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*Assembly
California Legislature*

**ASSEMBLY COMMITTEE ON
ENVIRONMENTAL SAFETY
AND TOXIC MATERIALS**

BILL QUIRK, CHAIR
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COMMITTEE SECRETARY
PÍA ESTRADA



AGENDA

Tuesday, June 27, 2017
1:30 p.m. -- State Capitol, Room 444

INFORMATIONAL HEARING

SUBJECT: Hazardous Waste Management: Update on DTSC's Work in Our Communities

ADOPTION OF COMMITTEE RULES

HEARD IN SIGN-IN ORDER

- | | | | |
|----|--------|---------|---|
| 1. | SB 49 | De León | California Environmental, Public Health, and Workers Defense Act of 2017. |
| 2. | SB 427 | Leyva | Public water systems: community water systems: lead user service lines. |
| 3. | SB 541 | Allen | School facilities: school facility water capture practices. |



Date of Hearing: June 27, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 49 (De León) – As Amended May 26, 2017

SENATE VOTE: 24-13

SUBJECT: California Environmental, Public Health, and Workers Defense Act of 2017

SUMMARY: Enacts the California Environmental, Public Health, and Workers Defense Act (Act) of 2017, which prohibits a state or local agency from amending or revising its rules to be less stringent than the federal baseline standards pertaining to environmental protection. Specifically, **this bill:**

- 1) Defines "baseline federal standards" as the authorizations, policies, objectives, rules, requirements, and standards contained in federal laws or federal regulations implementing the federal laws in existence as of January 1, 2016, or January 1, 2017, whichever is more stringent.
- 2) Defines "baseline federal standards for other federal laws" as the authorizations, policies, objectives, rules, requirements, and standards contained in other federal laws or federal regulations implementing the other federal laws in existence as of January 1, 2016, or January 1, 2017, whichever is more stringent.
- 3) Defines "federal law" as including the federal Clean Air Act, the federal Endangered Species Act of 1973, the federal Safe Drinking Water Act, and the federal Water Pollution Control Act.
- 4) Defines "other federal laws" as any other federal law not specified as a federal law relating to environmental protection, natural resources, or public health.
- 5) Prohibits a state or local agency from amending or revising its rules and regulations to be less stringent than the baseline federal standards.
- 6) Authorizes a state or local agency to establish rules and regulations for California that are more stringent than the baseline federal standards.
- 7) Prohibits a state or local agency that is delegated the authority to enforce other federal laws, or that implements the state law that is an analogue to the other federal laws, from amending or revising its rules and regulations to be less stringent than the baseline federal standards for other federal laws. Authorizes these entities to establish rules and regulations for California that are more stringent than the baseline federal standards for other federal laws.
- 8) Requires the State Water Resources Control Board (State Water Board) and the Regional Water Quality Control Boards (Regional Boards) to maintain and enforce all water supply and water quality standards that are at least as stringent as required by the baseline federal standards, in addition to those required by state law.

- 9) Requires the State Air Resources Board (Air Board), air quality management districts, and air pollution control districts to maintain and enforce all air quality standards that are at least as stringent as required by the baseline federal standards, in addition to those required by state law.
- 10) Requires the Air Board to adopt a standard or requirement for an air pollutant that is at least as stringent as the baseline federal standard, if there is a baseline federal standard for an air pollutant for which the Air Board has not already adopted a standard or requirement.
- 11) Requires the State Water Board to maintain and enforce all drinking water standards that are at least as stringent as required by the baseline federal standards, in addition to those required by state law.
- 12) Requires the State Water Board to adopt a standard or requirement for water supply or water quality at least as stringent as the baseline federal standard, if there is a baseline federal standard for water supply or water quality for which the State Water Board has not already adopted a standard or requirement.
- 13) Requires the State Water Board to adopt a drinking water standard or requirement at least as stringent as the baseline federal standard, if there is a baseline federal standard for drinking water for which the State Water Board has not already adopted a standard or requirement.
- 14) Requires all waste discharge requirements and permits issued on and after January 1, 2018, to at least be as protective of the environment and comply with all applicable water quality standards, effluent limitations, and restrictions as is required by the federal baseline standards in addition to those required by state law.
- 15) Requires all drinking water supply permits issued on and after January 1, 2018, to be at least as protective of public health and comply with all applicable drinking water standards as is required by the federal baseline standards, in addition to those required by state law.
- 16) Requires a water quality control plan adopted on or after January 1, 2018, to be at least as protective of the environment, pursuant to and in compliance with all applicable water quality standards, effluent limitations, and restrictions as required by the federal baseline standards, in addition to those required by state law.
- 17) Requires a waste discharge requirement or water quality control plan, if renewed or amended, to ensure that any water quality standards, effluent limitations, restrictions, and conditions are at least as protective of the environment, pursuant to and in compliance with all applicable water quality standards, effluent limitations, and restrictions as provided by the federal baseline standards, in addition to those required by state law.
- 18) Requires all native species listed as endangered or threatened, as of January 1, 2017, pursuant to the federal Endangered Species Act of 1973, that are not listed as threatened or endangered pursuant to California law, to be listed as threatened or endangered pursuant to California law. Authorizes the Fish and Game Commission to review and modify the listing of species.
- 19) Requires any new or revised consistency determination or incidental take permit issued to a permittee on or after January 1, 2018, to only authorize incidental take if it requires

conditions that are at least as stringent as those required by the relevant baseline federal standards.

- 20) States that, to the extent authorized by the federal Reclamation Act of 1902, the California Endangered Species Act shall apply to the operation of the federal Central Valley Project.
- 21) Prohibits a state agency from amending or revising its rules or regulations in a manner that is less stringent in its protection of worker's rights or worker safety than standards established pursuant to federal law in existence as of January 1, 2016.
- 22) Authorizes a state agency to establish worker's rights and worker safety standards for California that are more stringent than those provided in federal law, as it existed on January 1, 2016.
- 23) Requires every state agency, including the Department of Justice, to undertake all feasible efforts using its authority under state and federal law to implement and enforce the Act.
- 24) Requires every state agency that takes steps to enforce the Act to submit a report to the Legislature at least once every six months describing its compliance with the Act.
- 25) Authorizes an action, only if the United States Environmental Protection Agency (US EPA) has revised the standards or requirements under the Act to be less stringent than the federal baseline standards and if the federal Clean Water Act is amended to restrict, condition, or abridge or repeal the citizen suit provision set forth in federal law, to be brought by a person in the public interest to enforce the standards and requirements for all water supply and water quality standards, drinking water standards, and waste discharge requirements that are required to be at least as stringent as the federal baseline standards, pursuant to the Act.
- 26) States that the provisions of the Act are severable and if any provision of the Act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

EXISTING LAW:

- 1) Establishes the federal Clean Water Act (CWA) to regulate discharges of pollutants into the waters of the United States and to regulate quality standards for surface waters. (33 United States Code (U.S.C.) §1251 et seq.)
- 2) Establishes the National Pollutant Discharge Elimination System (NPDES) permit program to regulate the discharge of pollutants in storm water, including municipal storm water systems. (33 U.S.C. § 1251 et seq.)
- 3) Establishes the federal Safe Drinking Water Act (SDWA) to set standards for drinking water quality and to oversee the states, localities, and water suppliers who implement those standards. (42 U.S.C. § 300f et. seq.)
- 4) Establishes the federal Endangered Species Act (ESA) to protect and recover imperiled species and the ecosystems upon which they depend. (16 U.S.C. § 1531 et. seq.)

- 5) Establishes the federal Clean Air Act to regulate air emissions from stationary and mobile sources. Requires US EPA to establish National Ambient Air Quality Standards to protect public health and public welfare and to regulate emissions of hazardous air pollutants. (42 U.S.C. § 7401 et seq.)
- 6) Establishes the federal Resource Conservation and Recovery Act (RCRA) which includes the national hazardous waste management program. (42 U.S.C. § 6901 et seq.)
- 7) Creates the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) also known as the federal "Superfund" program, to clean up uncontrolled or abandoned hazardous waste sites, as well as accidents, spills, and other emergency releases of pollutants and contaminants in to the environment. Provides the 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.)
- 8) Establishes the California Safe Drinking Water Act (California SDWA) and requires the State Water Board to maintain a drinking water program. (Health & Safety Code (HSC) § 116270, *et seq.*)
- 9) Establishes the Porter-Cologne Water Quality Control Act, which prohibits the discharge of pollutants to surface waters unless the discharger obtains a permit from the State Water Board. (Water Code § 1300 et seq.)
- 10) Establishes 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.)
- 11) Creates the Hazardous Waste Control Law (HWCL) which authorizes the Department of Toxic Substances Control (DTSC) to regulate the management of hazardous wastes in California. (HSC § 25100 et. seq.)

FISCAL EFFECT: Unknown.

COMMENTS: *Need for the bill:* According to the author, "President Trump and his Administration have promised to withdraw from the landmark Paris Climate Agreement signed by 144 other nations. The United States would be by far the largest emitter of climate pollution to secede from the treaty. The Trump Administration has signaled that it wants to "reexamine the science" used to set standards; reduce the staff at the US EPA by up to two-thirds which would gut its ability to set health based standards; and, make regulations more cost-effective and business-friendly. All of these actions are euphemisms for weakening environmental and public health protections. They are the precise motivations behind actions that lead to the drinking water disaster in Flint Michigan."

Federal Clean Water Act (CWA): The federal CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Under the CWA, the US EPA has implemented pollution control programs, including setting wastewater standards for industrial facilities, as well as setting water quality standards for all contaminants in surface waters. The CWA made it unlawful to discharge any

pollutant from a point source into navigable waters without a permit. Industrial, municipal, and other facilities must obtain a permit under the National Pollutant Discharge Elimination System (NPDES) in order to discharge into surface water.

Federal Safe Drinking Water Act (SDWA): The federal SDWA was enacted in 1974 to protect public health by regulating drinking water. The US EPA enforces the federal SDWA at the national level. The federal SDWA authorizes the US EPA to set national health-based standards for drinking water to protect against both naturally-occurring and anthropogenic contaminants that may be found in drinking water.

There are a number of threats to drinking water: improperly disposed of chemicals; animal wastes; pesticides; human wastes; wastes injected underground; and, naturally-occurring substances. Likewise, drinking water that is not properly treated or disinfected, or which travels through an improperly maintained distribution system, may also pose a health risk.

The SDWA applies to every public water system in the United States. There are currently more than 170,000 public water systems providing water to almost all Americans at some time in their lives. The responsibility for making sure these public water systems provide safe drinking water is divided among US EPA, states, tribes, water systems, and the public. The SDWA provides a framework in which these parties work together to protect this valuable resource.

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. California has enacted its own safe drinking water act to implement the federal law and establish state standards.

Federal Endangered Species Act (ESA): The purpose of the federal ESA is to protect and recover imperiled species and the ecosystems upon which they depend. It is administered by the US Fish and Wildlife Service and the National Marine Fisheries Service. Under the federal ESA, species may be listed as either endangered or threatened. "Endangered" means a species is in danger of extinction throughout all or a significant portion of its range. "Threatened" means a species is likely to become endangered within the foreseeable future. All species of plants and animals, except pest insects, are eligible for listing as endangered or threatened.

SB 49 includes baseline standards for other federal laws, and while not an inclusive list, below are a couple examples of other environmental federal laws.

Federal hazardous waste regulation: The federal Resource Conservation and Recovery Act (RCRA) established three programs: hazardous waste management (RCRA Subtitle C), solid waste management (RCRA Subtitle D) and the underground storage tank program (RCRA Subtitle I). RCRA provides "cradle-to-grave" control of solid and hazardous waste by establishing management requirements for generators and transporters of hazardous waste treatment, storage, and disposal facilities. Most states have been authorized to implement some or all of the RCRA subtitle C program. State RCRA programs must be at least as stringent as the federal program, but states also can adopt more stringent requirements.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA): CERCLA or Superfund, provides 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. Through CERCLA, US EPA was given authority to seek out

those parties responsible for any release and assure their cooperation in the cleanup. The US EPA cleans up orphan sites when potentially responsible parties cannot be identified or located, or when they fail to act. Through various enforcement tools, US EPA obtains private party cleanup through orders, consent decrees, and other small party settlements. US EPA also recovers costs from financially viable individuals and companies once a response action has been completed. US EPA is authorized to implement CERCLA in all 50 states and US territories. Superfund site identification, monitoring, and response activities in states are coordinated through the states' environmental protection or waste management agencies.

Actions by the Trump Administration that could weaken federal environmental protections: On January 30, 2017, President Trump issued an Executive Order on Reducing Regulation and Controlling Regulatory Costs, which requires each federal agency or department, when proposing a regulation, to identify two existing regulations to be repealed. This Executive Order does not give any direction to federal agencies to ensure that regulations protect human health and safety, and the environment, and is simply a numbers game that does not require an evaluation of a regulations' effectiveness.

On February 24, 2017, President Trump issued an Executive Order on Enforcing the Regulatory Reform Agency, which creates a regulatory reform task force and requires the task force to evaluate existing regulations and make recommendations for their repeal. The task force is required to identify regulations that eliminate jobs or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; and create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies. Missing from this Executive Order is an evaluation of the benefits of a regulation on protecting human health and the environment, including the potential reduction in health care costs and increase productivity by having certain environmental regulations in place.

Response to President Trump's anti-environmental policies: SB 49 was introduced to respond to the Trump Administration's attack on laws and regulations that protect public health and the environment. It is clear that the new federal administration is interested in easing compliance with laws and regulations for multi-billion dollar corporations; however, it is unclear exactly what environmental laws or regulations could become a target for weakening or repealing. SB 49 simply sets a floor for the federal environmental laws currently in place in order to ensure that the public health benefits of these laws are maintained in California. The public health protections provided by the federal Clean Air Act, federal Clean Water Act, and all of the environmental laws and regulations in place, provide very important and very real benefits to everyone in this country. Loosening these federal requirements, such as allowing businesses to dump toxic wastes near schools and homes, or allow entities to emit toxic chemicals into the air, could set us back decades in terms of the environmental protections that have been achieved.

California is the sixth largest economy in the world and has some of the most, if not the most, protective public health and environmental laws in the country. Protecting human health and the environment and promoting economic growth are not mutually exclusive. There is a balance, and early indications from the Trump Administration are that the President does not see the balance and only sees the side of the equation that does not include protecting human health and the environment. SB 49 is intended to ensure that the strong environmental protections, coupled with the strong economic performance that California has achieved is not un-done by the Trump Administration.

Issues the Author may wish to consider:

Clarify the baseline federal law: The bill currently states that the baseline federal law is the law or regulation in existence on January 1, 2016 or January 1, 2017. In order to provide clarity, the author may wish to select one of those years to be the baseline.

Clarify state agency decision-making on stringency of a new federal law or regulation: The author may wish to consider clarifying that each state agency responsible for implementing the federal law would make some type of determination as to whether or not a new federal law or regulation is more stringent than the baseline federal standard.

Clarify the requirement to adopt federal standards into state regulation if the standard does not exist in California: In Article 3 of the bill, it requires the State Water Board to adopt a standard or requirement for which there is a federal standard or requirement but not one in state law or regulation. The author may wish to clarify that the Water Board may not have to adopt a federal standard if there is a state standard that, while may be not identical to the federal standard, is just as or more stringent than the federal standard.

Triple referral: SB 49 has been referred to the Assembly Environmental Safety and Toxic Materials Committee, the Assembly Natural Resources Committee, and the Assembly Judiciary Committee. Should SB 49 pass out of this committee, it will be re-referred to the Assembly Natural Resources Committee.

Related Legislation:

- 1) SB 50 (Allen). Establishes a policy of the state to discourage conveyances of federal public lands in California to third parties and establishes a process at the State Lands Commission to implement or waive this policy, as well as exempting routine conveyances from the federal government, as well as exempting certain leases, tribal conveyances, and conveyances pursuant to a conservation plan. SB 50 is set for hearing in the Assembly Natural Resources Committee on June 26, 2017.
- 2) SB 51 (Jackson). Requires the Secretary for the California Environmental Protection Agency to ensure that all scientific information and other data otherwise in the public domain is protected against censorship or destruction by the federal government. This bill also prohibits a licensing entity, other than the State Bar of California, from taking disciplinary action, including suspension, loss of credential, registration, or other professional privilege against a public employee or employee of a government contractor, subcontractor, or grantee if that person reports improper governmental activity or communicates the results of, or information about, scientific or technical research in a scientific or a public forum or with the media. SB 51 is set for hearing in the Assembly Natural Resources Committee on June 26, 2017.
- 3) SB 288 (Sher, Chapter 476, Statutes of 2003). Established the Protect California Air Act of 2003, prohibiting air quality management districts in California from amending or revising the Federal Clean Air Act (FCAA) related rules or regulations to be less stringent than those federal rules or regulations that existed on December 30, 2002, except under certain circumstances. This bill was a response to federal action on December 31, 2002, to reduce standards associated with the FCAA.

REGISTERED SUPPORT / OPPOSITION:

Support

350 Bay Area Legislative Bill Review Committee
All About Wells
All Good
American Federation of State, County and Municipal Employees
American Lung Association
American Rivers
American Whitewater
APEN
Audubon Society
Bureo Skateboards
Butte Environmental Council
California Bicycle Coalition
California Coastal Protection Network
California Coastkeeper Alliance
California Environmental Justice Alliance
California Labor Federation
California League of Conservation Voters
California Native Plant Society
California Professional Firefighters
California Releaf
California Sportfishing Protection Alliance
California State Association of Electrical Workers
California Water Impact Network
California Wilderness Coalition
Cal Outdoors
Central Valley Air Quality Coalition
Channel Islands Surfboards
ChicoBag Company
Clean Water Action
Coalition for Clean Air
Coast Seafoods Company
Contech Engineered Solutions
Da Vero Farms & Winery
Earth Friendly Products
East Bay Municipal Utility District
Environment California
Environmental Defense Fund
Environmental Entrepreneurs
Environmental Working Group
Foothill Conservancy
Fossil free California
Friends Committee on Legislation in California
Friends of Harbors, Beaches and Parks
Friends of the River

Half Moon Bay Brewing
Heal the Bay
Hills for Everyone
Hog Island Oyster Co.
Hotel Healdsburg
h2hotel
Humboldt Baykeeper
Inland Empire Waterkeeper
John Paul Mitchell Systems
Johnson's Beach Resort
Klamath Riverkeeper
Klean Kanteen
Kokatat Inc.
League of Women Voters of California
Los Angeles Waterkeeper
Mara Hoffman
Mixte Communications
Mono Lake Committee
Monterey Coastkeeper
Natural Resources Defense Council
Nopa/Nopalito
O.A.R.S.
Okiino
Orange County Coastkeeper
Pacific Outfitters
PAN
PermaCity Solar
Poseidon Paddle & Surf
PuraKai Clothing
REI, San Pedro
Restore the Delta
Russian Riverkeeper
Sacramento River Preservation Trust
Sagebrush Board Bags
Salty Girl Seafood
Samudra Skin & Sea
San Diego Coastkeeper
Santa Barbara Channelkeeper
Sea Forager
Shelter Co.
Sierra Club
Simply Straws
Smiley's Saloon & Hotel
South Yuba River Citizens League
State Building and Construction Trades Council
StokeShare
Surfrider Foundation
Sustainable Silicon Valley
The Bay Institute

The Environmental Justice Coalition for Water
The Inertia
The Nature Conservancy
The Otter Project
The Trust for Public Land
Three Forks Bakery & Brewing Co.
Urban Barrels
Voices for Progress
Western States council of Sheet Metal Workers
Wholly H2O
Winnemem Wintu Tribe
YubaDocs Urgent Care

Opposition

Agricultural Council of California
American Coatings Association
American Insurance Association
Association of California Water Agencies
Auto Care Association
California Association of Realtors
California Association of Winegrape Growers
California Building Industry Association
California Business Properties Association
California Cattlemen's Association
California Chamber of Commerce
California Citrus Mutual
California Construction and Industrial Materials Association
California Cotton Ginners and Growers Association, Inc.
California Farm Bureau Federation
California Forestry Association
California Fresh Fruit Association
California Independent Petroleum Association
California League of Food Processors
California Licensed Foresters Association
California Manufacturers & Technology Association
California Metals Coalition
California Paint Council
California Strawberries Commission
California Women for Agriculture
CAWA – Representing the Automotive Parts Industry
Chemical Industry Council of California
Civil Justice Association of California
Family Business Association of California
Forest Landowners of California
Greater San Fernando Valley Chamber of Commerce
Metal Finishing Association of Northern California
Metal Finishing Association of Southern California

National Federation of Independent Business
Simi Valley Chamber of Commerce
South Valley Water Association
Southwest California Legislative Council
Valley Industry & Commerce Association
West Coast Lumber & Building Material Association
Western Plant Health Association
Western Growers Association
Western Plant Health Association
Western States Petroleum Association

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

Date of Hearing: June 27, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 427 (Leyva) – As Amended May 15, 2017

SENATE VOTE: 28-9

SUBJECT: Public water systems: community water systems: lead user service lines

SUMMARY: Makes clarifying changes to current law related to lead service line identification and replacement. Specifically, **this bill:**

- 1) Requires, by July 1, 2020, a community water system (CWS) that has identified known lead user service lines in use in its distribution system to provide a timeline for replacement of those service lines to the State Water Resources Control Board (State Water Board).
- 2) Requires a CWS that has identified areas that may have lead user service lines in use in its distribution system to do both of the following:
 - a. Provide to the State Water Board its determination as to whether there are any lead user service lines in use in those areas of its distribution system and provide a timeline to the State Water Board for replacement of those lead user service lines that the CWS has identified; and,
 - b. Provide its findings as to whether there are any areas for which it cannot determine the content of the user service lines and a timeline to the State Water Board for replacement of the user service lines whose content cannot be determined.
- 3) Clarifies the iterative process by which the State Water Board and the CWS need to agree on a timeline for replacing known user service lines containing lead.
- 4) Authorizes the State Water Board to enforce provisions of the California Safe Drinking Water Act (SDWA) related to lead in service lines of a public water system (PWS) and a CWS.

EXISTING LAW:

- 1) Requires, by July 1, 2018, a PWS to compile an inventory of known lead user service lines in use in its distribution system and identify areas that may have lead user service lines in use in its distribution system. (Health & Safety Code (HSC) § 116885 (a))
- 2) Defines a PWS 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. A public water system includes the following: (1) any collection, treatment, storage, and distribution facilities under control of the operator of the system that are used primarily in connection with the system; (2) any collection or pretreatment storage facilities not under the control of the operator that are used primarily in connection with the system; and, (3) any water system that treats water on behalf

of one or more public water systems for the purpose of rendering it safe for human consumption. (HSC § 116275(h))

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

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill: According to the author, "California has made great strides in the fight for clean water and the complete elimination of lead exposure in drinking water. The provisions of SB 1398 [Leyva, Chapter 731, Statutes of 2016] continues California's leadership on eliminating lead exposure by removing all lead service lines in every public water system. The State Water Resources Control Board has brought to my attention the need for clarification in the current statutes in order to implement SB 1398. Without clarification, the goal of removing lead service lines and ensuring communities have access to clean water could be undermined. SB 427 provides the needed clean-up and clarification."

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

Lead in plumbing: Beginning January 1, 2010, California law prohibited the introduction into commerce of any pipe, pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption through drinking or cooking that is not "lead free" as defined in statute. This includes kitchen faucets, bathroom faucets, and any other end-use devices intended to convey or dispense water for human consumption through drinking or cooking. However, service saddles, backflow preventers for non-potable services such as irrigation and industrial uses, and water distribution main gate valves that are two inches in diameter and above are excluded.

Lead in water: The most prevalent sources of lead in drinking water are from pipes, fixtures, and associated hardware from which the lead can leach. According to *Lead in Drinking Water and Human Blood Levels in the United States*, published by the National Center for Environmental Health in 2012, nearly all lead in users' tap water does not come from the primary water source or from the municipal treatment plant, but is a result of corrosion resulting from materials containing lead coming into contact with water after it leaves the treatment plant. Lead can enter a building's drinking water by leaching from lead service connections, from lead solder used in copper piping, and from brass fixtures.

The amount of lead in tap water can depend on several factors, including the age and material of the pipes, concentration of lead in water delivered by the public utility (or, for private domestic wells, the concentration of lead in raw groundwater), and corrosivity (acidity, temperature, and the concentration of other mineral components) of the water. More corrosive water can cause greater leaching from pipes.

What do we know about California's pipes?: There are about 7,500 PWSs throughout the state. The State Water Board's Division of Drinking Water (DDW) regulates all PWSs and CWSs. Private well owners are not regulated by the state and therefore their drinking water is not overseen by the state's regulatory rules for drinking water standards.

California has stringent testing and monitoring protocols in place that ensure that drinking water supplies meet California's MCLs for water contaminants and that appropriate chemistry is maintained to inhibit corrosion of the pipes delivering drinking water that prevents a Flint, Michigan-type incident from occurring in California. More specifically, the State Water Board tracks all water sources in California for pH and salinity levels for potential corrosion, and tracks which water providers add corrosion inhibitors to their water supplies.

As it relates to pipes, the federal Lead and Copper Rule (LCR) established "action levels" for lead of 15 µg/L (or 15 ppb). The LCR requires PWSs to test water at the tap at a sample of their customers served for lead levels. The sample size is determined by the size of the customer base. If more than 10 percent of the samples collected are at, or exceed, the action level for lead, it can trigger 'actions' that include public education, water quality parameter monitoring, corrosion control treatment, source water monitoring/treatment, public education, and lead service line replacement. The LCR requires lead samples to be collected every 6 months. The LCR, however, is not an exhaustive requirement for identifying the real potential for leaded pipes in a PWSs territory.

Related Legislation: SB 1398 (Leyva, Chapter 731, Statutes of 2016) requires PWSs to compile an inventory of all known leaded pipes in use in their systems, and identify areas that may have lead pipes in use in their systems. A PWS is required to establish a timeline for replacing those known lead pipes and a separate timeline for investigating and replacing the unknown pipes.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Professional Scientists
Clean Water Action
Community Water Center
East Bay Municipal Utility District
Environmental Working Group

Opposition

None on file.

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

Date of Hearing: June 27, 2017

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
SB 541 (Allen) – As Amended June 19, 2017

SENATE VOTE: 37-2

SUBJECT: School facilities: school facility water capture practices

SUMMARY: Requires specified state and regional entities to consult on and recommend best design and use practices for storm water and dry weather runoff capture that can generally be applied to all new, reconstructed, or altered public schools. Specifically, **this bill:**

- 1) Requires the State Department of Education, the State Water Resources Control Board (State Water Board), the regional water quality control boards (regional water boards), and the Division of the State Architect within the Department of General Services to consult and recommend best design and use practices that include school facility storm water and dry weather runoff capture practices that can generally be applied to all new, reconstructed, or altered public schools, including school grounds.
- 2) Requires that these recommendations are reported to the Governor and the Legislature on or before January 1, 2019.
- 3) Defines "school facility storm water and dry weather runoff capture practices" as practices to control water pollutants, pollutant loads, and water runoff volume exiting a site to the maximum extent feasible by minimizing impervious surface area and controlling runoff from impervious surfaces through infiltration, evapotranspiration, bioretention, treatment, and rainfall harvest.
- 4) Sunsets the reporting requirement on January 1, 2023.

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 storm water, including municipal storm water systems. (33 United States Code §1251 et seq.)
- 2) Requires the State Water Board to formulate and adopt state policy for water quality control. (Water Code (WC) §13020 et seq.)
- 3) Authorizes one or more public agencies to develop and implement storm water resources plans that meet specified standards to address the capture, treatment, and storage of storm water and dry weather runoff. (WC §10562 (a))
- 4) Provides that a storm water resource plan must be designed to augment local water supply through groundwater recharge or storage for beneficial reuse of storm water; prioritize source control, onsite and local infiltration, and reuse of storm water; reestablish natural

water drainage treatment and infiltration systems; and, include requirements for new and upgraded infrastructure and development to meet design criteria and best management practices to prevent storm water pollution and increase effective storm water management. (WC §10562 (b))

- 5) Requires, by July 1, 2016, the State Water Board to establish guidance for developing a storm water resources plan that shall include, but is not limited to, identifying types of local agencies and nongovernmental organizations that need to be consulted in developing a storm water resource plan; defining appropriate quantitative methods for identifying and prioritizing opportunities for storm water and dry weather runoff capture projects; defining the appropriate geographic scale of watersheds for storm water resource planning; and, other guidance the State Water Board deems appropriate. (WC §10565)
- 6) Requires the State Water Board to develop a comprehensive guidance document for evaluating and measuring the effectiveness of municipal storm water management programs undertaken, and permits issued, in accordance with the CWA. (WC §13383.7)
- 7) Establishes siting and construction requirements for school facilities. (Education Code §17210 et seq.).
- 8) Directs the Energy Resources Conservation and Development Commission, in consultation with the State Department of Education and the Division of the State Architect and the Office of Public School Construction, to recommend best design practices that include energy efficiency measures for all new public schools. (Education Code §17255)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Cities and counties are required to ensure storm water discharges meet water quality standards, but many struggle to find adequate funding and open space sites needed to clean up the pollution, particularly in Los Angeles County. Cities are working with their local park districts to find suitable open space sites to capture and begin to treat storm water, but in many urban areas, school sites are among the largest parcels in otherwise fully built-out municipalities. However, because schools are not currently subject to a storm water permit, there are no standards or best practices for schools to follow to encourage their partnership. This has made partnership between municipalities and school districts harder. Therefore, this bill requires several entities to consult and recommend best design practices that include school facility water capture practices for all new, reconstructed, or altered public schools, including school grounds."

Storm water: As described by the United States Environmental Protection Agency (US EPA), storm water is the runoff generated when precipitation from rain and snowmelt events flows over land or impervious surfaces without percolating into the ground. Storm water is often considered a nuisance because it mobilizes pollutants such as trash, chemicals, oils, dirt, and sediment. In most cases, storm water flows directly to water bodies through sewer systems, contributing a major source of pollution to rivers, lakes, and the ocean.

Population growth and the development of urban and urbanized areas are chief contributors to the amount of pollutants in runoff, as well as the volume and rate of runoff from impervious surfaces. These factors can cause changes in hydrology and water quality that result in habitat modification and loss, increased flooding, decreased aquatic biological diversity, and increased sedimentation and erosion.

Storm water management: The US EPA posits that storm water management is a major and growing challenge nationwide, with storm water pollution, flooding and other impacts affecting water quality, public health, and local economies. However, while communities face technical and financial challenges in appropriately addressing storm water pollution, managing storm water over the long-term can create opportunities for communities to use rainwater as a resource, invest in resilient infrastructure, revitalize urban waterways, and introduce green space that makes communities more livable.

In the face of climate change and potentially strained water supplies, it is increasingly important that communities treat rain and storm water as a resource. A new generation of management practices has emerged to manage storm water while simultaneously building vibrant, attractive communities. Green infrastructure, such as green roofs, permeable pavement, bioswales, rainwater harvesting, green streets, storm water parks, and conservation areas can address storm water pollution and mitigate flooding, while at the same time provide open space for recreation, habitat, improved air quality, climate resiliency, and aesthetic benefits. When used in conjunction with gray infrastructure, these approaches can help revitalize community economies, particularly communities in need, by supporting sustainable local jobs, improving community assets, and reducing blight. Effective storm water runoff management can protect wetlands and aquatic ecosystems, improve the quality of receiving waterbodies, conserve water resources, protect public health, and provide flood control.

Storm water 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 storm water discharges under the NPDES Permitting Program. Cities and local jurisdictions that operate municipal storm water systems must obtain NPDES permits for discharges of municipal storm water to waters of the US. Similarly, industrial sites or activities must have NPDES permits for storm water from their industrial sites, and construction contractors must have NPDES permits for storm water from construction sites that disturb more than an acre of land.

Municipal separate storm sewer systems (MS4s): Polluted storm water runoff is commonly transported through MS4s, and then is often discharged, untreated, into local water bodies. An MS4 is a conveyance or system of conveyances that is owned by a state, city, town, village, or other public entity that discharges to waters of the US; is designed or used to collect or convey storm water (e.g., storm drains, pipes, ditches); is not a combined sewer; and, is not part of a sewage treatment plant or publicly owned treatment works. To prevent harmful pollutants from being washed or dumped into MS4s, operators are generally required to obtain NPDES permits, known as MS4 permits, and develop storm water management programs.

MS4 permits: The State Water Board and the regional water boards implement and enforce the Municipal Storm Water Program and the MS4 permit program. MS4 permits are issued in two phases. Under Phase I, MS4 storm water permits are issued for medium (serving between 100,000 and 250,000 people) and large (serving 250,000 people) municipalities. Most of these permits are issued to a group of co-permittees encompassing an entire metropolitan area.

Phase I MS4 permits require the discharger to develop and implement a Storm Water Management Plan/Program with the goal of reducing the discharge of pollutants to the maximum extent practicable (MEP). The management programs specify what best management practices (BMPs) will be used to address certain program areas, such as public education and outreach, illicit discharge detection and elimination, construction and post-construction, and good housekeeping for municipal operations. In general, medium and large municipalities are required to conduct monitoring.

Under Phase II, the State Water Board issues a statewide general permit for the discharge of storm water from small MS4s to provide permit coverage for smaller municipalities (serving less than 100,000 people), including non-traditional small MS4s, which are facilities such as military bases, public campuses, prisons, and hospital complexes that are not jointly regulated under a Phase I MS4 permit. The components and program areas of Phase II MS4 permits are similar to those of Phase I MS4 permits.

Storm water regulation and schools: While universities are currently designated as regulated non-traditional small MS4s, elementary schools, middle schools, high schools, and community colleges are not. This means that K – 12 school districts and community colleges are not subject to the requirements of the current MS4 permit, which expires in June 2018. However, the State Water Board indicates that at the next reissuance of the statewide Phase II MS4 permit, K – 12 school districts and community colleges will be considered and likely regulated under the permit. While it has already been informally communicating directly with schools and school districts about this potential upcoming change, the State Water Board will conduct additional outreach, public hearings, and workshops on the reissuance, and projects that it will adopt the next Phase II MS4 permit by the end of 2019.

Many California cities wrote in support of SB 541 that, with the open space (fields) that each school has for potentially capturing and filtering storm water, there is a valuable opportunity for schools and municipalities to partner to both manage storm water and to educate students about the importance of doing so. They say that in many cases, in order to comply with their current MS4 permits, cities are working with their local park districts to find suitable open space sites to capture and treat storm water, but, in many urban areas, particularly in Los Angeles County and in the Bay Area, school sites, and not necessarily parks, are among the largest parcels in otherwise fully built-out cities. The cities assert that during construction or reconstruction of a school, a campus can be retrofitted to capture, treat, store, and use rainwater with rain gardens, bioswales, cisterns, and native plants. They maintain that adding these natural features will also offer students a healthier environment, which has been shown to improve concentration, reduce stress, and stimulate creativity. The problem that these cities are facing is that because schools are currently not subject to an MS4 permit, there are no water capture standards or best practices for schools to follow, hampering these potential partnerships.

This bill will require state and regional entities to develop recommendations for best design and use for storm water and dry weather runoff capture practices that can generally be applied to all new, reconstructed, or altered public schools.

Related legislation:

- 1) SB 633 (Portantino, 2017). Would have required regional water boards to consider, when establishing water quality objectives, opportunities to convey storm water to a regional site

within the watershed in which the storm water originated for capture and infiltration for the purpose of improving water quality and enhancing local water supply in multi-objective projects. This bill was held on the suspense file in the Senate Appropriations Committee.

- 2) AB 1471 (Rendon, Chapter 188, Statutes of 2014). Reauthorized \$425 million in unissued bonds, in addition to authorizing \$7.120 billion in new general obligation bonds, all to fund water resources-related programs and projects, including storm water and rain water capture.
- 3) AB 1750 (Solorio, Chapter 537, Statutes of 2012). Authorized the use of rainwater collected from rooftops without a water right permit.
- 4) SB 790 (Pavley, Chapter 620, Statutes of 2009). Authorized one or more public agencies to develop and implement storm water resources plans that meet specified standards to address the capture, treatment, and storage of storm water and dry weather runoff.
- 5) SB 284 (Polanco, Chapter 498, Statutes of 2002). Directed the Energy Resources Conservation and Development Commission, in consultation with the State Department of Education and the Division of the State Architect and the Office of Public School Construction, to report to the Legislature and the Governor their recommendations on best design practices for energy efficiency measures in new public schools.

Double referral: This bill has been double-referred to the Assembly Committee on Education.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Division of the League of California Cities (Sponsor)
California Contract Cities Association
City of Arcadia
City of Bradbury
City of Burbank
City of Carson
City of Covina
City of Glendora
City of Hermosa Beach
City of Inglewood
City of Lakewood
City of La Mirada
City of La Verne
City of Monrovia
City of Palos Verdes Estates
City of Pasadena
City of Rolling Hills Estates
City of Rosemead
City of Signal Hill
City of South Pasadena
Coalition for Adequate School Housing
Los Angeles County Business Federation
League of California Cities

TreePeople

Opposition

None on file.

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