Date of Hearing: June 25, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
SB 615 (Allen) – As Amended June 11, 2024

SENATE VOTE: 40-0

SUBJECT: Vehicle traction batteries

SUMMARY: Requires battery suppliers to ensure the responsible end-of-life management of a vehicle traction battery once it is removed from a vehicle; report specified information about the sales of vehicle traction batteries to the Department of Resources, Recycling and Recovery (CalRecycle); and, adhere to a battery management hierarchy set forth in the bill. Provides that all vehicle traction batteries in the state shall be recovered and when possible reused, repaired, repurposed, or remanufactured and eventually recycled at the end of their useful life. Specifically, **this bill**:

1) States the policy of the State of California that in situations when a vehicle traction battery reaches the end of its life and cannot be reused in another vehicle or repurposed, it shall be sent to a qualified repurposer, remanufacturer, recycler, or sorting facility to be recycled.

2) Additionally states the policy of the State of California that any program designed to ensure proper end-of-life management of vehicle traction batteries first strives to reuse batteries when possible. When that is not possible, the program shall strive to repurpose or remanufacture the battery for a different application. When neither is possible, the program shall ensure that batteries are recycled. Disposal of these batteries should be discouraged and ultimately eliminated in support of achieving a circular economy.

3) Defines "battery management plan or plan" as a plan developed by a Producer Responsibility Organization (PRO) pursuant to this bill.

4) Defines "battery supplier" as a person, including a vehicle manufacturer, a vehicle traction battery manufacturer, or a vehicle traction battery remanufacturer; further specifies that:

    a) If there is no vehicle manufacturer or no other person in the state who is the battery supplier identified above, then the battery supplier is the owner or licensee of a brand or trademark under which the battery is sold or distributed into the state, whether or not the trademark is registered.
    b) If there is no person in the state who is the battery supplier as listed above, then the battery supplier is the person that imports the battery into the state for sale, distribution, or installation.
    c) If there is no other person in the state who is the battery supplier as listed above, then the battery supplier is the distributor, retailer, dealer, or wholesaler who sells the battery in or into the state.

5) Provides that "battery supplier" does not include a secondary handler who sells, offers for sale, or distributes a battery in or into the state in an unaltered condition.

6) Defines "department" to mean CalRecycle.

7) Defines "nonvehicle secondary user" as a business or entity that has repurposed a vehicle traction battery to another application, other than as a traction battery in a vehicle.

8) Defines "orphaned battery" as a battery for which the battery supplier owner or manufacturer cannot be identified or is no longer doing business.

9) Defines "producer responsibility organization" or "PRO" as the nonprofit organization created or appointed by battery suppliers, and approved by CalRecycle, to develop and implement the orphaned battery management plan.

10) Defines "qualified facility" as a qualified recycler, or secondary user of a battery.

11) Defines "qualified recycler" as an entity or facility that collects, sorts, separates, and refines the elemental components of end-of-life traction batteries or battery materials, and refines the elemental components back to usable battery chemicals that include, but are not limited to, nickel sulfates, cobalt sulfate, and lithium salts; and, also abides by all applicable federal, state, and local laws.

12) Defines "remanufacturing" as the process of refurbishing battery modules or packs through the replacement of worn or deteriorated components and recertifying them to original manufacturer specifications.

13) Defines "repurposing" as the process of refurbishing vehicle traction battery components or packs to fulfill a different use than what was originally intended, such as secondary use.

14) Defines "secondary handler" as any entity, other than the vehicle manufacturer or a secondary user, that takes possession of a battery removed from an electric vehicle (EV) or that removes a battery from a vehicle for purposes, including, but not limited to, repair, remanufacturing, and recycling.

15) Defines "secondary user" as an entity that repurposes a battery to fulfill a different use than what was originally intended.

16) Defines "vehicle traction battery" or "battery" as an advanced battery technology used as a traction battery to propel a motor vehicle, including the individual components and cells that comprise a battery pack. A vehicle traction battery or battery does not include a lead-acid battery.

17) Provides that all vehicle traction batteries in the state shall be recovered and when possible reused, repaired, repurposed, or remanufactured and eventually recycled at the end of their useful life.

18) Requires a battery supplier to do the following:

    a) Ensure the responsible end-of-life management of a vehicle traction battery once it is removed from a vehicle or other application for which the vehicle traction battery has been used and for which no other entity is ensuring responsible end-of-life management;

b) Adhere to the battery management hierarchy set forth in this bill for any vehicle traction batteries in their possession to the extent feasible;

c) Report information regarding the sale, transfer, or receipt of a vehicle traction battery, module, or cell to CalRecycle;

d) Collect any stranded battery for which they were the battery supplier and fully fund the cost of that collection; and,

e) Ensure battery state of health data that is easily interpretable is accessible to secondary handlers and secondary users, either while the battery is inside the vehicle or once it has been removed.

19) Requires a secondary user to do all of the following:

a) Adhere to the battery management hierarchy set forth in this bill to the extent feasible;

b) Ensure, if the battery has been removed from the secondary application for which the vehicle traction battery has been used and is at the end of its useful life, responsible end-of-life management for a battery, or return a vehicle traction battery to the battery supplier; and,

c) Report information regarding the sale, transfer, or receipt of a vehicle traction battery, module, or cell to CalRecycle.

20) Requires a secondary handler in possession of a battery that has been removed from the vehicle to:

a) Adhere to the battery management hierarchy set forth in this bill to the extent feasible;

b) Ensure responsible end-of-life management of the battery, send the battery to a qualified facility, or return the battery to a battery supplier; and,

c) Report information regarding the sale, transfer, or receipt of a vehicle traction battery, module, or cell to CalRecycle.

21) Defines "responsible end-of-life management" as ensuring a vehicle traction battery that cannot be repaired, reused, remanufactured, or repurposed is sent to a qualified recycler pursuant to the battery management hierarchy set forth in this bill.

22) Requires, no later than July 1, 2027, CalRecycle in coordination with the Department of Toxic Substance Control (DTSC), where applicable, to adopt regulations to implement and enforce this bill.

23) Requires the regulations CalRecycle is required to adopt, to be developed to encourage adherence to a battery management hierarchy that prioritizes, in descending order, the following:

a) The remanufacturing, repair, or reuse of batteries when possible;

b) The repurposing of batteries, when reuse is not possible; and,

c) The responsible recycling of batteries when remanufacturing, repairing, or repurposing is not possible.

24) Requires CalRecycle, in coordination with the DTSC, to establish a method and form for PROs, battery suppliers, secondary users, secondary handlers, and qualified facilities to report the sale, transfer, or receipt of a vehicle traction battery, module, or cell. This reporting shall include the initial sale or delivery of a vehicle traction battery into the state, either within a vehicle or separately; vehicle traction batteries and any related components shipped out of the state and exported to other countries; a unique identifier for each battery; and, the date the battery was sold, transferred, or received, the name of the entity selling or transferring the battery, and the name of the entity receiving it, state of health of the battery, and whether the battery will be repaired, reused, remanufactured, repurposed, or recycled.

25) Requires that annually, CalRecycle publicly post on the department's internet website aggregated data on the disposition of batteries removed from vehicles, including data on the number of batteries sold or distributed for reuse, remanufacturing, repurposing, and recycling.

26) Requires CalRecycle, on or before January 1, 2026, to approve one PRO that meets the requirements of this bill.

27) Requires the PRO, within 12 months of the effective date of the regulations adopted by CalRecycle pursuant to this bill, to develop and submit to CalRecycle and DTSC a complete orphaned battery management plan, in a form and manner determined by CalRecycle.

28) Requires the orphaned battery management plan to be designed to provide for the collection, transportation, recycling, and safe and proper management of orphaned vehicle traction batteries and any of their associated components in the state.

29) Requires the battery management plan to adhere to the battery management hierarchy set forth in this bill, to the extent feasible.

30) Requires the battery management plan to include the following:

a) The names and contact information, including email addresses, telephone numbers, and mailing and physical addresses of battery suppliers of products covered by the plan;

b) A description of the method to establish and administer a means for fully funding the orphaned battery management plan in a manner that equitably distributes a PRO's costs among battery suppliers that are part of the PRO, in a manner that reflects the sales volume and costs of managing the vehicle traction batteries they produce;

c) A demonstration that the PRO has adequate financial responsibility and financial controls in place, including fraud prevention measures and an audit schedule, to ensure proper management of funds;

d) A five-year budget that establishes a funding level sufficient to operate the PRO in a prudent and responsible manner;

e) A description of how the PRO will provide for any necessary collection system for vehicle traction batteries, including collection sites, and how any necessary collection and transportation will be managed; and,

31) Requires the PRO to pay all administrative and operating costs associated with establishing and implementing the battery management plan.

32) Authorizes CalRecycle to administratively impose a civil penalty on any person who is in violation of any provision of this bill of up to $50,000 per day, or up to $100,000 per day if the violation is intentional or knowing.

EXISTING LAW:

1) Establishes the Resource Conservation and Recovery Act (RCRA) to authorize the United States Environmental Protection Agency (US EPA) to manage hazardous and non-hazardous wastes throughout its life cycle. (42 United States Code (U.S.C.) § 6901 et seq.)

2) Creates the Hazardous Waste Control Law (HWCL) and provides DTSC with responsibility for overseeing the management of hazardous waste in California. (Health and Safety Code (HSC) § 25100 et seq).

3) Prohibits the disposal of a lead-acid battery at a solid waste facility, or on or in any land, surface waters, watercourses, or marine waters. (HSC § 25215.2)

4) Establishes the Lead-Acid Battery Recycling Act of 2016 (Act) to impose fees on lead-acid batteries to fund lead contamination cleanup. (HSC § 25215)

5) Enacts the Responsible Battery Recycling Act of 2022, which requires producers of covered [household] batteries to establish a stewardship program for the collection and recycling of covered batteries. (Public Resources Code (PRC) § 42420 et seq.).

6) Requires the Secretary for Environmental Protection (Secretary) to convene the Lithium-Ion Car Battery Recycling Advisory Group to review and advise the Legislature on policies pertaining to the recovery and recycling of lithium-ion (Li-ion) batteries sold with motor vehicles in the state, and requires the Secretary to appoint members to the group from specified departments, vocations, and organizations. (PRC § 42450.5)

FISCAL EFFECT: Unknown.

COMMENTS: *Need for the bill:* According to the author: "California is home to the fastest growing electric vehicle (EV) market in the nation. One in five new cars sold in the state is rechargeable. However, as the number of EVs on the road increases, so does the number of EV batteries reaching the end of their useful life. California is beginning to see piecemeal development of a market and infrastructure designed to capture the value imbedded in these batteries once removed from a vehicle; including high-value critical materials such as lithium, cobalt, nickel, natural graphite, and manganese.

Recycling batteries to capture this material reduces demand for raw materials, thereby avoiding the negative social and environmental impacts of mining, and potentially catalyzing a domestic

supply as demand for critical materials increases. However, our nascent system relies on the expectation that the value of the material will drive proper management. California lacks a policy framework to require that batteries are reused or repurposed when possible, and finally recycled when no longer useful and has no mechanism to ensure proper handling of batteries when the cost of recycling the battery is greater than that embedded value.

SB 615 will establish a program to ensure EV batteries are properly managed at every stage of their lives, and are put to their highest and best use by requiring all EV batteries to be recycled at the end of their useful life. This measure will also ensure those who handle batteries have a clear understanding of their roles and responsibilities."

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 that hazardous waste is generated to management, transportation, and ultimately disposal of waste into a state or federally-authorized facility.

There are approximately 80,000 entities that generate hazardous waste in California. Waste generators are responsible for determining whether a waste is hazardous or non-hazardous and disposing of the waste accordingly. In California, a hazardous waste is a solid, liquid, or contained gaseous waste with properties that make it potentially harmful to human health or the environment. The criteria for classifying a waste as a hazardous waste are regulated at both the state and federal levels. Specifically, a waste is identified as hazardous if it appears on one of five regulatory lists, or if it exhibits toxicity, corrosivity, reactivity, and/or ignitability.

Universal waste: Universal wastes are hazardous wastes that are widely produced by households and many different types of businesses. Universal wastes include televisions, computers, other electronic devices, batteries, fluorescent lamps, mercury thermostats, and other mercury containing equipment, among others. Lithium-ion vehicle traction batteries can be managed as a universal waste.

California’s Universal Waste Rule allows individuals and businesses to transport, handle, and recycle certain common hazardous wastes, termed universal wastes, in a manner that differs from the requirements for most hazardous wastes. The more relaxed requirements for managing universal wastes were adopted to ensure that they are managed safely and are not disposed of in the trash. The universal waste requirements are also less complex and easier to comply with, thereby increasing compliance.

Product stewardship (stewardship): Product stewardship, also known as Extended Producer Responsibility (EPR), is a strategy to place a shared responsibility for end-of-life product management on the producers, and all entities involved in the product chain, instead of the general public. Product stewardship encourages product design changes that minimize negative impacts on human health and the environment at every stage of the product's lifecycle. This allows the costs of treatment and disposal to be incorporated into the total cost of a product. It places primary responsibility on the producer, or brand owner, who makes design and marketing decisions. It also creates a setting for markets to emerge that truly reflect the environmental impacts of a product, and to which producers and consumers respond. CalRecycle has developed a product stewardship framework and checklists to guide statutory proposals that would allow

CalRecycle and other stakeholders to implement product stewardship programs. While SB 615 does not setup a traditional EPR program, the PRO envisioned in the bill for the management of orphan batteries is similar in concept.

Regulation of batteries: The HWCL prohibits the disposal of batteries in the trash or household recycling collection bins intended to receive other non-hazardous waste and/or recyclable materials. Many types of batteries, regardless of size, exhibit hazardous characteristics and are considered hazardous waste when they are discarded. These include single use alkaline and lithium batteries and rechargeable lithium metal, nickel cadmium, and nickel metal hydride batteries of various sizes (AAA, AA, C, D, button cell, 9-Volt, and small sealed lead-acid batteries).

All batteries in California that are intended for disposal must be recycled, or taken to a household hazardous waste disposal facility, a universal waste handler (e.g., a storage facility or broker), or an authorized recycling facility.

EPR program for household batteries: In 2022, AB 2240 (Irwin, Chapter 351, Statutes of 2022) enacted the Responsible Battery Recycling Act of 2022, which requires producers of covered [household] batteries to establish a stewardship program for the collection and recycling of covered batteries. This EPR program for household batteries is currently being implemented. SB 615 is designed to deal with the collection and management of EV batteries.

Li-ion batteries: Li-ion batteries, widely used in portable electronics like laptops, smart phones, digital cameras, game consoles, and cordless power tools, are also widely used as vehicle batteries in zero emission vehicles (ZEVs).

Fire risks: Because Li-ion batteries contain hazardous and corrosive materials, they also pose a fire risk if not stored or disposed of properly. Therefore, any program to manage used Li-ion batteries needs to account for this possible fire risk.

Zero emission vehicles (ZEVs): "Zero emission vehicle," or "ZEV," is an umbrella term for hydrogen fuel cell EVs, battery EVs, and plug-in hybrid EVs (PHEVs). ZEVs are vehicles that emit no exhaust gas from the onboard source of power, hence the term "zero emission."

Value of ZEVs to California goals: California has some of the most ambitious climate emission reduction goals in the nation, which include goals to reduce petroleum use in California by up to 50% from 2015 levels by 2030, and reducing greenhouse gas emissions to 40% below 1990 levels by 2030. The transportation sector represents about 40% of California's total greenhouse gas emissions portfolio, so promoting ZEVs, and replacing traditional gas-powered cars with ZEVs, are very big parts of California's mission to reduce climate emissions.

Li-ion battery waste: According to a presentation to DTSC from Occupational Knowledge International, by 2028, roughly 8 million kilotons of waste Li-ion batteries from ZEVs are expected to be generated; by 2038, the estimate is 55 million kilotons.

Collection rates today: It is unknown how many Li-ion batteries are being collected for recycling, reuse, or repurposing.

Market for Li-ion batteries: End-of-life management of Li-ion automotive batteries is still nascent, but, theoretically, they could be collected under universal rules for recycling, reuse, or potentially even refurbishment. If there is a market for reusing Li-ion and cobalt, recycling these automotive batteries could prove to be lucrative.

Lithium-ion Car Battery Recycling Advisory Group (Advisory Group): In 2018, AB 2832 (Dahle, Chapter 822, Statutes of 2018) required the convening of the Lithium-Ion Battery (LIB) Recycling Advisory Group, whose mandate included submission of policy recommendations to the Legislature to ensure "that as close to 100% as possible of lithium-ion batteries in the state are reused or recycled at end-of-life."

The Advisory Group was convened and met quarterly between fall of 2019 and spring of 2022. The Advisory Group heard from 26 experts from industry, academia, and government agencies. Advisory Group members also participated in subcommittees to identify barriers and opportunities and develop policy recommendations specific to three key processes for end-of-life (EOL) LIBs: recycling, reuse and repurposing, and logistics. Each subcommittee explored different barriers and opportunities and put forward proposals for policies.

Based on the proposed policy options and their barriers and opportunities that emerged from subcommittees, further deliberation by the whole Advisory Group yielded a final list of proposed policies. Policies were divided into those that define EOL management responsibilities, and supporting policies that help achieve the goal of maximizing reuse and recycling of EOL EV LIBs in a cost-effective manner.

At the November and December 2021 Advisory Group meetings, the members voted on each policy proposal. Policy proposals that received at least majority support from voting members of the Advisory Group were released as recommended policies.

Recommended policies: Two policy proposals that define EOL management responsibility rose to the level of majority support: core exchange with a vehicle backstop, and producer take-back. These policies complement, and do not replace, current warranty regulations and programs that require the vehicle manufacturer to properly reuse, repurpose, or recycle a removed EOL battery that is still under warranty.

The core exchange and vehicle backstop policy garnered the most support from the Advisory Group at 93% of voting members. It builds on existing industry standards and policies for other vehicle components, specifically a core exchange and product take-back.

The other policy proposal that received majority support at 67% of those that voted is a producer take-back policy, wherein the auto manufacturer is responsible for ensuring proper repurposing, reuse, or recycling of its EV traction batteries by a licensed facility at no cost to the consumer, if and when they are no longer wanted by the owner, and in the event that no other entity has taken possession of the battery. Auto manufacturer responsibility initiates when the auto manufacturer has been notified the battery has reached its EOL and is available to be properly managed. If the battery is repurposed, the EOL responsibility transfers to the repurposing company. This responsibility includes arranging reverse logistics to transport the batteries to recycling hubs; being responsible for the recycling costs; and documenting the proper disposal of the battery.

To ensure that the maximum amount of EOL batteries are reused, repurposed or recycled, the Advisory Group’s recommended policies focus on two main areas of need:

Clearly defining responsibility for the coordination and payment of recycling in cases where the cost presents a burden for the owner of the vehicle and the LIB is unwanted and,
Mitigating barriers that may currently inhibit the reuse, repurposing, and recycling of EV LIBs.

Widely supported policies that address more specific barriers include labeling and digital identifier requirements, supporting the development of recycling facilities through incentive packages and a guaranteed permitting timeline, supporting the enforcement of unlicensed dismantling laws, and supporting the development of strategic collection and sorting infrastructure to reduce transportation costs. The Advisory Group also recommended creating training programs to ensure that the people who handle EOL vehicles have the skills they need to safely work with EVs and assist them in navigating regulatory requirements.

US EPA Guidance Memo on Lithium Battery Recycling: On May 24, 2023, the US EPA issued a memo titled, "Lithium Battery Recycling Regulatory Status and Frequently Asked Questions," which stated:

"The purpose of this memorandum is to clarify how the hazardous waste regulations for universal waste and recycling apply to lithium-ion batteries. The proportion of electric cars powered by lithium-ion batteries on the road is rising rapidly; lithium-ion batteries also power our electronics and, increasingly, lawnmowers, e-scooters, electric bicycles, and many other devices. The growth of the circular economy for lithium battery materials is vital as the focus turns to how to eventually manage lithium-ion batteries at the end of their lives. Recycling lithium-ion batteries returns valuable critical minerals to the economy, both conserving resources and reducing the overall energy use needed to produce new batteries.

Recent interest in the regulation and management of lithium-ion batteries at end of life has prompted the EPA to examine specifically how universal waste handling requirements, hazardous waste recycling regulations, and other RCRA Subtitle C provisions apply to this waste stream. Today the Agency is clarifying that most lithium-ion batteries are likely hazardous waste at end of life and that they can be managed under the streamlined hazardous waste management standards for universal waste until they reach a destination facility for recycling or discard. The frequently asked questions attached to this memorandum also describe how RCRA recycling regulations apply to lithium-ion batteries. EPA encourages the recycling of lithium-ion batteries wherever possible in a manner that protects communities and the environment. By clarifying how battery recycling is regulated, [the Office of Resource Conservation and Recovery] hopes to both remove uncertainties for the states and industry about the regulatory status of these materials and processes and to ensure that this critical step in the circular economy is done safely and compliantly. Throughout this memorandum, when we refer to batteries, we mean lithium-ion batteries.

Despite all these variations, EPA has determined that most lithium-ion batteries on the market today are likely to be hazardous waste when they are disposed of due to the ignitability (D001) and reactivity (D003) characteristics. Fires at end of life are common and mismanagement and damage to batteries make them more likely.

Safe recycling of lithium-ion batteries at end of life conserves the critical minerals and other valuable materials that are used in batteries and is a more sustainable approach than disposal. Lithium-ion battery recycling is frequently a multi-step process.

When they are disposed, most lithium-ion (secondary batteries) and lithium primary batteries in use today are likely to be hazardous waste due to ignitability and reactivity (D001 and D003). With the exception of households, generators of lithium battery hazardous waste are responsible for determining whether the spent lithium batteries they generate are hazardous waste and, if they are, the generators need to manage the batteries accordingly under hazardous waste requirements.

Both rechargeable lithium-ion and single use lithium primary batteries can be managed as universal waste. EPA's universal waste battery regulations do not mandate use of a uniform hazardous waste manifest or shipment using a hazardous waste transporter, but Department of Transportation regulations for shipping lithium batteries do apply.

EV batteries removed at a dealership, an auto shop, a scrap yard, or similar type of facility are not household hazardous waste.

Universal waste handlers can conduct certain activities when managing all chemistries of batteries. These activities are sorting batteries by type, mixing batteries in one container, discharging batteries to remove the electric charge, regenerating used batteries, removing batteries from products, and removing electrolyte from batteries.

Due to the high energy density of lithium batteries, handlers may choose to discharge them before shipping them for recycling. EPA recommends that handlers ensure that any discharge is done with all appropriate safety measures in place to prevent fires and protect the health of workers and communities. Lithium batteries may remain hazardous waste after being discharged because they contain ignitable solvents.

The universal waste regulations allow handlers to remove electrolyte from batteries as long as the battery cell is closed immediately after electrolyte is removed, but this is not a likely management scenario for lithium batteries. With the exception of removing electrolyte in this way, universal waste handlers may not breach or open cells.

Shredding batteries is not an allowable waste management activity for universal waste handlers under part 273 regulations. Batteries can be shredded for recycling at a destination facility, either a hazardous waste recycler with no storage before recycling or a RCRA-permitted treatment, storage, and disposal facility.

Once a battery has arrived at the destination facility (i.e., a permitted treatment, storage, or disposal facility or a hazardous waste recycler) for recycling or disposal, it is no longer a universal waste, but a fully regulated hazardous waste. Likewise, after pretreatment for recycling (often shredding), the separated components of the battery are no longer universal waste.

Removal of hazardous waste batteries from devices, sorting, battery discharge, and disassembly of batteries into cells or modules prior to recycling would not require a RCRA hazardous waste treatment permit when performed in preparation for recycling because these activities would be considered part of an exempt recycling process per 261.6(c)(1). Likewise, shredding of batteries to produce black mass and separate foils and other materials for recycling are also part of an exempt recycling process. However, these activities should always be performed with caution and while using all appropriate best practices for safety and fire prevention. States may have

battery management requirements or recycling permitting requirements that are more stringent than the federal RCRA regulations.

A battery recycler that stores hazardous waste (e.g., ignitable/reactive batteries and/or black mass that exhibits one or more characteristics of hazardous waste) before recycling must obtain a RCRA Part B permit. Federal regulations do not specify an allowable 'holding time' prior to the waste being introduced to the recycling process; however, the appropriate EPA Regional office or authorized State regulatory agency may specify such a holding time on a site-specific basis, defining a time at which storage begins.

A battery that is removed from one device or application and is legitimately reused in another similar device or repurposed into another application is not a solid waste under the use/reuse exemption in section 261.2(e)(1)(ii). A battery being evaluated for use or reuse becomes a solid waste when a handler determines that it cannot continue to be used or reused and makes the decision to discard it."

By allowing universal waste rules to apply instead of full hazardous waste requirements, US EPA's guidance on Li-ion batteries could greatly aid the collection of these batteries for recycling.

This bill: SB 615 sets up a framework to ensure that vehicle traction batteries are safely collected, transported, and then reused, repurposed, remanufactured, or recycled. This bill requires the manufactures/producers of vehicle traction batteries to be responsible for the end-of-life management of these batteries. The major goal of this bill is to encourage and promote the recycling of these batteries as part of the circular economy. The timing of this bill is important as well. While there are a number of EVs on the road, the volume of these batteries nearing end-of-life is still rather low, making this a great opportunity to solidify and improve the safe collection and recycling of vehicle traction batteries.

Stakeholder process continues: The author of this bill has been engaging stakeholders since early 2023 and that process is ongoing. While significant changes to the bill have been made, it is important to get the wording right to ensure the safe management of end-of-life vehicle traction batteries. As this bill continues through the process, the author will be continuing to refine the bill with input from stakeholders.

Arguments in support: According to the National Stewardship Action Council (NSAC), "NSAC strongly supports SB 615, as amended June 11, 2024, which would require battery suppliers to ensure the responsible end-of-life management of vehicle traction batteries. EV batteries are a large and quickly growing waste stream with Californians adopting the use of EVs. In 2020, 144,000 EVs were sold in the State. In 2022, the California Air Resources Board set a mandate that all new cars and light trucks sold in the state must be electric by 2035, which could mean the addition of 12 million more EVs on California's roads. Historically, California has allowed products to be sold on the market without an end-of-life plan, causing significant problems at the back end of the system. The costs of management are then socialized amongst all rate payers, causing frustration amongst residents and environmental damage when there is not enough funding or adequate recycling facilities to handle the materials. According to California’s Lithium-ion Car Battery Recycling Advisory Group’s Final Report, an estimated 95% of EV batteries can be recycled. Ensuring EV batteries are properly recycled at end-of-life will create a domestic supply of materials needed for EV battery production."

Arguments in opposition: According to Redwood Materials, which is opposed unless amended: "Redwood Materials is respectfully opposed to SB 615 unless it is significantly amended to account for the significant strides and meaningful market response across the electric vehicle battery value chain. We fear the various, onerous and untested proposals in the bills current form may negatively impact this burgeoning domestic recycling industry and the costs of electric vehicles will increase as a result. As a supportive and original member of CalEPA's Lithium-ion Car Battery Recycling Advisory Group, we appreciate and support the intent of SB 615 and the author's collaborative working relationship with stakeholders over the past year and a half. We also want to acknowledge Senator Allen's responsiveness to stakeholder concerns as SB 615 has evolved.

However, despite some progress, we continue to have significant concerns with the bill in print and respectfully request amendments to align the bill with the current state of a market that has not failed. End-of-life (EOL) electric vehicle batteries are inherently valuable, and the market has responded without government intervention. Redwood Materials has partnered with most major automakers, battery manufactures and vehicle dismantlers in North America to collect and recycle their EOL EV batteries and battery production scrap and refine them back into battery materials for these same battery manufacturers and automakers. As such, SB 615 should embody a light-touch regulatory approach that imposes appropriate management responsibility without causing excessive compliance costs that will only increase the costs of EVs and make it harder for California to achieve its electrification goals."

Related legislation:

1) AB 2240 (Irwin, Chapter 351, Statutes of 2022). Enacts the Responsible Battery Recycling Act of 2022, which requires producers of covered [household] batteries to establish a stewardship program for the collection and recycling of covered batteries.

2) AB 2832 (Dahle, Chapter 822, Statutes of 2018). Requires the Secretary for the California Environmental Protection Agency (CalEPA) to convene a research group to review, and advise the Legislature on, policies pertaining to the recovery and recycling of Li-ion vehicle batteries sold with motor vehicles in the state.

3) AB 2407 (Ting, 2018). Requires CalEPA to convene a Lithium-Ion Car Battery Recycling Advisory Group to review and advise the Legislature on policies pertaining to the recovery and reuse of Li-ion batteries. This bill died in the Senate Environmental Quality Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Electric Transportation Coalition
California Environmental Voters (formerly CLCV)
Calstart
Climate Reality Project, Los Angeles Chapter
Climate Reality Project, San Fernando Valley
Junior Philanthropists Foundation

National Stewardship Action Council
Union of Concerned Scientists

Opposition

Alliance for Automotive Innovation
Redwood Materials, Inc.
Tesla Inc.

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

Date of Hearing: June 25, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
SB 1143 (Allen) – As Amended June 10, 2024

SENATE VOTE: 30-7

SUBJECT: Household hazardous waste: producer responsibility

SUMMARY: Requires producers of covered products (products that are considered household hazardous waste when disposed) to form a producer responsibility organization (PRO) for the purposes of providing a convenient collection and management system for covered products at no cost to residents or local governments. Specifically, **this bill**:

1) Enacts the Household Hazardous Waste Producer Responsibility Act of 2024 (Act).

2) States the purpose of the Act is to provide for the safe and proper management of household hazardous waste, which poses a threat to public health and safety, is costly for California's local governments, and may cause significant damage to the environment when managed improperly.

3) Requires the Department of Resources, Recycling and Recovery (CalRecycle), in coordination with the Department of Toxic Substances Control (DTSC), to adopt, amend, or repeal regulations to implement the Act. CalRecycle shall not adopt regulations pursuant to this Act with an effective date earlier than July 1, 2027.

4) Requires CalRecycle, as part of the regulations, to establish methodologies to determine a baseline amount of covered products improperly disposed of or dumped and to measure progress towards meeting the performance-based standards in the Act.

5) Requires DTSC, on or before January 1, 2026, to establish and post on its internet website a list of covered products.

6) Requires CalRecycle, on or before January 1, 2027, to approve one PRO that meets the requirements of the Act.

7) Defines "covered product" as a product that is flammable, toxic, ignitable, corrosive, reactive, or pressurized and that meets all of the following requirements:

    a) The product either meets the criteria for household hazardous waste at the time of disposal, or is defined by DTSC in regulations as household hazardous waste;

    b) The product is one or more of the following product types:

        i) Aerosols, cleaners, glues, solvents, oxidizers, and adhesives;

        ii) Automotive products, including chemically formulated consumer products used in a household setting for the purposes of maintaining the function of a motor vehicle, including, but not limited to, antifreeze, cleaner, degreasers, solvents, and automotive paint;

iii) Electronics and paint products not covered under statutorily required programs;

iv) Fire extinguishers with up to 50 pounds of water capacity;

v) Degreasers, lubricants, liquid adhesives, and strippers;

vi) Gas cylinders;

vii) Lamp kerosene and lighter fluid;

viii) Rust, tar, and bug remover;

ix) Fertilizers, pesticides, insecticides, herbicides, fungicides, and soil fumigants;

x) Products containing asbestos, mercury, or polychlorinated biphenyls;

xi) Pool chemicals and photochemicals;

xii) Concrete mix containing corrosive lime; and,

xiii) Universal waste.

c) The product is none of the following:

i) A product that is subject to another statewide program pursuant to state law;

ii) Health and beauty products; and,

iii) A parasiticide used to treat, or administered to, companion animals and that is regulated by the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (7 United States Code (U.S.C.) § 136 et seq.).

8) Defines "DTSC" as the Department of Toxic Substances Control.

9) Defines "producer" as a person who manufactures a covered product and who sells, offers for sale, or distributes a covered product into the state under the person's own name or brand.

10) Defines "producer responsibility organization" or "PRO" as an organization that is exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code of 1986, that is appointed by one or more producers to act as an agent on behalf of the producers to design, submit, and administer a PRO pursuant to the Act.

11) Defines "producer responsibility plan" or "plan" as the plan developed by a PRO for the collection, transportation, and the safe and proper management of covered products pursuant to the Act and submitted to CalRecycle for approval.

12) Requires a producer, no later than 90 days after CalRecycle's approval of the PRO, to register with the PRO.

13) Prohibits a producer, upon approval of a plan pursuant to the Act, from selling, offering for sale, importing, or distributing a covered product in the state unless all of the following conditions are met:

    a) The producer is registered with the PRO;

    b) The covered product is accounted for in the plan; and,

    c) CalRecycle has approved the plan.

14) Requires the PRO, within 12 months of the effective date of the regulations adopted by CalRecycle, to develop and submit a proposed plan to CalRecycle, in a form and manner determined by CalRecycle.

15) Requires, within 24 months of the effective date of the regulations adopted by CalRecycle, the PRO with an approved plan to provide a convenient collection and management system for covered products at no cost to residents or local governments.

16) Requires a plan to do all of the following:

    a) Be designed to ensure the safe and convenient collection and management of covered products and ensure both of the following performance-based standards are met:

        i) The PRO shall decrease the aggregate percentage of covered products improperly disposed of or dumped by 20% by 2032, as measured against the baseline determined pursuant to the Act; and,

        ii) The PRO shall decrease the aggregate percentage of covered products improperly disposed of or dumped by 40% by 2035, as measured against the baseline determined pursuant to the Act;

    b) Include strategies to ensure elderly consumers, disabled consumers, and any other consumers with limited mobility have access to the safe and proper collection and management of covered products, including opportunities to have covered products collected;

    c) Include the contact information of each participant producer;

    d) Include a financial section that demonstrates how the PRO will comply with the Act;

    e) Include a section describing the PRO's contingency plan in the event the plan expires or is revoked;

    f) Include a section describing a comprehensive statewide education and outreach program designed to educate consumers and promote participation in the program offered by the PRO; and,

    g) Include a description on how the PRO will leverage and use existing collection programs and infrastructure.

17) Requires the PRO to do all of the following:

a) Establish a method for fully funding its plan in a manner that equitably distributes the plan's costs among participant producers in a manner that reflects sales volumes, adjusted to account for the cost to manage the covered products that each participant producer is responsible for and the relative toxicity of each covered product;

b) Operate on a budget that establishes a funding level sufficient to operate the PRO in a prudent and responsible manner;

c) On a schedule determined by CalRecycle, pay CalRecycle fees to cover CalRecycle's and DTSC's regulatory costs;

d) Establish a process by which the financial activities of the PRO that are related to implementation of the plan will be subject to an independent audit consistent with generally accepted accounting principles;

e) Provide written certification by an authorized representative of the PRO that, at the time of submission to CalRecycle, all aspects of the plan are in compliance with all applicable state and federal laws and regulations; and,

f) Have adequate financial responsibility and financial controls in place, including fraud prevention measures, to ensure proper management of funds.

18) Requires the PRO, if the plan relies on a local jurisdiction to collect or manage a covered product, to reimburse the local jurisdiction for costs associated with the collection and management of the covered product.

19) Authorizes CalRecycle to audit the PRO annually.

20) Prohibits a retailer, dealer, importer, or distributor from selling, distributing, offering for sale, or importing a covered product in or into the state unless the producer of the covered product is listed as a compliant producer pursuant to the Act.

21) Requires CalRecycle within 12 months of the effective date of the regulations required by the Act, and on or before July 1 of each year thereafter, to publish on CalRecycle's internet website a list of the names of producers that are compliant with this chapter.

22) Authorizes CalRecycle to administratively impose on any person who is in violation of the act a civil penalty of up to the following amounts:

a) $10,000 per day.

b) $50,000 per day, if the violation is intentional or knowing.

23) Authorizes, under specified conditions, CalRecycle to revoke the PRO's approved plan or require the PRO to resubmit the plan or plan section.

24) Adds several paint related products to the Architectural Paint Recovery Program administered by CalRecycle.

EXISTING LAW:

1) Establishes the federal Resource Conservation and Recovery Act (RCRA) to authorize the United States Environmental Protection Agency (US EPA) to manage hazardous and non-hazardous wastes throughout their life cycle. (42 U.S.C. § 6901 et seq.)

2) Establishes the Hazardous Waste Control Law (HWCL) to authorize DTSC to regulate the management of hazardous wastes in California. (Health and Safety Code (HSC) § 25100 et seq.)

3) Defines "waste" as any solid, liquid, semisolid, or contained gaseous discarded material. (HSC § 25124)

4) Defines "hazardous waste" as waste that, because of its quantity, concentration, or physical, chemical, or infectious characteristics:

   a) Causes, or significantly contributes to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or,

   b) Poses a substantial present or potential hazard to human health or the environment, due to factors including, but not limited to, carcinogenicity, acute toxicity, chronic toxicity, bio accumulative properties, or persistence in the environment, when improperly treated, stored, transported, disposed of, or otherwise managed. (HSC § 25141(b))

5) Defines "household hazardous waste" as hazardous waste generated incidental to owning or maintaining a place of residence, but does not include waste generated in the course of operating a business at a residence. (HSC § 25218.1(e))

6) Establishes that counties and cities will provide services for the collection of HHW and that the state will provide an expedited and streamlined regulatory structure to facilitate the collection of HHW. (HSC § 25218)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "SB 1143 requires producers of the most toxic consumer products to fund and ensure convenient access to a system for the safe collection, transportation, and disposal of household hazardous waste (HHW). The bill will shift the cost burden of managing HHW disposal from local jurisdictions and ratepayers to the producers. Thousands of everyday household products are classified as HHW since they pose severe threats to residents, animals, and the environment if improperly managed at the end of life. This includes cleaning products, pesticides, pool chemicals, and fire extinguishers. Consumers struggle to understand which products are considered hazardous and how to properly dispose of those that are, especially as the list of products that can be collected at a local HHW facility varies from jurisdiction to jurisdiction and is often a function of what that jurisdiction can afford. Many communities lack convenient access to facilities permitted to accept these dangerous products altogether.

Places like Canada and Vermont have implemented Extended Producer Responsibility programs for HHW to increase access to safe collection and shift the cost burden of managing these

products from local cities and counties, and ultimately ratepayers, to the producers designing the products. SB 1143 builds on California's extensive experience with EPR programs and allows producers a degree of flexibility in meeting these goals while also saving ratepayers money and encouraging safer, sustainable household products."

Hazardous waste management: Hazardous waste is a waste with properties that make it potentially dangerous or harmful to human health or the environment. In regulatory terms, a waste is hazardous if it appears on a RCRA hazardous wastes list or exhibits one of the four characteristics of a hazardous waste: ignitability, corrosivity, reactivity, or toxicity. However, materials can be hazardous wastes even if they are not specifically listed or do not exhibit any characteristic of a hazardous waste. Hazardous wastes are prohibited from being disposed of in the trash, and must be properly transported and disposed of at permitted treatment, storage, and disposal facilities or at a recycling facility.

Universal waste: Universal waste comes primarily from consumer products containing mercury, lead, cadmium and other substances that are hazardous to human health and the environment. These items cannot be discarded in household trash nor disposed of in landfills. Examples of universal waste are batteries, fluorescent tubes, and many electronic devices. Under both state and federal law and regulation, universal wastes are authorized to be managed in a less stringent manner than hazardous waste.

Hazardous waste manifests: The Uniform Hazardous Waste Manifest is the shipping document that travels with hazardous waste from the point of generation, through transportation, to the final treatment, storage, and disposal facility. Each party in the chain of shipping, including the generator, signs and keeps one of the manifest copies, creating a "cradle-to-grave" tracking of the hazardous waste. Hazardous waste transporters in California must adhere to regulations regarding proper containment and management of the hazardous waste, and hence must be registered with DTSC.

Household hazardous waste collection: Many common household products are also hazardous, and when these products are discarded, they become "household hazardous waste." Common HHW includes, but is not limited to, antifreeze, glue and adhesives, pesticides, used oil, batteries, electronic wastes, and household cleaners. In California, HHW is prohibited from being disposed of in the trash, down the drain, or by abandonment, and must be disposed of through a Household Hazardous Waste Program. Most HHW programs are run by local government agencies such as a city or county.

California's Statewide Commission on Recycling Markets and Curbside Recycling: In 2019, Governor Newsom signed into law The California Recycling Market Development Act (AB 1583, Eggman, Chapter 690, Statutes of 2019), which required CalRecycle to convene, by July 1, 2020, a Statewide Commission on Recycling Markets and Curbside Recycling consisting of representatives of public agencies, private solid waste enterprises, and environmental organizations that have expertise in recycling. Below is one of the policy recommendations from the Commission's June 30, 2022 report:

> "Policy 20-01: Extending Producer Responsibilities Framework for Household Hazardous Waste (HHW) Primary Authors: Ward and Sanborn Adopted: December 18, 2020 Revised: March 16 & June 1, 2022

Background: Extended Producer Responsibility (EPR) is a policy strategy used widely around the world for HHW and other products to place a shared responsibility for end-of-life product management on the producers, and all entities involved in the product chain, instead of the public, while encouraging product design changes that minimize a negative impact on human health and the environment at every stage of the product's lifecycle. This allows the costs of treatment and disposal to be incorporated into the total cost of a product. It places primary responsibility on the producer, or brand owner, who makes design and marketing decisions. It also creates a setting for markets to emerge that truly reflect the environmental impacts of a product, and to which producers and consumers respond.

In March of 2008, the California Integrated Waste Management Board adopted an EPR policy framework which still applies today. HHW is both a small proportion of discarded materials and the source of the most significant concerns related to discard management. HHW is illegal to dispose of in the trash. HHW recovery programs generally recover less than a quarter of such material disposed of at great expense. Even so, those programs are largely irrelevant with respect to the state's recovery goals and have been relatively ignored. The largest fraction of HHW remains in the materials disposed of. When improperly placed in recycling or organic materials recovery streams, HHWs pose chemical and explosive hazards within those streams, significantly increasing the costs of those operations.

The costs to manage HHW, including costs for load checking, and the construction and operation of permanent HHW facilities across the state, though a significant continuing expense, is proving inadequate to the task of removing the increasing density and diversity of hazards in materials discarded. Continuing municipal support for the diversity of HHW programs required also takes limited local funds away from other programs such as composting. Municipalities continue HHW programs in part to reduce potential long-term liabilities but have limited resources to fund a program that is sufficiently effective. If a community under-performs in its efforts to remove hazardous materials from materials landfilled, that community becomes more vulnerable to potential future expenses associated with superfund cleanups for such a landfill.

Companies selling such products have not shared these municipal expenses or liabilities. In other words, our current system for managing HHW is both a significant public expense, and also an expensive failure. If we had to grade the HHW system effectiveness, it would be an F-, not because the efforts of those providing HHW services are deficient, but because the current HHW system has proven inadequate to these challenges. To manage discards more safely and efficiently, hazardous, and explosive materials need to be a decreasing and more readily managed proportion of discards. Those are not the current trends. Because HHW is illegal to dispose of with mixed wastes, management of HHW outside of landfills is not counted as "diversion." Though the costs to properly manage HHW are quite high, mis-managed HHW poses hazards to the environment and to those in the waste management system as well as those processing organic materials and recyclables. As this is another discard stream without adequate revenues for proper management, the cost to manage the fraction of HHW that is properly handled takes limited local funds away from other programs such as composting.

EPR is used widely and successfully for HHW in British Columbia, Canada and in many other provinces and countries for products including anti-freeze, batteries, fluorescent oil, paint, pesticides, electronics, and more. California implemented the paint stewardship law in

2010 and ten years later, it is working very well. Paint is being reused first, then recycled, and only disposed of when it has no higher and better use. This program is saving local governments millions of dollars they previously spent annually managing just paint. We believe it is in the best interests of California to move as quickly as possible toward EPR for all HHW to ensure all HHW is fully funded for proper management that is convenient and safe while preserving limited local funds for other mandated diversion programs.

CalRecycle just completed another HHW grant cycle HD-37 which was underfunded and only 20 of 25 grants were funded. The government will never have enough money to fund these programs, therefore, we need the producers who profit to provide the funding and management of these systems. There is an urgent need to reduce the fire risks posed by HHW considering the extended duration and increasing severity of California's fire season. In October 2019, a trash truck caught fire in the foothills of the San Bernardino Mountains. When the driver unloaded the truck to try to extinguish the flames, winds spread the fire quickly to the surrounding hillsides, soon encompassing 500 acres. Within minutes the fire had spread to a mobile home community, leading to the deaths of two people and the destruction of dozens of homes, burning over 1,000 acres. Though the source of the fires is under investigation, this Commission believes that action is required to reduce known sources of fires including lithium-ion batteries. Additionally, the South Bayside Waste Management Authority had a 4-alarm fire at their Recycling Processing Center (80,000 tons per year) in San Carlos, California which they believe was directly caused by an (almost) expired lithium-Ion battery. This incident resulted in over $8.5M in damages. This vital facility was closed for four months, 50+ employees were furloughed, and the building was not fully operational for a year. They were extremely fortunate to report that no facility workers or any of the 100 firefighters were injured in this incident. They may not be so fortunate in future incidents. Additional threats to their solid waste program from this incident include a dramatic, five-fold increase in property insurance premiums; a rapidly shrinking pool of insurers willing to write coverage for recycling facilities; and the real possibility of having to self-insure their facilities in the future.

This agency believes that self-insurance may not be financially feasible. Furthermore, customers are often confused about which products are hazardous and how to properly dispose of them. Containers placed in recycling bins that contain residual amounts of hazardous products, such as pesticides, contaminate recycling streams and pose occupational hazards to people working in recovery and discard operations. Hazardous product residuals fundamentally impede recovery of post-consumer plastic for food-grade applications.

Policy Proposal: The Commission recommends that California pass EPR framework legislation to establish and maintain a convenient and fully-funded recovery system for all hazardous products - including residuals and their containers as they are contaminants to other recycling/composting streams. In the absence of such a system, the variety and volume of hazards in the discard and recovery streams continues to expand. Such hazards currently include potentially explosive batteries and hazardous fluids that cannot be safely removed. The disposal of Lithium-Ion batteries in the trash and recycling whether separate or in products represents a clear and present safety danger to our industry's frontline workers, as well as an existential threat to the recycling industry's ability to secure proper insurance coverage for these valuable facilities. No insurance means no facilities, no jobs, and no programs. Lithium-ion batteries and their increasing diversity of uses are one of the most significant increasing fire hazards for discard management and processing operations. For

some facilities, several fires can be directly traced back to such batteries. From either a public safety, fire control, or insurance cost-control perspective, getting batteries that pose flammable and explosive hazards out of the discard stream is an urgent priority.

The California Legislature has considered, but not yet adopted, an EPR framework for HHW. In 2022, it remains unclear whether CalRecycle or DTSC has final authority over HHW management in California. Failure to delegate the responsibility to one responsible Department that is empowered to choose categories of HHW that are able to start new EPR programs for product categories such as all pesticides or all gas cylinders, ensures the Legislature will have to craft new EPR systems one product at a time. If the Legislature finds that EPR is the right policy tool for HHW, staff from both departments should be consulted and, and the legislature should clearly designate a single Department for administration of EPR programs. The Legislature could determine how many products per year can be put under EPR systems or leave it to that Department to determine or put a final deadline that all HHW be put under EPR by 2030, for example. The producer responsibility programs developed in California have separate legislation, rules and regulations. This makes consistent reliable management of these separate programs at best disjointed, inefficient, and not an even playing field for respective product stewardship programs."

This bill: Requires manufacturers of specified products that are hazardous at the end of the life of the product to be responsible for the end of life management of those products. SB 1143 requires these manufacturers to form a PRO that will be in charge of setting up a program where consumers can, at no cost, dispose of their products, which will be safely managed. While many local governments have HHW facilities that provide this service, many consumers are either unaware that these facilities exist or the facilities are not conveniently located, thereby resulting in consumers improperly disposing of these products. Ensuring that manufacturers take responsibility for managing the end of life of their products that pose a hazard to human health and the environment is a reasonable and fair policy.

Arguments in support: According to the California Product Stewardship Council (CPSC): "HHW materials are one of the highest cost wastes per pound for local governments to manage. These costs can easily exceed $0.50/lb. ($1,000.00/ton) on average as compared to municipal solid waste at an average of $100.00/ton, commingled recyclables at around $150.00/ton, and organics averaging $125.00/ton. Costs can be dramatically reduced if the producers were required to absorb these costs through EPR. They would be more likely to design their products to be less toxic and less costly if they bore this cost burden, rather than local governments.

Based on CPSC's experience working on EPR programs for HHW and other products, we support SB 1143. We appreciate SB 1143's promotion of less toxic products to reduce the environmental and public health risks posed by household hazardous waste. We also appreciate SB 1143's inclusion of reuse language which is a critical component to creating a circular economy for the covered products. We encourage the strengthening of the language around the baseline to include the government, so that program will include a reimbursement for all HHW, not just improperly disposed.

SB 1143 is a critical piece of legislation for creating an end-of-life solution for various problematic products that currently have no permanent collection and management program. For the reasons listed above, we are proud to support SB 1143."

Arguments in Opposition: According to a coalition writing in opposition, "While we appreciate the author's intent and believe there are opportunities to improve collection and end-of-life management of HHW in the state, there are efforts underway at the Department of Toxic Substances Control (DTSC) which will inform this work in the near future. We are also concerned with bandwidth challenges for industry and government agencies working to implement the groundbreaking SB 54. Simultaneously, producers are laying the foundation for a first-in-the-nation HHW EPR program in Vermont, an endeavor complicated by compressed timelines, uncertain costs, and the limited availability of capable service providers.

We appreciate the author's collaborative approach to solving complex environmental stewardship initiatives and are committed to being productive partners. As amended, the bill includes a series of new and premature mandates intended to remedy decades of government operated hazardous waste management deficiencies. The amendments will serve as unnecessary complications that, in the absence of a broader needs assessment, will undermine the viability of the proposal. We request SB 1143 be amended to require an industry funded needs assessment and expand the PaintCare program to include additional products which has industry support.

While we can appreciate the recent amendments to limit the scope of products included in SB 1143, the current language will create confusion and a potentially unfair treatment of different products under the law. For these reasons, we are opposed to SB 1143 as currently written. We are committed to engaging in constructive dialogue to find viable solutions to HWW across California. We welcome any opportunity to discuss the bill and its impact on our industry and consumers. Thank you in advance for your consideration of the points outlined in this letter and your leadership on this important matter."

Double-referral: Should this bill pass this committee, it will be re-referred to the Assembly Natural Resources Committee.

Related legislation:

1) AB 2481 (Smith, Chapter 499, Statutes of 2022). Makes various changes to statutory requirements for the transportation of hazardous waste and the operation of HHW collection facilities.

2) AB 698 (ESTM Committee, Chapter 153, Statutes of 2021). Updates terms within the HWCL to conform to recent changes in federal hazardous waste regulation promulgated by the US EPA under their Generator Improvement Rule.

3) SB 552 (Archuleta, Chapter 481, Statutes of 2019). Authorizes the use of consolidated manifests in the transportation of HHW in door-to-door HHW collection programs.

4) SB 726 (Caballero, Chapter 485, Statutes of 2019). Authorizes a public agency's contractor to conduct HHW materials exchange programs.

5) AB 1597 (ESTM Committee, Chapter 133, Statutes of 2019). Authorizes the state's hazardous waste management manifest requirements to be satisfied through the use of the US EPA's electronic manifest system.

REGISTERED SUPPORT / OPPOSITION:

Support

5 Gyres Institute
7th Generation Advisors
American Coatings Association
Atrium 916
Ban Single Use Plastic (SUP)
California Association of Environmental Health Administrators (CAEHA)
California Environmental Voters (formerly CLCV)
California Product Stewardship Council
California Professional Firefighters
Californians Against Waste
Center for Environmental Health
City of Sunnyvale
City of Thousand Oaks
Clean Water Action
Cleanearth4kids.org
County of San Joaquin
Cupertino; City of
Despray Environmental
Elders Climate Action Nor Cal and SoCal Chapters
Environmental Working Group
Greenwaste Recovery
Junior Philanthropists Foundation
League of California Cities
Los Angeles County Sanitation Districts
Marin Sanitary Service
Mojave Desert and Mountain Recycling Authority
Napa Recycling and Waste Services
National Stewardship Action Council
North American Hazardous Materials Management Association
Northern California Recycling Association
Pesticide Action Network
Product Stewardship Institute
Recology
Regen Monterey
Resource Recovery Coalition of California
Rethinkwaste
Rural County Representatives of California (RCRC)
Santa Barbara County Board of Supervisors
Sea Hugger
Stopwaste
Sustainable Mill Valley
The Story of Stuff Project
Turtle Island Restoration Network
Waste Connections, INC.
West Contra Costa Integrated Waste Management Authority
WM
Zero Waste Marin Joint Powers Authority

Zero Waste Sonoma
Zero Waste USA

Opposition

American Chemistry Council
American Cleaning Institute
Cal Chamber
CalCIMA
California Manufacturers & Technology Association
California Pool & Spa Association
California Retailers Association
Can Manufacturers Institute
Chemical Industry Council of California
Consumer Brands Association
Household and Commercial Products Association
Industrial Environmental Association
National Aerosol Association
Redwood Materials Inc.
Responsible Industry for A Sound Environment - RISE
Western Aerosol Information Bureau
Western Plant Health Association

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

Date of Hearing: June 25, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
SB 1234 (Allen) – As Amended June 10, 2024

SENATE VOTE: 37-0

SUBJECT: Hazardous materials: metal shredding facilities

SUMMARY: Establishes permitting requirements for new and existing metal shredding facilities. Requires an owner or operator of an existing metal shredding facility, within 120 days after the effective date of this bill, to submit to the Department of Toxic Substances Control (DTSC), for review and approval, specified information that is required for a metal shredding facility permit. Specifically, **this bill**:

1) Defines "chemically treated metal shredder residue" or "CTMSR" as the waste generated from the shredding and processing of metallic materials, which may include, but is not limited to, end-of-life vehicles, appliances, and other metal-containing items, by a metal shredding facility where recoverable ferrous or nonferrous metals have been removed and the remaining metal shredder residue has been treated by a waste stabilization process.

2) Defines "Department" as DTSC.

3) Defines "existing metal shredding facility" as a metal shredding facility that is conducting metal shredding and metal processing operations as of the enacted date of this bill.

4) Defines "light fibrous material" as a fibrous mixture of nonmetallic materials, including, but not limited to, synthetic fabric and carpet fibers, and entrained metallic particles, often representing the lightest fraction of metal shredder aggregate produced from the shredding of end-of-life vehicles and other metallic items that is susceptible to dispersal into the environment.

5) Defines "metal processing operations" as the stockpiling and handling of metal shredder aggregate, the operations undertaken to separate, sort, and remove ferrous or nonferrous scrap metal from metal shredder aggregate, and the treatment and storage of metal shredder residue.

6) Defines "metal shredder aggregate" as the mixture of shredded metallic and nonmetallic materials that is produced by the shredding of feedstock and that is subsequently processed for the purpose of separating, sorting, and removing ferrous metals, nonferrous metals, or other recyclable commodities from nonrecyclable materials.

7) Defines "metal shredding facility" as the entire site and all contiguous properties under the control of the owner or operator of a facility that conducts metal shredding and metal processing operations for the purpose of processing end-of-life vehicles, appliances, or other metallic feedstock materials in order to facilitate the sizing, separation, sorting, or removal of recoverable ferrous or nonferrous metals from nonrecyclable materials.

8) Defines "new metal shredding facility" as a metal shredding facility that had not commenced metal shredding and metal processing operations as of the date that the act adding this bill is signed into law by the Governor.

9) Repeals any nonhazardous determination issued by DTSC or its predecessor, the State Department of Health Services, to any metal shredding facility pursuant to Section 66260.200(f) of Title 22 of the California Code of Regulations.

10) Prohibits a local agency from deeming a metal shredding facility operating pursuant to this bill to be conducting hazardous waste treatment or storage operations for the purposes of making a land use decision.

11) Requires DTSC to adopt regulations to implement this bill.

12) Prohibits a metal shredding facility from operating in California, unless it has a permit issued by DTSC or is deemed to have a permit from DTSC pursuant to this bill.

13) Provides that the owner or operator of an existing metal shredding facility shall be deemed to have a permit from DTSC pursuant to this bill if, on the effective date of the bill, it is operating in accordance with the requirements of this bill and any regulations adopted by DTSC to implement this chapter.

14) Authorizes the owner or operator of an existing metal shredding facility that is deemed to have a permit shall to continue to be deemed to have a permit for as long as they continuously operate the metal shredding facility in accordance with the requirements of this bill and any regulations adopted by DTSC to implement this bill.

15) Requires, no later than 120 days after the effective date of the bill, the owner or operator of an existing metal shredding facility to provide all of the following information to DTSC for review and approval:

    a) A description of the metal processing operations conducted at the metal shredding facility, including all equipment used for this purpose;

    b) A metal shredding facility inspection plan;

    c) A closure plan;

    d) A current closure cost estimate;

    e) A corrective action cost estimate, if any;

    f) A metal shredding facility housekeeping plan:

    g) An inventory management plan;

    h) A preparedness and prevention plan;

    i) A contingency plan;

    j) A flood plain map, if applicable; and,

k) Evidence of financial assurance consistent with the requirements of the California Hazardous Waste Control Law (HWCL).

16) Exempts from the requirements of the California Environmental Quality Act (CEQA; Division 13 (commencing with Section 21000) of the Public Resources Code) the review or approval of the information provided by the owner or operator of an existing metal shredding facility to DTSC.

17) Requires the owner or operator of a new metal shredding facility to submit an application to DTSC for a metal shredding facility permit and prohibits operations at the new metal shredding facility until DTSC issues a permit for the new metal shredding facility.

18) Exempts from CEQA requirements the approval of an application for a metal shredding facility permit for a new metal shredding facility.

19) Requires the owner or operator of a metal shredding facility to operate the metal shredding facility in accordance with all of the following requirements:

(a) The metal shredding facility shall be located, designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of any of the following into air, soil, or surface water that could threaten human health or the environment: in-process materials or components thereof, including metal shredder aggregate and light fibrous material; hazardous waste; and, hazardous waste constituents.

b) Requires the owner or operator of the metal shredding facility to develop and follow an inbound source control policy to prevent the shredding of any of the following materials or wastes at the metal shredding facility:

i) Federal Resource Conservation and Recovery Act (RCRA) hazardous waste, and non-RCRA hazardous waste;

ii) Asbestos and asbestos-containing materials, except incidental asbestos-containing material that may be contained inside equipment and is not visible upon inspection;

iii) Radioactive materials;

iv) Petroleum-based wastes, including, but not limited to, used gasoline and diesel;

v) Polychlorinated biphenyls (PCB) materials and wastes, including, but not limited to, capacitors, electrical transformers, and transformer components;

vi) Fluorescent light ballasts, fluorescent lamps, neon, and high-intensity or mercury vapor lights;

vii) Military ordnance, except ordnance designated specifically as "Material Designated as Safe";

viiih) Explosives, explosive residues, fireworks, and other incendiary materials;

ix) Regulated electronic waste;

x) Mercury-containing devices;

xi) Batteries, including, but not limited to, lead-acid batteries and lithium-ion batteries; and,

xii) Compressed gas cylinders and propane canisters, unless empty and disabled.

c) Requires the owner or operator of the metal shredding facility to develop and implement procedures for any depollution operations that are conducted at the metal shredding facility involving the removal of automotive fuels, lubricating oils, refrigerants, and materials that require special handling, including procedures for the proper management of those materials or wastes that are removed during depollution operations.

d) Requires metal shredder aggregate that is transported to an offsite metal shredding facility, for the purposes of processing, to be tarped or otherwise contained during shipment and transported in a manner that prevents its release into the environment.

20) Deems the following materials non-hazardous waste, if managed in accordance with this bill:

a) Scrap metal;

b) Metal shredder aggregate that is managed in specified ways;

c) Intermediate or finished metal products that are subject to further processing to improve product quality;

d) Ferrous and nonferrous metal commodities that are separated or removed from metal shredder aggregate at a metal shredding facility;

e) Nonmetallic recyclable items recovered from metal shredder aggregate for which a market exists; and,

f) Chemically treated metal shredder residue that is treated and managed in accordance with the conditions set forth in this bill.

21) Deems chemically treated metal shredder residue not hazardous waste after waste stabilization if specified conditions are met.

22) Requires the owner or operator of a metal shredding facility to provide DTSC with immediate notice of a fire or other incident at the metal shredding facility that requires the assistance of a local fire department or other first responder. This notice shall be in addition to any notice that is required to be made to the Office of Emergency Services or any other agency under applicable law.

23) Requires the owner or operator of a metal shredding facility to establish an effective means of providing public notice to members of the surrounding community upon the occurrence of a fire or other incident at the metal shredding facility that requires the assistance of a local fire department or other first responder.

24) Requires the owner or operator of a metal shredding facility to have a written closure plan subject to approval of DTSC.

25) Requires the written closure plan to address all of the following:

    a) The closure and removal of all feedstock, metal shredder aggregate, and treated and untreated metal shredder residue;

    b) The decontamination of equipment and operating areas used for processing metal shredder aggregate; and,

    c) The treatment of metal shredder residue and management of chemically treated metal shredder residue.

26) Authorizes DTSC to collect an annual fee from all metal shredding facilities that are subject to the requirements of this bill.

27) Authorizes any authority granted to DTSC under the HWCL to be used to enforce this bill, including, but not limited to, the authority to suspend the authorization of any metal shredding facility that has been determined to pose an imminent and substantial endangerment to human health or the environment.

28) Repeals existing statute dealing with metal shredding facilities.

EXISTING LAW:

1) Requires DTSC to enforce the standards within the HWCL and the regulations adopted by DTSC pursuant to the HWCL. (Health and Safety Code (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) Requires DTSC, on or before January 1, 2018, to adopt regulations establishing or updating criteria used for the issuance of a new or modified permit or renewal of a permit, which may include criteria for the denial or suspension of a permit. (HSC § 25200.21)

6) Creates within DTSC the Board of Environmental Safety (Board), consisting of five voting members; requires the Board to set regulatory fees, hear and decide appeals of hazardous waste facility permit decisions, provide opportunities for public hearings on permitted or remediation sites, review and consider for approval the director of DTSC's annual priorities, conduct an analysis of DTSC's regulatory fee structure, and conduct an analysis of DTSC's programs. (HSC § 25125)

7) Authorizes DTSC, in consultation with the Department of Resources, Recycling and Recovery, the State Water Resources Control Board, and affected local air quality

management districts, to adopt regulations establishing management standards for metal shredding facilities for hazardous waste management activities within DTSC's jurisdiction as an alternative to the requirements specified in the HWCL (this authority expired on January 1, 2018). (HSC § 25150.82 (c))

8) Authorizes DTSC to collect an annual fee from all metal shredding facilities that are subject to the requirements of the HWCL or to the alternative management standards adopted pursuant to HSC § 25150.82. Requires DTSC to establish and adopt regulations necessary to administer this fee and to establish a fee schedule that is set at a rate sufficient to reimburse DTSC's costs to implement the HWCL as applicable to metal shredder facilities. Authorizes the fee schedule established by DTSC to be updated periodically as necessary and requires the assessment to be no more than the reasonable and necessary cost of DTSC to implement the HWCL, as applicable to metal shredder facilities. (HSC § 25150.84 (a))

9) Defines "metal shredding facility" as an operation that uses a shredding technique to process end-of-life vehicles, appliances, and other forms of scrap metal to facilitate the separation and sorting of ferrous metals, nonferrous metals, and other recyclable materials from nonrecyclable materials that are components of the end-of-life vehicles, appliances, and other forms of scrap metal. "Metal shredding facility" does not include a feeder yard, a metal crusher, or a metal baler, if that facility does not otherwise conduct metal shredding operations. (HSC § 25150.82 (b))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Metal shredding facilities recycle millions of end-of-life vehicles, household appliances, and other metallic items produced annually in California. Unless recycled, these materials would rapidly overwhelm all available landfill capacity, contributing to urban blight, creating massive accumulations of abandoned cars and appliances, and posing threats to public safety and welfare. Instead, recovered material is valuable feedstock for manufacturing. By providing a reliable and effective means of recycling these huge volumes of material, metal shredding facilities are a critical part of the State’s infrastructure and essential to a successful circular economy.

Metal shredding can also pose significant concerns to surrounding communities, however, due to potential exposure to hazardous materials and potential fires. However, under existing law, because scrap metal is excluded from the definitions of waste and hazardous waste, these facilities are not permitted by Department of Toxic Substances Control (DTSC). Without a comprehensive regulatory framework, DTSC has been regulating the industry using existing hazardous waste enforcement authority on a facility-by-facility basis.

The industry and DTSC have both acknowledged that a comprehensive regulatory program that recognizes the unique nature and importance of scrap metal is in the best interest of the industry, the state, and communities living near these facilities; and have engaged in years of discussion about the appropriate nature of regulation for this important industry. SB 1234 establishes that new comprehensive framework to ensure safe regulation of metal shredding facilities in California. The new framework would be administered and enforced by DTSC and mirrors the Department’s existing regimes."

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 hazardous waste laws and regulations. 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, including hazardous waste generation, 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 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, ensuring a public process on the permitting of hazardous waste facilities.

Tiered permitting of hazardous waste facilities: California has a five-tiered permitting program, with each tier matching the degree of risk posed by the hazardous waste facility. The five permitting tiers are: full permit, standardized permit, permit by rule (PBR), conditional authorization, and conditional exemption.

The Full Permit tier: This tier includes all facilities requiring a RCRA permit in addition to facilities performing selected non-RCRA activities pursuant to Title 22 of the California Code of Regulations. Any person who stores, treats, or disposes of hazardous waste as described in the HWCL, must obtain a permit or a grant of authorization from DTSC. The Full Permit involves considerable document preparation and review, substantial fees, and various other requirements.

The Standardized Permit tier: This tier includes some facilities that manage waste not regulated under RCRA, but are regulated as a hazardous waste in California (i.e., non-RCRA hazardous waste). Examples of facilities that may be eligible for authorization under a standardized permit include, but are not limited to, used oil transfer/storage facilities and precious metal recyclers. A facility with a Standardized Permit must comply with most of the operational requirements applicable to a full-permit facility, but the permit application process has been simplified and annual facility fees are lower than for a full permit.

The Permit by Rule (PBR) tier: This tier is a non-RCRA onsite treatment permit for specific waste streams and treatment processes. Example waste streams and treatment processes that may fall under the PBR tier include, but are not limited to, concentrated metal-bearing wastes, concentrated acids or alkalis, wastes posing multiple hazards, and silver recovery.

The Conditional Authorization (CA) tier: This tier is a non-RCRA hazardous waste onsite treatment authorization for specific waste streams.

The Conditional Exemption (CE) tier: This tier is a non-RCRA hazardous waste onsite treatment authorization for small-quantity treatment and other low-risk treatment. Example treatment processes that may fall under the CE tier include, but are not limited to, oil-water separation, container rinsing or destruction, gravity settling, and some neutralization.

The requirements in SB 1234 are similar to the requirements for facilities within the PBR tier.

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.

Violations Scoring Procedure (VSP): SB 673 (Lara, Chapter 611, Statutes of 2015) required DTSC to update its permitting criteria for hazardous waste facilities. To comply with SB 673, in 2019 DTSC adopted regulations for the VSP review of a hazardous waste facility's compliance history and the assignment of a score to that facility. DTSC uses the information from the VSP when it reviews a facility's renewal permit application.

It is unclear if the VSP would apply to the compliance history of metal shredding facilities permitted pursuant to SB 1234.

Board of Environmental Safety (Board): Senate Bill 158 (Committee on Budget and Fiscal Review, Chapter 73, Statutes of 2021) created the Board to improve DTSC's transparency, accountability, and fiscal stability. The Board is comprised of 4 part-time members and one full-time member. Three of the Board members are appointed by the Governor, including the full-time Board Chair, and subject to confirmation by the Senate. The Senate and Assembly each appoint one additional member.

The Board's duties and authorities include developing a multi-year schedule to develop long-term goals for DTSC's programs; reviewing and approving the Director's priorities and adopting performance metrics; adjusting fee rates based upon changes made in the annual Budget Act; hearing and deciding hazardous waste facility permit appeals; providing opportunities for public hearings on permitted and remediation sites; conducting an analysis of DTSC's fee structure; conducting an analysis of DTSC's programs and their relationship with related programs in other agencies; and, forming advisory subcommittees on any topic, including fees and environmental justice.

As SB 1234 is currently drafted, it is not clear if the permits for metal shredding facilities could be appealed to the Board.

Metal shredder facilities: California law defines a "metal shredding facility" as an operation that uses a shredding technique to process end-of-life vehicles, appliances, and other forms of scrap metal to facilitate the separation and sorting of ferrous metals, nonferrous metals, and other recyclable materials from non-recyclable materials. A "metal shredding facility" does not include a feeder yard, a metal crusher, or a metal baler, if that facility does not otherwise conduct metal shredding operations. As such, most scrap metal recycling facilities would not be subject to any proposed regulations meant to manage the waste generated from metal shredding facilities.

Metal shredder waste: The shredding of scrap metal (e.g., end-of-life vehicles) results in a mixture of recyclable materials (e.g., ferrous metals and nonferrous metals) and non-recyclable material (i.e., metal shredder waste). Aggregate is generated after the initial separation of ferrous metals and consists of nonferrous metals that can be further recovered and metal shredder waste. Metal shredder waste consists mainly of glass, fiber, rubber, automobile fluids, dirt and plastics in automobiles and household appliances that remain after the recyclable metals have been removed. Because scrap metal contains regulated hazardous constituents, it can contaminate and ultimately cause metal shredder waste to exhibit a characteristic of hazardous waste for toxicity. In a 2002 draft report on auto shredder waste, DTSC showed that metal shredder waste often exceeded the soluble threshold limit concentrations (STLCs) for lead, cadmium, and zinc.

Non-hazardous waste classification granted to metal shredding facilities: Based on the hazardous characteristics of metal shredder waste, in many instances, metal shredding facilities are hazardous waste generators and are thus subject to hazardous waste requirements, including permitting, transportation and disposal. In the late 1980s, in an effort to relieve metal shredding facilities of these requirements, the Department of Health Services (DHS) *(the predecessor of DTSC)* determined that the metal treatment fixation technologies were capable of lowering the soluble concentrations of metal shredder waste such that the treated metal shredder waste was rendered insignificant as a hazard to human health and safety, livestock, and wildlife. Seven metal shredding facilities applied for and were granted nonhazardous waste classification letters by DHS, and later DTSC, if they used the metal treatment fixation technologies. The authority to issue these classifications is found in subdivision (f) of Section 66260.200 of Title 22 of the California Code of Regulations, and these determinations are now known as "f letters." These classifications ultimately allowed treated metal shredder waste to be handled, transported, and disposed of as non-hazardous waste in class III landfills (i.e., solid (nonhazardous) waste landfills).

Legislation to address impacts of metal shredding facilities: In 2014, Senator Jerry Hill introduced SB 1249, based in part on concerns about metal shredder safety due to recent fires at metal shredding facilities in his district, but also in response to the historic concerns about metal shredding facilities and their potential impact on the environment. The intent of the bill was that the conditional nonhazardous waste classifications, as documented through the historical "f letters," be revoked and that metal shredding facilities be thoroughly evaluated and regulated to ensure adequate protection of the human health and the environment. SB 1249 (Hill, Chapter 756, Statutes of 2014) was signed by the Governor and authorized DTSC to develop alternative management standards (different from a hazardous waste facility permit) if, after a comprehensive evaluation of metal shredding facilities, DTSC determined that alternative management standards were warranted.

DTSC's implementation of SB 1249: DTSC's implementation of SB 1249 included: conducting a comprehensive evaluation of metal shredding facilities and metal shredder waste; determining if alternative management standards specific to metal shredding facilities could be developed to ensure that the management, treatment, and disposal practices related to metal shredder waste are protective of human health and the environment; preparing an analysis of activities to which the alternative standards will apply, made available to the public before any regulations were adopted; and, adopting emergency regulations establishing a fee schedule to reimburse DTSC's costs for the evaluation, analysis, and regulatory development for metal shredding facilities.

As part of this implementation, in January 2015, DTSC developed a three-year work plan to implement SB 1249. The work plan includes development of a treatability study on metal shredder wastes to demonstrate the highest level of treatment that can be achieved with the current technology, and an assessment of the potential for treated or untreated metal shredder waste to migrate off-site and impact residents or business occupants in the areas surrounding metal shredding facilities and landfills that accept metal shredder waste.

As part of the work plan, DTSC approved air monitoring summary reports for metal shredding facilities located in Bakersfield, Redwood City, and Terminal Island. Air sampling was conducted at the facilities during October 2016 to assess the potential for offsite emissions associated with the metal shredding operations.

DTSC oversight of metal shredders: DTSC has inspected and taken various enforcement actions on metal shredder facilities, as well as metal recyclers. One facility to note is Schnitzer Steel Industries, Inc. (now known as Radius Recycling), located in Oakland, in Alameda County.

Schnitzer Steel owns and operates a scrap metal recovery and recycling facility, located at 1101 Embarcadero West, Oakland, California 94607 (Facility), occupying approximately 33.2 acres adjacent to the Oakland Inner Harbor waterfront and the Port of Oakland. The Facility is bounded on the south by the Oakland Inner Harbor, to the east and west by the Port of Oakland (Howard Terminal and Roundhouse Terminal respectively), and, to the north by Embarcadero West and Union Pacific Railroad tracks. Radius Recycling is the new brand and assumed name of Schnitzer Steel as of July 2023.

Schnitzer Steel's operations at the Facility include, but are not limited to: collecting, sorting, and transporting waste metallic containing materials using conveyor belts and heavy equipment; shredding end-of-life automobiles, appliances, and other recyclable metal containing items; shearing recyclable metals; preparing and sorting ferrous and non-ferrous metal recycling feedstock; stockpiling of unprocessed feedstock, metal shredder aggregate (partially sorted shredder output) and processed metal; chemically treating residue from the metal shredding and separation operations; and, loading of processed materials for disposition.

In 2012, the Alameda County District Attorney's Office, in consultation with DTSC and the California Department of Fish and Wildlife, initiated an investigation of the area surrounding the Facility in response to alleged releases of light fibrous material (LFM). On February 3, 2021, a Stipulation for Entry of Final Judgement and Order on Consent (Stipulation) was filed and approved by the Alameda County Superior Court. Schnitzer Steel agreed to a $4.1 million settlement over allegations that it violated the state's environmental laws.

Due to concerns about ongoing releases of LFM, DTSC's Office of Criminal Investigations conducted an air monitoring study and collected samples of LFM from the ground in the areas surrounding the Facility from December 2020 to May 2023.

On February 23, 2021, DTSC ordered Schnitzer Steel, through a formal enforcement action, to clean up contamination both onsite and within the surrounding community, modify the facility as needed to prevent releases, and submit a plan to control immediate threats from metal shredding practices.

On March 30, 2022, a joint letter from DTSC, the Attorney General's Office, and the Alameda County District Attorney's Office (the "People") was sent to Schnitzer Steel notifying them of continued off-site releases and deposition of LFM from the Facility and their violation of the February 3, 2021 Stipulation. The letter included actions Schnitzer Steel must take to stop these releases. After multiple rounds of communication and DTSC's observations that LFM releases are still occurring, a final cease and desist LFM letter was sent to Schnitzer Steel by the People on July 31, 2023.

On August 9, 2023, a fire started in an unprocessed scrap metal pile at Schnitzer Steel's Facility. The next morning, DTSC inspectors responded to investigate the fire and all hazardous waste generated as a result of the fire. DTSC inspectors interviewed facility personnel, inspected the scrap metal pile, and collected samples from the fire impacted metal pile and water runoff samples. DTSC issued violations to Schnitzer Steel for failure to operate the facility to minimize the possibility of a fire and for failure to immediately notify the State Office of Emergency Services that the facility had a fire. DTSC's investigation and collaboration with other regulatory agencies on this incident are ongoing.

Currently Schnitzer Steel's hazardous waste treatment operations are being conducted under an Interim Status authority overseen by DTSC. This allows Schnitzer Steel to conduct hazardous waste treatment at the Facility until DTSC issues a decision on Schnitzer Steel's permit application.

Schnitzer Steel is an example of a metal shredding facility that has had multiple enforcement actions brought against it over the years by DTSC.

Interaction with Assembly Bill 2851: This bill is repealing some code sections in the Health and Safety Code that AB 2851 (Bonta) is seeking to amend. AB 2851 was heard and passed by this committee earlier this year. As this bill moves through the process, the author may wish to continue to coordinate with the author of AB 2851 to avoid potential code conflicts.

This bill: SB 1234 creates a regulatory structure in state law for metal shredding facilities. There are currently nine metal shredding facilities in the state, some operating under regulatory authorization from the 1980s and 1990s. Some facilities began the permitting process for a full hazardous waste facility permit and others may have less certain authorization. These facilities are an important piece of the metal recycling infrastructure in California. However, having one clear regulatory structure for all metal shredding facilities in the state makes sense. Having clear rules will be helpful for state and local regulators and facilities, and will help set the regulatory standard for future metal recycling facilities in the state.

Issues for further consideration: This is the first policy hearing for this bill. The bill was recently significantly amended and this policy has not yet been heard in a policy committee. While the regulation of metal shredding facilities is important, as the bill moves through the process, the author, committee, stakeholders and the Administration may wish to further refine a few issues:

- For other permits issued by DTSC, the details of the permit are usually done through regulations. However, this bill establishes requirements for the specific construction of a metal shredding permit. This means that any future changes to the permit conditions may have to be made by a future statutory change. It could be helpful to identify which

permitting requirements should be in statute and which requirements could be in regulation.

- The permitting requirements in this bill are more similar to the requirements for the PBR tier, rather than the requirements for a Full Permit. However, a Full Permit lasts for up to 10 years and has to be renewed; can be appealed to the Board of Environmental Safety; and, is subject to scoring under the violation scoring procedure regulation. These requirements would not apply to a metal shredder permit under this bill.

- This bill deems an existing metal shredding facility to be in compliance if the facility self certifies that it meets the requirements in the bill. Should there be a period of review and ultimate approval by DTSC before the facility is deemed to have a permit? Should the facility be inspected by DTSC for compliance before it is deemed to have a permit?

- This bill exempts the approval of both an existing and new metal shredding facility from the requirements of CEQA – is that appropriate?

- This bill, once a facility is deemed to have a permit, authorizes a metal shredding facility to conduct various activities, such as the storage and processing of metal shredder aggregate and the onsite treatment of metal shredder residue, even if a facility does not conduct these activities. Should the authorizations for a facility be tied to the actual operations of that particular facility?

- This bill deems various waste streams as "non-hazardous," such as metal shredder aggregate. Should there be some evaluation of this authorization? What if this waste stream changes over time, would it still be appropriate to be "non-hazardous"?

- This bill authorizes DTSC to impose an annual fee on metal shredding facilities to cover its regulatory costs. Perhaps DTSC should be required to impose this fee.

- This bill authorizes DTSC to use any enforcement authority it currently has for hazardous waste facilities, except the bill differs from existing authority when dealing with the ability to revoke or suspend a permit.

Arguments in support: According to the California Metals Coalition, "SB 1234 solves a problem that has threatened the economic viability of metal shredding facilities for almost a decade—the lack of clarity around how these critical facilities should be regulated. Because scrap metal is exempt from regulation under the Hazardous Waste Control Law, facilities that recycle these valuable materials fall outside the permitting program administered by the Department of Toxic Substances Control (DTSC). This bill would establish a new regulatory program tailored specifically to this industry that would be administered by DTSC under new authority. The industry has worked proactively with DTSC to address concerns raised by the agency and to improve the environmental performance of these facilities. Significant improvement has been achieved over the past few years, and the regulatory framework established by SB 1234 will ensure that these important facilities continue to operate safely and in an environmentally protective manner. The operating and performance standards have been discussed at length with DTSC and are supported by members of the industry. California's metal shredders and DTSC agree that a comprehensive regulatory program that recognizes the unique nature and importance of scrap metal is in the best interest of the industry and the state."

Arguments in opposition: According to LJT Trading, "I wanted to express my opposition to SB 1234 because applying broad regulations could disproportionately burden smaller shredding companies who are not shredding full automobiles.

The bill favors larger auto shredders, potentially creating a monopoly-like situation where smaller competitors are driven out of business. Amendments should aim to level the playing field and promote fair competition among all types of shredding operations.

The bill should focus on auto shredders that chemically treat auto shredder residue currently, rather than applying the same regulations to all metal shredders. Doing so will avoid penalizing smaller non-automotive shredders that do not pose the same environmental or operational risks."

Related legislation:

1) AB 2851 (Bonta, 2024). Requires DTSC, in consultation with local air pollution control districts and air quality management districts, to develop and implement facility-wide fence-line air quality monitoring at metal shredding facilities. This bill is pending action in the Senate Environmental Quality Committee.

2) SB 158 (Committee on Budget and Fiscal Review, Chapter 73, Statutes of 2021). Enacted several policy reforms to the programs overseen by DTSC, stabilized DTSC's funding, and created the Board.

3) SB 673 (Lara, Chapter 611, Statutes of 2015). Revised DTSC's permitting process and public participation requirements for hazardous waste facilities.

4) SB 1249 (Hill, Chapter 756, Statutes of 2014). Authorizes DTSC to adopt regulations establishing alternative management standards for hazardous waste management activities at metal shredding facilities until January 1, 2018.

REGISTERED SUPPORT / OPPOSITION:

Support

California Legislative Conference of Plumbing, Heating & Piping Industry
California Metal Recyclers Coalition
Californians Against Waste
National Electrical Contractors Association (NECA)
Recology Inc.
Republic Services
SCADA
West Coast Chapter-institute of Scrap Recycling Industries

Opposition

LJT Trading, LLC

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

Date of Hearing: June 25, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
SB 1066 (Blakespear) – As Amended April 18, 2024

SENATE VOTE: 39-0

SUBJECT: Hazardous waste: marine flares: producer responsibility

SUMMARY: Creates a producer responsibility program for marine flares with oversight from the Department of Toxic Substances Control (DTSC); defines specified terms; and, requires DTSC to adopt regulations to implement the provisions of this bill with an effective date no later than January 1, 2027. Specifically, **this bill**:

1) Establishes the Marine Flare Producer Responsibility Act (Act) of 2024 by creating a producer responsibility program for marine flares.

2) Defines several terms, including:

   a. "Approved plan" as a producer responsibility plan that has been approved DTSC, as specified, and that has not been revoked by DTSC as specified. A conditionally approved plan is an approved plan, except as specified. A partially approved plan is not an approved plan;

   b. "Collection site" as a permanent or temporary location where a covered product, as defined, is collected and prepared for transport in accordance with the provisions of this bill;

   c. "Covered product" as a pyrotechnic device that produces a brilliant light or a plume of colorful smoke as a visual distress signal on marine vessels to attract attention and pinpoint a boater’s location in an emergency;

   d. "Distributor" as a person that has a contractual relationship with one or more producers to market and sell covered products to retailers;

   e. "Importer" as either of the following: a person qualified as an importer of record, per federal law, for a covered product that is sold, distributed for sale, or offered for sale in or into the state that was manufactured or assembled by a company outside of the United States or a person importing into the state for sale, distributing for sale, or offering for sale in the state a covered product that was manufactured or assembled by a company physically located outside of the state;

   f. "Producer" as a person who manufactures a covered product and who sells, offers for sale, or distributes a covered product into the state under the person's own name or brand;

   g. "Producer responsibility organization (PRO)" as a 501(c)(3) exempt organization that is appointed by one or more producers to act as an agent on behalf of all producers to design, submit, and administer a producer responsibility plan for covered products;

h. "Producer responsibility plan" or "plan" as the plan developed by a PRO for the collection, transportation, and the safe and proper management of covered products, as specified, and submitted to DTSC for approval;

i. "Stewardship program" as a program, established by a program operator pursuant to the provisions of this bill, for free drop off, convenient, and safe collection, transportation, and proper management of covered products.

3) Provides alternative definitions for producer if there is no manufacturer of a covered product in the state.

4) Requires DTSC to adopt regulations to implement the provisions of this bill with an effective date no earlier than July 1, 2027.

5) Requires a producer of a covered product to register with a PRO.

6) Requires a producer to notify DTSC within 30 days of the effective date of DTSC's regulations that they have registered with a PRO.

7) Prohibits a producer from selling, offering for sale, importing or distributing a covered product unless they have registered with a PRO, the covered product is accounted in the plan, and DTSC has approved the PRO's plan.

8) Authorizes DTSC to establish performance standards for the PRO.

9) Requires a PRO, within 9 months of the effective date of the regulations, to prepare and submit a product responsibility plan to DTSC. Requires the plan to include specified elements, including a funding mechanism that provides sufficient funding to carry out the plan and a comprehensive statewide education and outreach program designed to educate consumers and promote participation in the program offered by the PRO.

10) Requires, within 90 days of receipt of the plan, DTSC to approve, approve in part, or disapprove the plan, as provided. Requires a PRO to resubmit a plan if its plan is not fully approved.

11) Requires a PRO to implement the approved plan within 90 days of approval of the plan by DTSC. Requires the plan to be fully funded in a manner that equitably distributes the plan’s costs among participant producers that reflects sales volumes and the cost to manage the covered products that a producer produces.

12) Requires a PRO to review the approved plan every 5 years and make revisions if necessary.

13) Requires the PRO to retain specified documents, annually audit its accounting books, and make documents available to DTSC for review, as specified. Requires all reports and records provided to DTSC under the provisions of this bill to be provided under the penalty of perjury.

14) Requires a participant producer, through the PRO, to pay DTSC, on an unspecified schedule, an annual administrative charge, as determined by DTSC. Specifies the charge be set at an amount that is adequate to cover DTSC's full costs of administering and enforcing the provisions of this bill.

15) Provides for the imposition of administrative civil penalties upon any person who violates the provisions of this bill: $10,000 per day or $50,000 per day if the violation is intentional or knowing.

16) Establishes the Marine Flare Recovery Fund in the State Treasury and requires the administrative charges collected by DTSC to be deposited into that account for expenditure by DTSC, upon appropriation by the Legislature, to cover DTSC's cost to implement and enforce the provisions of this bill.

17) Establishes the Marine Flare Recovery Penalty Account in the Marie Flare Recovery Fund and requires that the civil penalties collected by DTSC pursuant to the Act be deposited in that account, for expenditure by DTSC, upon appropriation by the Legislature, on activities related to the collection, reuse, and safe and proper management of covered products, grants for related purposes, and the administration and enforcement of the provisions of this bill.

18) Includes antitrust immunity by stating that an action that is taken by a producer or producer responsibility organization is not a violation of the Cartwright Act, the Unfair Practices Act, or the Unfair Competition Law to the extent the producer or producer responsibility organization is exercising authority pursuant to the provisions of this bill.

EXISTING LAW:

1) Establishes the federal Resource Conservation and Recovery Act (RCRA) to authorize the United States Environmental Protection Agency (US EPA) to manage hazardous and non-hazardous wastes throughout their life cycles. (42 United States Code (U.S.C.) § 6901 et seq.)

2) Establishes the Hazardous Waste Control Law (HWCL) to authorize DTSC to regulate the management of hazardous wastes in California. (Health and Safety Code (HSC) § 25100 et seq.)

3) Defines "waste" as any solid, liquid, semisolid, or contained gaseous discarded material. (HSC § 25124)

4) Requires DTSC to prepare, adopt and revise when appropriate, a listing of the wastes that are determined to be hazardous, and a listing of the wastes that are determined to be extremely hazardous. Requires DTSC, when identifying such wastes, to consider, but not be limited to, the immediate or persistent toxic effects to humans and wildlife and the resistance to natural degradation or detoxification of the wastes. (HSC § 25140)

5) Defines a "hazardous waste" as waste, that, because of its quantity, concentration, or physical, chemical, or infectious characteristics:

a. Causes, or significantly contributes to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or,

b. Poses a substantial present or potential hazard to human health or the environment, due to factors including, but not limited to, carcinogenicity, acute toxicity, chronic toxicity, bio accumulative properties, or persistence in the environment, when improperly treated, stored, transported, disposed of, or otherwise managed. (HSC § 25141(b))

6) Prohibits the disposal of any hazardous waste when the disposal is at a facility that does not have a permit from DTSC. (HSC § 25189.5)

7) Prohibits the owner or operator of a storage facility, treatment facility, transfer facility, resource recovery facility, or disposal site from accepting, treating, storing, or disposing of hazardous waste at the facility, area, or site, unless the owner or operator holds a hazardous waste facility permit or other grant of authorization from DTSC. (HSC § 25201)

Under federal regulation:

8) States that no person may use a boat unless each signal required by the regulation on visual distress signals is in serviceable condition and the service life of the signal, if indicated by a date marked on the signal, has not expired. (33 Code of Federal Regulations (CFR) 175.125)

9) Establishes that no person may use a boat 16 feet or more in length, or any boat operating as an uninspected passenger vessel subject to specified requirements, unless visual distress signals from a specified list or the alternatives list, in the number required, are onboard. Devices suitable for day use and devices suitable for night use, or devices suitable for both day and night use, must be carried. (33 CFR 175.110 (a))

10) Requires that between sunset and sunrise, no person may use a boat less than 16 feet in length unless visual distress signals suitable for night use, selected from a specified list, in the number required, are on board. (33 CFR 175.110(b))

11) States that any of the following signals, when carried in the number required, can be used to meet the requirements of visual distress signals. States that any combination of signal devices selected, when carried in the number required, may be used to meet both day and night requirements:

a. An electric distress light meeting specified standards. One is required to meet the night only requirement.

b. An orange flag meeting specified standards. One is required to meet the day only requirement.

c. Pyrotechnics meeting specified standards. (33 CFR 175.130(a)(b))

12) Requires that if pyrotechnics are used to meet the visual distress requirements, 3 are carried at minimum, as specified. (33 CFR 175.130 (table))

13) An individual who knowingly and willfully communicates a false distress message to the United States Coast Guard (USCG) or causes the USCG to attempt to save lives and property

when no help is needed is guilty of a class D felony; subject to a civil penalty of not more than $5,000; and, liable for all costs the USCG incurs as a result of the individual's action. (14 USC 88)

FISCAL EFFECT: Unknown

COMMENTS:

Need for bill: According to the author:

"The U.S. Coast Guard requires boats operating in coastal waters to have approved visual distress signals. To meet this requirement, many boaters carry three marine flares—a pyrotechnic device that produces bright light or colorful smoke to attract attention in an emergency. These flares need to be replaced about every three years, amounting to 174,000 flares expiring each year in California.

Properly disposing of flares is extremely difficult. The California Department of Toxic Substances Control and the Environmental Protection Agency classify unwanted and/or expired marine flares as hazardous waste that cannot be disposed of in waterways or the trash. They contain toxic metals and other pollutants that can contaminate water and impair thyroid function.

Flares are also reactive and ignitable, meaning they must be handled and transported as explosive devices. The Bureau of Alcohol, Tobacco, Firearms and Explosives requires flares be transported by a licensed hazardous waste authorized driver and stored in a Class 4 magazine. Moreover, only three facilities in the U.S. are permitted to accept and dispose of non-military explosive waste and none are in California.

Occasionally some counties will temporarily collect marine flares, but this can be expensive. Zero Waste Sonoma recently disposed of flares at a cost of $185 each (new flares sell for about $13). This includes transporting the flares around 2000 miles to reach a facility in Missouri.

Boaters in coastal communities across California are frustrated by the lack of disposal options for flares, with some stockpiling them or illegally disposing of them in trash or waterways.

SB 1066 will require producers of marine flares to create an extended producer responsibility (EPR) program that establishes a free and convenient statewide collection program to properly dispose of marine flares. This bill will solve the marine flare management crisis for boaters while protecting California’s water quality."

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 hazardous waste laws and regulations. Any person who stores, treats, or disposes of hazardous waste must obtain a permit from DTSC, under HWCL. The HWCL covers the entire management of hazardous waste, including hazardous waste generation, 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 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, ensuring a public process on the permitting of hazardous waste facilities.

Extended producer responsibility (EPR): The Department of Resources Recycling and Recovery's (CalRecycle's) website describes EPR as an environmental policy approach that holds producers responsible for product management throughout the product's lifecycle. EPR supports recycling and materials management goals that contribute to a circular economy and can also encourage product design changes that minimize environmental impacts. An EPR program is intended to reduce recycling costs for local governments, make recycling convenient for consumers, and is run by a PRO. Typically, PROs establish material collection sites, educate the public on how to use the EPR program, and ensure that products make it to a responsible end market. EPRs are intended for products that are difficult to recycle and can include products that are dangerous or expensive to manage in the waste stream. General requirements of a PRO include; equitable participation by individual producers; being a 501 (c)(3) nonprofit industry group formed by the regulated business; and, state agency oversight of the PRO.

In general, the PRO is responsible for:

- Education and outreach;
- Collecting, transporting, and processing materials;
- Creating incentives for reuse or design innovations;
- Reimbursing the state agency for administration, enforcement, and oversight costs;
- Keeping a record of the program data and making it available to the state agency overseeing the program; and,
- Developing a plan that must be submitted and approved by the state agency according to regulations set to meet requirements of statute.

There are six listed EPR programs on CalRecycle's website, the first of which were established in 2010 for carpet and paint. Then, an EPR program pharmaceuticals and sharps followed by one for used mattresses. The two most recent programs cover single use packaging and plastic single-use food service ware and household batteries. CalRecycle's website includes annual reporting that provides a list of compliant manufacturers, distributors, or brands. CalRecycle's data dashboards available online include; the number of drop off locations in the state; the percent of Californian's with convenient access; the percent of items diverted from landfill; the pounds of materials diverted; and, the items collected since the program was started. Most of these EPR programs have many registered manufacturers responsible for the costs of the program. For example, the California Stewardship Paint Program has 220 registered manufacturers as of June 4, 2024.

Universal Waste and Household Hazardous Waste (HHW) Facilities: Households and businesses often have items that are composed of materials that can pose a threat to humans, animals or the environment and cannot be tossed into the regular trash. Instead, these materials require proper facilities to dispose of them accordingly. Universal waste includes electronic

devices, batteries, mercury thermostats, and fluorescent lamps. Hazardous waste includes flammables, poisons, pesticides, and latex paint which require specific handling and disposal. These facilities provide members of the community with a way to safely dispose of items they use at home. Most HHW facilities don't meet the building requirements to hold a permit for managing explosives like marine flares.

Marine flares and their use: A marine flare is a pyrotechnic device that produces a brilliant light or plume of colorful smoke as a visual distress signal to signify an emergency. The signal helps pinpoint the exact location of the boater in distress. Handheld flares (which operate on the ground) and rocket flares (which are fired into the air) are the two most-used visual distress signals because they can be used for daytime or nighttime. These visual distress signals are also preferred due to their visibility range up to an estimated 10 miles during daylight and 40 miles at night time.

According to a factsheet available on the California State Parks Division of Boating and Waterways' (Division) website, the USCG requires vessels longer than 16 feet operating on coastal waters, and other specified waterways, to carry USCG approved visual distress signals. Recreational boats less than 16 feet in length, open sailboats less than 26 feet in length and not equipped with propulsion machinery, and manually propelled boats are exempted from the daytime signals requirement, but must carry nighttime distress signals when operating from sunset to sunrise. A violation of this regulation can result in a fine of $1,100. Marine flares and other visual distress signals must comply with USCG regulations by being readily accessible, carried in the number set by regulations (3 flares), properly labeled, and not expired. According to USCG regulations, marine flares expire every 36 to 42 months from the manufacture date. Flares past their expiration date are less effective because chemical ingredients breakdown over time.

Marine flares contain hazardous material: Marines flares are pyrotechnic flares and they are a safety hazard because they are combustible and reactive. A standard safety data sheet for marine flares can commonly list strontium nitrate, sulfur, potassium perchlorate, potassium chlorate, magnesium, strontium peroxide, and black powder (a mixture of sulfur, charcoal, and potassium nitrate). California Code of Regulations has a list of chemical names and common names for hazardous waste and hazardous materials (Title 22, Division 4.5, Chapter 11, Appendix X). Strontium nitrate, potassium perchlorate, magnesium, strontium peroxide and potassium nitrate are listed on the basis of their ignitable and reactive hazardous characteristics. Both strontium nitrate and potassium perchlorate are also listed as toxic. Strontium nitrate and strontium peroxide are also listed on the EPA's Toxic Substances Control Act Inventory List.

As stated on DTSC's website, a "waste" is a material that has been used or has otherwise served its intended purpose and, for whatever reason, can or will no longer be used. Also a waste is defined as any discarded material. A material is considered to be discarded if it is:

- Relinquished (disposed of; burned or incinerated; accumulated, stored or treated, but not recycled, before, or instead of, being disposed of, burned or incinerated); or,
- Recycled (accumulated, stored or treated before recycling by being used in a manner constituting disposal [placed on land], burned for energy recovery, reclaimed, or accumulated speculatively); or,
- Inherently waste-like when it is recycled.

Materials are also considered discarded if they pose a threat to human health or the environment and are either mislabeled or inadequately labeled, unless the label is corrected within 10 days. They are also considered discarded if the container is deteriorated or damaged, unless the container is repackaged within 96 hours.

As stated previously, marine flares expire every 36 to 42 months from manufacture date. Marine flares after that date cannot be used for their intended purpose as they have expired and don't meet USCG regulations. Additionally, expired flares may end up being accumulated in homes or boats with no further use.

Removal of perchlorate: Perchlorate is both a naturally occurring and man-made contaminate that is increasingly found in groundwater, surface water, and soil. Perchlorate contamination has been reported in at least 20 states due to its application in solid fuel for rockets and missiles, highway safety flares, fireworks, matches, pyrotechnics, explosives, and other items. Perchlorate interferes with the body's ability to produce thyroid hormone by interfering with iodine uptake into the thyroid gland.

Information provided by a representative of the primary marine flare manufacturer that sells their product in the state of California and an online product search for marine flares states that their marine flares are made with an "environmentally friendly formulation contain[ing] no-perchlorate". While most new flares sold in the state no longer contain perchlorate salts as of late 2022, there is an unknown number of expired marine flares in the state that likely contain perchlorate salts and an unknown number of marine flares that have not reached their expiration date and contain perchlorate since they were manufactured and sold between 2020-2022, prior to the reformulation.

The author's office may wish to consider adding language to address a phase-out of perchlorate in covered products.

Collection events for expired marine flares: CalRecycle has a grant application cycle to provide opportunities for local governments to implement safe HHW programs for the collection, source reduction, reuse, and/or recycling of, and public education surrounding, HHW. Grant funding applications must fall within the specified categories of fundable projects. One of the categories includes set-up and operation of temporary or mobile collection programs for one-day or multi-day collection events for materials such as marine flares, propane gas cylinders up to 5 gallons, solar panels, and common household hazardous waste materials and universal waste. Eligible applicants include cities, counties, regional or local sanitation agencies and waste agencies, and qualifying tribal entities. The application cycle for fiscal year 2023-2024 included $1,000,000 for maximum of $50,000 per grant award. Specified applicants can receive $100,000.

Information provided to the committee on this grant program states that nine collection events to date have occurred and they are as follows:

- City and County of San Francisco- April 19, 2019;
- Alameda County- October 18, 2020;
- Del Norte County –November 5, 2022 and September 16, 2023;
- Contra Costa County, Delta Diablo HHW collection facility- three events August-September 2023;

- West Contra Costa County-date unknown; and,
- City of Oceanside- September 9, 2023.

Regional applications allow for partnerships between jurisdictional applications and other eligible applicants. Applicants are permitted repeated applications, but after 3 funding cycles priority is given to other applicants. These nine events resulted in approximately 4,500 flares collected. Typically, these events are restricted to county residents or members affiliated with event partners. Interestingly, for reasons unknown, most of these events have concentrated in the northern California region.

Additionally, the California Product Stewardship Council reports leading 10 publicly funded marine flare pilot programs to remove single-use pyrotechnic marine flares from communities by hosting collection events and promoting reusable alternatives. It is not clear how many of those events are through a CalReycle grant.

According to information provided by the author's office, there are only three permitted facilities in the country that can accept, treat, or dispose of explosive wastes streams like marine flares. There are two incinerator locations, one located in Utah and another in Illinois. One facility in Missouri does open burning. The author's office recently learned that the Louisiana facility, cited in a previous analysis, no longer accepts marine flares. Furthermore, information shared by the author's office from the U.S. Department of Transportation (DOT) states that six DOT-SP 20599 permits have been granted to different counties and organizations in the state to authorize the transportation of certain marine signal devices collected from recreation vessels for disposal.

Information provided by the author's office, and also stated on the Division's website, estimates that 174,000 outdated flares are generated each year by recreational vessels. This number is based on information gathered in 2011. Information provided by a representative of the main manufacturer states that based on sales and other factors, a reasonable number of aerial flares expiring annually is closer to 41,000. By comparing all these numbers, several questions remain; the number of collection events, outside of CalRecycle's funding, that happen throughout the state; whether individuals are discarding flares into the ocean; whether individuals are burning flares at home or throwing them in the regular trash; and, the number of expired flares in need of disposal throughout the state.

The cost burden: The Division's website states that the packaging, disposal and transportation costs involved with the safe disposal of explosive waste streams are a huge cost burden for the public and governmental agencies. It costs approximately $7 to $50 to be properly dispose each flare at an out-of-state permitted facility. However, Zero Waste Sonoma states that in 2023, their cost to dispose of one marine flare, with help from nearby jurisdictions, was an estimated $187. An EPR program shifts the cost burden to manufacturers. The cost burden of handling the end of life of the product is shared equitably among the PRO members.

Statewide Commission on Recycling Markets and Curbside Recycling opines on marine flares: The Legislature and Governor created California's Statewide Commission on Recycling Markets and Curbside Recycling (Commission) to provide advice to CalRecycle, the Legislature, and other State or Federal agencies regarding the state's ambitious recycling and organic materials recovery goals from the perspective of professionals working in many aspects of this complicated industry. In its June 30, 2022 Policy Recommendations Report 4, the Commission stated that marine flares are "a 100-year-old technology, have polluted water, and are a chronic

problem for boaters to dispose of safely and expire every 3 years and have no management plan. Now that less hazardous and more reliable electronic signals are an option…[we] recommend that California consider banning the sale of products that are toxic and unnecessary in that there are safer alternatives that are often less expensive."

The USCG*'s Daytime Distress Signal Effectiveness:* The Coast Guard Research and Development Center (RDC) conducted field-testing of existing daytime distress signals and the light emitting diode (LED) signal characteristic. Researchers compared daytime visibility of the SOS flashing LED signal with that of hand-held flares and an orange distress flag along with commonly recognized signaling methods, a signal mirror and human hand-waving, at various ranges. Full-scale tests at one-half mile range were assessed, as follows:

> "Testing included 759 human subject observations and ratings of distress signal visibility. In all conditions, observers rated a rigid, orange distress flag and an orange smoke signal as far more easy to see than either the LED signal or the 500 cd red hand flare. While tested in only sunny conditions, observers unanimously rated both a SOLAS hand flare and a signal mirror as "easy to see."
>
> Analysis indicated a statistically-significant difference in ratings between the SOS flashing LED signal and 500 cd red hand flare during combined, sunny or overcast daytime conditions, at ½ mile range. In all cases, observers could clearly see the signal boat, and knew exactly where they could expect to see the signal. Observer responses indicated that *neither* the 500 cd red hand flare nor the 50 cd flashing SOS signal were attention-getting during sunny conditions. Observers generally rated the two as "hard to see" or "can't see at all" during sunny conditions. In cloudy conditions, there was no statistically-significant difference in ratings between the SOS flashing LED signal and 500 cd red hand flare.
>
> The results of this project show that certain daytime distress signals are only effective at relative close range, and under certain conditions. A combination of signals may provide a better visual detection paradigm. RDC recommends stakeholders use these results to increase public and responder awareness that generally accepted distress signals when used in combination, both electronic and visual, may yield more-predictable results."

The USCG's conclusion of using a combination of signals for a better visual detection paradigm gives validity to some of the concerns raised with the provisions of this bill. Concerns raised include an increase in the cost of the covered products possibly resulting in recreational boaters opting for alternative products comprising their likelihood of being spotted in case of an emergency.

Frustrated Californians and the need for a permanent solution: It is clear from the letters of support received from different organizations, cities, and counties across the state that a permanent solution for managing expired flares is needed. Calls from confused Californians are a common occurrence for household hazardous waste facilities, police stations, and fire stations. Callers seek information on proper disposal for marine flares and the current options are limited.

EPR alternatives: Alternatives to an EPR program have been discussed as pilot programs. Because marine flares are purchased by boat owners that are required to carry them, it is reasonable to assume that coastal cities/districts will likely have the largest need for proper disposal. A well designed and advertised pilot program can provide information to guide

expansion. Road flares share similar ingredients to marine flares, and they are also deemed hazardous and/or reactive. In developing a strategy for marine flares, the author may wish to consult with DTSC to determine other hazardous wastes that can potentially be grouped for disposal purposes.

This bill: SB 1066 would create a producer responsibility program for marine flares. Manufacturers would be responsible for end-of-life management that would require approval from DTSC. SB 1066 defines several terms, including covered products; requires a producer of a covered product to register with a PRO; authorizes DTSC to develop regulations based on the provisions in this bill and to approve the PRO plan; requires a PRO to implement the plan and evaluate the plan every five years; and, provides for the imposition of administrative civil penalties upon any person who violates the provisions of this bill.

Considerations: As this bill moves forward, the author may wish to engage with stakeholders and agencies to determine the appropriate scale for a producer responsibility program for marine flares. There is no conclusive data available to know how many outstanding expired flares are in the state, but it is clear that proper disposal sites are needed.

Arguments in support: According to the National Stewardship Action Council and Zero Waste Sonoma:

> "A lack of convenient disposal options has created a significant EOL management problem, with most household hazardous waste (HHW) facilities unable to accept them. Managing household hazardous waste (HHW) is one of the core responsibilities of Zero Waste Sonoma, which has one of the most comprehensive HHW programs in the country. Sonoma County is also home to 76 miles of coastline and has a large recreational boater population. Despite these facts, there are no disposal options in Sonoma County for expired marine flares. The HHW programs are not equipped to safely handle explosives. One marine flare can cost $11 to $185 to properly manage but can be purchased for approximately $13 each.
>
> The California Commission on Recycling Markets and Curbside Recycling, which represented materials management companies, local governments, unions, and NGOs and chaired by our Executive Director Heidi Sanborn, unanimously recommended that the legislature, "establish Extended Producer Responsibility (EPR) programs for the product categories below to reduce known fire and operational hazards". This included projectile or explosive marine flares."

Furthermore, according to California Professional Firefighters:

> "Federal law requires recreational boats to carry U.S. Coast Guard (USCG) approved visual distress signals in case of emergencies to help pinpoint the boater's exact location. An estimated 174,000 outdated flares are generated each year by recreational vessels in the state. In California, marine flares cost an estimated $185 to properly manage. They can be purchased new for approximately $13 each.
>
> When consumers do not have a reasonable manner in which to dispose of these flares, they have turned to leaving unused flares at fire stations that are not equipped to handle them, creating serious safety concerns for the firefighters who live and work there. The burden and expense of disposal is then also given to the fire department. Expired, unused flares can also

be stored in the home when a consumer has no other avenue of disposal, creating a significant hazard for firefighters should there be a fire.

Similar to the producer responsibility programs for the manufacturers of other hazardous materials, it should be incumbent upon the producers of these explosive devices to manage their safe disposal. SB 1066 will ensure that both consumers and first responders are kept safe, and for these reasons, we are pleased to support this important measure."

Lastly, the Orange County Fire Authority states:

"The OCFA fully supports this common-sense measure that will put an end to the improper disposal of this dangerous material in the trash or at local police and fire stations, which are not equipped to dispose of them properly, putting first responders at risk. Flares contain toxic metals and pollutants that render them hazardous and they are classified as explosive devices, requiring special equipment and permits to accept and store flares safely. This has created a significant end-of-life management problem, with many household hazardous waste facilities unable to accept them.

Currently, there are no permitted facilities in California that can accept, treat, and dispose of non-military explosives waste streams. The Bureau of Alcohol, Tobacco, Firearms, and Explosives requires collected flares be stored and transported in a Type 4 magazine shipped out of state to Missouri, where the only facility still accepting high-hazard flares in the U.S. is located. Boaters in coastal communities across California are frustrated by the lack of disposal options for flares, with some stockpiling them or illegally dumping them in trash or waterways. For these reasons, we strongly support SB 1066 (Blakespear)."

Arguments in opposition: According to the National Marine Manufacturers Association:

"The bill as proposed would create an EPR for pyrotechnic marine flares that produce smoke or brilliant light. A 2019 study by the U.S. Coast Guard evaluated the daytime distress signal effectiveness and found there were substantial visibility differences in the various signals available to boaters, with smoke signals being the easiest to observe across over 700 human subject observations in different lighting and backgrounds. Observer ratings in sunny conditions, when most recreational boaters are on the water, also ranked hand flares, both SOLAS and 500 cd, as easier to spot than LED signals. Moreover, the report concluded that one type of signal may not suffice for illuminance conditions that vary from dawn to dusk, under cloudy skies or in clear conditions. Considering these facts, NMMA supports keeping an array of marine flare options open to California boaters.

NMMA remains concerned that the EPR for pyrotechnic flares proposed under SB 1066 will inevitably drive-up costs to consumers and force consumers to choose less effective safety equipment. The average boater in the U.S. makes $75,000 or less and a cost increase to boaters could also become a disincentive to continue replacing expired marine flares.

NMMA's marine businesses are committed to ensuring that all boaters continue to have access to a full array of affordable safety equipment. Unfortunately, SB 1066 will increase costs and limit the safety options available to the boating community. For these reasons we are respectfully opposed to SB 1066."

Lastly, according to Standard Fusee Corporation Dba Orion Safety Products, in an oppose unless amended letter:

> "The most sound public policy in this instance is to study the most financially efficient options to alleviate the problems associated with unwanted marine flares. If we allow ourselves time, we would be able to thoughtfully examine data from multiple collection events at the Port of Los Angeles and the upcoming one-day collection event being held in Orange County in partnership with the Department of Boating and Waterways, among others.
>
> As an alternative to the current version of SB 1066, we would suggest a limited pilot program that consists of several similar one-day collection events along the California coast under which Orion would take possession of any collected Orion-manufactured products. More specifically, Orion personnel would be in attendance at 5 collection events during 2024 and the first six months of 2025 and Orion would cover the costs to package and transport all collected Orion marine flares back to Orion's manufacturing facility in Indiana, as there is an aftermarket for flares beyond 42 months. Based on the data generated from these events, maximum flexibility should be afforded to determine the frequency and locations of future collection events.
>
> With transportation and disposal as the most significant cost elements associated with the disposition of unwanted marine flares, Orion is willing to assume that responsibility for the pilot program, rather than a state-managed process with zero cost controls, but only if SB 1066 is withdrawn or amended to become a flexible study bill allowing for data collection and analysis to drive to an economically sustainable solution for all parties while protecting boater safety.
>
> We welcome the opportunity to discuss the practicality of study and data analysis to ensure a successful pilot program and how we can create the latitude and flexibility to test the most effective approaches to marine flare collection and disposal for California boaters while retaining the ability of such boaters to utilize affordable pyrotechnic flares to satisfy the USCG visual distress signal requirements for day and nighttime signaling."

Related Legislation:

1) SB 1143 (Allen, 2024). Creates a producer responsibility program for products containing household hazardous waste and requires a PRO to provide a free and convenient collection and management system for covered products. SB 1143 will be heard in this committee on June 25, 2024.

2) SB 615 (Allen, 2023). Requires producers of electric vehicle (EV) batteries to be responsible for the recapture, repair, reuse, or recycling of EV batteries. SB 615 will be heard in this committee on June 25, 2024.

3) SB 707 (Newman, 2023). Establishes an Extended Producer Responsibility (EPR) program for textiles with oversight from CalRecycle. SB 707 is pending in the Assembly Natural Resources Committee.

4) SB 54 (Allen, Chapter 75, Statutes of 2022). Established the Plastic Pollution Prevention and Packaging Producer Responsibility Act and established a producer responsibility program designed to ensure that producers of single-use packaging and food service ware covered by

that program take responsibility for the costs associated with the end-of-life management of that material and ensure that the material is recyclable or compostable.

5) AB 2240 (Irwin, Chapter 351, Statutes of 2022). Enacts the Responsible Battery Recycling Act of 2022, which requires producers of covered (household) batteries to establish a stewardship program for the collection and recycling of covered batteries.

6) AB 187 (Garcia, Chapter 673, Statutes of 2019). Established an EPR program for used mattresses.

7) SB 212 (Jackson, Chapter 1004, Statutes of 2018). Established an EPR program for pharmaceutical and sharps waste, with oversight from CalRecycle.

8) AB 1343 (Huffman, Chapter 420, Statutes of 2010). Established an EPR program for paint.

9) AB 2398 (Perez, Chapter 681, Statutes of 2010). Established an EPR program for carpet.

REGISTERED SUPPORT / OPPOSITION:

Support

National Stewardship Action Council (CO-SPONSOR)
Zero Waste Sonoma (CO-SPONSOR)
5 Gyres Institute
7th Generation Advisors
Ban Single Use Plastic (SUP)
Boat Safe North West
California Association of Environmental Health Administrators (CAEHA)
California Product Stewardship Council
California Professional Firefighters
California State Association of Counties (CSAC)
Californians Against Waste
Center for Biological Diversity, INC.
Center for Environmental Health
City of Thousand Oaks
Clean Water Action
Cleanearth4kids.org
County of Northampton Department of Public Works
Delta Diablo
Elders Climate Action (ECA) Northern California (NORCAL) and Southern California (SOCAL) Chapters
Environmental Working Group
Junior Philanthropists Foundation
League of California Cities
Los Angeles County Sanitation Districts
Marin Sanitary Service
Napa Recycling & Waste Services
North American Hazardous Materials Management Association
Northern California Recycling Association
Orange County Fire Authority

Pacific Manta Research Group
Plastic Free Future
Plastic Pollution Coalition
Recology
Regen Monterey
Republic Services - Western Region
Republic Services INC.
Resource Recovery Coalition of California
Rethinkwaste
Rural County Representatives of California (RCRC)
Sacramento Splash
San Francisco Baykeeper
San Francisco Environment Department
San Mateo County Harbor District
Santa Barbara County Board of Supervisors
Santa Clara County Recycling and Waste Reduction Commission
Save Our Shores
Sea Hugger
Sirius Signal LLC
Somaliland Community Action Network
Sonoma County Regional Parks Department
Stopwaste
Surfrider Foundation
Sustainable Mill Valley
The Last Plastic Straw
Turtle Island Restoration Network
West Contra Costa Integrated Waste Management Authority
Western Placer Waste Management Authority (WPWMA)
WM
Zero Waste Marin Joint Powers Authority
Zero Waste USA

Opposition

National Marine Manufacturers Association
Standard Fusee Corporation Dba Orion Safety Products

Analysis Prepared by: Brenda Cisneros-Larios / E.S. & T.M. /

Date of Hearing: June 25, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
SB 1147 (Portantino) – As Amended June 19, 2024

SENATE VOTE: 32-3

SUBJECT: Drinking water: bottled water: microplastics levels

SUMMARY: Requires the Office of Environmental Health Hazard Assessment (OEHHA) to prioritize studying the health impacts of microplastics in drinking water and bottled water; authorizes the State Water Resources Control Board (State Water Board), after OEHHA's study is complete, to request that OEHHA develop a public health goal (PHG) for microplastics in drinking water; requires the State Water Board to adopt a primary drinking water standard for microplastics, if appropriate; requires, if a primary drinking water standard for microplastics is adopted, water-bottling plants to annually report the levels of microplastics found in bottled water and the California Department of Public Health (CDPH) to determine whether adopting a maximum contaminant level (MCL) for microplastics is necessary or appropriate. Specifically, **this bill**:

1) Requires, in the event that the State Water Board adopts a primary drinking water standard for microplastics, that any water-bottling plant producing bottled water that is sold in this state to provide, upon adoption of the primary drinking water standard, CDPH with an annual report on the levels of microplastics found in the source water and in the final bottled water product that is offered for sale.

2) Authorizes the report and any related testing to be conducted in accordance with current state law, including, but not limited to, the use of methods outlined in the State Water Board's "Policy Handbook Establishing a Standard Method of Testing and Reporting of Microplastics in Drinking Water," and any subsequent document published or released by the State Water Board, including updates to the publication.

3) Requires the microplastics report to be included in a bottled water report that is required under current state law, and that the report be made available to each consumer upon request.

4) Requires, upon adoption of a primary drinking water standard for microplastics in drinking water, CDPH to determine, pursuant to its existing authority, whether requiring bottled water to meet an MCL equivalent to the primary drinking water standard for microplastics is necessary or appropriate for ensuring that bottled water presents no adverse effect on public health.

5) Requires OEHHA to prioritize studying the health impacts of microplastics in drinking water and bottled water to evaluate toxicity characteristics and levels of microplastics that are not anticipated to cause or contribute to adverse health effects or that do not pose any significant risk to health, or to identify any data gaps that exist that need to be addressed in order to establish those levels.

6) Requires OEHHA to compile findings from the study into a report, and to publish the report on its internet website no later than December 31, 2026.

7) Authorizes, upon completion of OEHHA's report, the State Water Board, after considering the report's findings, to request that OEHHA prepare and publish a PHG for microplastics in drinking water.

8) Requires the State Water Board to review a PHG for microplastics and adopt a primary drinking water standard for microplastics, if appropriate.

EXISTING LAW:

1) Authorizes, pursuant to the federal Safe Drinking Water Act (SDWA), the United States Environmental Protection Agency (US EPA) to set standards for drinking water quality and to oversee the states, localities, and water suppliers that implement those standards. (42 United States Code (USC) § 300(f), et seq.)

2) Establishes the California SDWA and requires the State Water Board to maintain a drinking water program. (Health and Safety Code (HSC) § 116270, et seq.)

3) Defines, under the California SDWA, "primary drinking water standards" to mean:

   a) MCLs that may have an adverse effect on human health;

   b) Specific treatment techniques adopted by the State Water Board in lieu of MCLs; or,

   c) The monitoring and reporting requirements specified in regulations, adopted by the State Water Board, that pertain to MCLs. (HSC § 116275(c))

4) Requires OEHHA to prepare and publish an assessment of the risks to public health posed by each contaminant for which the State Water Board proposes a primary drinking water standard, as provided. (HSC § 116365, et seq.)

5) Requires the risk assessment, prepared by OEHHA, to contain an estimate of the level of the contaminant in drinking water that is not anticipated to cause or contribute to adverse health effects, or that does not pose any significant risk to public health, also known as the PHG for the contaminant. (HSC § 116365, et seq.)

6) Requires the State Water Board to consider specified criteria when it adopts a primary drinking water standard, including the PHG for the contaminant published by OEHHA. (HSC § 116365, et seq.)

7) Requires the State Water Board to adopt a definition of microplastics in drinking water, on or before July 1, 2020. (HSC § 116376(a))

8) Requires the State Water Board, on or before July 1, 2021, to do all of the following: adopt a standard methodology to be used in the testing of drinking water for microplastics; adopt requirements for four years of testing and reporting of microplastics in drinking water; consider issuing a notification level or other guidance to aid consumer interpretation of the test results; and, accredit qualified laboratories in California to analyze microplastics. (HSC § 116376)

9) Establishes the state Sherman Food, Drug, and Cosmetic Law (Sherman Law), administered by CDPH, to regulate the manufacture, packaging, labeling, and advertising of food, drugs, and cosmetics. (HSC § 109875-111929.4)

10) Defines "bottled water" under the Sherman Law to mean any water that is placed in a sealed container at a water-bottling plant to be used for drinking, culinary, or other purposes involving a likelihood of the water being ingested by humans. (HSC § 111070(a))

11) Requires, as a condition of licensure, each bottled water plant to prepare an annual bottled water report containing specified information and to make the report available to customers upon request. (HSC § 111071)

12) Requires, under the federal Food, Drug, and Cosmetic Act (FD&C Act), not later than 180 days before the effective date for a national primary drinking water regulation that is promulgated by the US EPA, the federal Food and Drug Administration (FDA) to promulgate a standard of quality regulation for that contaminant in bottled water, or make a finding that such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems, but not in water used for bottled water. (21 USC § 349(b)(1))

13) Requires, if an MCL is established in a national primary drinking water regulation under the federal SDWA, that the FDA's regulation establish an MCL for the contaminant in bottled water that is no less stringent than the MCL provided in the national primary drinking water regulation. (21 USC § 349(b)(3)(A))

14) Establishes standards of quality for bottled water, including allowable levels for multiple substances. (21 Code of Federal Regulations (CFR) § 165.110(b))

15) Provides that bottled water containing a substance at a level considered injurious to health under the FD&C Act is deemed adulterated. (21 CFR § 165.110(d))

16) Requires, under the Sherman Law, the quality and labeling standards requirements for bottled water to include all standards prescribed in the federal FD&C Act, under 21 CFR 165.110; requires bottled water to comply with any additional quality standards adopted by CDPH through regulation; requires bottled water to meet all MCLs set for public drinking water that CDPH determines are necessary or appropriate so that bottled water may present no adverse effect on public health. (HSC § 111080)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author:

> "With the global urgency of plastic pollution, we begin to discover the extent of environmental damage and the breakdown of these materials into what we call microplastics. This material can be found in soil, rain, drinking water, air, and the human heart. Current research shows that microplastics have been detrimental to the behaviors and wellbeing of

marine life, fish, mammals, and plants, although more consistent research is needed to dissect the true health impact of microplastics, especially on human health. With the existing damage that microplastics have on animals, sea life, and plants, it is plausible that microplastics pose concern for human health as well. With adequate studies on the health impacts of microplastics in water and by identifying a safe level of microplastics in water, we can decrease significant health risks. Therefore we author this bill in hopes of adopting primary drinking water standards for microplastics and for beginning to analyze how plastic materials may leach into plastic water bottles."

Microplastics pollution: In 2018, the Legislature recognized the need for a comprehensive plan to address microplastics pollution and passed SB 1263 (Portantino, Chapter 609, Statutes of 2018), which requires the Ocean Protection Council to adopt and implement a Statewide Microplastics Strategy that increases understanding of the scale and risks of microplastics pollution in the marine environment and identifies proposed solutions. Released in February 2022, the Strategy provides a multi-year roadmap designed to help California take on a national and global leadership role in managing microplastics pollution.

According to research reviewed in the Strategy, plastics are ubiquitous in both Californians' daily lives and in the environment. Worldwide, an estimated 11 million metric tons of plastic enter the ocean each year, and without any intervention, this amount is anticipated to triple by 2040. Plastics are recognized globally as the most harmful and persistent fraction of marine litter, accounting for at least 85% of total marine waste. Over time, plastics break down in aquatic environments into pieces of ever-decreasing size, with those less than 5 millimeters in size known as microplastics.

Microplastics fall into two general categories: primary microplastics manufactured at a small size (e.g., preproduction plastic pellets used in manufacturing or microbeads in personal care products) or secondary microplastics that result from the breakdown of larger plastics. Microplastics have a range of polymer types, sizes, shapes, and associated chemicals, with irregular shapes and fibers found increasingly in marine organisms, including mammals, fish, mollusks, and crustaceans.

Microplastics and human health: Because microplastics are so small, they can travel in water, air, and in the bodies of living organisms. As a result, microplastics are ubiquitous in the environment and found in some of the most remote areas on earth, including arctic sea ice, the deep ocean, mountain peaks in national parks, and human embryos. Of particular concern for living organisms, microplastics' small size allows them to bioaccumulate up the food chain. Plastics in water, for instance, can be consumed by fish and shellfish and become part of their tissue. The fish and shellfish can in turn be eaten by humans or other animals. Microplastics can also act as vectors for pollutants such as pesticides and heavy metals, effectively "piggybacking" these harmful pollutants wherever the microplastics go, including into the living tissues of plants, animals, and humans.

A January 2023 report to the Senate Environmental Quality Committee and the Assembly Natural Resources Committee from the California State Policy Evidence Consortium (CalSPEC), an independent program administered through the University of California Center Sacramento, examined evidence concerning human health effects of microplastics. CalSPEC conducted a rapid systematic review of evidence from peer-reviewed literature to examine the human health effects of microplastics exposure. A comprehensive search in July 2022 found no human studies

of microplastics exposure; therefore, CalSPEC evaluated mammalian rodent studies of microplastic exposures. This process led CalSPEC to make the following findings about the human health effects of microplastics:

- Exposure to microplastics is suspected to be a digestive hazard to humans, including cancer;
- Exposure to microplastics is suspected to be a hazard to the human reproductive system; and,
- Although the evidence from the respiratory studies did not undergo as rigorous of an evaluation, findings in five studies on the respiratory system are also indicative of health harm.

The report rendered three principal conclusions. First, knowledge about microplastics prevalence, distribution, and toxicity to humans is incomplete. Second, despite these knowledge gaps, existing evidence raises concerns about the environmental and health consequences of microplastics pollution. Third, the international community has only just begun to implement policy interventions designed to curtail microplastics pollution, but the effectiveness of these interventions is unknown.

In March 2024, a study in the *New England Journal of Medicine* provided the first evidence of a potential link between microplastics and human health, although the authors acknowledge that additional studies are needed and that other factors not addressed in the study, such as socioeconomic status, could have contributed to the study's outcomes. A summary of the study's findings by *Scientific American* states the following:

> "A study of more than 200 people undergoing surgery found that nearly 60% had microplastics or even smaller nanoplastics in a main artery. Those who did were 4.5 times more likely to experience a heart attack, a stroke or death in the approximately 34 months after the surgery than were those whose arteries were plastic-free…The team tracked 257 people undergoing a surgical procedure that reduces stroke risk by removing plaque from an artery in the neck.
>
> The researchers put the excised plaques under an electron microscope. They saw jagged blobs— evidence of microplastics—intermingled with cells and other waste products in samples from 150 of the participants. Chemical analyses revealed that the bulk of the particles were composed of either polyethylene, which is the most used plastic in the world and is often found in food packaging, shopping bags and medical tubing, or polyvinyl chloride, known more commonly as PVC or vinyl."

State action on microplastics in drinking water: As required by SB 1422 (Portantino, Chapter 902, Statutes of 2018), on June 1, 2020 the State Water Board adopted a definition of "microplastics in drinking water" through Resolution No. 2020-0021. SB 1422 additionally required the State Water Board to adopt a standard methodology to be used in the testing of drinking water for microplastics; adopt requirements for four years of testing and reporting of microplastics in drinking water; consider issuing a notification level or other guidance to aid consumer interpretation of the test results; and, accredit qualified laboratories in California to analyze microplastics.

On September 7, 2022, the State Water Board adopted the "Policy Handbook Establishing a Standard Method for Testing and Reporting of Microplastics in Drinking Water" (Policy Handbook) through Resolution No. 2022-0032. In the Policy Handbook, the State Water Board states:

> "The Policy Handbook includes an iterative, two-step, four-year plan for monitoring and reporting microplastics in a systematic and harmonized manner. To date, no government in the world has required monitoring for microplastics in drinking water, and the data obtained through the efforts detailed in this Policy Handbook will provide valuable insights for determining exposure to consumers through drinking water. The [State Water Board] recognizes the emerging nature of microplastics and the potentially challenging effects (economically, technically, etc.) ordering a designated public water system to conduct monitoring may have on the public water system and community served. The State Water Board intends to use its monitoring authority carefully to minimize the unnecessary use of resources while obtaining necessary occurrence and exposure information to allow for more reliable characterizations of risk."

The State Water Board is currently employing a phased approach for monitoring microplastics, to inform how public water systems will be required to monitor and report microplastics in drinking water going forward. The phases are sequenced as follows:

- Pilot Phase (Expected Summer 2022-Summer 2023): Build infrastructure for monitoring. Develop sampling, provide resources for laboratories to become accredited to test for microplastics through the state's Environmental Laboratory Accreditation Program;

- Phase I (Expected Fall 2023-Fall 2025): Evaluate testing and monitoring protocols. A select number of public water systems will test for microplastics using one of the approved standardized methods. This phase will have a focus on characterization of sources that serve the greatest number of consumers (as a result, water systems that serve more than 100,000 people will receive the vast majority of monitoring orders in Phase I). This phase will focus on microplastics 50 micrometers and larger; and,

- Phase II (Expected Fall 2026-Fall 2028): After evaluating the results from Phase I, additional monitoring orders will be issued. Public water systems without any detections of microplastics during Phase I may be exempt from monitoring during Phase II. This phase will include monitoring of microplastics 5 micrometers and larger and will focus on treated water.

Of note, the dates of Phase I and II have been delayed from their expected start and end dates. The anticipated timeline for Phase 1 monitoring to begin is mid-2025, though it is unclear when the Phases will be complete. The Policy Handbook also includes a note that, at the time of its writing, "no government has required monitoring for microplastics, and there are few commercial or utility laboratories capable of monitoring microplastics." The State Water Board writes that it recognizes "the rapidly evolving science regarding microplastics, including the limited laboratory capacity and lack of proficiency testing samples, and the relatively high amount of resources required to sample and monitor for microplastics. The State Water Board anticipates capacity for monitoring and assessing laboratories using proficiency testing samples will be developed as a result of required monitoring." As of the writing of this analysis, there are

currently no state-accredited laboratories to analyze for microplastics, though two laboratories have applied and are under review.

Microplastics in bottled water: An understanding of the prevalence and implications of microplastics in bottled water is still emerging. In January 2024, a study published in the *Proceedings of the National Academy of Sciences* reported findings from a new imaging technique used to examine microplastics in three popular brands of bottled water. Key findings were summarized by the National Institutes of Health as follows:

> "The researchers found that, on average, a liter of bottled water included about 240,000 tiny pieces of plastic. About 90% of these plastic fragments were nanoplastics. This total was 10 to 100 times more plastic particles than seen in earlier studies, which mostly focused on larger microplastics.
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> The water contained particles of all seven types of plastic. The most common was polyamide, a type of nylon that's often used to help filter and purify water. An abundance of polyethylene terephthalate (PET) was also detected. This might be expected, since PET is used to make bottles for water, soda, and many other drinks and foods. Other identified plastics included polyvinyl chloride, polymethyl methacrylate, and polystyrene, which is also used in water purification. The method identified millions of additional particles that did not match the seven categories of plastic. It's not yet clear if these tiny particles are nanoplastics or other substances."

Equity considerations for bottled water use: The 2023 study, "Disparities in drinking water quality: evidence from California," published in the journal *Water Policy,* analyzed drinking water quality violations for 1,710 community water systems in the state and identified the types of communities disproportionately burdened by water contaminants. The researchers found that low-income communities and minority groups (Hispanics and non-Whites) face a greater likelihood of water quality violations. When water quality violations are longstanding and severe, or groundwater wells dry up, communities may end up needing to rely on bottled water, sometimes for years at a time. For example, in the tiny community of San Lucas in the Salinas Valley, where nitrate contamination has at times made the groundwater unsafe to drink, community members were on bottled water restrictions from 2011 to 2014. A new well provided a reliable source of drinking water for two years until 2016, when elevated nitrate levels again prompted a bottled water order.

In addition, tap water distrust has been linked to racial disparities in bottled water use. A 2018 study, "U.S. households' perception of drinking water as unsafe and its consequences: Examining alternative choices to the tap," published in *Water Resources Research,* analyzed 2015 American Housing Survey data and showed that minority households more commonly perceived their tap water as unsafe, and chose bottled water when they perceived their tap water as unsafe. The authors of another study conducted in Wisconsin, published in 2011 in the journal *Archives of Pediatrics and Adolescent Medicine,* found through parent surveys that African American and Latino parents were more likely to give their children mostly bottled water and that minority children were exclusively given bottled water three times more often than non-Latino white children. The researchers further found that the use of mostly bottled water was associated with a belief that bottled water is safer, cleaner, better tasting, or more convenient.

Federal and state regulation of contaminants in drinking water: To regulate drinking water contaminants that pose significant health risks, the State Water Board can begin the process by requesting that OEHHA establish a PHG. PHGs are concentrations of drinking water contaminants that pose no significant health risk if consumed for a lifetime, based on current risk assessment principles, practices, and methods. OEHHA can establish PHGs for contaminants regulated under existing drinking water standards (also called MCLs), and for contaminants that do not yet, but may in the future, have MCLs.

PHGs are not regulatory standards. However, state law requires the State Water Board to set MCLs for contaminants as close to the corresponding PHG as is economically and technologically feasible. To establish a PHG, OEHHA scientists first compile all relevant scientific information available, which includes studies of the chemical's effects on laboratory animals and studies of humans who have been exposed to the chemical. The scientists use data from these studies to perform a health risk assessment, in which they determine the levels of the contaminant in drinking water that could be associated with various adverse health effects. When calculating a PHG, OEHHA uses all the information it has compiled to identify the level of the chemical in drinking water that would not cause significant adverse health effects in people who drink that water every day for 70 years. OEHHA must also consider any evidence of immediate and severe health effects when setting the PHG.

Once OEHHA establishes a PHG, the State Water Board determines whether an MCL (or an updated MCL) should be considered. If the State Water Board determines that an MCL should be considered, it then conducts an in-depth risk management analysis and, if appropriate, initiates the regulatory process for adopting an MCL, enforceable under the California SDWA.

Similarly, under the federal SDWA, the US EPA can establish national primary drinking water regulations, which are legally enforceable standards and treatment techniques that apply to public water systems. These standards are established to protect public health by limiting the levels of contaminants in drinking water. Like most states, California has been granted "primacy" by the US EPA, which grants the State Water Board the authority to implement and enforce the federal SDWA, including national primary drinking water regulations, at the state level. For the State Water Board to maintain its primacy authority, California must have statutes, regulations, and an implementation program for public water system supervision that are no less stringent than those under the federal SDWA.

Some of California's drinking water MCLs are more stringent than national standards: Under its primacy authority, the State Water Board can adopt stricter drinking water MCLs than those adopted by the US EPA; this includes the adoption of a state MCL, even when the US EPA has not adopted a national MCL for a particular contaminant, and the adoption of a state MCL that is more stringent than the federal MCL. California has state MCLs for several contaminants that the US EPA does not, including MCLs for the metals aluminum and nickel; the radionuclides strontium-90 and tritium; the herbicides bentazon and molinate; and the solvent 1,2,3-tricloropropane. For some contaminants, California also has stricter MCLs than the US EPA's. For example, the state MCL for toluene (a potent solvent that can cause birth defects and other reproductive harms) is 0.15 milligrams per liter (mg/L), while the federal MCL is 1 mg/L.

SB 1147 initiates a process that could lead to the adoption of an MCL for microplastics in drinking water in California. The US EPA does not currently have an MCL for microplastics; if

this remains the case when (if) the State Water Board adopts an MCL for microplastics, then California would have a more stringent standard for this contaminant than the US EPA.

Federal and state regulation of bottled water: Similar to drinking water, bottled water is subject to both federal and state laws and regulations. However, unlike drinking water, which is regulated under the state and federal SDWAs, bottled water is regulated as a food under the FD&C Act, enforced by the FDA, and the Sherman Law, enforced by CDPH.

Under the FD&C Act, manufacturers are responsible for producing safe, wholesome, and truthfully labeled food products. Federal regulations that focus specifically on bottled water include "standard of identity" regulations that define different types of bottled water; "standard of quality" regulations that set maximum levels of contaminants—including chemical, physical, microbial, and radiological contaminants—allowed in bottled water; and "current good manufacturing practice" (CGMP) regulations that require bottled water to be safe and produced under sanitary conditions.

Federal quality standards for bottled water were first adopted in 1973 and based on United States Public Health Service standards for drinking water, set in 1962. After the 1974 SDWA gave regulatory oversight of public drinking water to the US EPA, the FDA subsequently took responsibility, under the FD&C Act, for ensuring that the quality standards for bottled water are compatible with US EPA standards for public drinking water. Specifically, each time the US EPA establishes a standard for a contaminant, the FDA must either adopt an MCL that is no less stringent for bottled water, or make a finding that the standard is not necessary for bottled water.

For bottled water production, bottlers must follow the CGMP regulations that are specific to processing and bottling drinking water. Water must be sampled, analyzed, and found to be safe and sanitary. These regulations also require proper plant and equipment design, bottling procedures, and record keeping. Bottled water containing a substance at a level considered injurious to health under the FD&C Act is deemed adulterated, which gives the FDA the authority to initiate enforcement actions that can range from issuing a letter notifying the individual or firm of a violation and requesting correction, to criminal prosecution of the individual or firm. In addition, the FDA inspects bottled water plants under its general food safety program and has states perform some plant inspections under contract. Some states, including California, also require bottled water firms to be licensed annually.

Under the Sherman Law, manufacturers of bottled water must be licensed in order to sell or distribute their products in California. In addition, each water bottling plant, as a condition of licensure, is required to prepare a bottled water report. The report must be updated annually and contain specified types of information, including the source of the bottled water, definitions of terms, and a brief description of the treatment process used for producing the bottled water. These reports must be submitted to CDPH and provided to customers upon request.

Once licensed, CDPH conducts periodic on-site inspections to assess compliance with applicable state and federal laws and regulations, including a review of water quality test results, the bottled water report, and equipment maintenance and sanitation records. CDPH posts an annual "Bottled and Vended Water Program Report" on its website that summarizes major violations and fines, by county. In 2023, CDPH reported 28 major violations that were corrected by the responsible firms.

SB 1147 relative to current laws and regulations for bottled water: State law does not require bottled water plants to include water quality information (i.e., test results for contaminants) in the bottled water reports described above (although CDPH recommends, but does not require, that bottlers include current or immediately previous year water quality test results with their bottled water reports). This means that, unless a bottled water manufacturer voluntarily includes these test results, a consumer cannot use the bottled water report to evaluate the quality of the bottled water they are consuming. SB 1147 would require that bottled water manufacturers include in their bottled water reports the levels of microplastics found in the source water used for bottling and in the final bottled water product.

In addition, as noted above, there is a federal mechanism for requiring that new federal drinking water MCLs are examined and potentially adopted by the FDA as MCLs for bottled water. California lacks a similar mechanism for ensuring that state MCLs, when they are more stringent than federal standards, are also considered and potentially adopted as MCLs for bottled water. According to CDPH, the department only adopts federal MCLs for bottled water.

In the event that the State Water Board adopts an MCL for microplastics in drinking water, SB 1147 would require that CDPH determine if it is necessary, for the protection of public health, to adopt an MCL for bottled water that is as stringent as the state MCL for microplastics in drinking water. This provision may be important for ensuring that the intensive work done by OEHHA and the State Water Board, to inform and adopt a state MCL for microplastics in drinking water, has the potential to inform similar protections for people drinking bottled water.

This bill: SB 1147 builds on prior legislation and takes a stepwise approach to addressing microplastics in drinking water and bottled water. This approach avoids "getting ahead of the science" by grounding the state's next steps in a study conducted by OEHHA, to first assess the human health impacts of microplastics in drinking water and bottled water. After the study is complete, the State Water Board can then initiate the regulatory process for developing a primary drinking water standard for microplastics, if appropriate. Then, if a primary drinking water standard is adopted, CDPH will determine whether it is necessary, for the protection of public health, to adopt an MCL for microplastics in bottled water that is equivalent to the State Water Board's drinking water standard.

Arguments in support: According to the Union of Concerned Scientists:

> "In 2018, the Governor signed SB 1422 (Portantino) into law, which required the State Water Resource Control Board (the Board) to define microplastics and establish standardized methods for testing drinking water for these materials…When ingested by wildlife, microplastics have both toxic and mechanical effects, leading to issues including reduced food intake, suffocation, behavioral changes and genetic alteration. It can be assumed that these particles have the potential to similarly affect our genes, cells, and organs. More research is necessary to understand the exact health impact of microplastics and how much must be ingested to begin experiencing health effects.
>
> In California, water bottling plants must submit copies of testing reports to the California Department of Public Health's Food and Drug Branch in order to retain their license. These reports include annual testing for physical, bacteriological, chemical and radiological analyses for both the source water and product water. Currently, these facilities do not test for microplastics in the source water nor the water being bottled, so it is uncertain where the

largest concentration of microplastics originate from. SB 1147 would provide a deeper understanding of the consequences of microplastics on our health. Additionally, the bill would set health standards and goals for microplastics in both tap and bottled water in California."

Arguments in opposition: None on file.

Related legislation:

1) AB 2214 (Bauer-Kahan, McKinnor, 2024). Requires the Ocean Protection Council to establish and lead an interagency coordination group to recommend statutory changes and adopt a workplan to implement recommendations from the 2022 Statewide Microplastics Strategy. This bill is pending before the Senate Environmental Quality Committee.

2) AB 234 (Bauer-Kahan, 2023). Would have prohibited a synthetic polymer microparticle, as defined, from being placed on the market; specified multiple effective dates for restrictions, depending upon product type; and established exemptions on the basis of biodegradability, determined using specified tests and pass criteria. This bill was held in the Assembly Natural Resources Committee.

3) AB 1628 (McKinnor, 2023). Would have required that all new washing machines sold or offered for sale in the state for residential or state use contain a microfiber filtration system by January 1, 2029. This bill was vetoed by Governor Gavin Newsom.

4) SB 1263 (Portantino, Chapter 609, Statutes of 2018). Requires the OPC to adopt and implement a Statewide Microplastics Strategy that increases understanding of the scale and risks of microplastics pollution in the marine environment and identifies proposed solutions.

5) SB 1422 (Portantino, Chapter 902, Statutes of 2018). Requires the State Water Board to adopt a definition of microplastics in drinking water, and to adopt requirements for the testing and reporting of the amount of microplastics in drinking water for four years.

REGISTERED SUPPORT / OPPOSITION:

Support

California Environmental Voters (formerly CLCV)
California Nurses for Environmental Health & Justice
Cleanearth4kids.org
Climate Reality Project, California Coalition
Union of Concerned Scientists

Opposition

None on file.

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

Date of Hearing: June 25, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
SB 1178 (Padilla) – As Amended June 17, 2024

SENATE VOTE: 31-8

SUBJECT: California Water Quality and Public Health Protection Act

SUMMARY: Requires the State Water Resources Control Board (State Water Board) to establish regulations for compliance entities, as defined, that govern annual reporting of waste discharges, as specified; requires compliance entities to place a warning label on products sold in California; establishes the California Water Quality and Public Health Impact Fund (Fund); and requires administrative penalties authorized under SB 1178 to be deposited into the Fund. Specifically, **this bill**:

1) Defines "compliance entity" to mean any partnership, corporation, limited liability company, or other business entity formed under the laws of this state, the laws of any other state of the United States (U.S.) or the District of Columbia, or under the act of Congress, with a minimum of 2,500 employees and that conducts business in California.

2) Defines "reported waste discharges" to mean waste discharges included in reports by compliance entities to the State Water Board, as required by SB 1178.

3) Requires, on or before August 1, 2025, the State Water Board to establish regulations governing annual reporting by compliance entities regarding the waste discharges specified in Water Code (WC) § 13260(a)(2) (relating to the discharge of waste outside the boundaries of the state in a manner that could affect the quality of waters of the state).

4) Requires, by June 1, 2026 and annually thereafter, compliance entities to submit a report to the State Water Board on waste discharges, pursuant to the regulations required under SB 1178, and the locations of those waste discharges; requires the report to include the compliance entity's name and any fictitious names, trade names, assumed names, and logos used by that entity.

5) Requires the State Water Board to regularly post reports filed by compliance entities pursuant to SB 1178 on its internet website and to make the reports publicly available, in a format designed to clearly inform the public of the waste discharges affecting their communities.

6) Authorizes the State Water Board to charge compliance entities a reasonable fee necessary to cover the reasonable costs of administering and implementing the provisions of SB 1178.

7) Requires, within three months of reporting to the State Water Board on waste discharges that affect the quality of waters of the state within any region, any compliance entity not exempt from the requirements of SB 1178 to prominently label any product sold in California, the production of which resulted in a waste discharge contaminating California's water quality, with the following warning label: "Warning: The creation of this product

contributed to the contamination of California water quality potentially threatening the health and safety of its residents."

8) Authorizes the State Water Board to adopt regulations that authorize it to seek administrative penalties for nonfiling, late filing, or other failures to meet the requirements of SB 1178.

9) Establishes the Fund, requires administrative penalties authorized under SB 1178 to be deposited into the Fund, and requires moneys in the Fund to be used exclusively to mitigate the impacts of contamination on waters of the state caused by waste discharge.

10) Prohibits penalties for noncompliance from exceeding $1 million in a reporting year; requires the State Water Board, in imposing noncompliance penalties, to consider all relevant circumstances and to avoid maximum penalties for good faith errors.

11) Provides that the requirements of SB 1178 do not apply to any discharge requirements prescribed by the State Water Board or a Regional Water Quality Control Board (Regional Water Board) pursuant to Waste Discharge Requirements (WDRs) issued under the state's Porter-Cologne Water Quality Control Act (Porter-Cologne), or a National Pollutant Discharge Elimination System (NPDES) permit issued by a state in accordance with a program approved by the United States Environmental Protection Agency (US EPA) under the federal Clean Water Act (CWA).

EXISTING LAW:

1) Establishes, under the CWA, the NPDES Permit Program to prescribe requirements for the discharge of any pollutant, or any combination of pollutants, into waters of the U.S.; authorizes states to administer their own NPDES Permit Programs if specified conditions are met. (33 United States Code § 1342)

2) Declares, under Porter-Cologne, that the health, safety, and welfare of people require there to be a statewide program for water quality control and that the statewide program for water quality control can be most effectively administered regionally, within a framework of statewide coordination and policy. (WC § 13000)

3) Establishes the State Water Board and Regional Water Boards to preserve, enhance, and restore the quality of California’s water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations. (WC § 13100, et. seq.)

4) Requires each Regional Water Board to formulate and adopt water quality control plans for all areas within the region, with specified plan elements, including:

   a) A requirement for water quality control plans to include water quality objectives, to ensure the reasonable protection of beneficial uses and the prevention of nuisance; and,

   b) An authorization for water quality control plans to specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted. (WC §

13240, et seq.)

5) Prohibits the discharge of waste or pollutants to surface and ground waters unless the discharger obtains a permit from the State Water Board or a Regional Water Board. (WC § 13260, et seq.)

6) Requires specified persons to file a report of waste discharges with the appropriate Regional Water Board; specified persons include a person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region. (WC § 13260(a)(2))

7) Defines "person" under Porter-Cologne to mean any city, county, district, the state, and the U.S., to the extent authorized by federal law. (WC § 13050(c))

8) Defines "citizen or domiciliary of the state" under Porter-Cologne to include a foreign corporation having substantial business contacts in the state or which is subject to service of process in California. (WC § 13050(o))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author:

> "Billions of gallons of contamination, pollution, and wastewater, stemming from failing infrastructure, are ravaging California's southern border communities and its coastline. With the explosion of manufacturing plants in Tijuana resulting from free trade agreements, the amount of pollution coming from those facilities has overwhelmed local and international sewage treatment facilities resulting in billions of gallons of raw sewage washing up on the streets of South San Diego County and the bacteria from that pollution has created a public health emergency. Meanwhile large multi-national corporations who rely on California's marketplace to sell their products are taking advantage of lax to nonexistent environmental standards in Mexico, giving them an unfair competitive advantage over California manufacturers and creating a public health epidemic inside California. SB 1178 is necessary to protect the health and safety of California residents who cannot breathe without risking serious bacterial infections and other airborne illnesses."

The NPDES Permit Program: In 1972, amendments to the Federal Water Pollution Control Act of 1948—the first major U.S. law to address water pollution—created what is commonly known today as the CWA. The federal CWA establishes the basic structure for regulating discharges of pollutants into waters of the U.S. and regulating quality standards for surface waters. Under the CWA, the US EPA implements pollution control programs that include 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.

As authorized by the federal CWA, the NPDES Permit Program controls water pollution by regulating point sources—or discrete conveyances such as pipes, or human-made ditches—that discharge pollutants into waters of the U.S. Examples of pollutants include, but are not limited

to, rock, sand, dirt, and agricultural, industrial, and municipal waste. Industrial, municipal, and other facilities must obtain an NPDES permit to discharge into surface water.

In California, implementation of the federal NPDES Permit Program has been delegated to the State Water Board and nine Regional Water Boards, which maintain regional jurisdiction within boundaries that are based on major watersheds. The State Water Board oversees implementation of the NPDES Permit Program throughout the state and, as such, coordinates with and supports Regional Water Board efforts, and reviews Regional Water Board actions. While the State Water Board has issued some NPDES permits, the Regional Water Boards issue the vast majority of NPDES permits in the state and ensure compliance with their permits through compliance inspections, monitoring report reviews, and enforcement actions. In California, NPDES permits are also referred to as waste discharge requirements (WDRs) that regulate discharges to waters of the U.S.

The Tijuana River watershed and transboundary pollution: According to the San Diego Regional Water Quality Control Board, the Tijuana River watershed is a large binational watershed of approximately 1,750 square miles that lies across the California-Mexico border. A large portion of the watershed (approximately 75%) is within Mexico and encompasses the densely urbanized city of Tijuana, Mexico. The watershed drains into the Tijuana River Estuary in the U.S. and ultimately to the Pacific Ocean in the city of Imperial Beach.

Land uses in the watershed are diverse, from largely undeveloped open space in the upper watershed to highly-urbanized, residential, commercial, military, and industrial areas in the lower watershed. Over the past 30 years, Tijuana, Mexico has experienced tremendous population and industrial growth, along with rapid urbanization, which has strained the aging Mexican sewage infrastructure. Emerging sewage infrastructure inadequacies have created recurring pollution problems on both sides of the California-Mexico border. At times, sewage generated on the Mexico side of the watershed travels north into California through the Tijuana River or other cross-border canyon tributaries in the Tijuana River Valley. The sewage flows degrade water quality in the Tijuana River Estuary and adjacent coastal waters, and also pose a significant public health risk to residents and visitors along both sides of the border.

While significant improvements in wastewater treatment have, in recent years, improved water quality on both sides of the border, stormwater flows continue to bring substantial amounts of sediment, trash, and other contaminants into the valley, which impairs water quality, jeopardizes public health, threatens life and property from flooding, degrades valuable habitats, and impacts recreational opportunities for residents and visitors.

Human health and environmental costs of transboundary pollution. The "Clean Water Report," released by the Surfrider Foundation in 2024, details findings from tests conducted on water samples collected from coastal sites across the U.S. According to the report, Imperial Beach in the San Diego region is one among ten beaches in the country that consistently have high bacteria levels, with 100% of samples collected from Imperial Beach in 2023 failing to meet state health standards for bacteria in recreational waters. The report also states:

> "Every day, millions of gallons of contaminated water carrying stormwater runoff, raw sewage, harmful chemicals, and trash traverse the U.S./Mexico border through the Tijuana River Watershed and flow out into the Pacific Ocean in Imperial Beach. Additionally, the San Antonio de los Buenos Wastewater Treatment Plant just south of the border discharges

> approximately 35 million gallons of untreated sewage into the Pacific Ocean each day. Currents associated with the Southern California Bight carry this pollution up the coast during the summer, causing widespread illnesses on both sides of the border and forcing beach closures throughout South San Diego County…This public health and environmental justice emergency has been going on for decades and it's only getting worse, especially with climate change-related storm events further stressing the already inadequate and failing regional wastewater infrastructure."

In coverage of the Surfrider Foundation's report, a 2024 *Los Angeles Times* article entitled, "California beach is most polluted seen in new study. People are 'getting sick left and right,'" states the following:

> "[Imperial Beach] has been closed for more than two years because of toxic water from the Tijuana River Watershed flowing into the ocean, said Mayor Paloma Aguirre of the city of Imperial Beach…'People in my community are getting sick left and right,' she said Tuesday of the effects of the sewage pollution on the water as well as the air. 'We cannot afford to continue to punt the responsibility across the border because we have a dire situation here on United States soil, on California soil, that is harming California constituents.'"

The International Boundary and Water Commission (IBWC) and the South Bay International Wastewater Treatment Plant (SBIWTP): Bi-national concerns about Tijuana River water quality date back to 1934, when the U.S. and Mexican governments instructed the International Boundary Commission (predecessor to the IBWC) to prepare a report on the Tijuana sewage problem. When the U.S. and Mexico signed the Water Treaty of 1944, Article III made the use of cross-border waters subject to "sanitary measures or works." The two governments also agreed to give preferential attention to the solution of all border sanitation problems.

In 1990, the IBWC authorized construction of the SBIWTP, a treatment plant on the Tijuana River, north of the border. This treatment plant is capable of treating 25 million gallons per day (MGD), but has an expansion capability of up to 100 MGD. Once treated, water from the plant flows through a pipe leading to the South Bay Ocean Outfall. The SBIWTP is not designed to treat all discharges originating in Tijuana, such as stormwater or transboundary flows from canyon collectors.

SBIWTP damages, weather events, and federal action. The SBIWTP has been in dire need of updates and repairs. Major storm events have caused an influx of water that exceeded the plant's capacity, resulting in untreated sewage and stormwater discharges into the South Bay Ocean Outfall and directly to the ocean.

Tropical Storm Hilary in 2023 accelerated damage to the already strained plant. The recovery plan to restore the SBIWTP's ability to fully treat 25 MGD of wastewater and restore compliance with discharge water quality permit parameters has been estimated to cost $8 million.

U.S.-Mexico-Canada Agreement: When Congress approved the U.S.-Mexico-Canada Agreement in 2019, California Congressional representatives succeeded in adding $300 million to identify infrastructure solutions to address the significant negative impacts of water pollution in cross-border rivers on water quality, public health, and the environment. In 2020, the U.S. government committed funding to the US EPA to be used to address Tijuana River water quality problems. In fall 2021, the US EPA completed an evaluation of the problem and developed a set

of project proposals known as the Comprehensive Infrastructure Solution. The estimated costs of the plan were $627 million and approximately $26 million for annual operations and maintenance. The Comprehensive Infrastructure Solution has yet to be completed.

On March 21, 2024, U.S. Senator Alex Padilla announced that over $103 million in additional funding for the IBWC had been secured in the bipartisan FY 2024 appropriations package. The funding will help repair the SBIWTP to address trans-border water pollution.

California Legislature's work on border river water quality: The California Legislature has been working to address water quality in its border rivers for the last 20 years. It has passed bills to support state agency projects to improve water quality and held informational hearings on efforts to improve border river water quality. State budgets since 2017 have included appropriations for border river water quality, as follows:

- 2017: Reappropriated $2.1 million from the 2014 California Wildlife, Coastal, and Park Land Conservation Fund of 1988 for acquisition of lands in the Tijuana River Valley;
- 2019: Appropriated $15 million for Tijuana River pollution control;
- 2020: Appropriated $18 million from the General Fund and $10 million from Proposition 68 water bond funds for the New River Project;
- 2021: Appropriated $20 million to improve water quality in border rivers; and,
- 2022: Appropriated $15 million for border rivers cleanup.

Stakeholders point to potential Constitutional and jurisdictional issues. As noted below under "Arguments in opposition," some stakeholders express agreement with the author that transboundary pollution via the Tijuana River is a serious problem, while raising concerns that the approach taken in SB 1178 poses Constitutional and jurisdictional issues. SB 1178 establishes reporting and product labeling requirements for entities discharging waste outside of California's borders, if the waste is discharged in a manner that could affect the quality of waters in the state. This would presumably include entities discharging on the other side of any border with California (including Mexico and other states), if those discharges could affect water quality within California.

In relation to the above concerns, it is worth noting that existing law under Porter-Cologne requires a person who discharges waste, or proposes to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state to file a discharge report with the appropriate Regional Water Board. This statute appears to grant the State Water Board and Regional Water Boards the ability to regulate discharges outside of California's borders (if those discharges could affect the state's waters), at least with respect to requiring reporting. However, the extent to which this provision has been used or tested previously in California or elsewhere is unclear.

This bill: SB 1178 aims to tackle longstanding, severe problems with transboundary water pollution that have been impacting communities near the California-Mexico border for decades. Four primary features of the bill's approach include: 1) SB 1178 focuses on waste discharges produced by entities that conduct business in California and have a minimum of 2,500 employees; 2) SB 1178 would regulate reporting by these entities on waste discharges occurring outside California, that could affect water quality within the state; 3) SB 1178 would require entities to include an on-product label stating that the product contributed to the contamination of California water quality; and, 4) SB 1178 would establish a new Fund, where penalties for

noncompliance would be deposited and used to mitigate the impacts of waste discharges on state waters.

Arguments in support: According to the California Coastkeeper Alliance and Defenders of Wildlife:

> "…we write to support SB 1178 (Padilla), which will direct the State Water Board to establish regulations necessary to hold large, international corporations already subject to California law accountable for their polluted discharges which impact waters of the state. As California continues to make strides toward swimmable, fishable, and drinkable waters for all, it is necessary to ensure that no parties profit from pollution.
>
> There is a crisis on the Tijuana River. A lack of infrastructure has allowed for over 100 billion gallons of untreated sewage, industrial waste, and urban runoff to run into the Tijuana Estuary and the Pacific Ocean over the last five years. Like much of California's pollution, this issue is multi-pronged. A lack of sewage infrastructure has overflowed the U.S. International Boundary and Water Commission (USIBWC's) South Bay International Wastewater Treatment Plant near San Diego, and now much of the raw sewage simply bypasses this plant. While a lack of sewage infrastructure is an important component of the transboundary pollution, studies have additionally found that stormwater runoff from Mexico also contains things like pesticides and heavy metals, likely from industrial waste. This industrial waste heavily contributes to transboundary pollution, is entirely controllable, and is something which SB 1178 could mitigate.
>
> Under the bill as amended, polluters will no longer be able to hide their impacts to California's waterways and the public will be able to hold them accountable for their discharges. Moreover, this bill is consistent with existing California law. For example, California Water Code section 13260(a)(2) notes that any person who is a citizen, domiciliary or political entity of the state that discharges or proposes to discharge into waters of the state 'outside the boundaries of the state in a manner that could affect the quality of the waters of the state within the region,' must report their discharges. Moreover, 'citizen or domiciliary' is defined in statute as including 'a foreign corporation having substantial business contacts in the state or which is subject to service of process in this state.' SB 1178 seeks to build on this existing framework and ensure that large polluters who are already subjected to California law and whose discharges affect waters of the state are held accountable for their pollution."

Arguments in opposition: A coalition—comprised of the California Chamber of Commerce, California Manufacturers and Technology Association, Agricultural Council of California, California Food Producers, Can Manufacturers Institute, and American Chemistry Council—writing in an opposed-unless-amended position states:

> "We understand the goal of SB 1178 is to address continued sewage contamination in the Tijuana River…This is a serious problem, and several of the members of this coalition have supported previous and ongoing efforts to address this issue…We are interested in finding effective means of addressing and improving water quality in the Tijuana River that does not result in unworkable regulation…

Our first concern with the bill's attempt to address actions that occur outside of California's boundaries is that California does not have the legal jurisdiction to control actions that occur internationally…The US Constitution and decades of Supreme Court precedent make clear that only the federal government can set foreign policy. The Commerce Clause expressly states that it is the federal government that is tasked with setting foreign policy and regulating commerce with other nations, and this has since been interpreted to prohibit state laws that (1) facially discriminate against foreign commerce, (2) impede the ability for the federal government to 'speak with one voice' as to other nations, and/or (3) attempt to regulate conduct beyond state borders…

The June 17, 2024 amendments introduce a new labelling requirement that will confuse both companies attempting to comply and consumers…The warning component in this bill would stand alone as a moral warning rather than one aimed at protecting users…There are also compliance concerns with regard to the labeling requirement. First, this bill merely states that the submission of a report of waste discharge would trigger the warning label, but this does not consider whether the respective discharge actually negatively impacts water quality…Finally, the labelling requirement is expressly discriminatory against out-of-state (especially out of US) commerce, as the intention of the bill is that facilities in California would not be subject to these requirements…

…Passing such a bill would subject the [State Water Board] and [Regional Water Boards] to nearly guaranteed litigation contesting the authority to regulate out-of-state discharges in this way, which translates to significant state costs to cover defense and court resources…Setting aside the challenges that will come as a result of this bill, the [State Water Board] and [Regional Water Boards] will incur significant workload in order to comply with the bill…This is a substantial amount of staff effort that would be expended outside of the state and would divert resources away from administering the state's own program within its own borders."

Related legislation:

1) AJR 12 (Alvarez, 2024). Urges the U.S. Congress and President Joseph R. Biden to fully fund the US EPA's Comprehensive Infrastructure Solution for the Tijuana River due to the ongoing impacts to public health, the environment, and the local economy caused by cross-border pollution; urges President Joseph R. Biden to declare a national emergency due to those ongoing impacts; and urges President Joseph R. Biden and the U.S. Congress to provide funding to address ongoing cross-border pollution impacting the New River. This bill is pending action on the Assembly floor.

2) AB 1567 (E. Garcia, 2023). Enacts the Safe Drinking Water, Wildfire Prevention, Drought Preparation, Flood Protection, Extreme Heat Mitigation, and Workforce Development Bond Act of 2024, which, if approved by the voters, would authorize the issuance of $15.1 billion in bonds to finance safe drinking water, wildfire prevention, drought preparation, flood protection, extreme heat mitigation, and workforce development program projects. At least $50 million each would be made available for the Tijuana River Border Pollution Control Project and the New River Water Quality, Public Health, and River Parkway Development Program. This bill is pending action before the Senate Natural Resources and Water Committee.

3) SB 253 (Wiener, Chapter 382, Statutes of 2023). Requires any partnership, corporation, limited liability company, or other U.S. business entity with total annual revenues in excess of $1 billion and that does business in California to publicly report their annual greenhouse gas emissions, as specified by the California Air Resources Board.

4) AB 2248 (E. Garcia, Ward, 2022). Would have provided $100 million to the State Water Board from the state's General Fund, upon appropriation by the Legislature, for grants and direct expenditures to address water quality problems arising in California-Mexico cross-border rivers. This bill was vetoed by Governor Newsom.

5) SJR 22 (Hueso, Chapter 241, Statutes of 2018). Urges the federal government and the U.S. Section of the IBWC to take immediate action to adequately address cross-border pollution in the Tijuana River Valley.

6) SB 507 (Hueso, Chapter 542, Statutes of 2017). Authorizes funds granted to the County of San Diego in the 2014 Budget Act to be available for development, improvement, rehabilitation, protection, restoration, and studies of natural and park lands in the Tijuana River Valley.

7) AB 1059 (E. Garcia, Chapter 584, Statutes of 2015). Requires the Office of Environmental Health Hazard Assessment to update its CalEnviroScreen 2.0 tool by using any relevant environmental data relating to known impacts of air pollution, water pollution, and toxic sites on the environmental quality of the communities in the California-Mexico border region.

8) AB 965 (E. Garcia, Chapter 668, Statutes of 2015). Requires the California-Mexico Border Relations Council to establish the New River Water Quality, Public Health, and River Parkway Development Program to coordinate funding for, and the implementation of, recommendations from the New River Strategic Plan. Provides the Border Relations Council with a consultative and coordinating role on the development, implementation, and funding of specified border-related projects.

9) SCR 90 (Hueso, Chapter 80, Statutes of 2014). Declared the Legislature’s intent to work with the Tijuana River Valley Recovery Team to take various actions to protect and preserve the Tijuana River Valley; to encourage collaboration with the team to protect and enhance natural resources through improved management of sediment and trash, flood control, ecosystem management, and recreation and education; and, to promote bilateral ties with Mexico.

10) AB 1079 (V. M. Pérez, Chapter 382, Statutes of 2009). Required the Border Relations Council to create a strategic plan to study, monitor, remediate, and enhance the New River’s water quality to protect human health and develop a river parkway suitable for public use and enjoyment.

11) AB 3021 (Núñez, Chapter 621, Statutes of 2006). Establishes the Border Relations Council to serve as the central organizing body for overseeing and collaborating on California-Mexico border issues.

REGISTERED SUPPORT / OPPOSITION:

Support

California Coastkeeper Alliance
California Environmental Voters (formerly CLCV)
City of Chula Vista
Cleanearth4kids.org
Defenders of Wildlife
Junior Philanthropists Foundation
San Diego Unified Port District
San Diego; County of

Opposition

Agricultural Council of California
American Chemistry Council
California Manufacturers and Technology Association
California Chamber of Commerce
California Food Producers
Can Manufacturers Institute

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

Date of Hearing: June 25, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
SB 1208 (Padilla) – As Amended April 29, 2024

SENATE VOTE: 28-6

SUBJECT: Waste discharge permits: landfills

SUMMARY: Prohibits a Regional Water Quality Control Board (Regional Water Board) from issuing a waste discharge permit for a new landfill that is used for the disposal of nonhazardous solid waste, if the new landfill is to be located within the Tijuana River National Estuarine Research Reserve, or within an area that is tributary to the Tijuana River.

EXISTING LAW:

1) Establishes the federal Clean Water Act (CWA) to regulate discharges of pollutants into the waters of the United States (U.S.) and to regulate quality standards for surface waters. (33 United States Code (USC) § 1251, et seq.)

2) Establishes the National Pollutant Discharge Elimination System (NPDES) permit program, requiring the State Water Resources Control Board (State Water Board) and the nine Regional Water Boards to prescribe waste discharge requirements which, among other things, regulate the discharge of pollutants in stormwater, including municipal stormwater systems. (33 USC § 1342)

3) Prohibits a Regional Water Board from issuing a waste discharge permit for a new landfill, or a lateral expansion of an existing landfill, that is used for the disposal of nonhazardous solid waste if the land has been primarily used at any time for the mining or excavation of gravel or sand. (Public Resources Code § 40060 (a))

4) Establishes the State Water Board and Regional Water Boards to preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations. (WC § 13100, et. seq.)

5) Requires each Regional Water Board to formulate and adopt water quality control plans for all areas within the region, with specified plan elements, including:

    a) A requirement for water quality control plans to include water quality objectives, to ensure the reasonable protection of beneficial uses and the prevention of nuisance; and,

    b) An authorization for water quality control plans to specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted. (WC § 13240, et seq.)

6) Prohibits, pursuant to the Porter-Cologne Water Quality Control Act, the discharge of waste or pollutants to surface and ground waters unless the discharger obtains a permit from the State Water Board or a Regional Water Board. (WC § 13260, et seq.)

7) Requires a Regional Water Board to prescribe requirements for any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area upon or receiving waters into which the discharge is made or proposed. Specifies that requirements shall implement any relevant water quality control plans that have been adopted, and take into consideration the beneficial uses to be protected, water quality objectives, other waste discharges, and the need to prevent nuisance. (WC § 13263.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Border communities already face some of California's most pressing environmental hazards in the form of dangerously polluted air and water that has created a public health crisis. The Tijuana River is already one of the most polluted watersheds in the nation. Allowing developers to build an unnecessary landfill in that watershed would further impact local communities that are already enduring ecological disasters. SB 1208 will protect vulnerable Californians by prohibiting a landfill that would further pollute the waters of the Tijuana River and threaten local residents."

Federal Clean Water Act (CWA): The Federal Water Pollution Control Act of 1948 was the first major U.S. law to address water pollution. The law was amended in 1972 and became commonly known as the Clean Water Act (CWA). The federal CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States (U.S.) and regulating quality standards for surface waters. Under the CWA, the United States Environmental Protection Agency (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 in order to discharge into surface water.

National Pollutant Discharge Elimination System (NPDES): As authorized by the CWA, the NPDES Permit Program controls water pollution by regulating point sources that discharge pollutants into waters of the U.S. Point sources are discrete conveyances such as pipes or man-made ditches. Examples of pollutants include, but are not limited to, rock, sand, dirt, and agricultural, industrial, and municipal waste discharged into waters of the U.S. The NPDES Program is a federal program that has been delegated to the State of California for implementation through the State Water Board and the Regional Water Boards.

The State Water Board oversees implementation of the NPDES Permit Program throughout the state and, as such, coordinates with and supports Regional Water Board efforts, and reviews Regional Water Board actions. While the State Water Board has issued some NPDES permits, the Regional Water Boards issue the vast majority of NPDES permits in the state and ensure compliance with their permits through compliance inspections, monitoring report reviews, and

enforcement actions. In California, NPDES permits are also referred to as waste discharge requirements (WDRs) that regulate discharges to waters of the U.S.

State Water Board: Created by the State Legislature in 1967, the five-member Board allocates water rights, adjudicates water right disputes, develops statewide water protection plans, establishes water quality standards, and guides the nine Regional Water Boards located in the major watersheds of the state.

Regional Water Boards: There are nine Regional Water Boards statewide. Regional boundaries are based on watersheds and water quality requirements are based on the unique differences in climate, topography, geology, and hydrology for each watershed. Each Regional Water Board makes critical water quality decisions for its region, including setting standards, issuing waste discharge requirements, determining compliance with those requirements, and taking appropriate enforcement actions.

Cross-border pollution: Several waterbodies straddle the international border between the U.S. and Mexico. Among those, the Tijuana River and the New River are recognized polluted rivers that affect both sides of the border and have required state resources to help mitigate the harm to environmental and public health.

Tijuana River watershed: According to the San Diego Regional Water Quality Control Board (San Diego Water Board), the Tijuana River watershed is a large binational watershed of approximately 1,750 square miles that lies across the California-Mexico border. A large portion of the watershed (approximately 75%) is within Mexico and encompasses the densely urbanized city of Tijuana, Baja California, Mexico. The watershed drains into the Tijuana River Estuary in the U.S. and ultimately to the Pacific Ocean in the City of Imperial Beach.

Tijuana River Estuary: According to the California Department of Parks and Recreation, the Tijuana Estuary is the largest coastal wetland in Southern California and it is located on the international border between the U.S. and Mexico. The estuary is primarily a shallow water habitat, though it is often termed an "intermittent estuary," as it undergoes extreme changes in streamflow at different times of the year. The Tijuana River Estuary is one of the few salt marshes remaining in Southern California. The site is an essential breeding, feeding, and nesting ground and key stopover point on the Pacific Flyway for over 370 species of migratory and native birds, including six endangered species.

Tijuana River pollution: In the past 30 years, the city of Tijuana, Baja California, Mexico has experienced tremendous population and industrial growth, along with rapid urbanization. According to census data presented by the National Institute of Statistics and Geography, an agency of the Mexican Government, the City of Tijuana had a population of 1,922,523 in 2020, representing a 23.3% growth in population compared to 2010 census data. The population in the City of Tijuana has nearly tripled compared to census data from 1990. This rapid growth has put a strain on aging Mexican sewage infrastructure causing serious pollution problems on both sides of the border. A concerning number of homes in the City of Tijuana do not have connections to any wastewater or solid waste collection system. These infrastructure problems result in massive flows of untreated sewage that affect the Tijuana River Estuary and adjacent beach coastal waters.

The pollution in the Tijuana River has impacted beaches and businesses and is a major public health threat in San Diego County. The San Diego Department of Environmental Health and Quality's Beach and Bay Water Quality Program currently lists five shorelines closed to the public in South San Diego County due to bacteria levels exceeding health standards. These closures date back to December 2021. Local news stations, such as *NBC 7 San Diego,* have visited numerous businesses in the city of Imperial Beach that stated concerns over their revenue and the future of their small businesses, since beach closures have decreased tourism in the area. While beach closures deter the public from entering contaminated waters and prevent illnesses from direct contact, a recent study by the Scripps Institution of Oceanography suggests that bacteria from the raw, untreated sewage can be airborne and affect people living in close proximity to coastal waters. Data analyses have demonstrated that up to 76% of the bacteria people breathe in the City of Imperial Beach comes from the aerosolization of raw sewage from the Tijuana River, suggesting that pollution in the Tijuana River may have farther-reaching health consequences than previously thought. On February 14, 2024, San Diego State University's School of Public Health released a report on the escalating public health crisis due to the Tijuana River pollution. This report was commissioned by the Prebys Foundation at the request of U.S. Representative Scott Peters. Further studies are needed to understand the impacts on human health and how climate change may contribute to this crisis.

The military is also affected by untreated wastewater that enters San Diego County coastal waters. The US Naval Special Warfare Command trains in the City of Coronado and has had to move ocean training events to different locations in Southern California to protect their personnel and avoid illnesses from polluted waters. Federal Homeland Security agents assigned to the region are also exposed to hazards when patrolling in Tijuana River Valley, putting their health at risk. The impact on military and national safety operations further emphasizes the need for a comprehensive plan with proper funding to address the pollution at the border.

On June 28, 2023, members representing San Diego County in the California Legislature wrote a letter addressing Governor Newsom, to urge him to declare a state of emergency. In their letter, they state that an astonishing 100 billion gallons of untreated toxic wastewater had crossed the border since December 2018. Furthermore, 35 billion gallons had crossed the border in the first six months of 2023, demonstrating that the environmental disaster has worsened over the years.

The East Otay Mesa Recycling Collection Center and Landfill: On June 8, 2010, a county-wide initiative, Proposition A, amended San Diego County's general plan to allow for the construction and operation of a new landfill. The question before the voters of San Diego County was: "Shall this Initiative be adopted for the purpose of siting a new recycling center and class III solid waste landfill in East Otay Mesa area of unincorporated San Diego County?"

In 2011, the developer of this proposed landfill began the regulatory process by initiating the environmental review process (under state law) for a class III solid waste landfill occupying approximately 340 acres. The proposed project would be located in the unincorporated area of south San Diego County, approximately two miles east of the Siempre Viva Road exit from Interstate 905, one-quarter mile from Loop Road/Paseo De La Fuente and east of planned State Route 11. The proposed project site would be located approximately one and one-half miles from the City of San Diego, two and one-half miles from the City of Chula Vista, and one-quarter mile from the U.S./Mexico border.

According to the website of the County of San Diego Department of Health and Quality, there were two environmental documents submitted (an Initial Study and a Notice of Preparation) on September 12, 2011. There are no additional environmental documents posted since 2011. However, since that time, the project proponent has indicated they are in the process of applying for a solid waste facility permit and are preparing the environmental documents to be submitted under the California Environmental Quality Act. It is important to note that the permitting and environmental documents are being prepared only for the landfill and not for the recycling center (the voters' approval was for two projects: a recycling center and landfill). During conversations about this bill, the proponents of the landfill are confident that there will not be any negative impacts on the Tijuana River associated with the landfill. *The Committee and author may wish to consider some type of requirement that ensures there will not be any negative impacts on the Tijuana River from this landfill.*

If this bill passes, then this proposed landfill in Otay Mesa would not be able to receive a waste discharge permit from the San Diego Water Board, and therefore would not be able to operate.

Additionally, while the voters approved of a zoning change to allow for the recycling center and class III landfill, the project still needs to obtain the approval of various local, state and federal agencies and those regulatory approvals cannot be guaranteed in advance. This includes the requirements under the California Environmental Quality Act (CEQA) which include evaluating potential impacts on Native American cultural sites.

Solid waste facilities/recycling: The voters in San Diego County approved projects for a recycling center and a landfill. Since this vote, state law has changed considerably as it relates to recycling and landfills. As a result of the passage of SB 1383 (Lara, Chapter 395, Statutes of 2016), all new or expanding landfills must implement organic waste recovery activities as described in regulations adopted by the Department of Resources, Recycling and Recovery (CalRecycle). Additionally, SB 54 (Allen, Chapter 75, Statutes of 2022) enacted the Plastic Pollution Prevention and Packaging Producer Responsibility Act, which requires producers (manufacturers) of packaging and single-use plastic food ware products to ensure that the products are recyclable or compostable. These two laws dramatically change the nature of recycling and the role of landfills in California.

This bill is double-referred to the Assembly Natural Resources Committee, where issues of recycling and landfills (including landfill capacity) will be discussed in greater detail.

CalEnviroScreen: In order to address the cumulative effects of both pollution burden and certain population characteristics, and to identify which communities might be in need of particular policy, investment, or programmatic interventions, the Office of Environmental Health Hazard Assessment (OEHHA) developed and now maintains and updates the CalEnviroScreen tool on behalf of the California Environmental Protection Agency (CalEPA). The tool applies a framework, developed by OEHHA in 2010, for assessing cumulative impacts. According to OEHHA cumulative impacts refer to exposures and public health or environmental effects from all sources of pollution in a geographic area. Cumulative impacts also take into account groups of people that are especially sensitive to the effects of pollution and socioeconomic factors. The CalEnviroScreen tool's framework is based in large part on input from a statewide working group on environmental justice that pointed out the unmet need to assess cumulative burdens and vulnerabilities affecting California communities. The tool uses thirteen pollution burden indicator and eight population characteristics in order to calculate a score. According to

CalEnviroScreen 4.0, Otay Mesa, the site of the proposed landfill, has a score in the 90-100% (which is the most burdened percentile). Therefore, citing a solid waste landfill in this area could increase the pollution burden this community already is faced with.

This bill: SB 1208 would prohibit the San Diego Water Board from issuing a waste discharge permit for the proposed landfill in Otay Mesa. The author's concern is the overwhelming pollution burden facing the community, the region, and the Tijuana River Watershed. If this bill is enacted, it would likely mean that the landfill could not operate (if constructed). Some stakeholders have raised legal concerns around this.

Legal considerations: During discussions on this bill, some stakeholders have opined that the state cannot change the rules and effectively prohibit this particular landfill from operating. It has been noted that the vote of the people in San Diego approved a zoning change – but that vote cannot alone guarantee approval of the various local, state, and federal permits that are required for this landfill. In other words, even with the locally approved voting change, the project may not achieve the necessary permits, with or without a bill. However, this is an important conversation, and one best had in the Assembly Judiciary Committee. This bill has not been referred to that committee; however, if the bill continues to move through the process, perhaps their expertise could be sought to help shed some light on any potential legal issues there might be if this bill were to be enacted.

Options for consideration: As currently drafted, the bill, if enacted, would likely mean the landfill could not open. However, given that the voters in San Diego County voted on a recycling center and landfill, there could be other options to consider. These options could recognize that while there was a vote, it was over a decade ago and the state of recycling in California has drastically changed. Additionally, the voters approved two projects and currently only the landfill is moving forward. Some options, taken alone or combined, for consideration include:

- Should approval of waste discharge requirements for landfill, be contingent on the approval and operation of the recycling center that was also approved by the voters?
- Given that the state of recycling has changed, should there be a review of a need for this facility by CalRecycle and potentially, should CalRecycle also certify that the landfill will meet the requirements of SB 1383 and SB 54?
- Could the prohibition on the waste discharge requirements for the landfill be removed, if, after enactment of this bill, the voters of San Diego County were to approve a new measure (given that a lot has changed since the vote 14 years ago)?
- The Secretary of CalEPA could be required to make formal written findings, based on clear and convincing evidence, that the construction, operation, and closure/post-closure of a new nonhazardous solid waste landfill within the Tijuana River National Estuarine Research Reserve or within an area that is tributary to the Tijuana River will not harm or otherwise adversely affect the Tijuana River or areas tributary to the Tijuana River.
- A regional water board makes a finding that the waste discharge requirements protect water quality, meet water quality objectives, and protect beneficial uses.

Arguments in support: According to a coalition in support of the bill, "The project could impair water and air quality throughout the Tijuana River Watershed, including the Tijuana River Valley and Estuary, contributing to harmful health impacts to downstream communities in a

region already burdened by the cross border pollution crisis, one of the worst ongoing public health and environmental justice crises in the country.

There is no need for a new landfill in San Diego County, as the county has more than adequate assured disposal capacity for the next 30 years as documented in San Diego County's 2022 detailed analysis of the region's landfill capacity. We applaud Senator Padilla's recognition that "we all live downstream", and, pointedly, that an unnecessary landfill developed in the watershed of the already impaired Tijuana River could adversely affect water and air quality in the lower watershed and exacerbate the ongoing pollution issues from which our border cities and communities have suffered for decades.

The protection of the Tijuana River tributary system from the significant and irreparable impacts of a proposed new landfill is critical and imperative. That fragile system is affected by transboundary flows, disturbances to hydrologic conditions, and impacts from land uses. The Tijuana River Valley experiences transboundary flows which contain treated and untreated wastewater, groundwater, stormwater, surface water run-off and trash. Cross-border canyon tributaries along the U.S.-Mexico border operate as entry points for transboundary flows into the Tijuana River, carrying pollutants in sediment from the canyons and upstream in the river. The construction of a landfill disturbs an area's natural hydrology. The removal of existing vegetation and alteration of the natural slopes and soils changes the hydrologic conditions which affects stormwater, run-off and erosion patterns. Stormwater, run-off and erosion flow through the watershed, carrying pollutants downstream. Given the topography and terrain of the location, the proposed project would require extensive grading and excavation – earth-moving and land alteration activities which would disturb the hydrology of the area."

Arguments in opposition: According to National Enterprises, Inc., "SB 1208 is a solution in search of a problem. While we deeply respect the author's steadfast leadership on the restoration of the Tijuana River, SB 1208 is based on the false premise that the proposed East Otay Mesa recycling and landfill project will pollute the river. There is no basis for this claim other than overly simplified refrains that the landfill could drain even more pollution into the Pacific Ocean and elementary illustrations of discharge flowing south from the proposed site.

SB 1208 undermines San Diego voters' approval and property rights. In 2010, County of San Diego voters approved Proposition A, by 84.49% to allow for the construction and operation of a recycling collection center and class III solid waste landfill on the East Otay Mesa project site. SB 1208 flagrantly defies the voters and provides them with no viable alternative."

Double-referral: Should this bill pass this Committee it will be re-referred to the Assembly Natural Resources Committee.

Related legislation:

1) AJR 12 (Alvarez). Urges the U.S Congress to support President Joseph R. Biden's $310 million supplemental funding request for the U.S. Section of the International Boundary and Water Commission (USIBWC), due to the ongoing impacts to public health, the environment, and the local economy caused by cross-border pollution in the Tijuana River Valley; urges President Joseph R. Biden to declare a national emergency due to those ongoing impacts; and urges the U.S. Congress to secure funding for the New River Project to

address the impacts on public health, the environment, and the local economy of Imperial County. This measure is pending action on the Senate Floor.

2) AB 1597 (Alvarez). Authorizes, upon appropriation by the Legislature, funds to be made available to the North American Development Bank (NADBank) for loans, grants, and direct expenditures that address water quality problems of the California-Mexico cross-border rivers, including the New and Tijuana Rivers; authorizes appropriation of funds to recipients that are authorized to work in Mexico, if recipients are, or consent to be, subject to the jurisdiction of the California courts for enforcement purposes, and if the project will provide water quality benefits to California. This bill is pending action in the Senate Environmental Quality Committee.

3) AB 2601 (Garcia, 2022). Would have prohibited a Regional Water Board from issuing a waste discharge permit for a new landfill, or a lateral expansion of an existing landfill, that is used for the disposal of nonhazardous solid waste if the land is located within three miles of the U.S. border with Mexico. Additionally, would have prohibited a Regional Water Board from granting a variance for a new landfill or lateral expansion of an existing landfill located within three miles of the U.S. border with Mexico. This bill was held on the suspense file in the Assembly Appropriations Committee and subsequently died on file.

4) SB 833 (Vargas, 2011). Would have prohibited the operation of a solid waste landfill in San Diego County that is located within 1,000 feet of the San Luis Rey River and within 1,000 feet of a Native American sacred site. This bill was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Activist San Diego
Alliance San Diego
Azul
California Coastal Protection Network
California Environmental Voters (formerly CLCV)
California Latino Environmental Advocacy Network
Californians Against Waste
Center for Biological Diversity
Chair Nora Vargas, San Diego County Board of Supervisors
Chula Vista Deputy Mayor Alonso Gonzalez
Clean Earth 4 Kids
Cleanearth4kids.org
Climate Action Campaign
Council Member Jose Rodriguez, City of National City
Council President Sean Elo Rivera, City of San Diego
Endangered Habitats League
Environmental Center of San Diego
Food & Water Watch
Mayor Paloma Aguirre - City of Imperial Beach
National City Mayor Ron Morrison
Natural Resources Defense Council (NRDC)

Over 1000 Individuals
Protect Otay Foothills
San Diego Audubon Society
San Diego Coastkeeper
San Diego Councilmember Jennifer Campbell
San Diego Councilmember Marni Von Wilpert
San Diego County Democrats for Environmental Action
San Diego Pediatricians for Clean Air
San Diego350
Sierra Club California
Supervisor Monica Montgomery Steppe
Surfrider Foundation San Diego Chapter
UDW/AFSCME Local 3930
Unite Here Local 30
Wildcoast
Youth Will

Opposition

California Building Industry Association
National Enterprises, Inc.

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

Date of Hearing: June 25, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
SB 1188 (Laird) – As Amended June 20, 2024

SENATE VOTE: 29-8

SUBJECT: Drinking water: technical, managerial, and financial standards

SUMMARY: Requires the State Water Resources Control Board (State Water Board) to develop and adopt minimum technical, managerial, and financial (TMF) capacity standards for specified water systems and requires those water systems to comply with the TMF standards. Specifically, **this bill**:

1) Requires the State Water Board, in accordance with the Administrative Procedure Act, to develop and adopt minimum standards related to the TMF capacity of community water systems serving fewer than 10,000 people or 3,300 service connections and of nontransient noncommunity water systems that serve K–12 schools.

2) Requires the standards to review and consider the most recent TMF assessment published by the State Water Board, and authorizes the standards to include, but not be limited to, all of the following, among other criteria:
   a) Source water adequacy, related to both supply and quality;
   b) Infrastructure adequacy, including source, treatment, distribution, and storage;
   c) Adequacy of organizational staffing levels and staff technical knowledge;
   d) Revenue sufficiency;
   e) Fiscal management and controls; and,
   f) Adequate management and technical staffing.

3) Requires the State Water Board, in developing the standards, to review and consider specified documents, standards, and practices produced by other government and water industry organizations.

4) Authorizes the State Water Board, in developing the standards, to consider proposed or adopted regulations required by the Safe Drinking Water Act (SDWA).

5) Requires the State Water Board, before developing the standards, to convene at least two virtual statewide public workshops regarding the proposed standards.

6) Provides that this bill does not limit the Public Utilities Commission's (PUC's) authority in relation to the regulation of water corporations.

7) Requires community water systems serving fewer than 10,000 people or 3,300 service connections and nontransient noncommunity water systems that serve K–12 schools to demonstrate compliance with the minimum TMF standards adopted pursuant to this bill within timelines adopted by the State Water Board.

8) Provides that the timelines adopted by the State Water Board shall not require compliance with the minimum TMF standards sooner than two years after the adoption of the standards.

9) Authorizes the State Water Board to grant an extension for compliance with the TMF standards for good cause when an explanation of the need for an extension is included in a compliance plan submitted by a water system and is approved by the State Water Board.

10) Requires new community water systems serving fewer than 10,000 persons or 3,300 service connections and nontransient noncommunity water systems that serve K–12 schools to demonstrate, as part of a permit application, compliance with the minimum TMF standards adopted pursuant to this bill.

11) Authorizes the State Water Board to require a community water system serving fewer than 10,000 people or 3,300 service connections and a nontransient noncommunity water system that serves K–12 schools subject to the minimum standards adopted pursuant to this bill to show proof that the system has the TMF capacity to comply with the standards, including, but not limited to, annual reporting of information necessary and appropriate to monitor its current capacity status.

12) Provides that this bill does not limit the State Water Board's authority under other laws, including the authority to order consolidation.

EXISTING LAW:

1) Pursuant to the federal SDWA, authorizes the United States Environmental Protection Agency (US EPA) to set standards for drinking water quality and to oversee the states, localities, and water suppliers who implement those standards. (42 United States Code (U.S.C.) § 300 (f) et seq.)

2) Establishes, under the federal SDWA Amendments of 1996, the Capacity Development Program, with the following three major components:

    a) Requires states, under penalty of Drinking Water State Revolving Fund (DWSRF) withholding, to establish a program to ensure that all new community water systems and nontransient, noncommunity water systems commencing operations demonstrate TMF capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations.

    b) Requires states, under penalty of DWSRF withholding, to develop and implement a strategy to assist public water systems in acquiring and maintaining TMF capacity.

    c) Prohibits states from providing DWSRF loan assistance to systems that lack the TMF capability to ensure compliance, or to systems in significant noncompliance with any drinking water standard or variance. Authorizes states to provide assistance if the use of such assistance will ensure the system's compliance, and the system has agreed to make the necessary changes in operation to ensure that it has the TMF capacity to comply over the long term. (42 U.S.C. § 300 (g) et seq.)

3) Declares that it is the established 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)

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

5) Defines "community water system" as a public water system that serves at least 15 service connections used by yearlong residents or that regularly serves at least 25 yearlong residents of the area served by the system. (HSC § 116275 (i))

6) Defines "nontransient noncommunity water system" as a public water system that is not a community water system and that regularly serves at least 25 of the same persons over six months per year. (HSC § 116275 (k))

7) Requires the State Water Board to adopt regulations it determines to be necessary to carry out the SDWA, including but not limited to, minimum acceptable financial assurances that a public water system is required to submit as a demonstration of its capability to provide for the ongoing operation, maintenance, and upgrading of the system, including compliance with monitoring and treatment requirements and contingencies. (HSC § 116375 (g))

8) Authorizes the State Water Board to impose permit conditions for the operation of a public water system, including requirements for system improvements, TMF requirements, and time schedules that it deems necessary to ensure a reliable and adequate supply of water at all times that is pure, wholesome, potable, and does not endanger the health of consumers. (HSC § 116540 (a))

9) Prohibits a public water system that was not in existence on January 1, 1998, from being granted a permit unless the public water system demonstrates to the State Water Board that the water supplier possesses adequate TMF capability to ensure the delivery of pure, wholesome, and potable drinking water. Provides that this prohibition shall also apply to any change of ownership of a public water system. (HSC § 116540 (b))

10) Requires the State Water Board, before ordering consolidation or extension of service, to make seven findings, including that consolidation of the receiving water system and subsumed water system or extension of service is appropriate and technically and economically feasible. (HSC §116682 (d))

11) Authorizes the State Water Board, in order to provide an adequate supply of affordable, safe drinking water to disadvantaged communities and to prevent fraud, waste, and abuse, to, if sufficient funding is available, contract with, or provide a grant to, an administrator to provide administrative, technical, operational, or managerial services, or any combination of those services, to a designated water system to assist the designated water system with the provision of an adequate supply of affordable, safe drinking water. (HSC § 116686 (a)(1)(A)(i))

12) Authorizes the State Water Board to order the designated water system to accept administrative, technical, operational, or managerial services from an administrator appointed

by the State Water Board for full oversight of construction or development projects related to a consolidation or extension of service. (HSC § 116686 (a)(1)(C))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Access to safe and affordable water is a human right that over 900,000 Californians lack. A water system's [TMF] capacity is a reliable indicator of a water system's ability to meet drinking water standards and supply adequacy, and TMF deficiencies are a key reason water systems fail. This is especially true for small water systems that often lack the financial base and expertise to meet safe water standards.

Senate Bill 1188 requires the [State] Water Board to establish minimum standards for [TMF] capacity of small water systems, and requires compliance with TMF standards. SB 1188 helps safeguard Californian's fundamental right to safe water by empowering the state to proactively identify and assist small water systems struggling with operational capacity that threatens access to safe, reliable drinking water."

Human right to water: By enacting Assembly Bill (AB) 685 (Eng, Chapter 524, Statutes of 2012), California became the first state with a Human Right to Water law. AB 685 established state policy that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation. It also requires all relevant state agencies to consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria. To date, water supply issues; contaminants; costs of treatment and distribution systems; climate change; the number and nature of small public water systems, especially in disadvantaged communities; and, many other factors continue to challenge the State's progress in implementing the Human Right to Water.

Drinking water contamination: While most drinking water in California meets requirements for health and safety, surface waters and aquifers used for drinking water can be contaminated by various chemicals, microbes, and radionuclides. According to the US EPA, common sources of drinking water contaminants include:

- *Industry and agriculture*. Organic solvents, petroleum products, and heavy metals from disposal sites or storage facilities can migrate into aquifers. Pesticides and fertilizers can be carried into lakes and streams by rainfall runoff or snowmelt, or can percolate into aquifers.

- *Human and animal waste*. Human wastes from sewage and septic systems can carry harmful microbes into drinking water sources, as can wastes from animal feedlots and wildlife. Major contaminants resulting from human and animal waste include Giardia, Cryptosporidium, and E. coli.

- *Treatment and distribution*. While treatment can remove many contaminants, it can also leave behind byproducts (such as trihalomethanes) that may themselves be harmful. Water can also become contaminated after it enters the distribution system, from a breach in the piping system or from corrosion of plumbing materials made from lead or copper.

- *Natural sources*. Some ground water is unsuitable or challenging to use for drinking because the local underground conditions include high levels of certain contaminants. For example, as ground water travels through rock and soil, it can pick up naturally occurring arsenic, other heavy metals, or radionuclides.

Drinking water contamination in California: According to the Office of the Environmental Health Hazard Assessment, disadvantaged communities and people in rural areas are exposed to contaminants in their drinking water more often than people in other parts of the state. The California State Auditor's July 2022 audit found that as of December 2021, more than 370 failing water systems providing water to more than 920,000 people were not meeting water quality standards. The audit report explained that this means that nearly a million Californians face possible long-term, negative health outcomes—including an increased risk of liver and kidney problems, as well as cancer—because they receive unsafe drinking water from a failing water system. The report noted that more than two-thirds of these failing systems are located in disadvantaged communities with significant financial need.

Health effects of drinking contaminated water: The US EPA reports that there is a broad range of health effects associated with exposure to drinking water contaminants. Ingestion or exposure to pathogens at sufficient doses can result in gastrointestinal illness with symptoms such as diarrhea, nausea, stomach cramps, and vomiting. Exposure to higher doses of chemicals, metals, or radionuclides through drinking water can produce biological responses, toxicological effects, and more severe health impacts including cancer, developmental or reproductive effects, neurological effects, and organ damage.

Providing safe, affordable drinking water to disadvantaged communities: According to the State Water Board, for common sources of drinking water contamination, such as arsenic and nitrates, expensive systems must be installed and operated to treat the water to meet drinking water standards. In many cases, technological advances have not yet been sufficient to make such treatment systems affordable, especially to small, disadvantaged communities. In addition, many small, disadvantaged communities do not have the TMF capacity to maintain and operate what are sometimes complex drinking water systems.

Technical, managerial, and financial (TMF) capacity: The November 2022 State Water Board report, *California Capacity Development Strategy for Public Water Systems* (2022 Capacity Strategy), asserts that all public water systems should have the TMF capacity to plan for, achieve, and maintain long term compliance with drinking water standards, thereby ensuring the quality and adequacy of the water supply. Technical, managerial, and financial capacity are interrelated and described in the 2022 Capacity Strategy as follows:

- *Technical capacity:* A public water system's ability to effectively treat and deliver safe drinking water with appropriately certified operators that meets state and federal water quality standards.

- *Managerial capacity:* A public water system's ability to conduct its affairs in a manner enabling it to achieve and maintain compliance with the California SDWA requirements while maintaining best practices in accountability and interactions with customers and regulatory agencies.

- *Financial capacity:* A public water system's ability to generate sufficient revenue for current and future budget needs, maintain creditworthiness, and manage funds through budgeting, accounting and other methods of fiscal control.

Safe Drinking Water Act of 1996 (federal SDWA): Congress enacted the federal SDWA in 1974 to protect the quality of drinking water in the United States. The federal SDWA covers all waters actually or potentially designed for drinking use, whether from above ground or underground sources. The federal SWDA authorizes the US EPA to establish minimum standards to protect tap water and requires all owners or operators of public water systems to comply with these primary (health-related) standards.

In 1996, Congress passed, and President Bill Clinton signed, amendments to the SDWA (1996 Amendments), which require states to incorporate TMF capacity into public water system operations. The 1996 Amendments require states to prevent the permitting of new non-viable water systems and to develop and implement a comprehensive capacity development strategy to assist existing public water systems in obtaining adequate TMF capacity. These requirements help ensure that public water systems have long-term sustainability and are able to maintain compliance with all applicable drinking water laws and regulations.

Capacity Development Program in California: A key component of the 1996 Amendments is the Capacity Development Program. The 1996 Amendments provide incentives, including funding through the DWSRF, for each state to develop and implement a Capacity Development program to assist public water systems in building TMF capacity. California's initial Capacity Development Strategy was adopted in 2000, and has since developed and evolved. California's most recent capacity development strategy is the 2022 Capacity Strategy.

According to the State Water Board's dashboard, which tracks failing water systems (SAFER Dashboard), as of June 15, 2024, California had 392 failing water systems that serve more than 960,000 residents, and 546 at-risk water systems that serve approximately 1.8 million residents. The SAFER Dashboard indicates that currently 15% of the water systems failing or at risk of failing; into these categories due to TMF capacity risk, which signifies a water system's TMF capacity to plan for, achieve, and maintain long term compliance with drinking water standards, thereby ensuring the quality and adequacy of the water supply. According to the 2022 Capacity Strategy, "Based on the State Water Board's engagement with failing water systems, it has become clear that TMF capacity limitations are a key driver towards a water system's inability to stay in compliance." The 2022 Capacity Strategy also states that, "At present, there are no specific requirements for TMF capacity for water systems in California regulations."

This bill: This bill requires the State Water Board to develop and adopt minimum TMF capacity standards for community water systems serving fewer than 10,000 people or 3,300 service connections and for nontransient noncommunity water systems that serve K-12 schools. It also requires those water systems to comply with the TMF standards. The author's office argues that, "establishing TMF standards will ensure that small water systems know what capacity standards need to be met, and also set up a framework for the state to more efficiently evaluate TMF capacity for individual water systems, foresee problems within systems, and prioritize targeted assistance."

Arguments in support: According to Clean Water Action and the Community Water Center,

"Access to safe and affordable drinking [water] is a human right (AB 685, Eng, Statutes of 2012) that over 900,000 Californians still lack access to. [TMF] capacity in water systems serve as indicators of a water system's ability to plan for, achieve, and maintain long-term compliance with drinking water standards. Small water systems often have trouble with TMF capacity because they lack economies of scale to invest in their water infrastructure and also may lack the staffing to properly maintain their systems.

The State Water Resources Control Board has, since 2021, published an annual Drinking Water Needs Assessment. In addition to identifying whether systems are out of compliance with one or more primary drinking water standards and are therefore considered to be failing, the Needs Assessment attempts to identify systems that are at risk of failure. According to the Water Board, TMF capacity limitations are a key driver towards a water system's inability to stay in compliance. While the Drinking Water Needs Assessment currently includes some risk factors and metrics for TMF, the state lacks regulations that define adequate TMF capacity and the State Water Board has identified additional regulation may be warranted.

SB 1188 requires the Water Board to adopt minimum TMF standards for water systems serving fewer than 10,000 connections, and requires small water systems to demonstrate compliance with those standards, or otherwise demonstrate an emergency need or progress towards consolidation or compliance when seeking state funding. SB 1188 will equip the state to better identify and address TMF deficiencies in small water systems and advance the Human Right to Water goal."

Arguments in opposition: None on file.

Related legislation:

SB 200 (Monning, Chapter 120, Statutes of 2019). Establishes the Safe and Affordable Drinking Water Fund (Fund) to help water systems provide an adequate and affordable supply of safe drinking water in both the near and the long terms. Transfers to the Fund annually, until June 30, 2030, 5% of the proceeds of the Greenhouse Gas Reduction Fund, up to $130 million.

AB 2501 (Chu, Chapter 871, Statutes of 2018). Updates the authority of the State Water Board to contract with, or provide a grant to, an administrator to provide administrative, technical, operational, or managerial services, or any combination of those services, to a designated water system to assist with the provision of an adequate supply of affordable, safe drinking water. Requires the State Water Board to develop standards, terms, and procedures for the management of the designated water system by the administrator.

SB 552 (Wolk, Chapter 773, Statutes of 2016). Authorizes the State Water Board to contract with an administrator to provide administrative and managerial services to a designated public water system to assist with the provision of an adequate and affordable supply of safe drinking water. Authorizes the State Water Board to order the failing water system to accept administrative and managerial services, including full management and control, from an administrator selected by the State Water Board.

SB 1263 (Wieckowski, Chapter 843, Statutes of 2016). Requires a person submitting an application for a permit for a proposed new public water system to first submit a preliminary

technical report to the State Water Board at least six months before initiating construction of any water-related improvement.

SB 88 (Budget Committee, Chapter 27, Statutes of 2015). Authorizes the State Water Board to require water systems that serve disadvantaged communities and that consistently fail to provide safe drinking water to consolidate with (physical or managerial consolidation), or receive and extension of service from, another public water system with safe, reliable, and adequate drinking water.

AB 685 (Eng, Chapter 524, Statutes of 2012). Establishes as policy of the state that every human being has the right to clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes, and requires relevant state agencies to consider this policy when revising, adopting, or establishing policies, regulations, and grant criteria pertinent to the human uses of water.

REGISTERED SUPPORT / OPPOSITION:

Support

California Democratic Party
Clean Water Action
Cleanearth4kids.org
Community Water Center
Santa Cruz County Board of Supervisors

Opposition

None on file.

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

Date of Hearing: June 25, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
SB 1255 (Durazo) – As Amended June 3, 2024

SENATE VOTE: 33-6

SUBJECT: Public water systems: needs analysis: water rate assistance program

SUMMARY: Requires, on or before July 1, 2027, retail water suppliers that serve over 3,300 residential connections to establish a water rate assistance program (WRAP), as specified, to provide assistance to eligible ratepayers for their water and wastewater bills. Specifically, **this bill**:

Findings:
1) Makes legislative findings about the human right to water and water affordability.

Definitions:
1) Defines "available information" as any of the following:
   a) Information documenting the residential ratepayer's participation in an affordability program, as specified;
   b) A benefits award letter provided by the residential ratepayer documenting that the customer is an enrollee in, or is a recipient of, an affordability program; or,
   c) Self-certification of eligibility, under penalty of perjury, by the residential ratepayer.

2) Defines "balancing account" as a reserved amount of sufficient funding to address fluctuations in voluntary contributions received or changes in eligible ratepayers, not to exceed 25% of the annual expenditures of the program.

3) Defines "crisis assistance" as direct bill credits to accounts of eligible ratepayers to reduce accrued arrearages.

4) Defines "eligible ratepayer" as a low-income residential ratepayer with an annual household income that is no greater than 200% of the federal poverty guideline level.

5) Defines "qualified system" as any retail water supplier that serves over 3,300 residential connections.

Needs analysis:
1) Requires the State Water Resources Control Board (State Water Board), on or before July 1, 2026, and on or before July 1 of each three years thereafter, to, in consultation with the Safe and Affordable Funding for Equity and Resilience (SAFER) Program advisory group and appropriate stakeholders, update the needs analysis of the state's public water systems.

2) Requires the update of the needs analysis to include:
   a) An assessment of the funds necessary to provide a 20% bill credit for low-income households served by community water systems with fewer than 3,300 service connections; and,

b) An assessment of the funds necessary for community water systems with fewer than 3,300 service connections to meet the affordability threshold established pursuant to the SAFER Program Fund Expenditure Plan.

3) Requires the State Water Board, in order to develop the assessment described above, to do all of the following:
   a) Collect arrearage data from water systems not regulated by the California Public Utilities Commission (CPUC) and request data from the CPUC on the systems they regulate;
   b) Estimate the number of households in need of assistance using arrearage data as well as information provided by the United States Census or other comparable data source;
   c) Identify available data on water rates charged by community water systems with fewer than 3,300 service connections; and,
   d) Where data is unavailable for a water system, use an average of existing data to estimate the level of need for that system.

Water rate assistance program (WRAP):

1) Requires, on or before July 1, 2027, a qualified system, other than a system that already offers an existing WRAP, to establish a WRAP, as specified, and to begin providing water rate assistance to eligible ratepayers.

2) Requires a WRAP offered pursuant to this bill to, at a minimum, include both of the following:
   a) Automatic enrollment of eligible ratepayers if available information, as defined in the bill, indicates that they are qualified to receive assistance; and,
   b) Provision of a bill credit for eligible ratepayers of no less than 20% of the total water charges, and, if present on the bill, wastewater charges, for a volume of water similar to that identified in urban water use objectives law (currently 47 gallons per capita daily for indoor residential water) or, if the eligible ratepayer uses less, the actual volume used.

3) Provides that in the event that there is not sufficient funding for the WRAP, including any balancing account funds, to support a 20% bill credit, the WRAP shall provide the maximum bill credit available that funding is able to support, unless the maximum bill credit available that funding is able to support is less than 10%, in which case the qualified system shall instead provide crisis assistance to the extent funds are available, as specified.

4) Authorizes the qualified system to select the elements, as described below, of the water charges upon which the bill credit is applied or to provide a bill credit as a set percentage of the total water bill, provided that the total bill credit is equivalent in value to the bill credit required above.

5) Provides that the element, or elements, of the drinking water charges upon which the bill credit may be applied include, but are not limited to, the fixed, volumetric, or fixed and volumetric charges levied by the system.

6) Authorizes a qualified system to, on or before September 1, 2026, begin collecting voluntary contributions for the reasonable costs, as specified, associated with the administration of the WRAP and to establish initial program funding.

7) Prohibits, beginning July 1, 2027, the reasonable costs associated with the administration of the WRAP from exceeding 10% of voluntary contributions collected.

8) Authorizes a qualified system to, in establishing a WRAP, establish a balancing account to manage fluctuations in voluntary contributions and the granting of bill credits to eligible ratepayers.

9) Provides that this bill does not require a qualified system to use funds other than voluntary contributions collected pursuant to the WRAP to provide rate assistance to eligible ratepayers or to pay for associated administrative costs, but provides that a qualified system may use other funds available for this purpose that are not derived from fees or assessments, as allowed by the California Constitution.

10) Exempts any qualified system that offers an existing water rate assistance program on or before September 1, 2026, that meets the minimum enrollment and bill credit requirements specified in this bill by July 1, 2027, from being required to comply with the provisions of this bill, and authorizes those systems to collect voluntary contributions to supplement or expand the existing program or to provide crisis assistance.

11) Provides that nothing in this bill shall prohibit a qualified system from offering assistance to residential ratepayers if the program does either, or both, of the following:
    a) Provides a greater bill credit benefit; or,
    b) Exceeds the definition of low income as specified in this bill for ratepayer eligibility.

12) Authorizes any public water system that is not a qualified system to collect voluntary contributions to fund a water affordability program, but does not require the system to comply with the provisions of this bill.

13) Authorizes a qualified system to require verification of eligibility from a sample of enrolled eligible ratepayers on an annual basis to verify the ratepayer's low-income status and eligibility for assistance, and to remove any ratepayers found to not be eligible for assistance from the WRAP.

14) Requires a qualified system to continue to have a WRAP as long as there is sufficient funding available to provide water rate assistance or crisis assistance, to pay for the qualified system's reasonable costs for administration of the program, and to establish a balancing account if the qualified system chooses to do so.

Crisis assistance:

1) Requires that if, after three months of accepting voluntary contributions, the qualified system can demonstrate there will not be sufficient funds to support a program at a minimum of a 10-percent discount or $5 per month, whichever amount is greater, and pay for the qualified system's reasonable costs for administration of the program, the system must instead use the collected contributions to provide ongoing crisis assistance and pay for the qualified system's reasonable costs for administration of crisis assistance.

2) Requires crisis assistance to be offered on or before July 1, 2027, and to be offered to eligible ratepayers, at a minimum, when a qualified system provides a discontinuation of residential

water service notification or when an eligible customer contacts the qualified system about a delinquent account.

3) Limits crisis assistance to only being provided to an eligible ratepayer once per year and limits it to an amount determined by the qualified system, taking into account the overall past due amount and available funding. Provides that to the extent the amount of crisis assistance provided does not eliminate an eligible ratepayer's arrearages, the ratepayer shall enter into an amortization agreement, alternative payment schedule, or plan for deferred or reduced payment, pursuant to discontinuation of residential water service law, to be eligible for crisis assistance.

Voluntary contributions:

1) Requires, on or before September 1, 2026, a qualified system to provide an opportunity for each ratepayer of the system to provide a voluntary contribution as part of the ratepayer's water bill to provide funding for the qualified system's WRAP.

2) Requires a qualified system to establish a recommended voluntary contribution amount on the bill of each ratepayer other than an eligible ratepayer based on available information as of July 1, 2026, at a level intended to raise sufficient funding to provide a bill credit to eligible ratepayers, pay for the qualified system's administrative costs to implement a WRAP beginning January 1, 2025, and establish a balancing account if the qualified system chooses to do so.

3) Requires a qualified system, when setting the recommended voluntary contribution, to assume that 60% of ratepayers other than eligible ratepayers will provide the contribution. Authorizes a qualified system, on or before July 1, 2027, to adjust the voluntary contribution, as necessary, considering the previous year's actual participation rate. Prohibits the recommended voluntary contribution from exceeding 5% of the charges for water and wastewater on the water bill for any residential ratepayer.

4) Requires a bill from a qualified system to label the voluntary contribution in a way that describes the purpose of the funds. Requires the qualified system to notify their ratepayers of the voluntary contribution and, in a visually accessible manner and using clear and unambiguous language, to provide each ratepayer the option and method of opting out of providing the voluntary contribution at least three months prior to beginning collection of the voluntary contribution, and thereafter on at least an annual basis.

5) Requires voluntary contributions to commence on the qualified system's subsequent billing cycle from the notice.

6) Authorizes the qualified system to choose to include alternative amounts for contributions.

7) Requires a qualified system to also provide this information on its internet website in English, and any other language spoken by at least 10% of the people residing in its service area, and other languages, as specified.

8) Authorizes a ratepayer to opt out of the voluntary contribution at any time in a manner that is specified by the qualified system in the notice about the voluntary contributions, with

voluntary contributions terminating on the qualified system's subsequent normal billing cycle.

9) Provides that a ratepayer may only request a refund for contributions made since the last notice of opportunity to opt out of the program was provided or for the period of the last billing cycle prior to the date the ratepayer opts out, whichever time period is greater. Authorizes qualified systems to provide refunds in the form of a bill credit.

10) Prohibits a qualified system from sanctioning, taking any enforcement or collection action against, imposing any late charge or penalty against, or otherwise holding liable a ratepayer in any manner for exercising the option of not paying a voluntary contribution.

11) Requires the voluntary contributions to be used only to provide rate assistance to eligible ratepayers, pay for associated administrative costs to implement the WRAP, and establish a balancing account. Authorizes administrative costs of establishing the WRAP to be reimbursed from voluntary contributions.

12) Authorizes a qualified system to contract with a third party to receive the voluntary contributions and comply with the requirements of the bill.

13) Requires that any partial payment made by a ratepayer that is insufficient to pay for charges on the bill be used to pay the qualified system's charges shown on the ratepayer's bill before being attributed to a voluntary contribution.

14) Prohibits a penalty or late fee from being assessed by a qualified system for the failure of a ratepayer to make timely payment of a voluntary contribution regardless of whether the ratepayer has exercised the option of not paying a voluntary contribution.

15) Authorizes a qualified system to use any state or federal funds that are available to support a WRAP by offsetting or supplementing the funds collected from voluntary contributions.

California Public Utilities Commission (CPUC) data collection:

1) Requires the CPUC to, on or before January 1, 2026, establish a mechanism for electrical corporations and gas corporations to provide data to all qualified systems no later than April 1, 2026, and annually by April 1 thereafter, regarding ratepayers enrolled in, or eligible to be enrolled in, the California Alternate Rates for Energy (CARE) program and the Family Electric Rate Assistance (FERA) program.

2) Authorizes all qualified systems to enter into agreements with local publicly owned electric utilities and local publicly owned gas utilities, including, but not limited to, municipal utility districts and irrigation districts, for the purpose of regularly receiving data regarding ratepayers enrolled in, or eligible to be enrolled in, affordability programs benefiting eligible ratepayers.

3) Specifies the laws under which the data collection is subject.

State Water Board data collection:

1) Requires the State Water Board, beginning in 2028, to require qualified systems to annually report the following information in required technical reports:

a) The total amount of voluntary contributions collected, the administrative costs of operating the WRAP, the number of eligible households that were provided rate assistance or crisis assistance, and the total amount of rate assistance or crisis assistance provided to eligible households; and,
b) An evaluation of available relevant information regarding any arrearages that remain after application of bill assistance.

Enforcement:

1) Authorizes the Attorney General to bring an action in state court to restrain, by temporary or permanent injunction, the use of any method, act, or practice in violation of the WRAP provisions of this bill by a qualified system, other than a system that has an existing WRAP program, including nonparticipation by a qualified system.

2) Prohibits the Attorney General from bringing an action against a qualified system with an existing WRAP program for failing to meet the requirements of the bill, as long as the qualified system makes a good faith effort to raise sufficient funding.

EXISTING LAW:

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

2) Requires the State Water Board, by January 1, 2018, to develop a plan for the funding and implementation of the Low-Income Water Rate Assistance Program, as specified. (WC § 189.5(b))

3) Requires the State Water Board, by February 1, 2018, to report to the Legislature on its findings regarding the feasibility, financial stability, and desired structure of the Low-Income Water Rate Assistance Program, including recommendations for needed legislative action. (WC § 189.5 (e))

4) Establishes the California Safe Drinking Water Act to provide for the operation of public water systems and imposes on the State Water Board various responsibilities and duties relating to the regulation of drinking water to protect public health. (Health & Safety Code §§ 116270 – 116755)

5) Requires the CPUC to continue the CARE program to low-income electric and gas customers with annual household incomes less than 200% of the federal poverty guideline levels. (Public Utilities Code § 739.1)

6) Declares that access to an adequate supply of healthful water is a basic necessity of human life, and that it shall be made available to all residents of California at an affordable cost. (Public Utilities Code § 739.8 (a))

7) Requires the CPUC to consider, and authorizes it to implement, programs to provide rate relief for low-income ratepayers. (Public Utilities Code § 739.8 (b))

8) Requires the CPUC to consider, and authorizes it to implement, programs to assist low-income ratepayers in order to provide appropriate incentives and capabilities to achieve water conservation goals. (Public Utilities Code § 739.8 (c))

9) Requires the CPUC to continue the FERA program to residential cusomers of the state's three largest investor owned utilities for households of three or more persons with total household annual gross income levels between 200% and 250% of the federal poverty guideline level. (Public Utilities Code § 739.12)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

> "While recognizing water as a basic human right, California has been at the epicenter of a water affordability and access crisis, especially for communities of color. The State [Water] Board reported that water rates rose 45% from 2007 to 2015. Those rate increases led to more than 1.6 million households having an average $500 water and/or sewer utility debt, with more than 150,000 of those households having a dangerously higher debt owed of $1,000 or more during the COVID-19 Pandemic.
>
> Further exacerbating the problem have been how efforts to address this access gap have been delayed. While AB 401 (Chap. 662, Stats. 2015) required the State [Water] Board to prepare a Low-Income Water Rate Assistance Program, no program has been created to date.
>
> SB 1255 is a critically needed bill that will finally establish a statewide water rate assistance program for large and medium water systems that serve most of the state's population. Specifically, SB 1255 will require water suppliers with over 3,300 connections to provide ratepayer assistance to eligible ratepayers, through a voluntary ratepayer contribution fund, that will not require use of assessments or fees, consistent with Prop. 218. This program will direct voluntarily collected funds to help qualified households, defined as those with an annual household income that is no greater than 200 percent of the federal poverty guideline level."

Human right to water: By enacting Assembly Bill (AB) 685 (Eng, Chapter 524, Statutes of 2012), California became the first state with a Human Right to Water law. AB 685 establishes state policy that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation. It also requires all relevant state agencies to consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria. To date, water supply issues; contaminants; costs of treatment and distribution systems; climate change; the number and nature of small public water systems, especially in disadvantaged communities; and, many other factors continue to challenge the State's progress in implementing the Human Right to Water.

Increasing water affordability challenge: Drinking water is a basic human need; however, according to the State Water Board's February 2020 report, *Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program* (2020 report), California households find it increasingly difficult to fulfill this need because the retail cost of water has risen substantially over the last decade and is expected to continue to escalate. The 2020 report notes that, adjusting for inflation, the average California household paid around 45%

more per month for drinking water service in 2015 than in 2007. Additional data presented in the State Water Board's September 2021, *Safe Drinking Water Plan for California* (2021 Safe Drinking Water Plan), shows that water costs have, on average over a five-year period from 2012 to 2017, increased about 35% within all size groups of water systems (ranging from 23% to 40 %). The 2021 Safe Drinking Water Plan states that on average, customers of small water systems (public water systems serving fewer than 200 service connections) pay approximately 21% more for water than customers served by larger systems. Many economically disadvantaged communities are served by small water systems making, water affordability a significant issue among residents in these communities.

The 2020 report explains that the high and rising costs of other basic needs for California residents, including housing, food, and other utility services, means that cost increases for any single need, such as water, can force families to make difficult and risky tradeoffs that could harm their health and welfare. When families are unable to pay their bills, these trade-offs include skipping meals and going hungry, delaying or avoiding medical treatment, risking eviction, or facing potential disconnection for electric, gas, or water services. Unfortunately, expenditures to meet basic water needs are expected to continue to rise rapidly due to the need for water systems to replace aging infrastructure, meet treatment standards, diversify supplies, and maintain a well-trained workforce. Given the staggering rise of costs across sectors since the referenced reports were produced, it can be assumed that water affordability has worsened since then.

The 2021 Safe Drinking Water Plan summarizes the concerns about, and recommendation to remedy, issues surrounding the cost of water in California as, "Over the past decades, the cost of drinking water, adjusted for inflation, has been on the rise and this trend is expected to continue. To address the issue of affordability, there is a need for a statewide rate assistance program."

Low-Income Water Rate Assistance Program report: To better understand and address drinking water affordability, AB 401 (Dodd, Chapter 662, Statutes of 2015) required the State Water Board, in collaboration with the State Board of Equalization and relevant stakeholders, to develop a plan for funding and implementing a Low-Income WRAP. AB 401 also required the State Water Board to submit a report to the Legislature by February 1, 2018, with its findings regarding the feasibility, financial stability, and desired structure of the program, including any recommendations for legislative action that may need to be taken. In response, the State Water Board published the 2020 Report, mentioned previously, but no statewide Low-Income WRAP has been adopted to date.

The State Water Board, in the 2020 Report, further argues for the need for a statewide water low income rate assistance program as follows,

"…Providing all low-income households with financial assistance to help pay their water bills is a small, but important, way the state can support the provision of basic necessities for all Californians. There are at least four additional rationales for supporting the development of a [WRAP] in California:

1) The devastating health and livelihood impacts people experience when water is unaffordable,
2) The rapidly rising retail cost of drinking water,
3) The general absence of robust low-income rate assistance or affordability programs for water, despite the availability of comparable programs for other utility needs, and

4) The inability of many individual water systems to self-fund a rate assistance program."

The State Water Board, in the 2020 Report, recommends components of a successful program to help low-income households afford drinking water, including identifying potential program recipients, mechanisms for delivering assistance to low-income households, and possible funding sources to implement a low income rate assistance program. The recommendations outlined in the report reflect discussions with public interest groups and stakeholders. For qualifying customers, the program recommended by the State Water Board will support bill discounts, crisis assistance, and a tax credit for renters who pay for their water indirectly through rent.

According to the report,

> "Only about half of California's population is served by a community water system (CWS) offering some form of rate assistance program, and most of these existing programs have low levels of enrollment and limited financial resources. As a result, less than 20% of the state's low income population served by CWSs currently receives benefits from a low-income rate assistance program.
>
> There are financial obstacles to providing a rate assistance program to water users at the system level. Many of the approximately 2,900 individual CWS cannot operate standalone rate assistance programs because they lack an adequate rate base to support benefit expenditures… Using 200% of the federal poverty level (FPL) as the baseline eligibility criteria for [low income water rate assistance] programs would mean that—for many large systems—more than 50% of their customers would be eligible for assistance. The problem is even more extreme for many smaller systems. To operate individual low-income rate assistance programs, these systems would likely have to impose outsized burdens on higher-income households. Even then, publicly-owned systems would be legally prevented from imposing water rates on non-eligible customers that exceed the cost of serving those customers.
>
> Due to the impracticality of a comprehensive low-income rate assistance program at the system level, the [State Water] Board envisions a statewide program with benefits distributed through water bills, crisis assistance for water ratepayers, and a renter's water credit for residents who pay for their water indirectly through rent.
>
> The [State Water] Board recommends the use of progressive revenue sources (i.e., taxes) for most of the program cost to avoid burdening the very state residents the program seeks to serve. For example, taxes on personal and business income would provide progressive revenues. To balance potential volatility of these sources, the [State Water] Board also recommends taxes on bottled water, which should generate more stable revenue and have a direct nexus to water use.
>
> Eligibility criteria and benefit levels would influence the total program costs. AB 401 defined "low-income" as 200% of the FPL; however, the [State Water] Board evaluated alternate eligibility criteria that could feasibly be implemented across the state… Benefit levels could be tied to the cost of water, other assistance programs, or certain affordability criteria."

How does the WRAP align with the 2020 Report recommendations? The Leadership Counsel for Justice and Accountability, one of the sponsors of the bill, responds to the recommendations in the 2020 Report by noting that SB 1255, while different in some regards to the recommendations of the 2020 Report, does include a number of the report's recommendations, as follows. First, SB 1255 uses the recommended income cutoff for eligibility (200% of the federal poverty level, which, in 2020, included 34% of Californians—roughly 13 million people). Second, the benefit is structured as a percentage of the water bill, and recent amendments conform with the spirit of the 2020 Report by better ensuring consistency with conservation goals. Third, the benefit will be delivered via the water bill rather than through other mechanisms (e.g., CalFresh). The Leadership Counsel for Justice and Accountability argues that the reason that this structure will work is because it does not apply to smaller systems with fewer than 3,300 connections, and because there is built in flexibility to adjust the benefit down to 10% and/or to shift to crisis assistance if enough funds are not collected. The Leadership Counsel for Justice and Accountability states that one reason that the WRAP established by the bill is funded by voluntary contributions is because SB 222 (2021) was structured as a state-funded program, and it was vetoed for lack of funding (see following sections). They maintain that the WRAP could be a $450 million or more program if it relied on a state funding source.

CPUC-regulated water utilities low-income assistance programs: Low-income WRAP are already operating throughout the state. According to the California Water Association, which represents regulated water utilities, in December 2005, the CPUC adopted a Water Action Plan setting forth its policy objectives to assist low-income ratepayers struggling with payments for basic monthly water service. Currently, there are nine Class A water utilities under the CPUC's jurisdiction, each of which has an individualized low-income rate assistance program. These programs were established on a case-by-case basis, without standardization, as part of the utility's General Rate Case. Each program differs in its availability of monthly discounts and recovery of costs. Customers are made aware of the low-income programs through various means, including bill inserts, public participation hearings, and company websites. The majority of low-income customers have been automatically enrolled into these existing low-income rate assistance programs through the CPUC-authorized biannual customer data exchange between water and energy utilities. Customers who receive automatic enrollment are sent notices by the utilities of their enrollment with an option to opt out of the low-income program. Permanent low-income rate assistance allows investments in infrastructure to occur, alleviating pressure on rates.

This bill: This bill requires a qualified system, defined as any retail water supplier that serves over 3,300 residential connections, to, on or before July 1, 2027, to establish a WRAP to begin providing water rate assistance to eligible ratepayers, as defined. SB 1255 exempts a qualified system that already offers a WRAP from many of the requirements of the bill. SB 1255 requires a WRAP offered pursuant to the bill to, at a minimum, include automatic enrollment of eligible ratepayers; and, provision of a bill credit for eligible ratepayers of no less than 20% of their total water charges, and, if present on the bill, wastewater charges. SB 1255 additionally requires that, in the event that there is not sufficient funding in the WRAP, including any balancing account funds, to support a 20% bill credit to eligible ratepayers, the WRAP provide the maximum bill credit available that funding is able to support, unless the maximum bill credit available that funding is able to support is less than 10%, in which case the qualified system must instead provide crisis assistance to the extent funds are available.

SB 222 veto: SB 222 (Dodd, 2021) would have required the State Water Board to develop and administer a statewide WRAP to provide rate assistance to low-income residential ratepayers of a community water system or wastewater system. Unlike SB 1255, which establishes a voluntary contribution program for the funding of the WRAP, SB 222 did not have an identified funding source. Governor Gavin Newsom vetoed SB 222 on September 28, 2022, and submitted the following veto message:

> "This bill establishes a Water Rate Assistance Program and Water Rate Assistance Fund to provide water affordability assistance for drinking and wastewater services to low-income ratepayers. The State Water Resources Control Board would be required to administer the program, and community water systems and wastewater systems would be subsequently required to provide rate assistance to residential ratepayers. This is a permanent program that would not be implemented or initiated until funding is provided. At this time, there is no sustainable, ongoing funding identified.
>
> Lowering costs and making sure that Californians have access to safe and affordable drinking water is a top priority of this administration. The last two budgets have provided billions in rebates, debt relief, assistance grants, and free support services. For water costs alone, the 2021-22 Budget provided $1 billion to the State Water Board for the California Water and Wastewater Arrearage Payment Program, which cleared unpaid water and wastewater debts resulting from the pandemic. This year, our 2022-23 budget added an additional $200 million to the Low-Income Household Water Assistance Program at the Department of Community Services and Development. These are programs that were both approved and funded by the Legislature.
>
> I commend the author and stakeholders for their work during this Legislative session to craft a vision for such a program. However, this bill does not have any funding identified, and because it is an ongoing program that would require all community water systems and wastewater systems to participate, signing this policy would result in significant General Fund pressures in the billions of dollars to continuously provide such assistance."

This bill: In response to the Governor's veto message and to fund the WRAP established in the bill, SB 1255 requires, on or before September 1, 2026, each qualified system to provide an opt-out opportunity for ratepayers to voluntarily contribute, as part of their water bill, to fund the system's WRAP. Under the bill, qualified systems must establish a recommended voluntary contribution amount on the bill of each ratepayer (other than a ratepayer who is eligible to receive benefits under the WRAP), at a level intended to raise sufficient funding to provide a bill credit to eligible ratepayers, to pay for the qualified system's administrative costs to implement a WRAP, and to establish a balancing account if the qualified system chooses to do so. SB 1255 specifies how qualified systems must determine the appropriate amount of, and manage, the voluntary contributions to fund the WRAP. The bill also requires that if, after three months of accepting voluntary contributions, a qualified system can demonstrate there will not be sufficient funds to support a program at a minimum of a 10% discount or $5 per month, whichever amount is greater, and also to pay for the qualified system's costs to administer the WRAP, the system must instead use the collected contributions to provide an ongoing crisis assistance program.

This bill includes additional provisions that support the provision of affordable drinking water, including:

1) Requiring the State Water Board, on or before July 1, 2026, and on or before July 1 of each three years thereafter, to update the needs analysis of the state's public water systems using specified arrearages data;

2) Requiring the CPUC to, on or before January 1, 2026, establish a mechanism for electrical corporations and gas corporations to provide data to all qualified systems regarding ratepayers enrolled in, or eligible to be enrolled in, the CARE program and the FERA program, both of which provide discounts on energy bills for income qualified households; and,

3) Authorizing the Attorney General to bring an action in state court to restrain, by temporary or permanent injunction, the use of any method, act, or practice in violation of the WRAP provisions of this bill by a qualified system, other than a system that has an existing WRAP program, including nonparticipation by a qualified system.

Moving forward: Both proponents and opponents of this bill appear to agree that a statewide WRAP is needed. Recent author's amendments have addressed some of the opposition's concerns with the WRAP structure proposed by the bill, and the author and sponsors continue to have conversations with stakeholders. Remaining concerns are focused on whether the program should include wastewater, how the WRAP will be administered, and how funds will be collected, including whether there will be an opt-in or opt-out structure for ratepayers to contribute to the program.

Arguments in support: A coalition of more than 30 environmental justice, environmental, and community organizations writes in a "support" position,

> "Access to safe and affordable drinking water and sanitation is a human right. (AB 685, 2012). However, water rates have continued to rise, outpacing inflation with a 45% increase between 2007 and 2015. During the pandemic, water arrearages grew to over $1 billion, prompting legislators to create the California Water and Wastewater Arrearages Payment Program, through which the [State] Water Board is on track to successfully provide over $800 million in assistance to California families. The 2023 SAFER Needs Assessment found that almost 450 water systems in California have either a medium or high affordability burden. In 2020, the Water Board finalized a report on a pathway and cost assessment for a Low-Income Water Rate Assistance Program, pursuant to AB 401 from 2015.
>
> Recent amendments to SB 1255 will fill a large portion of the needed assistance for low-income Californians by requiring systems that can fund a [low income rate assistance] program with voluntary ratepayer contributions to do so. Ratepayers served by these systems will be able to choose not to pay this contribution at any time and any contribution would be capped at 5% of their bill. These funds should allow most systems over 3,300 service connections to provide a 20% bill credit for customers and expand access to assistance by automatically enrolling customers who are already enrolled in the CARES program. This means that eligible ratepayers will receive assistance quickly without having to submit a new application demonstrating their eligibility if they have already done so for another program with similar eligibility criteria. Many provisions of SB 1255 are also designed to assist water systems in complying with the law, including balancing accounts to address any uncertainty and exemptions for systems where voluntary contributions may not provide for a 20% bill credit. Water systems that already have a water affordability program can keep their

program, provided it meets or exceeds the minimum requirements of SB 1255. In the event collections are insufficient to fund a bill credit, the funding may be used to establish a crisis assistance program.

SB 1255 also would also require the [State] Water Board to update its existing Drinking Water Needs Assessment, using existing information the Water Board already collects, to identify the affordability needs of small water systems under 3,300 service connections.

SB 1255 will empower many water systems to start to address the water affordability crisis in a manner consistent with Proposition 218, and provide California with a better understanding of the needs of small water systems. This is a critical step to fulfilling the Human Right to Water in California. We thank you for championing this bill."

The California Water Association (CWA) argues in support of SB 1255, "To protect customers, a permanent low-income water assistance program will help ensure low-income customers have access to high-quality drinking water through customer assistance programs and water conservation initiatives that help them save money by reducing water usage. CWA's members have a long history of providing rate assistance programs to their low-income customers and serve as a model for this legislation. However, water utilities across California can and should do more to provide low-income rate assistance to their customers, but this is not possible without SB 1255."

Arguments in opposition:

The Association of California Water Agencies (ACWA) writes in an "oppose unless amended" position (other opponents implied agreement with ACWA's letter),

"There can be a workable and efficient State water [low income rate assistance] program in California. However, ACWA has serious concerns about the workability of this brand-new proposal… On June 19 the Author amended SB 1255 to include many of [ACWA's] suggested amendments, addressing ACWA's concerns regarding the proposed program timeline, application of bill credits as it pertains to water use efficiency and flexibility for qualified systems to determine to which element or elements of water charges it applies the credit, and eligibility verification… Unfortunately, the August 19 amendments did not address the other concerns and suggested amendments. Following is an overview of some of ACWA's remaining concerns that would be addressed through amendments…:

Voluntary Contributions - Opt-Out Approach – The proposed "opt-out" approach would lack transparency and would create damaging distrust. The bill should instead propose an "opt-in" approach…. The bill would require notice of the voluntary contribution, but many ratepayers would not see the notice (e.g., customers on automatic payments) and would be charged for the "voluntary" contribution on their water bill. They could later opt out and seek refunds, as specified, but this would create funding instability and a negative public perception of the program. It is also important to note that many ratepayers will be at income levels not far above the eligibility cut-off for this program….

Application of Bill Credit – Drinking Water Not Wastewater – The bill should be limited to a credit for drinking water charges and not apply to wastewater charges… There is an equity issue if some customers receive a credit for wastewater charges and some customers (who are billed only for drinking water on the water bill) do not receive that additional credit…

> Administrative Costs - The proposal to restrict administrative costs to less than or equal to 10 percent of the amount of voluntary contributions… is not realistic or prudent because no one knows what the level of voluntary contributions would be. This section should be deleted….
>
> Participation-Level Assumption - The proposed required 60%-participation-level assumption needs to be reconsidered given the diverse circumstances for systems across California…
>
> Self-Certification - Self-Certification should not be an allowed method of establishing eligibility… This option is too susceptible to fraud…
>
> Existing Programs - Discussion is needed regarding how the bill should address existing [low income rate assistance] programs…
>
> Needs Assessment –… Arrearages are not a good basis for estimating the funding needed for [low income rate assistance]. Arrearages for nonpayment exist for multiple reasons. For example, some ratepayers with high incomes may have not paid their bills, ratepayers with low incomes will have paid their water bills and not have arrearages, etc. ACWA suggests that the State use existing income information that the State holds and estimate how many low-income ratepayers there are for these systems."

Ten water agencies from San Bernardino and Riverside counties write in an "oppose unless amended" position, "It is very concerning that this bill is a second house gut and amend. SB 1255 is a significant new policy that deserves ample discussion from both houses and stakeholders. It would be best to take the recent amendments as a starting point for discussions over the winter with the sponsors and stakeholders to create a program that comports with the intent of the sponsors without creating administrative and possibly legal (Proposition 218) challenges for retail water suppliers."

Related legislation:

SB 222 (Dodd, 2021). Would have required the State Water Board to develop and administer a statewide WRAP to provide rate assistance to low-income residential ratepayers of a community water system or wastewater system. SB 222 was vetoed by Governor Gavin Newsom.

SB 200 (Monning, Chapter 120, Statutes of 2019). Establishes the Safe and Affordable Drinking Water Fund (Fund) to help water systems provide an adequate and affordable supply of safe drinking water in both the near and the long terms. Transfers to the Fund annually, until June 30, 2030, 5% of the proceeds of the Greenhouse Gas Reduction Fund, up to $130 million.

SB 998 (Dodd, Chapter 981, Statutes of 2018). Requires all public water systems with more than 200 connections to have a written policy on discontinuation of residential water service, including provisions for not shutting off water for certain customers that meet specified criteria.

AB 401 (Dodd, Chapter 662, Statutes of 2015). Requires the State Water Board to develop a plan for funding and implementation of a statewide Low-Income WRAP.

AB 685 (Eng, Chapter 524, Statutes of 2012). Establishes as policy of the state that every human being has the right to clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes and requires relevant state agencies to consider this policy when

revising, adopting, or establishing policies, regulations, and grant criteria pertinent to the human uses of water.

Double referral: This bill was referred to the Assembly Committee on Environmental Safety and Toxic Materials and the Assembly Committee on Utilities and Energy. Should this bill pass the Assembly Committee on Environmental Safety and Toxic Materials, it will be referred to the Assembly Committee on Utilities and Energy.

REGISTERED SUPPORT / OPPOSITION:

Support

350 Humboldt
California Coastal Protection Network
California Coastkeeper Alliance
California Environmental Justice Alliance (CEJA) Action
California Environmental Voters
California State Council of Service Employees International Union (SEIU California)
California Water Association
California Water Research
Central California Environmental Justice Network
Clean Water Action
Cleanearth4kids.org
Climate Resolve
Community Water Center
Courage California
Defenders of Wildlife
Environmental Working Group
Facts: Families Advocating for Chemical & Toxics Safety
Friends Committee on Legislation of California
Friends of The River
Grace - End Child Poverty in California
Heal the Bay
LA Waterkeeper
Leadership Counsel for Justice & Accountability
Leadership Counsel for Justice and Accountability
Los Angeles Alliance for A New Economy
Lutheran Office of Public Policy - California
Mono Lake Committee
National Parks Conservation Association
Natural Resources Defense Council
Physicians for Social Responsibility - Los Angeles
Planning and Conservation League
San Francisco Baykeeper
Sierra Club California
UFCW - Western States Council
Union of Concerned Scientists
Voices for Progress

Opposition

Amador Water Agency
Association of California Water Agencies (ACWA)
California Municipal Utilities Association
City of Chino
City of Chino Hills
City of Montclair
Cucamonga Valley Water District
Desert Water Agency
Eastern Municipal Water District
Elsinore Valley Municipal Water District
Helix Water District
Inland Empire Utilities Agency
Irvine Ranch Water District
Mesa Water District
Monte Vista Water District
Mountain Counties Water Resources Association
Ontario Municipal Utilities Company
Padre Dam Municipal Water District
Rancho California Water District
Southern California Water Coalition
Valley Center Municipal Water District
Vista Irrigation District

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

Date of Hearing: June 25, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
SB 1266 (Limón) – As Amended June 19, 2024

SENATE VOTE: 39-0

SUBJECT: Product safety: bisphenol

SUMMARY: Prohibits, beginning January 1, 2026, a person from manufacturing, selling, or distributing in commerce, any juvenile's feeding product, juvenile's sucking product, or juvenile's teething product, as defined, that contains any form of bisphenol, as defined, at a detectable level above 0.1 parts per billion. Specifically, **this bill**:

1) Prohibits, beginning January 1, 2026, a person from manufacturing, selling, or distributing in commerce any juvenile's feeding products or juvenile's sucking or teething product that contains any form of bisphenol at a detectable level above 0.1 parts per billion.

2) Exempts medical devices, as defined in statute, and food and beverage containers designed or intended primarily to contain liquid, food, or beverages for consumption by the general population.

3) Authorizes the Department of Toxic Substances (DTSC) to establish standards for any juvenile's feeding product or juvenile's sucking or teething product that are more protective of peoples health and the environment than the provisions of this bill.

4) Provides that if DTSC adopts a regulatory response, under the Safer Consumer Products (SCP) statutes, to the use of any form of bisphenol in a product that is prohibited by the provisions of this bill, then the provisions of this bill will not apply starting on the date that the department posts a notice on their website that they adopted a response.

5) Provides that the provisions of this bill are not intended to prohibit or restrict DTSC's authority to prioritize or take action on any products containing any form of bisphenol in order to limit exposure to or reduce the level of hazard posed by any form of bisphenol.

6) Authorizes DTSC to enforce the provisions of this bill.

7) Requires manufactures to use the least toxic alternatives when replacing any form of bisphenol for products covered under the provisions of this bill.

8) Prohibits manufacturers from replacing bisphenols, pursuant to the provisions of this bill, with chemicals classified as carcinogenic to humans, likely to be carcinogen to humans, or for which there is suggestive evidence of carcinogenic potential, by the United States Environmental Protection Agency (U.S. EPA) or are listed by the state to cause cancer under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

9) Prohibits manufacturers from replacing bisphenols, pursuant to the provisions of this bill, with reproductive toxicants as identified by the U.S. EPA or by Proposition 65.

10) Prohibits manufacturers from replacing bisphenols, pursuant to the provisions of this bill, with any chemical identified by DTSC as a candidate chemical.

11) Defines "bisphenol" as a chemical with two phenol rings connected by a single linker atom. The linker atom and phenol rings may have additional substituents.

12) Defines "juvenile" as an individual or individuals younger than 12 years of age.

13) Defines "juvenile's feeding product" as any consumer product, marketed for use by, marketed to, sold, offered for sale, or distributed to juveniles in the state that is designed or intended by the manufacturer to be filled with any liquid, food, or beverage intended primarily for consumption from that bottle or cup by a juvenile.

14) Defines "juvenile's sucking or teething product" as any consumer product, marketed for use by, marketed to, sold, offered for sale, or distributed to juveniles in the state that is designed or intended by the manufacturer to help a juvenile with sucking or teething in order to facilitate sleep or relaxation.

EXISTING LAW:

1) Defines "person" as any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company. (Health and Safety Code (HSC) § 19)

2) Prohibits, commencing on July 1, 2013, the sale, manufacture, or distribution of any bottle or cup that contains bisphenol A (BPA), at a detectable level above 0.1 parts per billion (ppb), if the bottle or cup is designed or intended to be filled with any liquid, food or beverage intended primarily for consumption from that bottle or cup by children three years of age or younger. (HSC § 108940)

3) Prohibits, a person, including a manufacturer, from selling or distributing in commerce in this state any new, not previously owned, juvenile product, as specified, that contains regulated perfluoroalkyl and polyfluoroalkyl substances (PFAS); and, requires a manufacturer to use the least toxic alternative when replacing PFAS chemicals in a juvenile product. (HSC § 108945, § 108946)

4) Prohibits the manufacture, sale, or distribution in commerce of any toy or child care article that contains di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP), in concentrations exceeding 0.1 percent; prohibits the manufacture, sale, or distribution in commerce of any toy or child care article intended for use by a child under three years of age if that product can be placed in the child's mouth and contains diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP), in concentrations exceeding 0.1 percent; and, requires manufacturers to use the least toxic alternative. (HSC § 108937)

Under the SCP (Green Chemistry) statues:

5) Requires DTSC to adopt regulations to establish a process to identify and prioritize chemicals or chemical ingredients in consumer products that may be considered chemicals of concern, as specified. (HSC § 25252)

6) Requires DTSC to adopt regulations to establish a process to evaluate chemicals of concern in consumer products, and their potential alternatives, to determine how to best limit exposure or to reduce the level of hazard posed by a chemical of concern. (HSC § 25253 (a))

7) Specifies, but does not limit, regulatory responses that DTSC can take following the completion of an alternatives analysis, ranging from no action, to a prohibition of the chemical in the product. (HSC § 25253)

Under the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65):

8) Prohibits, a person, in the course of doing business, from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. (HSC § 25249.6)

9) Requires the Governor, on or before March 1, 1987, to publish a list of chemicals known to the state to cause cancer or reproductive toxicity and to revise and republish in light of additional knowledge at least once per year thereafter. The Office of Environmental Health Hazard Assessment (OEHHA) listed BPA on May 11th, 2015 as a chemical known to the state to cause developmental and reproductive toxicity. Bisphenol S (BPS) was listed on December 29, 2023 as a chemical known to the state to cause reproductive toxicity. (HSC § 25249.8)

FISCAL EFFECT: Unknown

COMMENTS:

Need for bill: According to the author:

"Bisphenols, commonly referenced as BPA or BPS, is a chemical compound that is used in a variety of industrial and consumer products – ranging from automobile parts to food containers. BPA is considered an endocrine disruptor, which means it can interfere with the hormone system in the body and is associated with harmful health outcomes such as asthma, cardiovascular disease, and obesity.

Children, in particular infants, are even more susceptible to the harms of BPA and can have adverse health impacts upon exposure. Recognizing this harm, in 2012, the U.S. Food and Drug Administration (FDA) banned BPA from baby bottles and sippy cups. Although manufacturers have eliminated BPA from these products, they have shifted to using alternative chemicals to replace it – such as BPS and BPF – which have been found to be even more harmful than BPA. This poses a serious health concern amongst children and parents that must be addressed.

SB 1266 prohibits the manufacture, sale, or distribution of any feeding, sucking, or teething product that contains bisphenol at a detectable level above 0.1 parts per billion. Additionally, it requires the Department of Toxic Substances Control to establish health and environmental standards on children products."

Proposition 65: Proposition 65, officially known as the Safe and Drinking Water and Toxic Enforcement Act of 1986, was enacted as a ballot initiative in November 1986. Proposition 65 requires the state to maintain and update a list of chemicals known to the state to cause cancer or reproductive toxicity; protects the state's drinking water sources from being contaminated with chemicals known to cause cancer, birth defects, and other reproductive harm; and requires businesses to inform Californians about exposure to such chemicals. OEHHA is the lead agency for implementation of Proposition 65 and has the authority to adopt and modify regulations as necessary. According to the Office of Environmental OEHHA, the Proposition 65 list contains a wide range of naturally occurring and synthetic chemicals including additives or ingredients in pesticides, common household products, food, drugs, dyes, or solvents.

OEHHA listed BPA on May 11, 2015 on the Proposition 65 list for causing reproductive toxicity and on December 18, 2020 for causing developmental toxicity. BPS was listed on December 29, 2023 for causing reproductive toxicity. OEHHA considered, but did not list BPA as a carcinogen. The literature review behind this decision covered epidemiological studies in humans and studies in animals. It is titled "Evidence on the Carcinogenicity of Bisphenol A (BPA)," published on September of 2022, and is available on OEHHA's website.

Green Chemistry: Green Chemistry, as defined in Green Chemistry: Theory and Practice, is "the utilization of a set of principles that reduces or eliminates the use or generation of hazardous substances in the design, manufacture and application of chemical products." For the last century, environmental and public health protection has concentrated on capturing and storing hazardous waste. Green Chemistry is a fundamentally different approach to environmental and public health protection, transitioning away from managing hazardous chemicals to reducing or eliminating their use in products or processes altogether. Green Chemistry encourages cleaner and less-polluting industrial processes, while creating new economic opportunities in the design and use of chemicals, materials, products, and processes.

Green Chemistry in California: In 2008, the California legislature recognized the principle of Green Chemistry by enacting two landmark pieces of legislation, AB 1879 (Feuer and Huffman, Chapter 559, Statutes of 2008) and SB 509 (Simitian, Chapter 560, Statutes of 2008). These bills lay the statutory foundation for the state's Green Chemistry program and intend to establish a comprehensive approach to chemicals policy.

The structure for regulatory action required by the Green Chemistry legislation is broad and general. Rather than specifying particular chemicals or explicit regulatory action on those chemicals, the statutes authorize state agencies, primarily DTSC, to set up a process to identify and evaluate chemicals of concern and the products in which they are found, and to impose appropriate regulatory action for those chemicals and products in order to protect people and the environment. This unique statutory approach anticipated state agencies playing a greater role in developing strategies and policies designed to meet the general objectives of the statute.

Statutory requirements for the California Green Chemistry regulations: The bulk of the statutory requirements for establishing regulations governing the Green Chemistry program was included in AB 1879 (Feuer and Huffman, Chapter 559, Statutes of 2008). Its companion bill, SB 509 (Simitian, Chapter 560, Statutes of 2008), also includes provisions related to the regulations. AB 1879 requires DTSC to adopt regulations that fulfill two major requirements: 1) establish a process to identify and prioritize chemicals or chemical ingredients in consumer products that may be considered a chemical of concern; and, 2) establish a process for evaluating

chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by the chemical.

The Safer Consumer Products regulatory process: To implement the Green Chemistry statutes, DTSC created what it called a "four-step continuous, science-based, iterative" regulatory process, which it deemed the "Safer Consumer Products" (SCP) regulations. The SCP regulations were adopted October 2013, and follow the process below:

1) Candidate Chemicals – The regulations establish a list of "candidate chemicals" based on the work already done by other authoritative organizations, and specify a process for DTSC to identify additional chemicals as candidate chemicals;

2) Priority Products – The regulations require DTSC to evaluate and prioritize product/candidate chemical combinations to develop a list of "priority products" for which alternatives analyses must be conducted. A candidate chemical that is the basis for a product being listed as a priority product is designated as a chemical of concern for that product and any alternative considered or selected to replace that product;

3) Alternatives Analysis – The regulations require responsible entities (manufacturers, importers, assemblers, and retailers) to notify DTSC when their product is listed as a priority product. DTSC will post this information on its website. Manufacturers (or other responsible entities) of a product listed as a priority product must perform an alternatives analysis for the product and the chemicals of concern in the product to determine how best to limit exposures to, or reduce the level of adverse public health and environmental impacts posed by, the chemicals of concern in the product; and,

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

Challenges with implementation: In October 2018, the Public Health Institute, an independent non-profit organization, released a report, California's Green Chemistry Initiative at Age 10: An Evaluation of its Progress and Promise, evaluating the Green Chemistry program in California. The report noted that while the Green Chemistry program is an innovative program with the potential to drive the market for safer chemicals and products, and while it includes many of the attributes of a successful chemicals policy, it has failed to achieve its full potential in several ways. According to the report, "the pace of implementation of the SCP Program has been slow and DTSC has unclear authority to collect necessary information on chemicals in products. California's overall efforts and investment have not been sufficient to foster robust research and development of safer product chemistry. The SCP's Candidate Chemical List needs to be updated over time to capture chemicals with Hazard Traits consistent with breast cancer-causing chemicals and other potential health threats. And, the Toxics Information Clearinghouse currently provides no useful information but could be repurposed for more effective use."

In the almost 16 years since the passage of the original Green Chemistry legislation, DTSC has only adopted seven priority products and has three more priority products currently undergoing the regulatory process. Additionally, DTSC's SCP Program only allows it to list a priority

product for one chemical-product combination. Under recent staffing improvements DTSC has indicated a likely average of 5 priority product regulations per year going forward.

Uses of Bisphenols: Bisphenols are phenolic organic compounds that are widely used in various products such as in the creation of plastics, epoxy resins and thermal paper. Kitchen utensils, food and drink containers and toys are just some of the products that can contain bisphenols. Unlike plasticizers, bisphenols are used to harden plastic. The diverse uses and applications of plastic in today's society has resulted in many sources of exposure for humans, animals and the environment. BPA was the most widely used bisphenol. Today, industry has transitioned to using BPS for their products or other types of bisphenols. Some manufactures, like those developing thermal paper, state they have developed, or are in process of developing, products that are bisphenol free altogether.

Exposure and toxicity: Juveniles, as defined by this bill, are in a critical age of development where their body systems are undergoing rapid changes and growth. The human body needs hormones to control many biological functions like sleep, body energy, growth and fertility. Bisphenols are classified as endocrine disruptive chemicals (EDCs). EDCs, as defined by the National Institute of Health, are natural or human-made chemicals that may mimic, block, or interfere with the body's endocrine system. EDCs are an interest in research due to their potential for negative developmental and biological effects in humans. According to the Endocrine Society, there are an estimated 85,000 human made chemicals in the world and about 1,000 or more have the potential to be EDCs due to their unique properties (chemical structure, ability to bind to proteins in our body etc.). The most common and well-studied EDCs are atrazine, bisphenol A, dioxins, perchlorate, per and polyfluoroalkyl substances (PFAS), phthalates, phytoestrogens, polybrominated diphenyl ethers, polybrominated biphenyls and triclosan. The state of California has implemented several laws regulating or prohibiting the use of some of these EDCs. Additionally, DTSC's Green Chemistry program, through their candidate chemical list, has also acknowledged these chemicals due to their specified hazards traits.

OEHHA published a report in 2009 titled, "Evidence on the Developmental and Reproductive Toxicity of Bisphenol A." The authors of this report state that "there are few epidemiologic studies, mostly of cross-sectional design. The human BPA studies are thus of limited usefulness for evaluating causal relationships. In contrast, there are extensive data from animal studies on the developmental, female reproductive and male reproductive toxicity of BPA." While there are limitations and considerations for these studies, overall the findings point to BPA disrupting the endocrine (hormone) system through multiple pathways. For example, BPA can change the way, estrogen, progesterone, insulin and thyroid hormones act in the body. More recently, OEHHA published a report in 2023 titled, "Evidence on the Female Reproductive Toxicity of Bisphenol S." The authors reported that BPS exhibits key characteristics of female reproductive toxicants; for example, BPS alters the function of reproductive hormone systems, including receptor signaling and hormone production.

In emphasizing the need to protect children from chemical exposures, below is an excerpt taken from the Agency for Toxic Substances and Disease Registry under the Centers for Disease Control and Prevention:

> "The differing susceptibility of children to harm from environmental exposures results from their development—a dynamic process with many physiologic, metabolic, and behavioral

aspects. Children are at increased risk because of their *increased exposures* and *increased vulnerability*. Examples of increased exposures include children's physiologic needs for more

- food,
- water, and
- air per kilogram of body weight compared with adults.

These needs result in a greater exposure per kilogram to toxicants. Increased exposures also arise from children's normal development, such as the hand-mouth and hand-object behavior exhibited by toddlers. Increased vulnerability results from children's rapidly growing and developing organ systems, such as the central nervous system and lung which, compared with adults are especially susceptible to toxic insults.

Exposure to the same chemical may cause different health outcomes in children compared with adults. A well-known example is the effect of lead on young children's developing nervous systems. Lead does have effects on the nervous systems of adult workers, which result in peripheral neuropathies. For children, however, intellectual development is exquisitely sensitive to even small amounts of lead; this sensitivity is not seen in adults."

The wide use of BPA in plastic containers designed to hold food and beverages resulted in widespread exposure to the chemical since research was able to show that BPA could leach out of containers and into the food or beverages being consumed. In 2011, AB 1319 (Butler, Chapter 467) was signed by Governor Jerry Brown to protect children from the harmful effects of BPA. The law took effect in 2013 and it prohibited the sale, manufacture, or distribution of any bottle or cup that contains bisphenol A (BPA), at a detectable level above 0.1 parts per billion (ppb), if the bottle or cup is designed or intended to be filled with any liquid, food or beverage intended primarily for consumption from that bottle or cup by children three years of age or younger. In 2012, the United States Food and Drug Administration (US FDA) banned the use of BPA in baby bottles and cups. Increased public health concerns led to a gradual shift from BPA to other alternatives, like BPS. As described in OEHHA's report, BPS is also an EDC. Research on other bisphenols is increasingly becoming available showing similar negative impacts on health as BPA and BPS. Numerous scientific studies have shown that BPA exposure in childhood is associated with higher levels of anxiety, depression, hyperactivity, and adverse behavioral outcomes. There is emerging scientific evidence that other bisphenols, such as bisphenol F and BPS, have similar adverse neurological and behavioral effects on children. The provisions of this bill expand on existing law in the state of California. This bill aims to reduce the exposure to bisphenols in juvenile products, as defined, by expanding the protection of juveniles from a whole class of chemicals in various juvenile products.

Juvenile teething products: Since identifying BPA as an EDC, our store aisles contain many products whose packaging assure us they are BPA-free. Products ranging from baby food plates, cups to adult water bottles and household food storage containers. A *Washington Post* article, shared by the author's office from 2016, titled "Some baby teething toys may contain hormone-disrupting chemicals" discusses findings from a research article reporting the presence of EDCs in baby teething toys. Although more research is needed to better understand these finding, the research article reports detectable levels of bisphenols and other EDCs in teething products. They detected the presence of 8 types of bisphenols with BPA being detected even in products labeled "BPA free." The article was published in *Environmental Science and Technology,* titled,

"Migration of Parabens, Bisphenols, Benzophenone-Type UV Filters, Triclosan, and Triclocarban from Teethers and Its Implications for Infant Exposure."

Regulating bisphenols as a class: California has passed legislation that regulates perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals as a class. Scientists from the SCP Program under DTSC state in a publication, titled "Regulating PFAS as a Chemical Class under the California Safer Consumer Products Program, " that in the case of PFAS, "all members of the class have a potential for significant and widespread adverse impacts due to their extremely high environmental persistence, coupled with growing evidence for human and ecological health hazards for impurities, metabolites and degradation products of the subset commonly used in consumer products."

The state of Washington passed rules prohibiting bisphenols as an entire class of chemicals in several products. Using this approach, they bypass the standard risk assessment chemical-by-chemical method that can be slow, costly and can result in regrettable substitutions ultimately failing to protect public health. In the case of bisphenols, we have a clear example of a regrettable substitution: BPA to BPS. California would not be the first state to take this class approach with bisphenols.

Enforcement: The author is engaged in conversations to clarify and modify the enforcement language on this bill. As this bill moves through the legislative process, the author is encouraged to discuss enforcement with DTSC.

Regrettable substitutes: BPS became widely used as an alternative to BPA after research identified BPA to be toxic or hazardous to human health. BPS was discovered to have similar negative health impacts, and has thus become a regrettable substitution. The provisions of this bill prevent other bisphenols from becoming the next regrettable substitute. They also reduce the risk of regrettable substitutes by prohibiting manufacturers from using any chemicals under DTSC candidate chemicals list, chemicals recognized to be carcinogens or reproductive toxicants and for manufacturers to use the least toxic alternative.

The threshold: The bill follows existing statute on BPA by keeping a 0.01 ppb threshold for all bisphenols in covered products. The bill also gives DTSC the authority to develop thresholds for all the covered products that are more protective for public health than the thresholds set by the bill. As this bill moves forward, the author may wish to continue to continue conversations regarding this provision of the bill in more detail and to ensure that testing technology is aligned with this threshold.

This bill: SB 1266 would expand the prohibitions set forth by AB 1319 (Butler, Chapter 467, Statutes of 2011). It would prohibit, beginning January 1, 2026, a person from manufacturing, selling, or distributing in commerce, any children's feeding product, children's sucking product, or children's teething product that contains any form of bisphenol at a detectable level above 0.1 parts per billion.

Arguments in support: According to a coalition of health advocates and environmental organizations:

"Our exposure to bisphenols is ubiquitous and continuous. According to CDC data, approximately 90% of Americans have BPA and BPS in our bodies. They disrupt the very

sensitive balance of our hormones and have profoundly negative impacts at very low levels. Banning these chemicals in children's products is critically important because early life exposures are particularly concerning. This developmental period is when endocrine disrupting chemicals have their biggest and longest-lasting impacts.

Many of our organizations supported AB 1319 (Butler-2011) which banned BPA from baby bottles and sippy cups as of July, 2013. Unfortunately, all too often BPA was replaced with an array of bisphenol substitutes, for instance BPS, BPF, or BPAF. While these substitutes are often less well studied, the initial science is indicating that the entire class of has implications for our health, including increased risk of asthma and hyperactivity in children, and cardiovascular disease, fertility problems, obesity, diabetes, and an increased risk of breast and prostate cancers in adults. BPA and BPS are listed on CA's Prop 65 as reproductive toxicants. And Washington State has designated BPA, BPS, and BPF as Chemicals of High Concern for Children. Banning bisphenols as a class of chemicals, as SB 1266 does, is critical to prevent toxic, "regrettable" substitutions in the future.

SB 1266 expands the ban on BPA in baby bottle and sippy cups to the entire class of bisphenol chemicals in all children's feeding, sucking, or teething products."

Arguments in opposition: None on file

Related Legislation:

1) AB 2244 (Ting, 2024). Would prohibit, beginning on January 1, 2025 a paper proof of purchase (receipt), provided to a consumer by a business or created by a manufacturer, from containing bisphenol A (BPA) and would prohibit, beginning January 1, 2026, a paper proof of purchase, provided to a consumer by a business or created by a manufacturer, from containing any bisphenols. This bill is pending action in the Senate Judiciary Committee.

2) AB 1347 (Ting, 2023). Would have required a business to provide a consumer with the option to receive or not receive a proof of purchase. Would have prohibited a business from printing a paper proof of purchase if the consumer opts to not receive a proof of purchase. Would have also prohibited a paper proof of purchase provided to a consumer by a business from containing BPA and at a later date from containing any bisphenols. This bill was held in the Senate Appropriations Committee.

3) AB 418 (Gabriel, Chapter 17, Statutes of 2023). Prohibits, commencing January 1, 2027, a person or entity from manufacturing, selling, delivering, distributing, holding, or offering for sale, in commerce a food product for human consumption that contains any of the following: brominated vegetable oil, potassium bromate, propylparaben, and red dye 3.

4) AB 652 (Friendman, Chapter 500, 2021). Prohibits, a person, including a manufacturer, from selling or distributing in commerce in this state any new, not previously owned, juvenile product, as specified, that contains regulated perfluoroalkyl and polyfluoroalkyl substances (PFAS). Requires a manufacturer to use the least toxic alternative when replacing PFAS chemicals in a juvenile product.

5) AB 1319 (Butler, Chapter 467, Statutes of 2011). Prohibits the sale, manufacture, or distribution of any bottle or cup that contains BPA, at a detectable level above 0.1 parts per billion (ppb), if the bottle or cup is designed or intended to be filled with any liquid, food or

beverage intended primarily for consumption from that bottle or cup by children three years of age or younger.

6) AB 1108 (Ma, Chapter 11, Statutes of 2007). Prohibits the manufacture, sale, or distribution in commerce of any toy or child care article that contains di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP), in concentrations exceeding 0.1 percent. Prohibits the manufacture, sale, or distribution in commerce of any toy or child care article intended for use by a child under three years of age if that product can be placed in the child's mouth and contains diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP), in concentrations exceeding 0.1 percent. Requires manufacturers to use the least toxic alternative.

REGISTERED SUPPORT / OPPOSITION:

Support

A Voice for Choice Advocacy
American College of Obstetricians and Gynecologists District IX
Arts District Community Council LA
Breast Cancer Prevention Partners
California Health Coalition Advocacy
Californians Against Waste
Clean Water Action
Cleanearth4kids.org
Educate. Advocate.
Environmental Working Group
National Stewardship Action Council
Natural Resources Defense Council (NRDC)

Opposition

None on file.

Analysis Prepared by: Brenda Cisneros-Larios / E.S. & T.M. /

Date of Hearing: June 25, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
SB 1176 (Niello) – As Amended May 16, 2024

SENATE VOTE: 38-0

SUBJECT: Wildfires: workgroup: toxic heavy metals

SUMMARY: Requires the Department of Forestry and Fire Prevention (CalFire), the Office of Emergency Services (Cal OES), and the Department of Toxic Substances Control (DTSC), in consultation with specified entities, to form a workgroup related to exposure of toxic heavy metals after a wildfire; authorizes CalFire to contract with public universities, research institutions, and other technical experts to support the work of the workgroup; and, requires the workgroup to report their findings to the Legislature on or before January 1, 2026. Specifically, **this bill**:

1) Requires CalFire, Cal OES, and DTSC, in consultation with academic and research institutions with relevant expertise, and any other governmental agency or educational institution that may have experience in public health and wildfires, to form a workgroup related to exposure of toxic heavy metals after a wildfire.

2) Requires the workgroup to do the following:

    a. Establish best practices and recommendations for wildfire-impacted communities and first responders to avoid exposure to heavy metals after a wildfire;

    b. Study and consider ways that communities can minimize and prevent exposure to heavy metals from a wildfire;

    c. Study and consider ways that communities can minimize or remediate the accumulation of heavy metals in the environment after a wildfire, including through bioremediation through vegetation, fungal, or bacterial treatments; and,

3) Authorizes CalFire to contract with public universities, research institutions, and other technical experts to support the work of the workgroup.

4) Requires, on or before January 1, 2026, CalFire, Cal OES, and DTSC to report to the legislature the findings by the workgroup.

5) Sunsets the reporting requirement on January 1, 2030.

EXISTING LAW:

1) Establishes the Department of Forestry and Fire Protection under the control of a Governor appointed director. (Public Resource Code (PRC) § 701)

2) Defines "department" as the Department of Forestry and Fire Protection (CalFire). (PRC §4003)

3) States that on and after January 1, 2007, the Department of Forestry and Fire Protection may be referred to, where appropriate and as determined by the director, as CAL-FIRE. (PRC § 701.5)

4) Gives CalFire the responsibility for the fire protection, fire prevention, maintenance, and enhancement of the state's forest, range, and brushland resources, contract fire protection, associated emergency services, and assistance in civil disasters and other nonfire emergencies. Requires CalFire to coordinate programs of fire protection, fire prevention, pest control, and forest and range maintenance and enhancement. (PRC § 713)

5) Establishes the Office of Emergency Services (OES) within the Governor's Office under the supervision of the Director of Emergency Services. OES is responsible for the state's emergency and disaster response services for natural, technological, or man-made disasters and emergencies, including responsibility for activities necessary to prevent, respond to, recover from, and mitigate the effects of emergencies and disasters to people and property. (Government Code (GC) §8585)

6) Establishes the Hazardous Waste Control Law (HWCL) to authorize DTSC to regulate the management of hazardous wastes in California. (Health and Safety Code (HSC) § 25100 et seq.)

7) Requires DTSC to prepare, adopt and revise when appropriate, a listing of the wastes which are determined to be hazardous, and a listing of the wastes which are determined to be extremely hazardous. When identifying such wastes the department shall consider, but not be limited to, the immediate or persistent toxic effects to humans and wildlife and the resistance to natural degradation or detoxification of the wastes. (HSC § 25140)

Under the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65):

8) Prohibits, a person, in the course of doing business, from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. (HSC § 25249.6)

9) Requires the Governor, on or before March 1, 1987, to publish a list of chemicals known to the state to cause cancer or reproductive toxicity and to revise and republish in light of additional knowledge at least once per year thereafter. (HSC § 25249.8)

FISCAL EFFECT: Unknown

COMMENTS:

Need for bill: According to the author:

"Between 2018 and 2021, California's fire seasons were among the most destructive on record, with millions of acres burned, thousands of homes destroyed, and dozens of lives lost. The magnitude and scale of these wildfires have created unprecedented challenges for affected Californians, including years-long site cleanup and hazardous material removal, prolonged displacement, and serious health complications.

A recent Stanford University study showed that unmanaged wildfires can release toxic metal particles. Specifically, the study showed extreme high heat wildfires can transform a natural element in soils into a potentially cancer-causing and airborne metal known as hexavalent chromium, or chromium 6. Chromium 6 can possibly increase cancer risk when inhaled or ingested. Other serious health consequences include asthma, heart attacks, and early death, due to its toxicity.

These health risks to firefighters, disaster response workers, and California residents living and working near or downwind from conflagrations from airborne chromium 6 need to be further vetted and mitigated. More research and study is needed to better understand how to limit high-heat fires, which increase exposure to chromium 6, by implementing strategies, including controlled burns and other forest clean-up measures. Further research and mitigation strategies will better protect humans and ecosystems, including waterways and groundwater. SB 1176 will bring the right people together to help come up with these strategies helping to protect Californians."

Proposition 65: Proposition 65, officially known as the Safe and Drinking Water and Toxic Enforcement Act of 1986, was enacted as a ballot initiative in November 1986. Proposition 65 requires the state to maintain and update a list of chemicals known to the state to cause cancer or reproductive toxicity, protects the state's drinking water sources from being contaminated with chemicals known to cause cancer, birth defects and other reproductive harm and requires businesses to inform Californians about exposure to such chemicals. The Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency for implementation of Proposition 65 and has the authority to adopt and modify regulations as necessary. According to OEEHA, Proposition 65 list contains a wide range of naturally occurring and synthetic chemicals including additives or ingredients in pesticides, common household products, food, drugs, dyes, or solvents. Chromium 6, commonly referred to as hexavalent chromium, is listed under the Proposition 65 list. It is listed as a carcinogen since 02/27/1987 (basis for listing: labor code), a developmental toxicant since 12/19/2008, and a reproductive toxicant, for both sexes, since 12/19/2008. OEHHA has a report, titled "Evidence on the Developmental and Reproductive Toxicity of Chromium (hexavalent compounds)," published in 2009 available on their website.

Wildfires: Wildfires have ravaged regions across the state of California in recent years. The size, duration, and the destructiveness of wildfires has grown in the last decade. CalFire's website provides statistics on wildfire events. A document titled "Top 20 Largest California Wildfires," available on CalFire's website and last updated in 2022, shows that nine of those wildfires have occurred in the last five years alone (2019-2024). CalFire's "Top 20 Most Destructive California Wildfires" document, last updated March 2024, lists seven wildfires from the last five years (2019-2024).

California Air Resources Board (CARB) describes on their website that air pollutants from wildfires include particulate matter and toxic air contaminants. Toxic air contaminants can include metals, carbon monoxide, hydrogen cyanide and toxic volatile organic compounds. Furthermore, on July 2021, CARB released a report titled "Camp Fire Air Quality Data Analysis." In this report, CARB describes the findings from comparing the 2018 Camp Fire (Butte County, California) air quality data to that of other large wildfires in 2018 that mostly burned vegetation. They found elevated levels of lead, zinc, calcium, iron and manganese. Some of these metals were detected 150 miles from the wildfire site (San Jose and Modesto, CA).

Wildfire Debris Removal and Recovery Operations: DTSC and the Department of Resources Recycling and Recovery (Cal Recycle) are tasked with different phases of the Wildfire Debris Removal and Recovery Operations. The removal of visible household hazardous waste (HHW) is phase I. In this phase, DTSC's Emergency Response Unit oversees the removal of HHW such as household batteries, bulk pesticides, paints, aerosol cans, and asbestos siding from impacted areas. Following DTSC's work, Cal Recycle implements phase 2. Phase 2 consists of debris removal like concrete, metal, ash and the top 3-6 inches of contaminated soil. Soil testing and contaminated soil removal are part of the process because toxins like arsenic, lead, mercury, and chlorine can be present.

Firefighters and cancer: According to The National Institute for Occupational Safety and Health (NIOSH) website, under the Centers for Disease Control and Prevention, cancer is the leading cause of death among firefighters. Research suggests that firefighters are at higher risk of certain types of cancers compared to the general population. During fire events, firefighters can be exposed to hundreds of different chemicals in the form of gases, vapors, and particulates. Exposure can be via inhalation, ingestion, into their eyes or by handling protective clothing. In 2022, the International Agency for Research on Cancer (IARC) completed a literature review of the scientific evidence available -research from multiple countries. IARC classified occupational exposure as a firefighter as "carcinogenic to humans." This classification is based on sufficient evidence for cancer in humans. They conclude there is sufficient evidence for mesothelioma and bladder cancer. They also concluded there was limited evidence for colon cancer, prostate cancer, testicular cancer, melanoma, and non-Hodgkin lymphoma. That is, positive associations were identified, but chance, bias, and/or confounding variables could not be ruled out with reasonable confidence. The assessment was published in IARC Monographs and a summarized version was published in *The Lancet Oncology* titled, "Carcinogenicity of occupational exposure as a firefighter."

CalFire is currently involved in projects aimed at reducing the occupational risks that firefighters face. In partnership with the Wildfire Conservancy, the National Fire Fighter Cancer Cohort Study, and the University of Arizona, Cal Fire is working to study exposure risk and identify interventions to help reduce the risk of developing cancer in firefighters. Another partnership includes identifying hazards and reducing exposure risk from vehicle contamination. Projects focused on dermal exposure and proper protective gear as well as evaluating respiratory protection are also ongoing.

Chromium 3 and 6: The element chromium exists in several forms. Chromium 3, or trivalent chromium, and chromium 6 are among the most stable forms found in the environment. Research suggests chromium 3 might play a role in nutrient metabolism via insulin action in the body. Chromium 3 is considered non-toxic. On the other hand, as stated in OEHHA's Chromium 6 factsheet, chromium 6 is the most toxic form of the metal chromium. It is naturally found in rocks and can enter the groundwater. Chromium 6 is commonly used in pigments for textile dyes, paints and inks. It is also used in chrome plating processes and in wood preservatives. As a result, industrial use of chromium 6 can also contribute to groundwater contamination and manufacturing emissions can be source of exposure to the general public.

In 2021, The National Toxicology Program published their fifteen edition report titled "Report on Carcinogens." Their section for chromium hexavalent compounds summarizes cancer risks, exposure, and properties of these chemicals. Studies looking at human data have consistently shown increased risk of lung cancer for workers involved in chromate production, chromate

pigment production, and chromium plating. Exposure to chromium 6 can come from breathing ambient air, drinking water, or skin contact with products that contain chromium 6. Lastly, research has shown that chromium 6 can cross the placenta barrier – passing from mother to baby.

Chromium and wildfires: A study published in *Analytical and Bioanalytical Chemistry* in 2011 titled, "Simultaneous speciation of arsenic, selenium, and chromium: species stability, sample preservation, and analysis of ash and soil leachates," found high levels of chromium 6 in samples taken from burned residential areas compared to those from non-residential forested areas. In 2019, a study titled, "A new pathway for hexavalent chromium formation in soil: Fire-induced alteration of iron oxides" was published in *Environmental Pollution* by a group in Australia. They reported that high temperatures, like those reached during a wildfire, can cause the formation of chromium 6 from chromium 3 present in surface soils. More recently, a research study titled "Metal toxin threat in wildland fires determined by geology and fire severity" was published in *Nature Communications*. In this 2023 study, soils and ash were collected from the North Coast Range (Sonoma, Napa, and Lake counties) after the Kincade and Hennessey Fires in November 2019 and September 2020, respectively. Samples were from four ecological preserves that were recently burned. Burn history, burn severity, ecosystem types and geology were among the factors considered as samples were collected. Among their research findings, they report that chromium rich areas that burned for long durations had chromium 6 concentrations nearly seven times higher than unburned areas, elevated chromium 6 could persist months after a wildfire event, and chromium 6 is enriched in particles of surface soil and ash that can become airborne.

Given the timeline of research projects and funding for research proposals, it is not known if complementary studies are underway or how many research groups are looking into this research topic. Additional research is needed to better understand the risks and preventative measures communities and first responders can take to minimize exposure.

Considerations: The requirements of the workgroup include (i) establishing best practices and recommendations for wildfire-impacted communities and first responders to avoid exposure to heavy metals after a wildfire and (ii) study and consider ways that communities can minimize and prevent exposure to heavy metals from a wildfires. The exposure and risk that first responders have during a wildfire event differs from that of wildfire-impacted communities. First responders are the most exposed during a fire. The author may wish to consider revising the first requirement to reflect exposure of both groups. The language in the bill also requires the workgroup to (i) study and consider ways that communities can minimize or remediate the accumulation of heavy metals in the environment after a wildfire, including through bioremediation through vegetation, fungal, or bacterial treatments. The Department of Conservation as an additional workgroup member could be helpful. Additionally, the author may consider adjusting the report deadline to allow for additional time for agencies to gather data and report.

This bill: SB 1176 requires, upon appropriation, CalFire, Cal OES, and DTSC, in consultation with academic and research institutions with demonstrated relevant expertise, and any other governmental agency or educational institution that may have experience in public health and wildfires, to form a workgroup related to exposure of toxic heavy metals after a wildfire. It also requires the workgroup to report their findings to the Legislature on or before January 1, 2026.

Arguments in support: According to the California Fire Chiefs Association and the Fire Districts Association of California:

"As wildfires continue to increase in frequency and intensity, the release of toxic substances such as chromium 6 has become a major public health concern. The recent findings by Stanford University, highlighting the transformation of natural soil elements into carcinogenic compounds during high-heat wildfires, underscores the urgent need for effective strategies to reduce these exposures.

SB 1176 proposes a collaborative approach by involving the Department of Forestry and Fire Protection, the Office of Emergency Services, and the Department of Toxic Substances Control. By forming a workgroup with the mandate to research and recommend effective mitigation techniques, this bill provides a crucial framework for safeguarding both human health and our ecosystems."

Arguments in opposition: None on file.

Double referral: This bill was double referred to Assembly Committee on Natural Resources and was heard on June 17, 2024. It passed committee with a vote of 10-0-1.

Related Legislation:

1) AB 102 (Ting, Chapter 38, Statutes of 2023). Appropriates $7 million from the General Fund to the University of California, in partnership with the State Department of Public Health and the FIRESCOPE Program Cancer Prevention Subcommittee, for the California Firefighter Cancer Prevention and Research Program.

2) AB 700 (Grayson, Chapter 268, Statutes of 2023). Establishes the California Firefighter Cancer Prevention and Research Program and requests the University of California (UC) to develop and administer a competitive grant program for UC campuses to conduct research related to understanding biomarkers of exposure to chemical carcinogens that are absorbed and metabolized by firefighters.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Professional Scientists
California Fire Chiefs Association
California Forestry Association
Fire Districts Association of California
Union of Concerned Scientists

Opposition

None on file.

Analysis Prepared by: Brenda Cisneros-Larios / E.S. & T.M. /

Date of Hearing: June 25, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
SB 1252 (Stern) – As Amended June 6, 2024

SENATE VOTE: 37-0

SUBJECT: California Mosquito Surveillance and Research Program

SUMMARY: Requires the California Mosquito Surveillance and Research Program (Program) to consult with partners at the University of California (UC) and California State University (CSU) about the most up-to-date research pertaining to mosquito abatement, including, but not limited to, sustainable pest management. Specifically, **this bill**:

1) Requires the Program to consult with partners at UC and CSU about the most up-to-date research pertaining to mosquito abatement, including, but not limited to, sustainable pest management.

2) Defines "sustainable pest management" as a holistic, whole-system approach applicable to agricultural and other managed ecosystems and urban and rural communities that builds on the concept of integrated pest management to include the wider context of the three sustainability pillars: human health and social equity, environmental protection, and economic vitality.

3) Defines "integrated pest management" as an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and use of resistant varieties. Pesticides are used only after monitoring indicates they are needed according to established guidelines, and treatments are made with the goal of removing only the target organism. Pest control materials are selected and applied in a manner that minimizes risks to human health, beneficial and nontarget organisms, and the environment.

4) Declares that for the Program, biological control includes, but is not limited to, bats as pest suppressors, dragonfly preservation and restoration, and controls that address invasive crayfish species.

EXISTING LAW:
1) Establishes the Mosquito Abatement and Vector Control District Law, which authorizes the establishment of mosquito abatement and vector control districts, each governed by a board of trustees. (Health and Safety Code (HSC) § 2000 et seq.)

2) Establishes the Program, administered by UC Davis, and requires it to perform all of the following functions:

    a) Maintain an interactive internet website for management and dissemination of data on mosquito-borne virus and surveillance control;

b) Work in conjunction with local mosquito abatement and vector control districts to conduct research on arbovirus surveillance, transmission of vector-borne diseases, and mosquito ecology and control; and,

c) Coordinate with the Mosquito and Vector Control Association of California (MVCAC), the California Department of Public Health (CDPH), local mosquito abatement and vector control districts, local governments, and other affected stakeholders to share information. (HSC § 2101(a))

3) Requires the Program to perform the functions described above to the extent that the Program receives federal or state grants or private donations or grants made for those purposes. (HSC § 2101(b))

4) Requires CDPH to maintain a program of vector biology and control including providing consultation and assistance to local vector control agencies; providing surveillance of vectors and vector-borne diseases; coordinating and conducting emergency vector control; training and certifying government agency vector control technicians; and, disseminating information to the public regarding protection from vectors and vector-borne diseases. (HSC § 116110)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Mosquitoes pose significant public health risks, with invasive species of mosquitoes exacerbating the state's issue with the flying pests. As the author of SB 1252, I know the immediate need for this bill to address the escalating threat of mosquito-borne illnesses in California. By mandating the California Mosquito Surveillance and Research Program to consult with ALL University of California and California State University campuses, we ensure access to the latest research on mosquito abatement throughout the entire state. This collaborative approach fosters comprehensive strategies and leverages the expertise of our academic institutions. SB 1252 empowers our state to stay ahead of emerging challenges, safeguarding public health and promoting effective mosquito control efforts statewide"

Mosquitos in California: The UC Statewide Integrated Pest Management program (UC IPM) states that more than 50 species of mosquitoes live in California, with habitats ranging from deserts at or below sea level, to mountain meadows at elevations of 10,000 feet or more. While many species of California mosquitoes are relatively uncommon and seldom pose a threat to humans, some species can transmit microbial organisms through their bites that cause serious diseases. The mosquitoes that are of most concern in California belong to the genera *Culex*, *Aedes*, and *Anopheles*. Other species of mosquitoes transmit diseases to livestock or pets.

According to the May 2024 *California Mosquito-Borne Virus Surveillance and Response Plan*, published by CDPH, MVCAC, and UC, there are 15 known mosquito-borne viruses in California; however, only West Nile virus, St. Louis encephalitis virus, and western equine encephalitis virus have caused significant human disease. Of those, West Nile virus is the most prevalent and serious disease transmitted by mosquitoes in California. There is no human vaccine for West Nile virus, which can cause debilitating cases of meningitis and encephalitis, and even death. Other diseases that are spread by mosquitoes to people include Zika virus, chikungunya virus, dengue, and malaria.

According to UC IPM, mosquitoes are best managed on an area wide basis by public agencies organized specifically for mosquito control. In California, more than 50 mosquito and vector control districts provide this service.

The California Mosquito Surveillance and Research Program (Program): According to the May 2024 *California Mosquito-Borne Virus Surveillance and Response Plan*, California has had a comprehensive mosquito-borne disease surveillance, prevention, and control program since 1969. Previously, guidelines for mosquito surveillance and interagency responses were published by CDPH (1987) and MVCAC (1995). In 2019, the legislature passed and Governor Gavin Newsom signed, AB 320 (Quirk, Chapter 422, Statutes of 2019), to establish the Program in statute. AB 320 requires UC Davis, in administering the Program, to maintain an interactive internet website for the management and dissemination of data on mosquito-borne virus and surveillance control, and to coordinate with CDPH, MVCAC, local mosquito abatement and vector control districts, local governments, and other affected stakeholders to share information and conduct research on vector-borne diseases and mosquito control, to the extent the Program receives funding for those purposes.

In response to enactment of AB 320, staff at UC Davis established the California Vectorborne Disease Surveillance Gateway (CalSurv), the statewide surveillance database that assists with preventing the spread of mosquito-borne diseases. CalSurv curates local and statewide data to enable mosquito and vector control and public health agencies to make informed decisions on public health interventions.

MVCAC argues that CalSurv is an important part of controlling invasive mosquitoes because it helps identify pesticide resistance and visualize disease outbreak risks. MVCAC describes the current functions of CalSurv as including the following:

- Track the spread of invasive mosquitoes;
- Enable real-time control decisions based on surveillance data to prevent the spread of vector-borne diseases;
- Provide data that supports research to enhance surveillance and control strategies and predict new disease outbreaks;
- Provide data on mosquito abundance, mosquito infection rates, dead birds, sentinel chickens, and weather, which CDPH uses to provide statewide reports and assess transmission risk for vector-borne diseases; and,
- Provide a software solution for surveillance data in smaller rural communities that have a higher risk of arbovirus transmission but limited vector control resources.

Funding for the Program: According to MVCAC, historically funding for CalSurv was provided through research grants and collaborative projects with partners such as CDPH, MVCAC, the National Oceanic and Atmospheric Administration (NOAA), and the National Aeronautics and Space Administration (NASA). In 2018, the California state legislature allocated $500,000 to the Program, and in 2021, SB 129 (Skinner, Chapter 69, Statutes of 2021), appropriated $1 million on an ongoing basis to support CalSurv. According to MVCAC, the state's ongoing support for this online interactive platform is critical as it enables real-time collection, visualization, and analysis of data on vector-borne diseases

This bill: This bill requires staff at the Program to consult with partners at UC and CSU about the most up-to-date research pertaining to mosquito abatement, including, but not limited to,

sustainable pest management. It also establishes definitions for sustainable pest management and integrated pest management that are consistent with the definitions of those terms in California's January 2023 *Accelerating Sustainable Pest Management: A Roadmap for California*, and with the UC IPM definition of integrated pest management.

The author argues, "The California Department of Pesticide Regulation (DPR), California Environmental Protection Agency (CalEPA), and California Department of Food and Agriculture (CDFA) jointly initiated the Sustainable Pest Management (SPM) Work Group. This group published a roadmap for accelerating Sustainable Pest Management in California in 2023. In that 97-page document, the word 'research' appears 163 times. The importance of developing alternatives to high-risk pesticides cannot be overstated. Furthermore, this roadmap recommends that in supporting public research, the State of California create guiding requirements to ensure institutions advance a strong framework for sustainable pest management. This bill establishes new guiding requirements for the [Program] that align with the roadmap and will shift the focus of research to safer alternatives to pest management. These alternatives may include utilizing bats as pest suppressors, preserving and restoring dragonfly populations, and building on research that focuses on biological controls and habitat management strategies specifically designed to address invasive crayfish species."

Related legislation:

AB 320 (Quirk, Chapter 422, Statutes of 2019). Codifies the Program in statute and requires it to, among other functions, maintain an interactive internet website for the management and dissemination of data on mosquito-borne virus and surveillance control.

AB 2892 (Quirk, 2018). Would have codified the Program in statute, similar to AB 320 (2019), but would have housed the Program at CDPH instead of UC Davis. AB 2892 was held on the Senate Appropriations Committee suspense file.

SB 382 (Pan, 2017). Would have created the California Mosquito Surveillance and Research Program Account to fund California-based surveillance and research on mosquitoes. Would have appropriated $2 million from the General Fund to the account, and would have required that $1.5 million of that money be used to fund CalSurv to perform specified functions. SB 382 was held on the Senate Appropriations Committee suspense file.

Double referral. This bill is double-referred. Should it pass out of the Assembly Committee on Environmental Safety and Toxic Materials, it will be referred to the Assembly Committee on Higher Education.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: June 25, 2024

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Eduardo Garcia, Chair
SJR 13 (Newman) – As Amended April 8, 2024

SENATE VOTE: 37-0

SUBJECT: Navy North Hangar Fire: contamination cleanup

SUMMARY: Urges the United States (U.S) Congress and President Joseph R. Biden (President Biden) to support a $100 million supplemental funding request to address the ongoing impacts on public health, the environment, and the local economy caused by pollution from the Navy North Hangar Fire; urges President Biden to declare a national emergency due to ongoing impacts; and urges President Biden and the U.S. Congress to include in future federal budgets sufficient ongoing operational and maintenance funding for Navy North Hangar Fire remediation. Specifically, **this resolution**:

1) Makes the following legislative findings:

   a) The U.S. Navy (Navy) owns the site of former Marine Corps Air Station Tustin, on which the North Hangar structure was located before a catastrophic fire that started on November 7, 2023;

   b) The Navy North Hangar Fire burned for 24 days, deposited tons of debris, including toxic contaminants such as asbestos and lead from the Navy North Hangar, into a broad area of the community of Tustin, California, and affected over 1,500 homes and businesses, 29 schools, and 14,000 individuals;

   c) The debris has been studied for exposure levels by an environmental health team that includes the South Coast Air Quality Management District (SCAQMD), California Department of Toxic Substances Control (DTSC), United States Environmental Protection Agency (US EPA), Orange County Health Care Agency (OCHCA), Navy, Center for Toxicology and Environmental Health, and University of California, Irvine, and that is determined to protect against significant public health risks;

   d) The City of Tustin has proclaimed a state of local emergency since November 9, 2023, as a result of asbestos and lead debris contaminants deposited into the City of Tustin;

   e) The Tustin Unified School District and its students were greatly impacted by school closures and disruptions due to threatening air quality conditions and the contamination impacts;

   f) The Orange County Transportation Authority was impacted due to public concern for air quality;

   g) Orange County, on November 9, 2023, proclaimed a local emergency due to the public health, environmental, and economic impacts of the pollution disaster;

h) The City of Tustin has contracted for emergency services to protect the public and environment in excess of $80 million; and,

i) The City of Tustin is expending over 100% of its annual budget on this incident;

2) Resolves, on behalf of the Assembly and the Senate of the State of California, jointly, that:

a) The Legislature urges the U.S Congress and President Biden to support a $100 million supplemental funding request to address the ongoing impacts on public health, the environment, and the local economy caused by cross-jurisdictional pollution from the Navy North Hangar Fire;

b) The Legislature urges President Biden to declare a national emergency due to the ongoing impacts to public health, the environment, and the local economy caused by cross-jurisdictional pollution from the Navy North Hangar Fire;

c) The Legislature urges President Biden and the U.S. Congress to include in future federal budgets sufficient ongoing operational and maintenance funding for Navy North Hangar Fire remediation; and,

d) The Secretary of the Senate transmit copies of this resolution to the U.S. President and Vice President, Speaker of the House of Representatives, Majority Leader of the Senate, each Senator and Representative from California in the U.S. Congress, Secretary of Defense, Secretary of the Navy, Governor, Attorney General, and to the author for appropriate distribution.

EXISTING LAW:

1) Authorizes the President to declare a national emergency. (50 United States Code (U.S.C.) § 1621)

2) Provides that when the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposed that he, or other officers, will act. (50 U.S.C. § 1631)

3) Terminates any national emergency declared by the president if a joint resolution terminating the emergency is enacted, or if the President issues a proclamation terminating the emergency. (50 U.S.C. § 1622(a))

4) Requires each House of Congress to meet to consider a vote on a joint resolution to determine whether an emergency shall be terminted no later than 6 months after the national emergency is declared, and no later than the end of each 6 month period thereafter that such emergency continues. (50 U.S.C. § 1622(b))

5) Authorizes the Secretary of Defense and the Secretaries of the military departments, in the event of the declaration of a national emergency by the President, to undertake military construction projects and specifies that the projects may only be undertaken with funds that

have been appropriated for military construction, including funds appropriated for family housing that have not been obligated. (10 U.S.C. § 2808(a))

6) Establishes, under the California Emergency Services Act, the California Office of Emergency Services (Cal OES) within the office of the Governor for the purpose of mitigating the effects of natural, manmade, or war-caused emergencies that result in conditions of disaster or in extreme peril to life, property, and the resources of the state. (Government Code (GC) § 8550)

7) Requires, under the California Disaster Assistance Act, the Director of Cal OES to provide financial assistance to local agencies for their personnel costs, equipment costs, and the cost of supplies and materials used during disaster response activities, incurred as a result of a state of emergency proclaimed by the Governor, subject to specified criteria. (GC § 8680)

8) Authorizes, under the federal Robert T. Stafford Disaster Relief and Emergency Assistance Act, the Federal Emergency Management Agency (FEMA) to provide emergency assistance to states and local entities impacted by disasters; authorizes, in any emergency, the President to, among other things, authorize public assistance programs aimed at providing essential emergency assistance, repairing and restoring damaged public facilities, and removing debris. (Public Law § 100707)

9) Establishes the federal Resource Conservation and Recovery Act (RCRA) to authorize the US EPA to manage hazardous and non-hazardous wastes throughout its life cycle. (42 U.S.C. § 6901 et seq.)

10) Establishes the Hazardous Waste Control Law (HWCL) to authorize DTSC to regulate the management of hazardous wastes in California. (Health and Safety Code (HSC) § 25100 et seq.)

11) Defines "waste" as any solid, liquid, semisolid, or contained gaseous discarded material. (HSC § 25124)

12) Defines a "hazardous waste" as waste that, because of its quantity, concentration, or physical, chemical, or infectious characteristics:

    a) Causes, or significantly contributes to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or,

    b) Poses a substantial present or potential hazard to human health or the environment, due to factors including, but not limited to, carcinogenicity, acute toxicity, chronic toxicity, bio-accumulative properties, or persistence in the environment, when improperly treated, stored, transported, disposed of, or otherwise managed. (HSC § 25141(b))

FISCAL EFFECT: Unknown

COMMENTS:

Need for the resolution: According to the author:

"The Navy North Hangar Fire has inflicted a profound financial and environmental impact on the community. The residents of the surrounding communities deserve an expedited and comprehensive cleanup of the asbestos and other toxic materials. SJR 13 calls on President Biden and the U.S. Congress to support all necessary remediation and cleanup efforts in swiftly responding to the pressing needs created by this devastating fire."

Marine Corps Air Station Tustin: As described in the California Military Museum, the air station was originally built as a blimp base in 1942 as Santa Ana Naval Air Station. Blimps were used to patrol America's coastline primarily to watch for enemy submarines. The air station had two hangars, each more than 1,000 feet long and 300 feet wide, designed to hold six blimps simultaneously. Following World War II, the Navy decommissioned the air station in 1949. In 1951, the Marine Corps used the site as their primary West Coast helicopter base, operating medium and heavy transport and attack helicopter squadrons. The station housed over 100 helicopters at its peak. In 1999, the Marine Corps closed the station. The hangars were designated a national historic landmark, marked for preservation. The local government approved the property for reuse for a mixture of purposes, including parkland and commercial development, and the City of Tustin was working with the Navy to implement the plan.

Navy North Hangar Fire: On Tuesday, November 7, 2023, a fire broke out in the North Hangar at the former Marine Corps Air Station in Tustin. The Orange County Fire Authority responded to the fire by sending more than 70 firefighters at about 1 a.m. to contain the fire. Efforts to contain the fire escalated to deploying helicopters to douse the fire from above. These efforts were ultimately unsuccessful and officials allowed the structure to burn rather than risking the lives of firefighters.

On November 9, 2023, the Tustin Acting Director of Emergency Services proclaimed a local emergency and the city council ratified it on November 10. The proclamation requested a Gubernatorial State of Emergency, per the Emergency Services Act, and provide expedited access to state and federal resources, and recovery assistance. On the same day, members of the U.S. House of Representatives wrote a bipartisan letter. Congress members Young Kim (CA-40), J. Luis Correa (CA-46), Michelle Steel (CA-46), Katie Porter (CA-47), Linda T Sánchez, Mike Levin, and Southern California representatives wrote a letter to the Base Realignment and Closure (BRAC) Environmental Coordinator of the Navy, requesting information about their plan to address the fire. Specifically, they requested information on their plan for cleaning up contaminated sites, disclosing the building materials used to construct the hangar, engaging and informing community members, and whether the Navy would be involved in assisting the county.

On the City of Tustin's official website, the city has yet to state an official cause for the fire. The fire is still under investigation by the Orange County Fire Authority and the Tustin Police Department.

The Navy Agreement: The US EPA deemed the Navy responsible for the releases from the Navy North Hangar Fire. On November 10, 2024, the city held an emergency meeting where they approved an agreement with the U.S. Department of the Navy. The agreement allowed the city to take immediate remediation actions following the fire with an initial $1 million in assistance.

Testing and hazardous conditions: The fire resulted in releases of several contaminants into the air. The SCAQMD reported that both air and ash samples in the area surrounding the North Hangar Fire was positive for asbestos, lead, arsenic, and nickel. Community parks, schools,

open spaces, shopping centers, and residential properties are part of the surrounding area. A pollution alert was sent out by SCAQMD within two days of the fire engulfing the hangar structure. At the time of the findings, Tustin Unified School District closed all their school campuses for the safety of students, staff, and families.

On December 5, 2023, Assemblymember Petrie-Norris wrote a letter to the BRAC Environmental Coordinator of the Navy. The letter requested answers to specific questions and transparency on the Navy's approach for debris cleaning and remediation, their comprehensive testing strategy, and their funding and reimbursement mechanism to support the affected community.

On January 30, 2024, the City of Tustin announced that an informational webinar would be available for residents to learn about the methodology and implementation plan for an exterior soil and interior air/dust sampling study following the fire. Residents voluntarily signed up and were randomly selected. The study assessed the impact of the Navy's North Hangar Fire on the surrounding community and was approved by county, state, and federal regulators including the US EPA, DTSC, SCAQMD, OCHCA, and the Navy. On May 8, 2024, the City of Tustin published a news release sharing the results. The sampling study analyzed 960 soil, interior air, and dust samples from 80 randomly selected homes in close proximity to the North Hangar Fire, and compared findings to homes in the cities of Irvine and Santa Ana ("control" cities, or cities well outside the impacted zone). No asbestos or lead exceeding state or federal health standards were detected in any of the homes with the exception of one. Exceedances in lead were detected in a few of the "control" cities, but this was due to the historical background lead levels in Santa Ana, CA.

As of today, the City of Tustin's North Hangar Fire Resources website states that all 29 Tustin Unified School District schools have been inspected, mitigated, and cleared.

Cleanup costs: A news article in the *Los Angeles Times*, shared by the author's office, titled, "Tustin incurs hefty hangar fire cleanup costs while waiting on Navy funding," states that the City of Tustin, as of March 6, 2024, had contracted $74 million for emergency services including a soil, air, and dust study. This study was completed in May 2024 and is described above. Furthermore, the article states that the city has surpassed their general fund budget due to cleanup costs. At the time of the article, the Navy had only paid $11 million through their cooperative agreement with the City of Tustin.

On March 12, 2024, the Navy pledged to provide the City of Tustin with $13 million to partially cover the more than $90 million in cleanup costs as of that date. With this pledge, the total money provided by the Navy totaled $24 million. The most recent information available at the City of Tustin's public website breaks down the costs of the North Hangar Fire, which in total is nearly $88 million and disaggregates as follows:

- Debris clearance: $52,570,475
- Air monitoring, analytical, and community outreach services: $21,247,438
- Consulting, project management, and legal services: $8,554,764
- Agency costs: $2,340,000
- Supplies, equipmen,t and security: $1,468,108
- Residential air and dust sampling, outdoor soil sampling: $898,900
- Hangar door deconstruction: $854,251

The document states that 1,500 homes, 29 schools, 12 parks, and 14,000 people were affected by the North Hangar Fire. The fire burned for 24 days and impacted 6.5 square miles.

State of emergency declaration: City and county officials asked Governor Newsom to declare a state of emergency. Information provided by the author's office states that the governor declined to issue an emergency and emphasized it was the federal government's responsibility to provide resources for the clean-up. On January 25, 2024, a week after the denied request, Congress members Young Kim and J. Luis Correa wrote a letter requesting that the Governor reconsider his decision on an emergency declaration. By declaring a state of emergency, the City of Tustin would have access to federal funds for their remediation, efforts. The letter highlighted the financial and emotional burden of the fire on the city's residents. Some residents paid out of pocket to hire contractors to test their homes for the presence of lead and asbestos. Residents were requesting additional testing, remediation and reimbursement for out-of-pocket expenses. The letter also requested that the Governor clarify a statement he shared to the media regarding a $73 million threshold amount that is required for a disaster declaration and why the City of Tustin would be disqualified.

Recent events: Information available on the City of Tustin's website states that the Navy's contractor has submitted a draft work plan to clean up the site of the fire. The plan is currently being evaluated by local, county, and state agencies.

On April 15, 2024, it was announced that the Navy had pledged an additional reimbursement payment of $37 million to repay the City of Tustin. With this pledge, the reimbursement to the City of Tustin amounted to $61 million. An additional $27 million was announced on June 18, 2024, bringing the total to $88 million. This amount matches the City's costs and contractual obligations to date. The Navy reimbursements do not provide relief to residents with out-of-pocket expenses.

This resolution: SJR 13 urges the U.S. Congress and President Biden to support a $100 million supplemental funding request to address the ongoing impacts on public health, the environment, and the local economy caused by pollution from the Navy North Hangar Fire. It also urges President Biden to declare a national emergency due to ongoing impacts and urges President Biden and the U.S. Congress to include in future federal budgets sufficient ongoing operational and maintenance funding for Navy North Hangar Fire remediation.

Arguments in support: According to the City of Tustin:

"The Navy North Hangar Fire caused significant disruption and required extensive environmental remediation of the surrounding community. Officials were forced to shut down all Tustin schools and parks, and issue health warnings to surrounding residents. The City declared a local state of emergency and the Orange County Board of Supervisors declared a county-wide state of emergency due to the fire.

In responding to the fire and subsequent recovery efforts, the City has been stretched beyond its financial limits, with emergency obligations exceeding more than 100% of its 2023-2024 fiscal year budget. The overall costs for the response and recovery needed to protect the public and the environment are expected to exceed $90,000,000 at this time and have put the fiscal solvency of the City at great risk. The ruins of the destroyed Navy North Hangar remain, and its eventual removal and clean-up are likely to generate further impacts to the City and its residents, many of

whom spent thousands of dollars out of their own pockets to recover from the Navy North Hangar Fire.

The City must remain fiscally solvent so it can fulfill its core duties to provide crucial public services to the City's residents and businesses. The Navy North Hangar Fire disaster has our community facing financial peril and has created a dire need of immediate assistance."

Arguments in opposition: None on file.

Related Legislation:

1. AJR 12 (Alvarez, 2024). Urges the U.S. Congress and President Biden to fully fund the US EPA's Comprehensive Infrastructure Solution for the Tijuana River Valley; urges President Biden to declare a national emergency due to those ongoing impacts. This resolution is pending action on the Assembly Floor.

2. AJR 2 (O'Donnell, Chapter 142, Statutes of 2021). Requested that the U.S. Congress and US EPA to take all measures necessary to prevent further damage to California's citizens, wildlife, and natural resources caused by the dichloro-diphenyl-trichloroethane (DDT) waste dumped in the waters near Santa Catalina Island.

3. SJR 22 (Hueso, Chapter 241, Statutes of 2018). Urged the federal government and the U.S. section of the International Boundary Water Commission to take immediate action to adequately address cross-border pollution in the Tijuana River Valley.

4. SCR 90 (Hueso, Chapter 80, Statutes of 2014). Declared the Legislature's intent to work with the Tijuana River Valley Recovery Team (Team) to take various actions to protect and preserve the Tijuana River Valley; encourage collaboration with the Team to protect and enhance natural resources through improved management of sediment and trash, flood control, ecosystem management, and recreation and education; and, promote bilateral ties with Mexico.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Tustin
Junior Philanthropists Foundation

Opposition

None on file.

Analysis Prepared by: Brenda Cisneros-Larios / E.S. & T.M. /