metrics for DTSC; and, in consultation with the director, develop a multiyear schedule for the discussion of DTSC's processing of hazardous waste facility permits; DTSC's duties and responsibilities in law and ways to improve DTSC's abilities to meet those duties and responsibilities; the prioritization of the cleanup of contaminated properties; and, DTSC implementation of its enforcement activities.
- 6) Requires the director, or a designee, to present and respond to the Board if requested to do so by the Board.
- 7) Requires, annually, the Board to prepare and transmit to the Secretary for Environmental Protection an annual review of DTSC's performance against its objectives, including, but not limited to, the performance of the director.
- 8) Establishes within DTSC an office of the ombudsperson. Requires the Board to appoint an ombudsperson who will serve as an impartial resource to the public, receive complaints and

suggestions from the public, evaluate complaints, report findings and make recommendations to the director and to the Board, and render assistance to the public when appropriate.

- 9) Authorizes the Board to adopt regulations to carry out its duties and responsibilities.

EXISTING LAW:

- 1) Requires DTSC to enforce the standards within the Hazardous Waste Control Law (HWCL) and the regulations adopted by DTSC pursuant to the HWCL. (Health and Safety Code Section (HSC) § 25180)
- 2) Authorizes DTSC to deny, suspend, or revoke any permit, registration, or certificate applied for, or issued pursuant to the HWCL. (HSC § 25186)
- 3) Authorizes DTSC to issue 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 permit specifying the types of hazardous wastes that may be accepted for transfer, storage, treatment, or disposal. (HSC § 25200 (a))
- 5) Establishes, pursuant to the Carpenter-Presley-Tanner Hazardous Substance Account Act (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.)
- 6) Establishes the national hazardous waste management program under Subtitle C of the Resources Conservation and Recovery Act (RCRA). (42 United States Code (U.S.C.) § 6901 et seq.)
- 7) Creates, under the Federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 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. 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 U.S.C. § 9601 et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"SB 42 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.

In 2015, an Independent Review Panel (IRP) was established with the purpose to review and make recommendations regarding improvements to DTSC's permitting, enforcement, public outreach, and fiscal management. 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.

A common thread the legislature has seen over the past few years – from the Independent Review Panel and numerous stakeholders – is an acknowledgement that the legislature needs to get the department's oversight and programs in order. Unfortunately, there seems to have been a lot of discussion and minor actions taken with questionable corresponding improvements. Accountability and transparency are imperative to address these issues. This is in the best interest of both the people of California, our local communities, and those DTSC regulates. SB 42 creates the Board to oversee DTSC as recommended by the IRP."

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's hazardous waste management permitting program: DTSC is responsible for administering the hazardous waste facility permitting program established under the HWCL and the federal Resource Conservation and Recovery Act (RCRA). The core activities of the permitting program include: review of RCRA and non-RCRA hazardous waste permit applications to ensure safe design and operation; issuance and denial of operating permits; issuance of post-closure permits; approval and denial of permit modifications; issuance and denial of emergency permits; review and approval of closure plans; oversight of approved closure plans; and, providing public involvement on issues related to permitted facilities.

DTSC's hazardous waste management enforcement program: DTSC's inspection and enforcement responsibilities include its delegated authority under RCRA, California's HWCL, and state laws pertaining to toxics in packaging, toxic substances in consumer products, and disposal of universal wastes such as electronic waste. Core activities of DTSC's hazardous waste management program include routine compliance inspections and targeted compliance inspections. Routine compliance inspections involve review of submitted data and reports as well as physical observation, testing, and evaluation of regulated facilities. Targeted compliance inspections involve review of specific units or processes in response to focused concerns or to inform permitting decisions, as well as analysis of current and historical compliance to inform those decisions.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA): CERCLA, or Superfund, provides a Federal "Superfund", funded by the federal government, 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. Through CERCLA, the US EPA was given authority to seek out those parties responsible for any release and assure their cooperation in the cleanup.

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. Additionally, DTSC ensures that the state meets the federal requirements that California pays 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 laws also authorize DTSC to recover costs and expenses it incurs in carrying out these activities.

Recent criticism of DTSC: Over the past decade or so, DTSC has received complaints from the public about its permitting program and held meetings with the public, the regulated community, and stakeholders to identify and understand concerns about its permitting program. 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 with 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 the process extending years beyond the expiration date of their existing permit, as well as the costs associated with processing a permit.

Legislative oversight: Over the last five years, the Legislature has conducted numerous hearings on DTSC's internal controls, its business practices, and its basic statutory obligations. In those hearings, the legislative budget and policy committees have evaluated the following four main areas: (1) reviewing and monitoring DTSC's strategic plan and reorganization; (2) auditing cost recovery at DTSC; (3) providing staffing to improve permit backlogs and business operations; and, (4) improving enforcement at DTSC.

Numerous statutory changes have been made to clarify and strengthen DTSC's statutes to help DTSC better achieve its mandates, and budget augmentations have been made to give DTSC resources to reduce backlogs and address outstanding programmatic failings. However, many of the underlying concerns about transparency, accountability, and the long-term stability of DTSC's programs remain, and a fiscal deficit persists.

DTSC Independent Review Panel (IRP): In 2015, the Legislature passed and the Governor signed SB 83 (Budget Committee, Chapter 24, Statutes of 2015), which established within DTSC a three-member IRP to review and make recommendations regarding improvements to DTSC's permitting, enforcement, public outreach, and fiscal management. Pursuant to SB 83, the IRP was authorized until January 1, 2018. Over the course of its term, the IRP conducted 24 public meetings and released 11 progress and annual reports. On January 8, 2018 the IRP released its final report and recommendations concluding: "DTSC has implemented, or is working on, most

of the IRP's recommendations and has achieved, or partially achieved, many of the IRP's suggested performance metrics. However, there is more work to be done. In the absence of the IRP, the Governor and the Legislature should consider a DTSC governing board or other structural change to enhance transparency and accountability and regularly monitor the status of the IRP-suggested recommendations and performance metrics, as well as DTSC's ongoing initiatives and decision-making."

DTSC's fiscal situation: DTSC's funding comes primarily from the Hazardous Waste Control Account (HWCA) and the Toxic Substances Control Account (TSCA). The HWCA is a repository for revenues from cost recovery activities and fees paid by various hazardous waste generators, transporters, and facilities. The HWCA funds DTSC's regulatory work overseeing hazardous waste management activities in the state.

The TSCA is a repository for revenues from cost recovery, penalties, interest, and the Environmental Fee (which was established as a 2/3 vote tax by the California State Legislature). TSCA funds DTSC's work dealing with cleaning up contaminated properties, including federal Superfund sites and state orphan sites, as well as funding the Safer Consumer Products Program (also known as the Green Chemistry Program).

Both HWCA and TSCA have been operating with a structural deficit, which means that expenditures out of HWCA and TSCA have exceeded revenues for many years. The Budget Act of 2019-2020 provided the HWCA with \$27.5 million from the General Fund to backfill the shortfall and maintain existing operations. The Governor's proposed budget for 2020-2021 provides a \$12 million backfill from special funds for the TSCA and a backfill of approximately \$19 million for the HWCA (also from special funds) as those accounts were projected to be insolvent in the budget year.

Governor Newsom's response to DTSC's fiscal situation: As part of the 2020-2021 budget the Newsom Administration proposed a reform package intended to resolve DTSC's governance and fiscal problems. The Administration proposed to remedy DTSC's fiscal instability by providing DTSC the ongoing authority to set and revise fees. The Administration included trailer bill language with its proposal to raise fees in the HWCA and TSCA; this language was proposed as a 2/3 vote measure. To address transparency and governance issues, the Administration proposed, also with trailer bill language, to create the Board of Environmental Safety. This budget proposal was not acted upon, however the Governor proposed a new, but similar DTSC Reform package as part of the 2021-2022 budget. This new reform package contains three major components: Establishing a Board of Environmental Safety; Fee Reform; and, Programmatic Reform. SB 42 similarly enacts the Board but does not include any additional programmatic changes or changes to DTSC's fees.

As part of the current proposal, the Governor is proposing to create a five-member Board with the members of the Board appointed by the Governor. The Chairperson of the Board would be full-time and the remaining Board members would be half-time. The Board would: set fees and fee rates; decide permit appeals for hazardous waste facilities; provide opportunities for public comment on DTSC's permit and remediation decisions; review and approve the DTSC director's annual priorities and performance metrics; provide long-term goals for DTSC's programs; and, provide an annual performance review of the DTSC director. Along with the Board, this proposal establishes an Ombudsperson to receive and evaluate complaints and suggestions regarding any action, program, or policy of DTSC.

The Governor is proposing a major overhaul of DTSC's fee structure. The proposal is designed to produce sufficient revenue to eliminate the need to provide General Fund revenues to close DTSC's baseline funding gap; pay the costs associated with the Board, support staff, and Ombudsperson; provide for an additionally \$59 million in revenue to support anticipated near-term staffing needs, likely beginning in 2022; and, begin to establish a prudent reserve. Additionally, the proposal eliminates three fees under the HWCA (disposal fee, manifest user fee, and EPA Identification fee); restructures the generator fee into a generation and handling fee; establishes a per ton rate for the generation and handling fee; raises and sets a new base rate for the facility fee; and, eliminates all of the exemptions except the exemption for small quantity generators (those that generate less than 5 tons per year). This fee reform proposal also includes changes to the environmental fee. The proposal permanently eliminates the fee for businesses with less than 100 employees, freezes the fee for businesses with 100-499 employees (this fee can change if the Board raises the fee in the future); and, more than triples the fee for businesses with 500 or more employees.

The Governor's proposal includes programmatic changes. The proposal establishes a hazardous waste management plan (Plan) to be presented to the Board. Within the Plan would be recommendations to establish hazardous waste reduction goals; update DTSC's pollution prevention program; and, reduce the risk of exposure to communities threatened by releases of hazardous waste. Additionally the Governor's proposal includes changes to strengthen financial assurance requirements for permitted hazardous waste facilities and establishes accountability requirements for DTSC's permitting of renewal applications for hazardous waste facilities.

Discussions under way: As of the writing of this analysis, the Governor's budget proposal is currently part of budget deliberations with the Legislature. The creation of a Board, as proposed in SB 42, is also a part of those budget discussions. It is anticipated that the Governor's proposal for a Board, changes to DTSC's fee structure and other programmatic changes could be contained within a budget trailer bill. However, depending on the timing and nature of budget negotiations, SB 42 could be utilized to enact the Board or other similar changes to DTSC currently being discussed.

Arguments in Support: According to the California Product Stewardship Council, "This bill will help ensure lasting accountability and transparency within the DTSC by creating the Board of Environmental Safety as the policy setting body for DTSC. This board will provide oversight to current DTSC functions and shall consist of five members appointed by the Governor who possess qualifications in environmental law and science. DTSC requires significant reforms to improve transparency, oversight, and accountability at the agency, as well as to adequately fulfill these responsibilities, which is profoundly important to the communities where these facilities are located."

Arguments in Opposition: None on file.

Related Legislation:

- 1) AB 1 (C. Garcia). Creates the Board within the California Environmental Protection Agency (Cal/EPA) to provide policy direction to and oversight of DTSC. Raises and recasts existing fees within the HWCA to fill a projected deficit of approximately eighteen million dollars. This bill is pending action in the Senate Environmental Quality Committee.

- 2) AB 732 (Quirk). Increases the rates of the Environmental Fee in an amount sufficient to close the structural deficit within TSCA and to provide base funding to support the Site Mitigation Program and Safe Consumer Products Program. This bill is in the Assembly Environmental Safety and Toxic Materials Committee.
- 3) AB 995 (C. Garcia, 2020). Would have created the Board within the Cal/EPA to provide policy direction to and oversight of DTSC. Raises and recasts existing fees within the HWCA to fill a projected deficit of approximately eighteen million dollars. This bill was vetoed by Governor Gavin Newsom.
- 4) AB 2094 (Kalra, 2018). Would have required DTSC to, on or before January 1, 2021, adopt regulations establishing inspection frequencies for permitted hazardous waste treatment, storage, and disposal facilities; hazardous waste generators; and, transporters. This bill was held in the Senate Appropriations Committee.
- 5) AB 2345 (Reyes, 2018). As it was heard before the Assembly Environmental Safety and Toxic Materials (ESTM) Committee, would have made statutory changes to improve the process for the permitting of hazardous waste facilities. This bill was later amended to require the California Energy Commission to require each large electrical corporation to establish a tariff or tariffs that provide for bill credits for electricity generated by eligible renewable generating facilities and exported to the electrical grid. This bill was held in the Senate Rules Committee.
- 6) AB 2606 (Fong). Would have required DTSC to process a hazardous waste facility renewal permit in an expedited manner if DTSC determines certain conditions apply. This bill was held in the Senate Appropriations Committee.
- 7) AB 248 (Reyes, 2017). Would have made statutory changes to improve the permitting process for hazardous waste facilities. This bill was vetoed by Governor Edmund Gerald Brown Jr.
- 8) AB 1179 (Kalra, 2017). Would have required DTSC to, on or before January 1, 2020, adopt regulations establishing inspection frequencies for permitted hazardous waste treatment, storage, and disposal facilities and for hazardous waste generators and transporters. This bill was vetoed by Governor Edmund Gerald Brown Jr.
- 9) SB 774 (Leyva, 2017). As it was heard before the ESTM Committee, would have created the California Toxic Substances Board within DTSC to provide oversight of California's hazardous waste management and the remediation of contaminated sites. This bill was later amended to require the California State University Trustees to oversee a competitive process to award funds to the Wildland and Wildland Urban Interface Wildfire Research Grant Program and appropriate \$5 million from the General Fund to the Trustees in order to oversee the program. This bill was vetoed by Governor Edmund Gerald Brown Jr.
- 10) SB 812 (De León, 2014). Would have modified the permitting process and public participation requirements for hazardous waste facilities. Would have established a Bureau of Internal Affairs to oversee DTSC and investigate departmental misconduct and a DTSC Citizen Oversight Committee to receive and review allegations of misconduct. This bill was vetoed by Governor Edmund Gerald Brown Jr.

REGISTERED SUPPORT / OPPOSITION:

Support

California Product Stewardship Council

Opposition

None on file.

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

Date of Hearing: June 30, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 207 (Dahle) – As Amended May 20, 2021

SENATE VOTE: 39-0

SUBJECT: Photovoltaic Recycling Advisory Group

SUMMARY: Establishes the Photovoltaic Recycling Advisory Group. Specifically, **this bill:**

- 1) Requires, on or before April 1, 2022, the Secretary for Environmental Protection (Secretary) to convene the Photovoltaic Recycling Advisory Group to review and advise the Legislature on policies pertaining to the recovery and recycling of photovoltaic panels and their components.
- 2) Requires the Secretary to appoint the following members to the advisory group:
 - a) The Director of Resources Recycling and Recovery (CalRecycle) or his/her designee;
 - b) The Director of Toxic Substances Control (DTSC) or his/her designee;
 - c) A photovoltaic panel or solar energy system manufacturer;
 - d) An organization that represents one or more photovoltaic panel manufacturers;
 - e) An electronic waste recycler or an organization that represents one or more electronic waste recyclers;
 - f) A photovoltaic panel or solar energy system repair dealer or an organization that represents one or more photovoltaic panel or solar energy system repair dealers;
 - g) An environmental organization that specializes in waste reduction and recycling;
 - h) A representative of the solar industry; and,
 - i) A standards organization that has a focus on photovoltaic or electrical engineering.
- 3) Requires the advisory group to consult with relevant entities in order to develop and, on or before April 1, 2025, submit to the Legislature policy recommendations aimed at ensuring that, to the extent possible, 100 percent of photovoltaic panels in the state are reused or recycled at end of life in a safe and cost-effective manner.
- 4) Provides that meetings of the advisory group are subject to the Bagley-Keene Open Meeting Act.
- 5) Provides that implementation of this chapter is contingent upon an appropriation for purposes of this chapter in the annual Budget Act or another statute.
- 6) Sunsets this Photovoltaic Recycling Advisory Group on January 1, 2027.

EXISTING LAW:

- 1) Defines hazardous wastes as those identified in regulation by DTSC; wastes categorized as hazardous under the federal Resource Conservation and Recovery Act (RCRA); and, extremely hazardous waste and acutely hazardous waste. (Health & Safety Code (HSC) § 25117)

- 2) Authorizes DTSC, by regulation, to designate end-of-life photovoltaic modules that are identified as hazardous waste as a universal waste and subject those modules to universal waste management. (HSC § 25259)
- 3) Regulates seven categories of hazardous wastes that can be managed as universal wastes. (California Code of Regulations (CCR), Title 22, Division 4.5, Ch. 22)
- 4) Requires CalRecycle to coordinate with DTSC to develop and implement a public information program to provide uniform and consistent information on the proper disposal of hazardous substances found in and around homes, and to assist the efforts of counties required to provide household hazardous waste collection, recycling, and disposal programs. (Public Resources Code (PRC) § 47050 - 47051)
- 5) Defines "solar energy system" as a solar energy device that has the primary purpose of providing for the collection and distribution of solar energy for the generation of electricity, that produces at least one kilowatt, and produces not more than five megawatts, alternating current rated peak electricity, and that meets or exceeds the eligibility criteria established by the commission or the California Energy Commission. (Public Utilities Code (PUC) § 2852)
- 6) Sets a target of requiring electric utilities to generate 60% of retail sales of electricity from renewable energy resources by December 31, 2030, to be implemented through the California Renewables Portfolio Standard Program (RPS). (PUC § 399.11 et seq)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "The use of solar energy to electrify the grid will have significant environmental benefits for years to come, as more and more solar panels are used to assist in meeting California's energy goals. It has been proven that in less than ten years, California will be decommissioning more panels than installing them, in part due to the cumbersome requirements of recycling. The state needs to open the door for recycling businesses to conduct their work here and contribute to a future robust market of recovering green energy technologies. SB 207 is intended to highlight the importance of not just managing waste, but also the need for future organization. Many of our modern technologies, including energy generation technologies that can help buffer us in times of planned power outages, are reliant on materials that need to be carefully disposed of and managed. This trend will only increase, and California can address issues in their inception through the adoption of recommendations made by industry experts with SB 207."

Photovoltaic (PV) panels & components: A PV panel, also known as a solar panel, is an assembly of photovoltaic cells mounted in a framework for installation. Solar panels use sunlight as a source of energy to generate direct current electricity.

A PV panel consists of an arrangement of several components, including solar panels to absorb and convert sunlight into electricity, a solar inverter to convert the output from direct to alternating current, as well as mounting, cabling, and other electrical accessories to set up a working system.

PV systems can include integrated components that cannot be separated without breaking the PV glass module. Examples of integrated components include, but are not limited to, protective glass, conductive metal contact, metal framing the PV cells, housing or pocket holding the PV cells/modules, and top and back layers. PV modules are composed of, but not limited to, monocrystalline silicone, polycrystalline silicone, amorphous silicone, cadmium telluride, copper indium gallium selenide, and gallium indium phosphide/gallium arsenide, and perovskite.

PV systems range from small, rooftop-mounted or building-integrated systems with capacities from a few to several tens of kilowatts, to large utility-scale power stations of hundreds of megawatts.

Solar panels in California: In 2019, the Solar Energy Industries Association (SEIA) reported a total of 27,400 megawatts (MW) of solar capacity installed (3,125 MW in 2019 alone). Solar power made up more than 22% of all electricity produced in the state in 2020. In October 2020, California ranked as the highest solar power generating state in the nation, producing enough solar capacity to power 8.4 million homes in the state. In 2020, SEIA estimated that California will increase its solar capacity by more than 19,000 MW over the next five years, second behind Texas at 20,000 MW.

State solar policies: Solar-powered energy is expected to continue to grow exponentially in California due to state policies both incentivizing (for consumers) and requiring (for utilities) solar investment, which has led to declining solar panel costs, thus further trending more solar panels.

State policies advancing solar panels started in 2006 when California enacted the Million Solar Roofs Initiative (Senate Bill (SB) 1, Murray, Chapter 132, Statutes of 2006) and set a goal of building a million solar energy systems across the state through the adoption of long-term rebates, net metering, and the beginnings of incorporating solar into new homes. The Million Solar Roofs Initiative helped kick off California's solar market and achieved the million-roof target in 2019.

SB 100 (De León, Chapter 312, Statutes of 2018) increased the ever-escalating renewable energy procurement requirements for the state's energy load under the RPS to 60% by 2030 and 100% by 2045. Much of this is expected to come from solar power.

Also in 2018, the State Building Standards Commission approved solar installation requirements for all new residential buildings with three stories or fewer. This requirement took effect in 2020.

Furthermore, the state has established goals to reduce petroleum use in California by up to 50%, which has gone hand-in-hand with state policies promoting zero emission vehicles (ZEVs). In 2015, the Clean Energy and Pollution Reduction Act of 2015 (SB 350, De León, Chapter 547, Statutes of 2015) established a statewide policy to effectuate widespread electrification of the transportation sector, much of which is expected to come from renewable energy, such as solar.

Life expectancy of a solar panel: According to SEIA, "[Solar panels] are designed to last more than 25 years, and many manufacturers back their products with performance guarantees backed by warranties. The lifespan of a [solar panel] is approximately 20-30 years, while the lifetime of an inverter is approximately 10 years. Therefore, many solar products have not yet reached end-of-life, and in fact, panels installed in the early 1980s are still performing at levels nearly equal

to the installation performance level. Thus, even accounting for the dramatic growth of the industry, annual [solar panel] waste will not exceed 10,000 tons until after 2014, and will not exceed 100,000 tons until after 2017."

Universal waste: Under current law, it is illegal to dispose of hazardous waste in the garbage, down storm drains, or onto the ground. Universal waste, which is regulated by DTSC (CCR, Title 22, Division 4.5, Chapter 23), comes primarily from consumer products containing mercury, lead, cadmium and other substances that are hazardous to human health and the environment. Examples of universal waste are batteries, fluorescent tubes, and many electronic devices. These items cannot be discarded in household trash or disposed of in solid waste landfills.

Are solar panels hazardous? The production of solar panels involves toxic heavy metals, such as cadmium, copper, lead, and selenium; therefore, some solar panels are likely to exhibit the characteristic of toxicity that have adverse environmental and public health effects.

According to current California regulations, discarded PV panels are classified as hazardous waste due to the potential levels of heavy metals included in certain electrical components.

On October 1, 2015, SB 489 (Monning, Chapter 419, Statutes of 2015) was enacted to authorize DTSC to adopt regulations to designate end-of-life PV modules that are identified as hazardous waste as a universal waste and subject those modules to universal waste management standards.

DTSC's regulations, which became effective starting January 1, 2021, allow PV panels to be managed under California's universal waste program.

What about recycling? Given the timing of solar panel installation en masse across the state and the anticipated lifespan of the panels, the state can reasonably expect an impending influx of end-of-life PV solar panels, which are now considered universal waste. This will have a significant impact on California landfills as the current wave of panels become obsolete.

California's waste management ethos is to reduce, reuse, and recycle, which is consistent with the state's 75% waste diversion mandates. The idea of tons of solar panel waste being disposed as universal waste or hazardous waste in coming decades runs counter to the eco-conscious ideal of solar panels, and can imperil jurisdictions' mandate to meet the waste diversion requirements.

Many parts of a solar module can, in fact, be recycled, including up to 95% of certain semiconductor materials or the glass as well as large amounts of ferrous and non-ferrous metals.

Which brings us to SB 270: This bill would require the Secretary for CalEPA to convene a Photovoltaic Recycling Advisory Group by April 1, 2022, to review and advise the Legislature on policies pertaining to the recovery and recycling of PV panels and their components.

Arguments in support: The Rural County Representatives of California writes, "The state should be prepared to properly handle and divert these solar panels from the waste stream before they become an even greater problem. Newly-adopted regulations allow solar photovoltaic panels to be managed as "universal waste" (rather than hazardous waste) in order to promote recycling and reduce the regulatory burden. While classification as "universal waste" is helpful, greater efforts are needed to create end markets for recycling of those products."

Related legislation:

- 1) SB 1152 (Skinner, 2020) would have required, commencing January 1, 2023, a manufacturer of a solar panel sold in California to include a label on the panel that provides disposal or recycling information of the solar panel at the end of its useful life. SB 1152 was not referred out of the Senate Rules Committee.
- 2) SB 489 (Monning, Chapter 419, Statutes of 2015). Authorized DTSC to designate end-of-life photovoltaic modules that are identified as hazardous waste as a universal waste and subject those modules to universal waste management standards.
- 3) SB 1020 (Monning, 2014) would have designated solar panels with hazardous waste properties to be classified as universal waste. The bill also would have required producers of solar panels to have a take-back and recycling plan. That bill was held by the author in the Senate Environmental Quality.

REGISTERED SUPPORT / OPPOSITION:**Support**

Rural County Representatives of California
Solar Energy Industry Association

Opposition

None on file.

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