California State Assembly

NATURAL RESOURCES

ISAAC G BRYAN
CHAIR

AGENDA

Monday, July 1, 2024
2:30 p.m. -- State Capitol, Room 447

BILLS HEARD IN SIGN-IN ORDER

1.	SB 308	Becker	Net zero greenhouse gas emissions goal: carbon dioxide removal: regulations.
2.	SB 312	Wiener	California Environmental Quality Act: university housing development projects: exemption.
3.	SB 571	Allen	Fire safety: ingress and egress route recommendations: report.
4.	SB 610	Wiener	Fire prevention: wildfire mitigation area: defensible space: State Fire Marshal: real property disclosures: fire protection building standards.
5.	SB 615	Allen	Vehicle traction batteries.
6.	SB 707	Newman	Responsible Textile Recovery Act of 2024.
7.	SB 945	Alvarado-Gil	The Wildfire Smoke and Health Outcomes Data Act.
8.	SB 1053	Blakespear	Solid waste: reusable grocery bags: standards: plastic film prohibition.
9.	SB 1062	Dahle	Electrical generation facilities using biomass: conversion to advanced bioenergy technology facilities.
10.	SB 1143	Allen	Household hazardous waste: producer responsibility.
11.	SB 1208	Padilla	Waste discharge permits: landfills.
12.	SB 1231	Allen	Plastic Pollution Prevention and Packaging Producer Responsibility Act: environmental advertising.
13.	SB 1298	Cortese	Certification of thermal powerplants: data centers.
14.	SB 1324	Limón	California Ocean Science Trust: agreements.
15.	SB 1420	Caballero	Hydrogen.
16.	SJR 12	Min	Oil and gas leases: bankruptcy.

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Isaac G. Bryan, Chair
SB 308 (Becker) – As Amended June 5, 2024

SENATE VOTE: 24-9

SUBJECT: Net zero greenhouse gas emissions goal: carbon dioxide removal: regulations

SUMMARY: Requires the Air Resources Board (ARB) to adopt specified standards and targets for carbon dioxide (CO_2) removal (CDR).

EXISTING LAW:

1) Requires ARB, pursuant to the California Global Warming Solutions Act, to adopt a statewide greenhouse gas (GHG) emissions limit equivalent to 1990 levels by 2020 and to adopt rules and regulations to achieve maximum technologically feasible and cost-effective GHG emission reductions. (Health and Safety Code (HSC) 38500 *et seq.*)

2) Requires ARB to ensure that statewide GHG emissions are reduced to at least 40% below the 1990 level by 2030. (HSC 38566)

3) Establishes, pursuant to the California Climate Crisis Act, the policy of the state to achieve net zero GHG emissions by 2045, maintain net negative GHG emissions thereafter, and ensure that by 2045, statewide anthropogenic GHG emissions are reduced to at least 85% below the statewide GHG emissions limit. (HSC 38562.2)

4) Requires ARB to prepare and approve a scoping plan, at least once every five years, for achieving the maximum technologically feasible and cost-effective reductions in GHG emissions from sources or categories of sources of GHG emissions. (HSC 38561)

5) Requires any direct GHG regulation or market-based compliance mechanism adopted by ARB to achieve GHG emissions reductions that are real, permanent, quantifiable, verifiable, and enforceable by ARB. (HSC 38562 (d))

6) Requires ARB to establish CDR targets for 2030 and beyond, taking into consideration the Natural and Working Lands Climate Smart Strategy, science-based data, cost-effectiveness, and technological feasibility. (HSC 39740.2)

7) Requires ARB to establish a Carbon Capture, Removal, Utilization, and Storage Program and defines CDR as anthropogenic activities that use technologies or engineered strategies to remove CO_2 from the atmosphere and put it into long-term storage, including direct air capture. (HSC 39741 and 39741.1)

THIS BILL:

1) Requires ARB to ensure the state achieves CDR equivalent to at least 100% of statewide GHG emissions by 2045, in order to achieve net zero and net negative GHG emissions goals.

2) Requires ARB to establish separate interim targets for GHG emissions reductions and CDR, to be applicable beginning no later than 2030, and report on progress toward achieving those targets.

3) Requires ARB, for purposes of the net zero GHG target, to only certify CDR processes that meet all of the following:

   a) The CDR process results in removals of CO_2 from the atmosphere, directly or indirectly, and not only the avoidance or reduction of GHG emissions.

   b) The CDR process is not used for purposes of enhanced oil recovery, including the facilitation of enhanced oil recovery from another well.

   c) If the CDR process requires biomass as a feedstock, it only uses biomass that is produced as a residue or waste product, including, but not limited to, agricultural residues and byproducts of sustainable forest management.

   d) The CDR process is consistent with the requirements of Carbon Capture, Removal, Utilization, and Storage Program established by ARB pursuant to SB 905.

   e) The CDR process uses a form of long-term carbon storage with specified requirements for financial responsibility and longevity.

4) To the extent feasible, requires these requirements to apply equivalently to all CDR processes certified by ARB whether located inside or outside of the state.

5) Provides that only CDR certified by ARB is counted for the purpose of counterbalancing statewide GHG emissions when determining the state's progress toward achieving net zero and net negative GHG emissions.

6) Authorizes ARB to adopt protocols for CDR.

7) Makes related findings.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Background**. CDR is an umbrella term used to describe a range of strategies used to remove CO_2 from the atmosphere, without a relationship to where or when the CO_2 was emitted. In contrast to carbon capture, CDR is a negative emissions strategy when it involves capturing legacy CO_2 directly from the atmosphere. To store the CO_2 for long periods, it is generally injected underground into geological formations, such as former oil and gas reservoirs, deep saline formations, and coal beds.

   Radical cuts in GHG emissions are critical to climate change mitigation, but in parallel with emissions reductions, most experts agree that CDR is necessary to avert further climate disaster. The Intergovernmental Panel on Climate Change's (IPCC) Sixth Assessment asserts

that global emissions will need to be cut by almost half by 2030 if warming is to be limited to 1.5°C, the global target in the Paris Agreement. It acknowledged that CDR will be necessary to meet the 1.5°C target, especially in hard-to-abate sectors.

California too has acknowledged the need for CDR. California has a statutory goal to achieve net zero GHG emissions by 2045, with a reduction in emissions of at least 85% from 1990 levels. This leaves 15% of emissions that need to be removed, estimated to be about 65 million metric tons (MMT). To balance out those remaining 15% of emissions, ARB's 2022 Scoping Plan projected that the state will need about 75 MMT of CDR by 2045 (65 MMT to balance out the 15% of remaining emissions in the state inventory plus 10 MMT to balance estimated net emissions from natural and working lands).

2) **Author's statement**:

In 2022, California passed landmark legislation committing the state to achieve net zero GHG emissions by 2045, with a reduction in emissions of at least 85% from 1990 levels. To achieve the net zero target, the state will need CDR to balance those remaining 15% of emissions. Today, the state has no plan for scaling up that CDR capacity to produce the needed "negative emissions," and there are no rules for what should count as negative emissions or how to keep track of it. There are a wide variety of approaches to CDR being developed, but they are early-stage, low volume, and expensive.

Since California is going to need large volumes of negative emissions to meet its climate targets, we need a plan for helping those CDR solutions mature, scale up, and reduce costs over time. As the Draft 2022 Scoping Plan Update stated, "Because CDR is critical for achieving carbon neutrality in all alternatives, it is important to begin investment soon to allow demonstration, deployment, and experience to reduce its cost as dependence on it grows toward 2045."

SB 308 will create the plan we need for developing the required CDR capacity, with a focus on three issues:

1. Putting requirements and guardrails around what CDR pathways will be certified by ARB.
2. Ensuring that only that certified, high-quality CDR is counted toward meeting the state's net zero target.
3. Setting interim targets to drive progress in scaling up CDR capacity.

3) **Proposed author's amendments**. The author has developed several amendments, in consultation with the committee, to address opposition concerns. The proposed amendments:

a) Add a finding clarifying the distinction between CDR and carbon capture, utilization and storage (CCUS).

b) Clarify that CDR may remove carbon from the atmosphere directly or indirectly, including by direct air capture or using carbon stored in biomass or soil or absorbed in water, and that "nature-based" CDR is included.

c) Provide that CDR must be quantifiable, verifiable, and enforceable by ARB.

d) Require ARB, prior to rulemaking, to conduct a robust community engagement process that includes outreach that targets residents of communities most likely to be near potential CDR projects.

e) Prohibit ARB approval of CDR that includes an industrial facility or engineered infrastructure for any portion of the process until the owner or operator provides a written attestation they have done community engagement and have a plan for providing meaningful benefits to residents of the surrounding community, as specified.

f) Require ARB to report on the implementation of this bill to the Joint Legislative Committee on Climate Change Policies.

g) Add a deadline of July 1, 2027 for ARB to implement the Carbon Capture, Removal, Utilization, and Storage Program enacted by SB 905.

REGISTERED SUPPORT / OPPOSITION:

Support

350 Sacramento
California Carbon Dioxide Removal Coalition
Clean Air Task Force
Climate Action California
Ebb Carbon
Environmental Defense Fund
Generation 2030
Heirloom Carbon
League of Women Voters of California
Menlo Spark
Ocean Iron Fertilization Alliance
Producer Accountability for Carbon Emissions
Project 2030
Santa Cruz Climate Action Network
US Green Building Council
World Resources Institute

Opposition

American Forest & Paper Association
Biofuelwatch
California Cement Manufacturers Environmental Coalition (unless amended)
California Chamber of Commerce
California Farm Bureau
California Manufacturers & Technology Association
Center for Biological Diversity (unless amended)
Center on Race, Poverty & the Environment (unless amended)
Central Valley Air Quality Coalition (unless amended)
Leadership Counsel for Justice and Accountability (unless amended)

Western States Petroleum Association

Analysis Prepared by: Lawrence Lingbloom / NAT. RES. /

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Isaac G. Bryan, Chair
SB 312 (Wiener) – As Amended June 3, 2024

SENATE VOTE: 34-1

SUBJECT: California Environmental Quality Act: university housing development projects: exemption

SUMMARY: Relaxes several conditions attached to the California Environmental Quality Act (CEQA) exemption for public university housing projects established by SB 886 (Wiener) in 2022.

EXISTING LAW:

1) CEQA requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA. (Public Resources Code (PRC) 21000, *et seq.*)

2) Exempts from CEQA any residential development project, including any subdivision, or any zoning change that is undertaken to implement and is consistent with a specific plan for which an EIR has been certified after January 1, 1980, unless substantial changes or new information require the preparation of a supplemental EIR for the specific plan, in which case the exemption applies once the supplemental EIR is certified. (Government Code 65457)

3) Exempts from CEQA specified residential projects which meet detailed criteria established to ensure the project does not have a significant effect on the environment, including:

   a) Affordable agricultural housing projects not more than 45 units within a city, or 20 units within an agricultural zone, on a site not more than five acres in size;

   b) Urban affordable housing projects not more than 100 units on a site not more than five acres in size; and,

   c) Urban infill housing projects not more than 100 units on a site not more than four acres in size which is within one-half mile of a major transit stop.

   (PRC 21159.20-21159.24)

4) Requires metropolitan planning organizations (MPOs) to include a sustainable communities strategy (SCS), as defined, in their regional transportation plans, or an alternative planning strategy (APS), for the purpose of reducing greenhouse gas (GHG) emissions, aligns planning for transportation and housing, and creates specified incentives for the implementation of the strategies, including CEQA exemption or abbreviated review for residential or mixed-use residential "transit priority projects" if the project is consistent with the use designation, density, building intensity, and applicable policies specified for the project area in either an approved SCS or APS. (PRC 21155.1)

5) Exempts from CEQA residential, mixed-use, and "employment center" projects, as defined, located within "transit priority areas," as defined, if the project is consistent with an adopted specific plan and specified elements of an SCS or APS. (PRC 21155.4)

6) Exempts from CEQA multi-family residential and mixed-use housing projects on infill sites within cities and unincorporated areas that are within the boundaries of an urbanized area or urban cluster. (PRC 21159.25)

7) The CEQA Guidelines include a categorical exemption for infill development projects, as follows:

   a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations;

   b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses;

   c) The project site has no value as habitat for endangered, rare, or threatened species;

   d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and,

   e) The site can be adequately served by all required utilities and public services.

   (CEQA Guidelines 15332)

8) Provides that the approval of a long-range development plan (LRDP) (i.e., a physical development and land use plan to meet the academic and institutional objectives for a particular campus or medical center of public higher education) is subject to CEQA and requires the preparation of an EIR. (PRC 21080.09)

9) Provides that the approval of a project on a particular campus or medical center of public higher education is subject to CEQA and may be addressed in a tiered environmental analysis based upon a LRDP EIR. (PRC 21080.09)

10) Exempts from CEQA, until January 1, 2030, a public university housing project, as defined, carried out by a public university on real property owned by the public university if all of the following are met:

   a) The project is consistent with the university's most recent LRDP EIR or master plan EIR.

   b) Each building of the project is certified as Leadership in Energy and Environmental Design (LEED) platinum or better.

   c) No more than one-third of the project square footage is used for nonresidential purposes.

   d) The project is either within one-half mile of a major transit stop, one-half mile of the campus boundary, or has 15% lower per capita vehicle miles traveled.

e) The project has a transportation demand management program.

f) The project's construction impacts are fully mitigated.

g) The project does not result in any net additional greenhouse gas (GHG) emissions, as determined by an independent third-party evaluation approved by the lead agency.

h) All contractors and subcontractors at every tier on the project will be required to pay prevailing wages. An entity cannot be prequalified or shortlisted or awarded a contract to perform work on the project unless the entity provides an enforceable commitment to the public university that the entity and its contractors and subcontractors, at every tier, will use a skilled and trained workforce to perform all work on the project that falls within an apprenticeable occupation in the building and construction trades, except as specified.

i) Requires all cleaning, maintenance, groundskeeping, food service, or other work traditionally performed by persons with University of California (UC) Service Unit job classifications to be performed only by UC employees at any facility, building, property, or space that is part of the project.

j) The public university holds at least one noticed public hearing in the project area to hear and respond to public comments before determining that the project is exempt.

k) The public university files a notice of exemption (NOE) with the Office of Planning and Research (OPR).

l) The project is not located on an environmentally sensitive site, as specified.

m) The project does not require the demolition of certain types of housing or historic structures.

n) The project is not located on a site that was previously used for housing that was occupied by tenants and was demolished within 10 years before the public university submits an application pursuant to this exemption.

o) The project is not located on a site that contains housing units that are occupied by tenants and the housing units are offered for sale, were subsequently offered for sale, to the general public by a subdivider or subsequent owner of the site.

p) The project does not consist of more than 2,000 units or 4,000 beds.

(PRC 21080.58)

THIS BILL:

1) Eliminates the requirement for UC projects to be consistent with the university's most recent LRDP EIR, instead requiring consistency with the LRDP's land-use designation.

2) Eliminates the requirement for LEED certification prior to issuance of the certificate of occupancy, instead requiring the project to meet the minimum requirements to qualify for LEED certification, and requiring the university to obtain LEED certification for each project

building within 18 months of completion, subject to unlimited six-month extensions if certification is not obtained for reasons beyond the university's control.

3) Provides that mitigation of project construction impacts does not include mitigation required by CEQA.

4) Limits mitigation of greenhouse gas (GHG) impacts to the project "when completed," implying that GHG impacts from construction are not included, and eliminates the requirement for an independent evaluation of GHG mitigation.

5) Eliminates the requirement for the university to respond to public comments offered at the public hearing required prior to the university's determination that a project is exempt.

6) Extends the sunset from 2030 to 2032.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Background**. CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines, for housing projects. For example, any residential development project, including any subdivision, or any zoning change that is consistent with an adopted specific plan is exempt from CEQA pursuant to a statute enacted in 1984.

   Since 1978, CEQA has included statutory exemptions for housing projects. There are now at least 14 distinct CEQA exemptions for housing projects. Three are specific to projects with an affordable housing fraction, the rest are available to affordable and market-rate projects alike. Each exemption includes a range of conditions, including requirements for prior planning-level review, as well as limitations on the location and characteristics of the site. These conditions are intended to guard against the approval of projects with significant environmental impacts that go undisclosed and unmitigated – endangering workers, residents and the greater environment.

   There are several avenues under current law to claim a CEQA exemption for residential projects, which can include university-sponsored projects, as well as private projects to house university students, faculty and staff. Public universities also periodically adopt planning-level EIRs, which can serve as the basis for streamlined review of subsequent housing projects.

2) **Author's statement**:

   > Currently, California is in the depths of a housing crisis. The impacts of this go beyond typical residential developments and into other areas such as student housing. As of 2019, 5% of UC, 10% of CSU, and 19% of CCC students are homeless. In an attempt to address the growing student housing crisis, the Legislature passed SB 886 (Wiener) in 2022, which provided a streamlined path for student and faculty housing in specified circumstances. However, some of the requirements for projects to utilize the law simply do not work. For example, SB 886 requires projects to accomplish LEED Platinum certification prior to a CEQA exemption being granted or the certificate of occupancy being issued; however LEED Platinum cannot be certified until a building is occupied.

SB 312 addresses this timing issue by reducing the requirement of these buildings from LEED Platinum to qualifying for LEED Platinum, which can be achieved prior to occupancy. As amended the bill will also further clean up SB 886 by proposing a number of clarifying changes to ensure that this pathway is functional for public universities.

3) **Does the LEED certification timing issue justify such a significant departure from the conditions in SB 886**? This bill passed the Senate in January as a "clean up" measure, addressing only the LEED certification issue, with no opposition. On May 24, it was amended to relax several additional conditions included in SB 886, at the request of UC. The LEED certification requirement in SB 886 has been converted into an open-ended requirement to qualify for LEED certification, without a firm deadline or enforcement.

   The bill also eliminates the requirement for UC projects to be consistent with the LRDP EIR, eliminates mitigation of construction GHG emissions, and eliminates the requirement for the university to respond to public comments on exempted projects. The justification for these changes is unclear, beyond expedience.

   LEED certification follows the submittal of a completed application, which can be done shortly after construction is completed. The typical timeline for certification of a completed application is within 30 days. In this bill, UC is seeking an initial certification timeline of 18 months, with unlimited six-month extensions. The committee asked UC for examples to explain why LEED certification would take so long for UC projects. None have been offered.

4) **Bill exempts very large projects without regard for the established planning and environmental review process required at each UC campus**. Every UC campus has a LRDP, which plans for housing among other things. The LRDP is accompanied by an EIR, which analyzes the environmental impacts of planned development.

   According to UC, these are the LRDP adoption dates for UC campuses with substantial housing units:

   UC Berkeley: 2021
   UC Davis: 2018
   UC Irvine: 2007
   UCLA: 2002 (amended in 2018 for student housing projects)
   UC Merced: 2020
   UC Riverside: 2021
   UC San Diego La Jolla Campus: 2018
   UCSF: 2014
   UCSB: 2014
   UC Santa Cruz: 2021

   In the past five years, 13 large student housing projects consisting of over 1,000 beds have been constructed on UC campuses. Some of these projects have exceeded 1,000,000 square feet and included significant parking and other non-residential uses.

   Like SB 886, this bill caps each exempt project at 2,000 units or 4,000 beds (more than the largest recent UC projects), and allows one third of the project square footage to be non-residential uses. The bill imposes no limits on parcel size, square footage, or building height.

A 2,000 unit project might range from 400,000 to over 1,000,000 square feet of residential use, with an additional 200,000 to 500,000 square feet allowed for non-residential uses. These are enormous mixed-use projects to be approved without any project-specific CEQA review or connection to the prior, planning-level review that every UC campus is required to perform.

5) **Suggested amendments**. *The author and the committee may wish to consider* the following amendments:

   a) Require exempt projects at UC campuses to be located on sites identified for housing in the most recent LRDP EIR, and within the range of housing units or beds identified for the site.

   b) Limit the number of six-month LEED certification extensions to two.

   c) Suspend use of the exemption on any campus that has more than one prior project that has not received LEED certification within the bill's timeline.

   d) Restore the requirement to fully mitigate project GHG emissions by striking ", when completed," on page 7, line 20.

REGISTERED SUPPORT / OPPOSITION:

Support

California State University Employees Union
California YIMBY
GENup
Housing Action Coalition
Student Homes Coalition
University of California Student Association

Opposition

Center on Race, Poverty, and the Environment
Communities for a Better Environment
Endangered Habitats League
Physicians for Social Responsibility - Los Angeles
Planning and Conservation League

Analysis Prepared by: Lawrence Lingbloom / NAT. RES. /

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Isaac G. Bryan, Chair
SB 571 (Allen) – As Amended June 24, 2024

SENATE VOTE: 31-0

SUBJECT: Fire safety regulations: development projects: ingress and egress route standards.

SUMMARY: Requires the Office of Planning and Research (OPR) to conduct a study and prepare a report evaluating potential improvements to state standards for ingress and egress and evacuation routes for development in the event of a wildfire.

EXISTING LAW:

1) Establishes OPR in the Governor's office and requires OPR, by July 1, 2020, in consultation with the Housing and Community Development (HCD), the Department of Forestry and Fire Protection (CAL FIRE), the Office of Emergency Services (CalOES), and other fire and safety experts, to update the guidance document entitled "Fire Hazard Planning, General Plan Technical Advice Series." Requires the guidance document to include specific land use strategies to reduce fire risk to buildings, infrastructure, and communities. (Government Code (GC) 65037 and 65040.21)

2) Establishes the State Board of Forestry and Fire Protection (Board) to determine, establish, and maintain an adequate forest policy for the state, and protect all wildland forest resources in California that are not under federal jurisdiction. (Public Resources Code (PRC) 740)

3) Requires the Board to adopt minimum fire safety standards related to defensible space that are applicable to state responsibility area (SRA) lands under the authority of CAL FIRE, and to lands classified and designated as very high fire hazard severity zones (FHSZs). Requires the regulations to include road standards for fire equipment access, standards for signs identifying streets, roads, and buildings, minimum private water supply reserves for emergency fire use, and fuel breaks and greenbelts. (PRC 4290)

4) Requires the State Fire Marshal (SFM), in consultation with the Director of CAL FIRE and the Director of HCD, to propose fire protection building standards for roofs, exterior walls, structure projections, including, but not limited to, porches, decks, balconies, and eaves, and structure openings, including, but not limited to, attic and eave vents and windows of buildings in FHSZs, including very high fire hazard severity zones (VHFHSZs) designated by the SFM. (Health and Safety Code 13108.5)

5) Requires safety elements to include information about wildfire hazards, as well as goals, policies, and objectives and feasible implementation measures for the protection of the community from the unreasonable risk of wildfire. (GC 65302, 65302.5.)

THIS BILL:

1) Defines "development" as all new residential, commercial, and industrial development, unless the context otherwise requires.

2) Requires the OPR to conduct a study and prepare a report, including recommendations, that evaluates potential improvements to state standards for ingress and egress and evacuation routes for development in the event of a wildfire. Requires the report and recommendations to consider, at minimum, all of the following:

    a) The potential effect that a change to state standards, described in this subdivision, could have on all of the following:

        i) The cost and affordability of housing, including any potential impact on the ability of cities and counties to meet their statutory obligations;

        ii) Interactions with state climate goals; and,

        iii) The ability for individuals and communities to rebuild after a disaster.

    b) Existing evacuation planning guidance, best practices, and fire safety standards.

    c) The role of wildfire behavior, fire modeling, and potential wildfire impacts affecting evacuation routes and temporary refuge area locations.

    d) Recommended feasible timeframes after notification of a fire to accommodate travel by the development's population to a point of safety, such as to a temporary refuge area, when appropriate, using designated evacuation routes.

    e) Scaling and tiering of feasible standards based on the development's size, population density, motor vehicle volume, and other appropriate factors, including strategies and performance criteria to address safety needs.

    f) The needs of vulnerable populations.

    g) Travel capacity needs for designated evacuation routes and needs for concurrent emergency vehicle access, including considerations of current use of existing routes by local populations and potential reductions of travel capacity posed by new development.

    h) Feasible mitigation for a development's traffic impacts that address any unmet local travel and infrastructure capacity needs of identified evacuation routes.

3) Requires OPR, to assist with and inform the development of the report and recommendations, to convene and consult with a working group that includes, but is not limited to, voluntary representatives from all of the following entities:

    a) The Office of the SFM;

    b) The Board;

    c) HCD;

    d) The Office of Emergency Services;

e) The Transportation Agency;

f) The State Air Resources Board;

g) Local fire chiefs and local law enforcement or statewide associations representing those entities;

h) The building industry;

i) Organizations representing urban, suburban, and rural local governments; and,

j) Environmental, housing, and other nongovernmental stakeholder organizations.

4) Requires OPC, when developing the report, to include public outreach and engagement by providing regular opportunities for input from and dialogue with the public.

5) Requires, on or before January 1, 2027, OPR to submit the report required to the appropriate fiscal and policy committees of the Legislature, consistent with GC 9795, and to the Governor.

6) Sunsets the bill on January 1, 2031.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Emergency evacuation routes**. Having narrow and overgrown roads leading into and out of communities that lie in the wildland urban interface (WUI) setting jeopardize the safety and lives of not only firefighters but the residents who live in these communities. These narrow roads do not allow for the simultaneous use of evacuating citizens and responding fire department equipment.

   According to the Board, the 2006 Esperanza Fire claimed the lives of five firefighters, and roads were considered a contributing factor that lead to their deaths. In 2015, poor road networks led to deaths in the Valley Fire. In November 2018, the Camp Fire struck Butte County and first responders and residents fleeing the fire blizzard were both stuck in a bottleneck as the one main road both into and out of town was not cleared enough to efficiently evacuate. Many fleeing residents were caught and overtaken by the intense flames, and many lost their lives.

2) **Fire safe standards**. The Board maintains the Minimum Fire Safe Standards (Title 14, California Code of Regulations 1270.00-1265.05) to set certain minimum standards for structures, subdivisions, and developments in the SRA and VHFHSZ in the local responsibility area (LRA). The regulations include: (1) road standards for fire equipment access; (2) standards for signs identifying streets, roads, and buildings; (3) minimum private water supply reserves for emergency fire use; and, (4) fuel breaks and greenbelts.

   SB 901 (Dodd), Chapter 626, Statutes of 2018, expanded the scope of the minimum fire safe standards regulations to the VHFHSZs in the LRA; requires the Board to promulgate

regulations for fuel breaks and greenbelts near communities; and, establishes measures for preserving undeveloped ridgelines to reduce fire risk and improve fire protection.

In 2021, the Board updated the regulations to, among many other things, make improvements to the ingress and egress requirements. That includes allowing flexibility to local jurisdictions to implement road networks that allow for alternative transportation modes that provide for concurrent ingress and egress; safeguarding that bridges and elevated structures meet road width and height requirements in order to avoid situations where a bridge width is narrower than a road and limits safe ingress or egress under emergency situations; and, adds a minimum 'clear width' requirement for bidirectional roads with a center median and one-way roads of 20 feet. This ensures that in instances where a road may only provide one traffic lane, sufficient clear width is provided to ensure concurrent ingress and egress during a wildfire as is provided for on bidirectional roads with two lanes.

The Board's effort to update the regulations was highly controversial and it took time to develop an appropriate balance to ensure public safety while not unduly burdening or restricting new development to address the state's housing supply crisis. The Board approved changes to the regulations to comply with SB 901 at their August 2022 meeting and they went into effect April 1, 2023.

According to the author, the Board's regulations do not address specific requirements about the amount of distinct and separate ingress/egress routes needed for safe wildfire responses.

3) **Local evacuation planning**. The safety element of the general plan establishes policies and programs to protect the community from risks associated with seismic, geologic, flood, and wildfire hazards. Counties that contain a SRA and any city or county containing a VHFHSZ must submit its safety element for review and comment by the Board and any local agencies that provide fire protection to the city or county. Local agencies are also required, as a precondition for federal hazard mitigation grants, to prepare a local hazard mitigation plan every five years.

   Further, several recent bills have augmented local evacuation planning requirements. SB 99 (Nielsen), Chapter 202, Statutes of 2019, requires cities and counties to identify residential developments with less than two evacuation routes. AB 747 (Levine), Chapter 681, Statutes of 2019, requires each city or county to review and update its safety element to identify evacuation routes and their capacity, safety, and viability under a range of emergency scenarios. AB 1409 (Levine), Chapter 481, Statutes of 2021, updated AB 747 to include evacuation locations.

4) **New development**. California's population is nearly 40 million and growing, and, commensurately, so is the demand for housing and associated development. Cities and counties are frequently challenged to accommodate both current and future residents in need of safe and affordable housing. According to HCD, California must plan for more than 2.5 million new homes. That would require production of more than 300,000 units a year. By contrast, housing production in the past decade has been fewer than 100,000 units per year. Over the past few decades, communities across the state have approved many new housing units within or adjacent to the WUI; today, approximately one third of all homes in California are located in the WUI. This trend is of particular concern because WUI conditions are associated with an increased risk of loss of human life, property, natural

resources, and economic assets. Ensuring new development is built according to the state's minimum fire safe standards is critical to protecting those homes and residents.

5) **This bill.** SB 571 requires OPR to conduct a study and prepare a report evaluating potential improvements to state standards for ingress and egress and evacuation routes for development in the event of a wildfire.

6) **Committee amendments**. Safe evacuation routes that permit concurrent ingress and egress are not limited to wildfire emergencies. Therefore, *the Committee may wish to consider* expanding the reporting requirements in the bill to consider evacuation routes for the natural disasters (seismic, geologic, flood, and wildfire hazards) for which a local government's safety element of the general plan covers.

REGISTERED SUPPORT / OPPOSITION:

Support

Planning and Conservation League

Opposition

Building Industry Association of San Diego County
California Apartment Association
California Builders Alliance
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Farm Bureau Federation
California Manufacturers & Technology Association
Central City Association of Los Angeles
El Dorado County Chamber of Commerce
El Dorado Hills Chamber of Commerce
Elk Grove Chamber of Commerce
Folsom Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Home Builders Association of The Central Coast
Lincoln Area Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
North State Building Industry Association
Rancho Cordova Area Chamber of Commerce
Rancho Southeast Realtors
Rocklin Area Chamber of Commerce
Roseville Area Chamber of Commerce
Sacramento Regional Builders Exchange
Shingle Springs/Cameron Park Chamber of Commerce
Southern California Leadership Council
Southwest California Legislative Council
Tri County Chamber Alliance
United Chamber Advocacy Network UCAN
Valley Industry and Commerce Association
Yuba Sutter Chamber of Commerce

Analysis Prepared by: Paige Brokaw / NAT. RES. /

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Isaac G. Bryan, Chair
SB 610 (Wiener) – As Amended June 11, 2024

SENATE VOTE: 36-0

SUBJECT: Fire prevention: wildfire mitigation area: defensible space: State Fire Marshal: real property disclosures: fire protection building standards

SUMMARY: Eliminates the state's fire hazard severity mapping for the state responsibility area (SRA) and local responsibility area (LRA) and requires the State Fire Marshal to designate Wildfire Mitigation Area (WMA), through regulations, for fire mitigation across the state.

EXISTING LAW:

1) Establishes the State Fire Marshal (SFM) as an entity within the Department of Forestry and Fire Protection (CAL FIRE) to foster, promote, and develop ways and means of protecting life and property against fire and panic. (Health & Safety Code 13100 – 13100.1)

2) Requires the SFM, by regulation, to designate FHSZs and assign to each zone a rating reflecting the degree of severity of fire hazard that is expected to prevail in the zone. Provides that no designation of a zone and assignment of a rating shall be adopted by the SFM until the proposed regulation has been transmitted to the board of supervisors of the county in which the zone is located at least 45 days before the adoption of the proposed regulation and a public hearing has been held in that county during that 45-day period. (Public Resources Code (PRC) 4203)

3) Requires the SFM to periodically review zones and, as necessary, revise FHSZs or their ratings or repeal the designation of FHSZs. (PRC 4204)

4) Establishes the Board of Forestry and Fire Protection (Board) to determine, establish, and maintain an adequate forest policy for the state, and protect all wildland forest resources in California that are not under federal jurisdiction. (PRC 740)

5) Defines the SRA as areas of the state in which the financial responsibility of preventing and suppressing fires has been determined by the Board to be primarily the responsibility of the state. (PRC 4102)

6) Requires the Board to establish standards, based upon its determination of conditions that create an unreasonable hazard to life or property from fire, for what constitutes a hazardous condition in those instances not covered by state law. Requires standards to be established for each of CAL FIRE's administrative districts after a public hearing for which ample publicity is given. (PRC 4173)

7) Authorizes the Board, upon the written petition of the owners or authorized agents of more than 50% of the land, including public land, within the exterior boundaries of any area of not less than 10,000 acres in size, upon which a fire hazard exists due to the presence of

flammable material or cover, to designate such area as a hazardous fire area, and requires the Board to declare the period of time during which the area shall be so designated. (PRC 4251)

8) Requires the Board to adopt regulations implementing minimum fire safety standards related to defensible space that are applicable to SRA lands under the authority of CAL FIRE, and to lands classified and designated as very high fire hazard severity zones (VHFHSZs). (PRC 4290)

9) Requires the Board to develop and maintain a "Fire Risk Reduction Community" list of agencies, communities, and neighborhoods located in the SRA or a VHFHSZ that meet best practices for fire hazard planning. (PRC 4290.1)

10) Requires the Board to develop and update guidance for fuels management for defensible space compliance. Requires the SFM to make recommendations to the Board on vegetation management, and make reasonable efforts to provide notice to affected residents. (PRC 4291)

11) Requires a person who owns, leases, controls, operates, or maintains a building or structure in, upon, or adjoining a mountainous area, forest-covered lands, shrub-covered lands, grass-covered lands, or land that is covered with flammable material, to at all times maintain a defensible space of 100 feet from each side and from the front and rear of the structure, as provided. (PRC 4291.5)

12) Requires a person who owns, leases, controls, operates, or maintains an occupied dwelling or occupied structure in, upon, or adjoining a mountainous area, forest-covered land, shrub-covered land, grass-covered land, or land that is covered with flammable material, which area or land is within a VHFHSZ designated by the local agency to, at all times, maintain a defensible space of 100 feet from each side and from the front and rear of the structure, as provided. Requires the Board to adopt regulations for an ember-resistant zone for the elimination of materials that would likely be ignited by embers. (Government Code (GC) 51182)

13) Requires the SFM to identify areas in the state as moderate, high, and very high fire hazard severity zones (FHSZs) based on consistent statewide criteria and based on the severity of fire hazard that is expected to prevail in those areas. Requires FHSZs to be based on fuel loading, slope, fire weather, and other relevant factors including areas where winds have been identified by the Office of the SFM as a major cause of wildfire spread. (GC 51178)

THIS BILL:

1) Provides that lands designated as VHFHSZs shall retain that identification until the SFM adopts the WMA.

2) Repeals the requirement for the SFM to identify areas in the state as moderate, high, and very high FHSZs upon adoption of the WMA regulations.

3) Repeals requirement for a local agency to designate, by ordinance, moderate, high, and very high FHSZs and the authority for a local agency to include areas as VHFHSZ that were not identified by the SFM upon adoption of the WMA regulations.

4) Repeals the requirement for the SFM to periodically review VHFHSZs and make recommendations.

5) Recasts defensible space requirements to apply to the WMA and shifts responsibility for updating defensible space requirements from the Board to the SFM.

6) Requires the SFM to adopt regulations to implement the defensible space requirements.

7) Requires the SFM to establish wildfire mitigation measures in the WMA. Requires wildfire mitigation measures to include, but not be limited to, all of the following:

   a) Wildland Urban Interface (WUI) building standards;

   b) Statewide minimum fire safety regulations, pursuant to PRC 4290 and 4290.1;

   c) State defensible space requirements, pursuant PRC 4291;

   d) Real estate hazard disclosure requirements;

   e) Defensible space real estate compliance requirements, pursuant to Civil Code 1102.19;

   f) Subdivision review requirements; and,

   g) Safety element review requirements, pursuant to GC 65302.5.

8) Requires the SFM, in consultation with the Director of Housing and Community Development (HCD), to propose fire protection building standards for roofs, exterior walls, structure projections, including, but not limited to, porches, decks, balconies, and eaves, and structure openings, including, but not limited to, attic and eave vents and windows of buildings in the WMA.

9) Requires the SFM and HCD to propose, and the California Building Standards Commission to adopt, the building standards for the WMA during the next triennially occurring code adoption cycle.

10) Changes the intent for classifying lands based on severity of fire for the purposes of measures to slow the rate of spread of fire to classifying the WMA based on wildfire hazard in order to prepare communities.

11) Requires the SFM to designate, by regulation, a WMA within the state, excluding federal lands. Requires the WMA to be based on fuel loading, slope, fire weather, and other relevant factors present, including areas where winds have been identified by the director of CAL FIRE as a major cause of wildfire spread. Requires the SFM, within two business days of the adoption of the regulations, to provide notice on its internet website that the regulations have been adopted.

12) Repeals the requirement for the SFM, by regulation, to designate and rate FHSZs.

13) Requires, when the SFM publishes the notice of proposed action concerning the WMA in the California Notice Register, the SFM to also transmit a copy to the board of supervisors of the county and the city council of each city in which the WMA is located.

14) Requires the SFM to conduct at least three public hearings during the rulemaking process.

15) Requires the SFM to periodically review, and, if necessary, update the WMA. Authorizes any update to the WMA to be petitioned pursuant to Sections 11340.6 and 11340.7 of the Government Code.

16) Requires the SFM to annually account for modifications to the SRA and make any necessary adjustments to the WMA. Provides that any revisions to the WMA from the annual review are not subject to the adoption requirements of the Administrative Procedure Act.

17) Repeals requirements for the Board to adopt regulations implementing minimum fire safety standards related to defensible space that are applicable to SRA and lands designated as VHFHSZs.

18) Shifts responsibility from the Board to the SFM to adopt regulations implementing minimum fire safety standards related to lands in the WMA.

19) Eliminates the regulatory requirement to preserve undeveloped ridgelines to reduce fire risk and improve fire protection.

20) Eliminates the ember resistant zone and replaces with an undefined zone with five feet of a structure.

21) Requires the SFM, in consultation with the Board, to adopt regulations implementing defensible space standards related to lands within the WMA.

22) Shifts responsibility from the Board to the SFM to develop and periodically update a guidance document on fuels management.

23) Amends the following statutes to replace reference of a FHSZ with the WMA:

    a) Civil Code 1102.6f requiring a seller of any real property located in a high or VHFHSZ to provide a disclosure notice to the buyer, if the home was constructed before January 1, 2010.

    b) Civil Code1102.19 requiring a seller of a real property subject to this article that is located in high or VHFHSZ to provide to the buyer documentation stating that the property is in compliance with PRC 4291.

    c) Civil Code 1103 requiring a seller of real property that is located within a high or VHFHSZ to disclose to any prospective buyer the fact that the property is located within a VHFHSZ and is subject to the requirements of GC 51182 if certain conditions are met.

24) Provides that no reimbursement is required by this bill pursuant to the California Constitution.

25) Provides that, if the Commission on State Mandates determines that this bill contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Wildfires**. In recent years, California has experienced a growing number of highly destructive wildfires. Of the 20 most destructive wildfires in California's recorded history, 13 have occurred since 2017. Together, these 13 fires caused tremendous damage, destroying nearly 40,000 structures, taking 148 lives, and charring millions of acres. As of June 19, there are multiple active wildfires across the state in Sonoma, Los Angeles, Colusa, Calaveras, and San Bernardino, and it's been reported that experts are warning Californians to brace for a "very active" wildfire season due to back-to-back wet winters and forecasts for a warmer than normal summer.

   It is estimated that as many as 15 million acres of California forests need some form of treatment to maintain or restore forest health and prevent risk of wildfires. The state and United States Forest Service (USFS) have a collective goal to treat one million acres of land annually to reduce fire risk by 2025. CAL FIRE completed about 105,000 acres of fuel treatment, including 36,000 acres of prescribed burns during the 2023 fiscal year, according to state data. The USFS conducted about 312,000 acres of combined treatment and burns.

2) **Who's in charge?** The Board is a government-appointed body within CAL FIRE and is responsible for developing the general forest policy of the state, determining the guidance policies of CAL FIRE, and representing the state's interest in federal forestland in California.

   The Board is required to adopt regulations implementing minimum fire safety standards related to defensible space that are applicable to SRA lands under the authority of CAL FIRE, and to lands classified and designated as VHFHSZs in the LRA. The Board also maintains a "Fire Risk Reduction Community" list of agencies, communities, and neighborhoods located in the SRA or a VHFHSZ that meet best practices for fire hazard planning.

   The Office of the SFM was established by the Legislature in 1923 as an independent state entity; it was consolidated within CAL FIRE in 1995. Today, the SFM supports the mission of CAL FIRE by focusing on fire prevention through a variety of fire safety responsibilities, including: regulating buildings in which people live, work, and congregate; providing statewide direction for fire prevention within wildland areas; developing and reviewing regulations and building standards; and, providing training and education in fire protection methods and responsibilities.

   The SFM classifies lands within the SRA into FHSZs. Each zone is based on fuel loading, slope, fire weather, and other relevant factors present, including areas where winds have been identified by CAL FIRE as a major cause of wildfire spread.

   In 2009, the Legislature enacted AB 9 (Wood), Chapter 225, Statutes of 2021, establishing the Deputy Director of Community Wildfire Preparedness and Mitigation in the Office of the

SFM to be responsible for overseeing defensible space requirements, establishment of FHSZs, and implementation of the minimum fire safety standards, among other responsibilities. SB 9 also augmented the SFM's responsibilities by transferring and delegating certain duties related to fire safety and wildfire prevention from CAL FIRE to the SFM, including CAL FIRE's local assistance grant program for fire prevention and home hardening education activities.

SB 610 shifts fire mitigation responsibilities, including defensible space regulatory authority and minimum fire safe standards, from the Board to the SFM. Environmental organizations express concern that the bill places these authorities and responsibilities on the SFM before knowing what parts of the state will be subject to the new requirements for the proposed WMA.

3) **Wildfire Mitigation Area**. SB 610 revises the area subject to fire mitigation requirements (presently the SRA and LRA VHFHZ) into a single designated WMA that encapsulates fire hazard, building standards, and defensible space. Under the bill, the SFM is required to designate, by regulation, a WMA within the state based on fuel loading, slope, fire weather, and other relevant factors present, including areas where winds have been identified by the director of CAL FIRE as a major cause of wildfire spread.

   According to Governor Newsom's Administration, the intent is to create consistent, statewide minimum fire standard for mitigation across what is currently the SRA and LRA with one adoption process.

4) **Fire hazard mapping**. As of 2010, about one-third of California's housing units were located in the WUI. Residential developments in the WUI and other wildfire prone areas can significantly increase the risks of wildfires and the risk to public safety.

   FHSZs fall into the following classifications: moderate, high, and very high based on consistent statewide criteria and based on the severity of fire hazard that is expected to prevail in those areas. FHSZ maps evaluate "hazard" based on the physical conditions that create a likelihood and expected fire behavior over a 30 to 50-year period without considering mitigation measures such as home hardening, defensible space, vegetation management, or fuel reduction efforts.

   Regulations were approved on January 31, 2024, for revised SRA FHSZs, which became effective April 1, 2024. This current revision only updates areas in the SRA, which are unincorporated, rural areas where wildfires tend to be frequent.

   Before the updated FHSZ regulations were approved, the FHSZ maps were last updated in 2007 when CAL FIRE updated the FHSZs for the entire SRA. Lands are removed from the SRA when they become incorporated by a city, change in ownership to the federal government, become more densely populated, or are converted to intensive agriculture that minimizes the risk of wildfire. While some lands are removed from SRA automatically, the Board typically reviews changes every five years.

   Between 2008 and 2011, CAL FIRE worked with local governments to make recommendations of the VHFSZ within the LRA, which includes incorporated cities, urban regions, agriculture lands, and portions of the desert where the local government is

responsible for wildfire protection. This is typically provided by city fire departments, fire protection districts, counties, and by CAL FIRE under contract.

SB 63 (Stern), Chapter 382, Statutes of 2021, requires CAL FIRE to adopt of all FHSZs in the LRA. Previously, only VHFHSZs were required for adoption in the LRA.

CAL FIRE uses the same modeling data that are used to map the SRA to develop the FHSZs in the LRA. CAL FIRE works with local jurisdictions for validation of the mapping. The maps, along with a model ordinance, are then sent to the governing body for adoption. Then, a local agency is required to make the identified FHSZs available for public review and comment within 30 days of being notified by the SFM of the FHSZs.

FHSZ maps for the LRA, as required by SB 63, have not yet been developed. They are going to be contentious as they will require new home construction to meet Chapter 7A building standards for new construction (including ignition-resistant roofs, under eves, siding, windows, and decking) and defensible space requirements. These standards will make new construction significantly more costly. However, home hardening standards, which are periodically updated, have been shown to work. An analysis by the Sacramento Bee showed that approximately 51% of the 350 single-family homes built after 2008 in the path of the Camp Fire were undamaged. By contrast, only 18% of the 12,100 homes built prior to 2008 escaped damage. Factors that can cause post-2008 homes to combust include not having adequate defensible space and proximity to neighboring non-fire hardened homes.

SB 610 eliminates the FHSZs, which means there will be no distinction in the mitigations or restrictions required in an area with a Moderate level of fire hazards versus High or Very High fire hazard. Therefore, it is unknown where defensible space, building standards, and home hardening will be required until that is determined by the SFM in the rulemaking process. Further, it is unclear how the vast range of hazard conditions in California will be addressed with a single WMA designation for all hazard levels.

5) **Defensible space**. Defensible space is the buffer created between a building on a property and the grass, trees, shrubs, or any wildland area that surrounds it. This space is needed to slow or stop the spread of wildfire, and it helps protect structures from catching fire. A 2019 analysis done by CAL FIRE of the relationship between defensible space compliance and destruction of structures during the seven largest fires that occurred in California in 2017 and 2018 concluded that the odds of a structure being destroyed by wildfire were roughly five times higher for noncompliant structures compared to compliant ones.

The defensible space for all structures within the SRA and VHFHSZ is 100 feet. CAL FIRE additionally requires the removal of all dead plants, grass, and weeds, and the removal of dry leaves and pine needles within 30 feet of a structure. In addition, tree branches must be 10 feet away from a chimney and other trees within that same 30 feet surrounding a structure. AB 3074 (Friedman), Chapter 259, Statutes of 2020, established an ember-resistant zone within 5 feet of a structure as part of revised defensible space requirements for structures located in FHSZs. The Board has not yet promulgated regulations effectuating that defensible space requirement (known as Zone 0).

SB 610 repeals the current statutes for defensible space upon the adoption of regulations by the SFM, putting the onus on the SFM to complete the ember-resistant standards.

6) **Ripple effects across state law**. Changing how the state identifies the geographic boundaries of where (and how) to manage fire risk mitigation will have impacts across other state laws that are tethered to the state's FHSZs. There are 51 unique statutory code sections referencing FHSZs (including those amended by this bill.) Forty-six include "high fire hazard severity zones," and 43 include "very high fire hazard severity zones. Those statutes include, but are not limited to:

- Insurance Code, i.e., Basic Property Insurance Inspection and Placement Plan (IC 10094.2)

- Government Code, including:
  - Planning and Land use (GC 66474.02)
  - Housing development approvals (GC 65912.120 - 65912.124)
  - Department of General Services installation of emergency sleeping cabins (GC 14669.23)
  - California Wildfire Mitigation Financial Assistance Program (GC 8654.2 - 8654.10)

- Streets and Highways Code, Contractual Assessment Program (S&HC 5899.4)

- Health & Safety Code, Building and Development Standards, and Safety Improvements (HSC 13108.5, 13132.7)

Cross-referencing the WMA is not a one-size-fits-all to replace references to the FHSZs throughout California's laws. Different laws reference the varying fire hazards (Moderate, High, Very High) and the WMA cannot supplant all three designations, because it doesn't have the fire hazard severity determination, and different regulatory requirements (building standards, defensible space, home hardening) apply in different FHSZs.

7) **Author's statement**:

> The SFM is currently required to classify and map the severity of fire hazard within both the State and Local Responsibility Areas as Moderate, High, or Very High. These maps evaluate hazard, not risk; hazard is based on the physical conditions that create a likelihood and expected fire behavior without considering mitigation measures, whereas risk is the potential damage a fire can do to the area under existing conditions. Unfortunately, the FHSZ maps are often misinterpreted as identifying risk, but the maps were never intended to be used as a deterrent or a moratorium on fire safe housing or as a method to determine insurance rates. SB 610 would remedy the issues with the existing FHSZ process by empowering the SFM to use its science-based hazard model to develop the Wildfire Mitigation Area to replace the tiered FHSZ model, and collaboratively develop appropriate and consistent statewide minimum mitigation requirements for the WMA through a public process. SB 610 is a partnership between Senator Wiener and the Office of Governor Gavin Newsom.

8) **Committee amendments**. The *Committee may wish to consider* amending the bill to address all of the aforementioned concerns.

9) **Related legislation**:

AB 3150 (Quirk-Silva) transfers authorities related to designation of fire hazards from the Board to the SFM. This bill is referred to the Senate Natural Resources & Water Committee.

SB 504 (Dodd) updates defensible space requirements and implementation timeframes. This bill is referred to the Assembly Appropriations Committee.

SB 63 (Stern) Chapter 382, Statutes of 2021, enhanced fire prevention efforts by CAL FIRE, including adding the designation of moderate and high fire hazard severity zones in the LRA.

AB 3074 (Friedman) Chapter 259, Statutes of 2020, establishes, upon appropriation, an ember-resistant zone within five feet of a structure as part of the defensible space requirements for structures located in specified high fire hazard areas. Requires removal of material from the ember-resistant zone based on the probability that vegetation and fuel will lead to ignition of the structure by ember.

SB 901 (Dodd) Chapter 626, Statutes of 2018, addresses numerous issues concerning wildfire prevention, response and recovery, and requires the board to extend the state's minimum fire safety standards to VHFHSZs in the LRA and include ridgelines, among other things.

REGISTERED SUPPORT / OPPOSITION:

Support

California Building Industry Association
Housing Action Coalition
Yimby Action

Opposition

Brentwood Alliance of Canyons & Hillsides
California Cattlemen's Association
California Farm Bureau
California Farm Bureau Federation
California Forestry Association
California Native Plant Society
California State Association of Counties
California Wilderness Coalition
Canyon Back Alliance
Center for Biological Diversity
Clean Water Action
Defenders of Wildlife
Endangered Habitats League
League of California Cities
Pacific Forest Trust
Planning and Conservation League
Rural County Representatives of California
Sierra Forest Legacy
State Alliance for Firesafe Road Regulations

Analysis Prepared by: Paige Brokaw / NAT. RES. /

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Isaac G. Bryan, Chair
SB 615 (Allen) – As Amended June 11, 2024

SENATE VOTE: 40-0

SUBJECT: Vehicle traction batteries.

SUMMARY: Establishes an expanded producer responsibility (EPR) program that 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, as specified. 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.

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 United States Code (USC) 6901 *et seq*.)

2) 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. (Health and Safety Code (HSC) 25215.2)

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

4) Requires the Department of Toxic Substances Control (DTSC) to develop a hazardous waste management report by March 1, 2023 that includes an analysis of available data related to hazardous waste. Requires DTSC to prepare a state hazardous waste management plan by March 1, 2025 and update the plan every three years. Requires the plan to be based on the report and serve as a comprehensive planning document for the management of hazardous waste in the state, as a useful informational source to guide state and local hazardous waste management efforts, and as a guide for DTSC's implementation of its hazardous waste management program. (HSC 25135)

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)

7) Establishes the Plastic Pollution Prevention and Packaging Producer Responsibility Act, which imposes minimum content requirements for single-use packaging and food ware and source reduction requirements for plastic single-use packaging and food ware, to be achieved through an EPR program. (PRC 42040 *et seq*.)

8) Establishes the Used Mattress Recovery and Recycling Act, which creates an EPR program for the collection and recycling of used mattresses. (PRC 42985 *et seq*.)

9) Establishes the Electronic Waste Recycling Act of 2003, which requires consumers to pay a fee for specified electronic devices, defined to include video screens larger than four inches and battery-embedded products and establishes processes for consumers to return, recycle, and ensure the safe disposal of covered electronic devices. (PRC 42460 *et seq*.)

10) Establishes the Architectural Paint Recovery Program, which establishes an EPR program for the collection and recycling of architectural paint. (PRC 48700 *et seq*.)

THIS BILL:

1) Declares the policy of state 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. Further declares the policy of the state 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.

2) Defines terms used in the bill, including:

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

    b) "Battery supplier" as a person, including a vehicle manufacturer, a vehicle traction battery manufacturer, or a vehicle traction battery remanufacturer. 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. 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. 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. 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.

    c) "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.

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

e) "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.

f) "Qualified facility" as a qualified recycler, or secondary user of a battery.

g) "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.

h) "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.

i) "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.

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

k) "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.

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

4) 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.

5) 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.

6) 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.

7) By July 1, 2027, requires CalRecycle, in coordination with DTSC, where applicable, to adopt regulations to implement and enforce this bill. Requires the regulations 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.

8) 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.

9) Requires CalRecycle to annually post publicly on its 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.

10) By January 1, 2026, requires CalRecycle to approve one PRO that meets the requirements of this bill.

11) 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.

12) 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.

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

14) Requires the 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; and,

    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.

15) Upon approval of a plan, prohibits a battery supplier from selling, offering for sale, importing, or distributing a vehicle traction battery in the state unless the battery supplier is a participant in the PRO and the vehicle traction battery has been reported to CalRecycle.

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

17) 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. Establishes related enforcement provisions and procedures.

18) Establishes recordkeeping requirements for the PRO and requires that they be maintained for at least five years.

19) Authorizes CalRecycle to audit the PRO annually and requires the PRO to conduct an independent audit annually.

20) Requires the PRO to prepare and submit to CalRecycle an annual report that includes specified information, including:

    a) Costs, according to cost categories in the plan;

    b) An updated list of the battery suppliers participating in the plan;

    c) An estimate on the quantity of vehicle traction batteries sold by battery suppliers and a description of methods used to manage them; and,

    d) Recommendations for any future proposed substantial changes to the program that may be submitted for CalRecycle and DTSC's approval.

21) Requires CalRecycle to annually publish a list of the names of battery suppliers that are compliant with the bill's requirements. Requires retailers, dealers, importers, and distributors to monitor the list to determine if a battery supplier, brand, or vehicle traction battery is in compliance.

22) Eliminates the 2025 sunset on a provision of law that requires the Department of Motor Vehicles, in consultation with the California Department of Tax and Fee Administration, the California Environmental Protection Agency, DTSC, the State Water Resources Control Board, CalRecycle, and the Air Resources Board to review and coordinate enforcement and compliance activity related to unlicensed and unregulated automobile dismantling.

FISCAL EFFECT: Unknown

COMMENTS:

1) **EPR**. According to CalRecycle, EPR is a strategy that places shared responsibility for end of life management for products on the producers and all entities involved in the product chain, instead of entirely on local governments and ratepayers. EPR programs rely on industry, formalized in a product stewardship organization, to develop and implement approaches to create a circular economy that makes business sense, with oversight and enforcement provided by a government entity. This approach provides flexibility for manufacturers to design products in a way that facilitates recycling and to develop systems to capture those products at the end-of-life to meet statutory goals.

There are several key elements that should be carefully evaluated to develop a successful EPR program. These elements are part of CalRecycle's "EPR checklist" and include considerations of: (1) the scope of the program (what and who is captured in the covered product and producer universe); (2) requirements for the producers; (3) funding for the program; and, (4) oversight for the program.

2) **Hazardous and universal waste**. 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 is waste that 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.

   Batteries of all types, including vehicle traction batteries, are prohibited from disposal in the solid waste stream by the state's hazardous waste control laws. Waste batteries must be taken to a household hazardous waste disposal facility, a universal waste handler (e.g., a storage facility or broker), or an authorized recycling facility. Lithium-ion (li-ion) batteries are very common rechargeable batteries that are used in everything from children's toys to electronics to EVs. Li-ion batteries pose the environmental and public health risks as other hazardous wastes, as they contain hazardous components. Additionally, li-ion batteries pose a significant fire risk if they are damaged or broken. For these reasons, it is imperative that they be properly managed at their end of life.

23) **EVs**. The Air Resources Board's Advanced Clean Cars Regulations, adopted in 2022, require that all new passenger cars, trucks, and sport utility vehicles sold in California must be zero-emission by 2035. Zero-emission vehicles include battery electric vehicles, plug-in hybrid vehicles, and fuel cell vehicles. According to the California Energy Commission, sales of EVs reached record levels in 2023, with nearly 450,000 sold. While the increasing numbers of EVs on the road significantly reduce air and greenhouse gas emissions in the state, they will also result in steadily increasing numbers of difficult to manage vehicle traction batteries.

24) **Vehicle traction batteries**. EVs, including fully electric and hybrid vehicles, are fueled by powerful li-ion batteries. According to DTSC, by 2028, approximately 8 million kilotons of li-ion battery waste from EVs will be generated, increasing to 55 million kilotons in 2038. Li-ion batteries contain critical minerals and other valuable materials, including nickel and cobalt, that can be recycled when batteries are properly managed.

   Li-ion battery recycling is generally a multi-step process. When they are disposed, most li-ion batteries used today will be considered hazardous waste due to ignitability and reactivity.

Some batteries can be managed as universal waste. The US 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 apply.

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. A battery recycler that stores hazardous waste must obtain appropriate hazardous waste permits. 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 a use/reuse exemption. A battery becomes a solid waste when a handler determines that it cannot continue to be used or reused and makes the decision to discard it. The USEPA's decision to allow universal waste rules to apply to vehicle traction batteries instead of full hazardous waste requirements should aid the collection of these batteries for recycling.

5) **Lithium-ion Car Battery Recycling Advisory Group**. The advisory group was created by AB 2832 (Dahle), Chapter 822, Statutes of 2018, to advise the Legislature on policies relating to the recovery and recycling of li-ion batteries sold with motor vehicles 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 led by the California Environmental Protection Agency, DTSC, and CalRecycle, and includes members of the environmental community, auto dismantlers, public and private representatives involved in the manufacturing, collection, processing, and recycling of EV batteries, and other interested parties.

   The advisory group met at least quarterly from the fall of 2019 to the spring of 2022 and released its final report on March 16, 2022, which includes a number of recommendations. The report separates those that received majority support of the advisory group and those that received less than majority support. The policy recommendation that received majority support included core exchange with a vehicle backstop (93% support) and producer take-back (67% support). Core exchange would build on existing industry standards used to manage auto parts, in which a core charge is collected from consumers, which is returned when a depleted or damaged part is returned. Producer take-back would require auto manufacturers to take-back depleted or damaged batteries for proper management.

   In order to ensure that the maximum number of vehicle traction batteries are reused, repurposed, or recycled, the advisory group recommended clearly defining responsibility for the coordination and payment of recycling and mitigating barriers that may currently inhibit the reuse, repurposing, and recycling of vehicle traction batteries.

6) **This bill**. This bill is intended to ensure that the vehicle traction batteries that power the state's EVs will be properly managed when they reach their end of life by establishing an EPR program that requires EV manufacturers to ensure that vehicle traction batteries are safely collected and transported, and then reused, repurposed, remanufactured, or recycled.

7) **Author's statement**:

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.

8) **Double referral**. This bill was heard by the Environmental Safety and Toxic Materials Committee on June 25, 2024 and passed 6-1.

9) **Author's amendments**. The author has been working with stakeholders on amendments to the bill. Due to the timing of the double referral, the author was unable to submit author's amendments prior to this hearing. The *committee may wish to adopt author's amendments* to the bill that:

- Eliminate the PRO and instead requires battery suppliers to develop battery management plans and to comply with the requirements of the bill.

- Define "auctioneer." Revise the bill's definitions of "person," "orphaned battery," "qualified recycler," and "vehicle traction battery." Delete the definitions of "non-vehicle secondary user" and "producer responsibility organization."

- Clarify the circumstances under which a battery supplier is responsible for ensuring the responsible end of life management of a vehicle traction battery.

- Specify the duties of a qualified facility, including reporting requirements.

- Revise the tracking requirements.

- Authorize CalRecycle and DTSC to require additional reporting from battery suppliers.

- Require CalRecycle and DTSC to jointly determine a process to certify qualified recyclers.

- Delete the orphan battery management plan requirements.

- Require battery suppliers to develop and submit a battery management plan to CalRecycle and DTSC. Establish requirements for the plan.

- Delete the requirement that the PRO pay all administrative and ongoing costs associated with the PRO's battery management plan.

- Clarify that failure to provide required documents or data as part of an audit is a violation.

- Require CalRecycle to post an approved battery management plan on its website within 90 days of approval, as specified.

- Specify that a person seeking to discard a stranded battery may deliver the battery or the vehicle that contains the battery to a location designated by the battery supplier or a qualified recycler, pursuant to the battery management plan.

- Require CalRecycle to conduct a study to determine whether there is evidence of abandonment of orphaned batteries on or before January 1, 2026, and every three years thereafter.

- Require CalRecycle to revise its regulations to address orphaned batteries if deemed necessary.

- Specify that the bill does not exempt a secondary handler from applicable licensing and certification requirements of the Department of Motor Vehicles and Bureau of Automotive Repair.

- Delete a CalRecycle reporting requirement related to unlicensed automobile dismantlers.

REGISTERED SUPPORT / OPPOSITION:

Support

California Electric Transportation Coalition
California Environmental Voters
CALSTART
Climate Reality Project, Los Angeles Chapter
Climate Reality Project, San Fernando Valley
Junior Philanthropists Foundation
National Stewardship Action Council
Product Stewardship Institute
Union of Concerned Scientists

Opposition

Alliance for Automotive Innovation

Analysis Prepared by: Elizabeth MacMillan / NAT. RES. /

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
SB 707 (Newman) – As Amended June 10, 2024

SENATE VOTE: 32-8

SUBJECT: Responsible Textile Recovery Act of 2024

SUMMARY: Establishes an extended producer responsibility (EPR) program (i.e., stewardship program) for waste textiles.

EXISTING LAW:

1) The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery (CalRecycle), generally regulates the disposal, management, and recycling of solid waste. Establishes a state recycling goal that 75% of solid waste generated is to be diverted from landfill disposal through source reduction, recycling, and composting by 2020. (Public Resources Code (PRC) 40000 *et seq*.)

2) Establishes the Plastic Pollution Prevention and Packaging Producer Responsibility Act, which imposes minimum content requirements for single-use packaging and food ware and source reduction requirements for plastic single-use packaging and food ware, to be achieved through an EPR program. (PRC 42040 *et seq*.)

3) Establishes the Used Mattress Recovery and Recycling Act, which creates an EPR program for the collection and recycling of used mattresses. (PRC 42985 *et seq*.)

4) Establishes the Electronic Waste Recycling Act of 2003, which requires consumers to pay a fee for specified electronic devices, defined to include video screens larger than four inches and battery-embedded products and establishes processes for consumers to return, recycle, and ensure the safe disposal of covered electronic devices. (PRC 42460 *et seq*.)

5) Requires CalRecycle to establish a three-year pilot project located in the Los Angeles and Ventura Counties partnering with garment manufacturers to study and report on the feasibility of recycling fabric. (PRC 40512)

6) Establishes, upon appropriation from the Legislature, a Zero-Waste equity grant program that can be used for repair and extending the life of products including textiles. (PRC 42999.5)

7) Defines "recycle" or "recycling" as the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise ultimately be disposed of onto land or into water or the atmosphere, and returning them to, or maintaining them within, the economic mainstream in the form of recovered material for new, reused, or reconstituted products, including compost, that meet the quality standards necessary to be used in the marketplace. Specifies that "recycling" does not include combustion, incineration, energy generation, fuel production (except anaerobic digestion), and other forms of disposal. (PRC 42041 (aa))

THIS BILL establishes the Responsible Textile Recovery Act of 2024 (Act), which:

1) States that the purpose of the Act is to increase the amount of postconsumer apparel and textile articles that are diverted from landfills and reused, repaired, and recycled into secondary products or otherwise managed in a manner that is consistent with the state's waste management hierarchy. States that the purpose of the Act is that any producer, regardless of whether the producer is domiciled in California, who sells, offers for sale, or distributes a covered product into the state to be responsible for complying with the Act.

2) Requires CalRecycle to adopt regulations to implement the bill's requirements with an effective date no earlier than January 1, 2028.

3) Requires producers of covered products to form and join a producer responsibility organization (PRO) for the purposes of complying with the Act. Requires the governing body of the PRO to submit an application to CalRecycle by January 1, 2026, describing how the PRO meets the requirements to be an approved PRO. If approved, requires the PRO to proceed to carry out the requirements of the bill.

4) Requires CalRecycle to approve a PRO that meets the requirements of the Act by March 1, 2024. Requires that the PRO have a governing board, as specified, and demonstrate that it has adequate financial responsibility and financial controls in place. Authorizes CalRecycle to approve additional PROs after January 1, 2035, as specified.

5) Requires producers of covered products to join the approved PRO by July 1, 2026.

6) Specifies that upon approval of a PRO plan (plan), or January 1, 2030, whichever is sooner, a producer is subject to penalties under the Act unless the producer is a member of a PRO and all covered products are accounted for in the plan. If an entity becomes a producer, requires the producer to join the PRO and comply with the Act within 90 days.

7) Specifies that a producer is not in compliance with the Act and is subject to penalties if a covered product sold or offered for sale by the producer is not subject to an approved plan.

8) Requires the PRO to prepare an initial statewide needs assessment to determine the necessary steps and investment needed for covered products to achieve the requirements of the Act by March 1, 2027. Requires that the needs assessments be updated every five years. Authorizes the PRO to prepare different needs assessments covering different covered products. Requires the PRO to develop the needs assessment in consultation with CalRecycle and local jurisdictions. Requires CalRecycle to approve, conditionally approve, or disapprove the needs assessment within 90 days of submission.

9) Requires the needs assessment to:

    a) Be designed to inform the program budget and plan; and,

    b) Include an evaluation of specified factors relating to covered products and covered product categories, including the existing scope of disposal and collection and recycling needs to comply with the Act.

10) Requires the PRO to include any local jurisdiction that offers to participate in the stewardship program and to comply with the PRO requirements as a collection site within 90 days. Authorizes the PRO to suspend or terminate a collection site that does not comply with all

applicable federal, state, or municipal laws or adhere to the rules established by the PRO and requires the PRO to notify CalRecycle if a collection site fails to comply with specified requirements.

11) Requires that collection sites be operated and managed to ensure that covered products are collected safely and handled properly. Allows collectors and authorized sorters to divert reusable covered products for sale in secondhand markets.

12) Requires the PRO, within 12 months of the effective date of the regulations, to develop and submit a complete plan to CalRecycle. Requires the stewardship plan to cover the collection, transportation, repair, sorting, recycling, and the safe and proper management of covered products in the state, as specified. Prohibits a PRO from limiting the stewardship plan to covered products of the producers participating in the program. Requires CalRecycle to review and approve, disapprove, or conditionally approve the plan within 120 days of receipt.

13) Requires, by July 1, 2030, "program operators" to have a complete plan approved by CalRecycle and requires that each producer to be subject to an approved plan. Requires, within three months of the approval of a plan, the program operator to begin to implement the plan and to fully implement the plan within 12 months.

14) Requires a plan to be designed to accept and manage all postconsumer covered products and include:

    a) The names and contact information of producers and brands of covered products covered by the plan;

    b) A description of the method to establish and administer a means of fully funding the PRO in a manner that distributes the costs among producers using a per unit eco-modulated fee that reflects California sales volumes and the cost of reuse, repair, recycling, and otherwise managing covered products;

    c) A five-year budget that fully funds the stewardship program;

    d) Quantifiable five-year and annual performance standards and metrics until CalRecycle publishes performance standards;

    e) A description of how the PRO will provide for a free and convenient drop-off or collection system for covered products in each county and how the collection sites will be authorized and managed;

    f) A description of the process by which collected covered products will be sorted, transported, processed, repaired, reused, and recycled, as specified;

    g) A description of how collection sites will be authorized and managed, as specified;

    h) A description of the process by which collected covered products will be sorted, transported, processed, reused, and recycled following collection, as specified;

    i) A comprehensive statewide education and outreach program to educate consumers and promote participation in the program, as specified;

j) A description of the strategies, goals, and metrics the PRO will use to annually assess and evaluate the efficacy of the comprehensive statewide education and outreach program;

k) A description of efforts to coordinate with specified entities;

l) Information to the public on secondhand markets and the benefits of reuse, including repair;

m) A requirement that the statewide education and outreach campaign to promote the safe and proper management of covered products;

n) Coordination with, and a description of the efforts and methods used to coordinate activities with, other PROs, existing collection and recycling programs, and community-based organizations;

o) A contingency plan in the event the plan expires or is revoked;

p) Develop a program in coordination with other program operators to support laundries for laundering covered products;

q) A description of how the plan will address per- and polyfluoroalkyl substances (PFAS) and other chemical contamination;

r) Develop strategies to address design challenges for covered products;

s) A description of how the PRO will minimize the negative environmental impacts of all operations associated with the plan; and,

t) A process by which the financial activities of the PRO or individual producers that are related to implementation of the plan will be subject to an independent audit.

15) Requires producers of covered products sold, offered for sale, imported, or distributed in or into the state to achieve the performance standards set by the PRO. Authorizes CalRecycle, after March 1, 2032, to establish, review, and adjust performance standards based on information included in the plan, annual reports, and other information provided by the PRO, CalRecycle waste characterization studies, the needs assessment, and economic and any other relevant information.

16) Requires the PRO to review the plan at least every five years after approval and determine what revisions may be necessary. Establishes a process for plan revisions.

17) Requires the PRO to pay all administrative and operational costs associated with establishing and implementing the program in which it participates, including the cost of collection, transportation, sorting, repairing, recycling, and the safe and proper management of covered products.

18) Requires the PRO to establish a method for fully funding the PRO in a manner that distributes the program's costs among participating producers that reflects sales volumes and the eco-modulated fee criteria included in the plan.

19) Establishes the Textile Stewardship Recovery Fund for the purpose of implementing enforcing the bill's requirements.

20) Requires the PRO to retain an independent public accountant to annually audit the accounting books of the PRO, which must be included as part of its annual report. Authorizes CalRecycle to conduct its own audits.

21) Requires the program operator to submit an annual report to CalRecycle that includes specified information. Requires the annual report to include the annual audit and:

    a) The PRO's costs and revenues;

    b) A summary of anticipated changes to allocations for the next calendar year;

    c) The amounts of the eco-modulated fees;

    d) The producers participating in the plan and an updated list of the names and contact information;

    e) The amount of covered products sold in or into the state by producers covered by the plan broken down by fiber type;

    f) A list of the PRO's collection sites;

    g) The total weight of covered products, by category, collected and deemed reusable;

    h) A list of each authorized sorter, repair business, and textile article recycling facility;

    i) An updated list of the names and contact information for producers and brands covered under the plan;

    j) The total weight and number of covered products sold in or into the state attributed to a producer covered by the plan that are collected and reused or recycled by the PRO;

    k) A complete accounting of the ultimate disposition of all covered products collected by the PRO;

    l) A description of how the PRO provided incentive payments, grants, and market development incentives to support infrastructure;

    m) A report on how the PRO prioritized the use of sorting and recycling facilities located closer to the point of generation to minimize transportation cost and increase accountability;

    n) An analysis of whether the PRO met the performance standards; and,

    o) A description of how the PRO addressed PFAS and other chemical contamination.

22) Authorizes CalRecycle, after March 1, 2032, to establish, review, and adjust the performance standards and the dates by which they must be achieved.

23) Requires CalRecycle, within 12 months of the effective date of the regulations, and on or before July 1 thereafter, to post a list of compliant producers, brands, and covered products. Requires retailers, importers, and distributors to monitor the list and prohibits the sale of noncompliant products. Authorizes the sale of existing inventory in stock before the before the initial list was posted by CalRecycle.

24) Establishes administrative civil penalties of up to $10,000 per day, and up to $50,000 per day for intentional or knowing violations. Requires CalRecycle or the court to consider specified factors when determining the amount of a penalty. Requires CalRecycle to establish an informal hearing process. In addition to assessing penalties for violations, authorizes CalRecycle to revoke a PRO's plan approval.

25) Establishes anti-trust immunity for PRO actions and provides justification for limitations on the public's access to specified information.

26) Specifies that nothing in the bill grants any city, county, city and county, special district, or joint powers authority with any new authority over solid waste handling or solid waste franchise agreements.

27) Requires online marketplaces to annually:

    a) Notify CalRecycle and the PRO of all third-party sellers with sales of covered products over $1 million in the preceding year and provide required information; and,

    b) Provide all third-party sellers with information on the requirements of law as provided by the PRO.

28) Defines terms used in the bill, including:

    a) "Apparel as clothing and accessory items intended for regular wear or formal occasions and outdoor activities. Specifies that for purposes of the bill, "apparel" includes only undergarments, shirts, pants, skirts, dresses, overalls, bodysuits, costumes, vest, dancewear, suits, saris, scarves, tops, leggings, school uniforms, leisurewear, athletic wear, sports uniforms, everyday swimwear, formal wear, onsies, bibs, footwear, handbags, backpacks, knitted and woven accessories, jackets, coats, snow pants, ski pants, and everyday uniforms for workwear. Specifies that "apparel" does not include personal protective equipment or clothing items for use by the United States military, personal protective equipment worn to protect the wearer from health or environmental hazards, and reusable products designed to collect and absorb urine and feces or reusable products regulated by the United States Food and Drug Administration that are designed to collect and absorb menstruation or vaginal discharge.

    b) "Brand" as a trademark, including both a registered trademark and an unregistered trademark, logo, name, symbol, word, identifier, or traceable mark that identifies a covered product and identifies the owner or licensee of the brand.

    c) "Covered product" as an apparel or textile article. Excludes products covered by the Used Mattress Recovery and Recycling Act, the Electronic Waste Recycling Act, the Product Stewardship for Carpets Law, or an automated, motorized, battery, or manual window covering.

d) "Importer" as either:

   i) A person qualifying as an importer or record, as specified; or,

   ii) A person importing into the state for sale, distribution 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.

e) "Online marketplace" as a consumer-directed, electronically accessed platform for which all of the following are true:

   i) The platform includes features that allow for, facilitate, or enable third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer product in the state;

   ii) The features above are used by third-party sellers; and,

   iii) The platform has a contractual relationship with consumers governing the use of the platform to purchase consumer products.

f) "Producer" as a person who manufactures a covered product and who owns or is the licensee of the brand or trademark under which that covered product is sold, offered for sale, or distributed for sale in the state. If there is no person who meets this requirement, the producer is the owner of a brand or trademark or the exclusive licensee of a brand or trademark, regardless of whether the trademark is registered. If there is no person who meets these requirements, the producer is the person that imports the covered product into the state for sale or distribution. If there is no person who meets these requirements, the producer is the distributor, retailer, or wholesaler who sells the product in or into the state. Specifies that the sale of a covered product is deemed to occur in the state if the covered product is delivered to the consumer in the state. Excludes from this definition sellers that only sell secondhand covered products and sellers with less than $1 million in annual aggregate global turnover, as specified.

g) "Producer responsibility organization" as an organization exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code that is formed for the purpose of implementing a plan to meet the requirements of the Act, and is approved by CalRecycle.

h) "Recycle" or "recycling" as having the same meaning as set forth in PRC 42041 (aa), excluding references to plastics and as otherwise applicable.

i) "Stewardship program" as a program established by a PRO pursuant to the Act for the free, convenient, and safe collection, transportation, repair, recycling, and otherwise proper management of covered products.

j) "Textile article" as any item customarily used in households or business that are made entirely or primarily from a natural, artificial, or synthetic fiber, "yard," or fabric.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Textile waste**. According to CalRecycle's 2020 *Facility-Based Characterization of Solid Waste in California* report, textiles, including apparel, fabric, and textile articles (such as linens, curtains, etc.) were the sixth most prevalent material type disposed of by single-family residences in 2018. Overall, Californians disposed of nearly 1.2 million metric tons of textiles in 2018, making up about 3% of California's total waste stream.

   The generation of textile waste has been supercharged by the rise of fast fashion. "Fast fashion" is an approach to the design, creation, and marketing of clothing that emphasizes making fashion trends quickly and cheaply available to consumers. Retailers and producers benefit from frequently updating styles to incentivize shopping. Fast fashion contributed to a global doubling of clothing production from 2000 to 2014. Fast fashion provides clothes to consumers for lower prices but sacrifices the quality and longevity of garments in the process, leading to more waste.

   Dealing with all this waste is expensive; in 2021, California ratepayers paid more than $70 million dollars in disposal costs. Textile waste comes with a carbon cost as well; textile and garment industries account for between 6-8% of total global carbon emissions, or some 1.7 billion tons in carbon emissions per year.

2) **Managing waste textiles**. According to CalRecycle, 95% of California's textile waste is reusable or recyclable, meaning that the textiles are in a condition that allows them to be reused, or that still have tags identifying the materials used. Tags are critical for textile recycling in order to identify the material type.

   Both reuse and recycling for used textiles begin when textiles are discarded, either when businesses toss out scrap or surplus material, or when consumers dispose of old clothes or textile household items, like sheets, curtains, and pillows. Once these materials have been collected, they can be sorted to separate reusable material from material that is only eligible for recycling or landfilling.

   According to CalRecycle, only 10-15% of garments donated or sold to second-hand markets are directly resold in the stores where they are collected. Of the remaining material, 30% is cut down to rags, 20% is converted into recycled fibers for uses such as carpet padding, insulation, and pillow stuffing, 5% is landfilled in the state, and 45% is sent overseas for further processing or eventual disposal. Items that are sent overseas may or may not have a second life. For example, of the 15 million used garments that flow into Ghana every week, an estimated 40% are deemed worthless upon arrival and landfilled. This off-shore landfilling comes at a high carbon cost, since shipping overseas is a carbon-intensive process.

   Recycling textiles is a multistep process. Natural fibers are mechanically processed. For example, cotton textiles are shredded, the fibers are separated, and then re-spun with virgin fibers into yarn to make new textiles. Synthetic fibers, such as polyester, can sometimes be mechanically processed by shredding, cleaning, molding into pellets, and then extruding into new fibers. If mechanical processing is not possible, the textiles can also undergo the more intensive process of chemical processing, where the synthetic material is broken down into its component molecules to remove contaminants and then reformed into fibers. Blends of materials, either different types of natural fibers, synthetic fibers, or both, are typically not

eligible for chemical processing, but can be mechanically processed and downcycled into composite materials, such as thermal insulation or carpet for use in the building industry.

The current recovery rate for textiles in the United States is approximately 15%, while the remaining 85% of discarded clothing and textiles are sent to landfill or incineration. Just 1% of recycled clothes are turned back into new garments, which is the gold standard for a circular economy.

3) **Pilot programs**. According to the bill's sponsor, the California Product Stewardship Council (CPSC), there are various textile recycling pilot projects underway or completed in San Francisco, the City of Los Angeles, the County of Los Angeles, and the County of Alameda. Additionally, SB 1187 (Kamlager), Chapter 616, Statutes of 2022, requires CalRecycle to establish a three-year pilot project in the Counties of Los Angeles and Ventura to study and report on the feasibility of recycling fabric; however, this program has not received funding through the Budget process.

4) **EPR**. According to CalRecycle, EPR is a strategy that places shared responsibility for end-of-life management for products on the producers and all entities involved in the product chain, instead of entirely on local governments and ratepayers. EPR programs rely on industry, formalized in a product stewardship organization, to develop and implement approaches to create a circular economy that makes business sense, with oversight and enforcement provided by a government entity. This approach provides flexibility for manufacturers to design products in a way that facilitates recycling and to develop systems to capture those products at the end-of-life to meet statutory goals.

   There are several key elements that should be carefully evaluated to develop a successful EPR program. These elements are part of CalRecycle's "EPR checklist" and include considerations of: (1) the scope of the program (what and who is captured in the covered product and PRO universe); (2) requirements for the PRO; (3) funding for the program; and, (4) oversight for the program.

5) **Author's statement**:

   > The fashion industry is considered a top industrial polluter, accounting for approximately 10% of global carbon emissions. As textiles decompose, they emit high levels of methane gas, a major contributor to global warming. The phenomenon of "fast fashion," which revolves around the marketing and sale of low-cost, low-quality garments that go out of vogue with increasing speed, is a major contributor to this alarming environmental trend.
   >
   > A well-designed and effectively administered statewide textile [EPR] program has the potential to develop previously untapped or underutilized upcycled and recycled clothing and fiber markets, as well as to support ongoing efforts to encourage the repair and reuse of clothing and other textiles in California. In so doing, SB 707 will facilitate a transition to a sustainable, market-aligned, circular economy for textiles that will unlock new production and consumption opportunities to the benefit of the environment, all at a relatively low cost to both the state and consumers alike.

6) **The big picture**. This bill is intended to create a statewide EPR program to manage the volumes of textile waste generated in California. The program would require producers, through a PRO, to design and implement a program to collect and recycle, reuse, repair, or otherwise properly manage textile wastes, including apparel, linens, and accessories.

7) **Details matter**. This bill establishes a broad framework for an EPR program, including the basic components of an EPR program, but leaves the details open for the PRO or CalRecycle to develop through the plan or as part of the regulations.

   This bill models the definition of producer after prior EPR legislation, which starts with the brand owner and steps down to the importer or retailer to ensure that there is an entity located within the state that is responsible for ensuring compliance with the bill's requirements. This has worked well previously, but it may not be able to capture many fast fashion producers, as a significant portion of fast fashion apparel is shipped directly to in-state consumers from companies located overseas. These products would be collected and managed by the in-state program operators, but it may be difficult, if not impossible, to enforce the requirements on overseas producers.

   The bill appears to include commercial entities that rent textiles, such as uniforms, medical gowns, and commercial linens, which are collected, laundered, and reused repeatedly. At the end of the useful life, the textiles are generally repurposed for industrial uses, such as rags and insulation. The author may wish to consider whether entities that are participating in reuse activities should be included as producers or not.

   This bill establishes clear metrics for collection sites, requiring the PRO to provide at least 10 collection sites per county, or one collection site for every 25,000 people, whichever is greater. As drafted, the PRO would have to collect all materials covered by the bill, whether or not their stewardship plan covers all covered products. This is important to ensure convenience for consumers, but may be somewhat challenging for program operators if there are multiple plans covering different covered products.

   This bill does not establish collection or recycling goals or timelines. Instead, the bill requires the PRO to establish five-year and annual "performance standards and metrics" until CalRecycle adopts a performance standard when it reassesses the program's regulations in 2032.

8) **Suggested amendments**: The *committee may wish to make the following amendments* to the bill:

   - Clarify PRO responsibility to approve collection sites.

   - Clarify the definition of recycling.

   - Make a number of organizational, technical, and clarifying changes.

REGISTERED SUPPORT / OPPOSITION:

Support

5 Gyres Institute
A Voice for Choice Advocacy
Ambercycle
Aquafil Carpet Recycling
Association of California Goodwills
BASF Corporation
Boardrider
California Environmental Voters
California Product Stewardship Council
Californians Against Waste
CALPIRG
Castro Valley Sanitary District
CBU Productions
Center for Oceanic Awareness, Research, & Education
Changing Markets Foundation
Circ, INC.
Cirtex
City of Alameda
City of Roseville
City of San Jose
City of Sunnyvale
City of Thousand Oaks
Clean Brands
Climate Reality Project, Los Angeles Chapter
Climate Reality Project, San Fernando Valley
County of Santa Barbara
Coyuchi
CRRA
Delta Diablo
Democrats of Rossmoor
Eco New Upcycled
Eco-Catalyst, Inc.
Ellerali
Environmental Working Group
Everlane
Fashion Revolution USA
Fibershed
Fort Ord Environmental Justice Network
Friends Committee on Legislation of California
Full Circle Environmental
Grace Veterinary, Inc.
Greenwaste Recovery
Haelixa
Heal the Bay
Ikea
Intrinsic Advanced Materials, LLC
JDG Group, Inc.
Laci
Le Marche Limited
Luna Lab
Lymi, Inc. Dba Reformation
Mara Hoffman
Marmot
Materevolve
Mend It, Inc.
Mojave Desert and Mountain Recycling Authority
Molte Volte
National Stewardship Action Council
Northern California Recycling Association
Ocean+Main
Operations Reformation
Ouros Industries
Outerknown
Plastic Oceans International
Plastic Pollution Coalition
Plsreturnit Inc.
Product Stewardship Institute
Project Ropa
R3 Consulting Group, Inc.
Ravel
Recology
Renewcell
Repeat Reuse, Inc.
Republic Services
Resource Recovery Coalition of California
Rethink Waste
Roboro
Rural County Representatives of California
Salinas Valley Solid Waste Authority
Santa Barbara Count Resource Recovery and Waste Management Division
Santa Barbara County Solid Waste Local Task Force

Santa Clara County Recycling and Waste Reduction Commission
Savers
Scullyspark
Sea Hugger
Seventh Generation Advisors
Sew You, LLC
Sierra Club California
Sixone Labs LTD
Social Compassion in Legislation
Sohocolab
Solana Center for Environmental Innovation
Solid Waste Environmental Excellence Performance Standard
Sortile
South Bayside Waste Management Authority Dba Rethinkwaste
St. Catherine University
Stand Up to Trash
Stopwaste
Surfrider Foundation
Sustainable Works
The Center for Oceanic Awareness, Research, and Education
The Fashion Connection
Threadhous Co.
Upcycle It Now
USAgain
Western Placer Waste Management Authority
Wishtoyo Chumash Foundation
Zero Panik
Zero Waste Company
Zero Waste San Diego
Zero Waste Sonoma
Zero Waste USA

Opposition

Accelerating Circularity, Inc.
American Apparel & Footwear Association
American Circular Textiles Group
California Chamber of Commerce
California Manufacturers and Technology Association

Analysis Prepared by: Elizabeth MacMillan / NAT. RES. /

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Isaac G. Bryan, Chair
SB 945 (Alvarado-Gil) – As Amended June 13, 2024

SENATE VOTE: 38-0

SUBJECT: The Wildfire Smoke and Health Outcomes Data Act

SUMMARY: Establishes the Wildfire Smoke and Health Outcomes Data Act and requires the State Department of Public Health (CDPH), in consultation with state entities, to create, operate, and maintain a statewide integrated wildfire smoke and health data platform no later than July 1, 2026, to integrate wildfire smoke and health data from multiple databases.

EXISTING LAW:

1) Requires CDPH to develop a plan with recommendations and guidelines for counties to use in the case of a significant air quality event caused by wildfires or other sources. Requires the plan to address: establishing policies and procedures that address respiratory protection and other protective equipment and devices; making respiratory protection and other protective equipment and devices available to residents that are sensitive receptors and are at risk of serious illness or complications resulting from inhaling highly polluted air from a significant air quality event caused by wildfires or other sources; providing information to residents on what they should do if the air quality index hits a significant threshold; providing information to residents regarding the health impacts of inhaling air pollution during a significant air quality event caused by wildfires or other sources; developing prevention strategies to assist residents in avoiding inhalation of air pollutants; and, disseminating the information to the public. (Health and Safety Code 107250)

2) Establishes the Department of Forestry and Fire Protection (CAL FIRE) within the California Natural Resources Agency, and establishes various programs for the prevention and suppression of wildfires at CAL FIRE, as provided. (Public Resources Code (PRC) 701)

3) Establishes, pursuant to Executive Order No. B-52-18, a Forest Management Task Force, now known as the Wildfire and Forest Resilience Task Force (Task Force), involving specified state agencies to create the action plan for wildfire and forest resilience. (PRC 4005)

THIS BILL:

1) Establishes the Wildfire Smoke and Health Outcomes Data Act.

2) Requires CDPH, CAL FIRE, and the Task Force to coordinate and integrate existing wildfire smoke and health data from local, state, and federal agencies.

3) Authorizes CDPH, CAL FIRE, and the Task Force, where appropriate, to use data from existing sources, including open source data and other external data.

4) Requires CDPH, in consultation with CAL FIRE and the Task Force, to develop the following:

    a) Protocols for data sharing, documentation, quality control, and promotion of open-source platforms and decision support tools related to wildfire smoke and health data;

    b) Regularly updated data products that track air pollution concentrations attributable to wildfire smoke, population exposure to smoke, and cases of adverse health outcomes attributable to smoke;

    c) Smoke data products that include estimates of smoke impacts by individual wildfire;

    d) Methodological guidelines for estimating smoke air pollutant concentrations and counts of adverse health impacts attributable to wildfire smoke;

    e) Methodologies to estimate smoke emissions from human-made materials; and,

    f) Smoke emission inventories that include emission estimates from developed landscapes that are burned by wildfire.

5) Requires, no later than July 1, 2026, CDPH, in consultation with CAL FIRE and the Task Force, to create, operate, and maintain a statewide integrated wildfire smoke and health data platform.

6) Requires, by January 1, 2026, CDPH to do both of the following:

    a) Make the protocols public; and,

    b) Publish a strategic plan for data management to guide the implementation;

7) Requires CDPH to ensure that the statewide integrated wildfire smoke and health data platform created pursuant to this section, at a minimum, does all of the following:

    a) Integrates existing wildfire smoke and health data information from multiple autonomous databases managed by federal, state, and local agencies and academia using consistent and standardized formats;

    b) Integrates the data products;

    c) Integrates the air pollutant concentrations and counts of adverse health impacts estimated by the methodological guidelines;

    d) Integrates measures of smoke emissions from human-made materials estimated by methodologies;

    e) Integrates smoke emission inventories;

    f) Provides documentation of data quality and data formats through metadata;

g) Adheres to data protocols; and,

h) Is able to receive both spatial and time series data from various sources.

8) Provides that this bill does not prevent a state agency from disseminating, managing, or publishing data separately from the platform.

9) Establishes the Wildfire Smoke and Health Administration Fund. Requires all moneys to be available, upon appropriation, to CDPH, CAL FIRE, and the Task Force for the collection, management, and improvement of wildfire smoke and health data.

10) Requires the Department of Finance (DOF) to develop a standardized agreement to allow for the voluntary donation to the fund by any person, educational institution, government entity, corporation or other business entity, or organization.

FISCAL EFFECT: According to the Senate Appropriations Committee:

- CDPH estimates ongoing annual costs of $1,310,000 starting in 2025-26; and potential, additional, limited-term costs of $880,000 ($730,000 in 2025-26 and $150,000 in 2026-27) for information technology.

- The DOF estimates costs of $354,000 in year one, $254,000 in year two, and $238,000 annually thereafter for state administration.

- The Task Force indicates no fiscal impact.

- While the bill creates the Wildfire Smoke and Health Administration Fund, which allows for voluntary donations to cover state administration costs, the bill would result in cost pressures to the General Fund to the extent the special fund revenues are not sufficient to cover the costs.

COMMENTS:

1) **Author's statement**:

> Amidst California's escalating wildfires fueled by climate change, the crucial necessity for effective forest management strategies is becoming increasingly evident. As these fires rage with unparalleled ferocity, endangering ecosystems, livestock, public health, and human lives, it is imperative to gather comprehensive data on the health effects of wildfire smoke, particularly considering the heightened vulnerability of outdoor workers who experience increased inhalation of wildfire smoke due to the nature of their duties. This legislation will require the State Department of Public Health, in consultation with the Department of Forestry and Fire Protection and the Wildfire and Forest Resilience Task Force, to create, operate, and maintain a statewide integrated wildfire smoke and health data platform in order to bridge concerted efforts and mobilize action from both state authorities and the medical community to confront this critical, time-sensitive issue.

2) **Wildfires**. The ten largest wildfires in California's recorded history have occurred since 2000—with five of these wildfires occurring in a single year (2020). The 2020 August Complex wildfire was the first California wildfire to burn more than a million acres. Wildfires now occur throughout the year—the 2022 Big Sur wildfire started in January and the 2017 Thomas wildfire started in December. Scientists predict that climate change will result in "longer, hotter, and drier fire seasons" that increase the risk of severe wildfires and exposure to wildfire smoke.

3) **Wildfire smoke**. The major components of wildfire emissions are particulate matter (PM) and gases, including carbon dioxide, carbon monoxide, nitrogen oxides, and volatile organic compounds (VOCs, such as formaldehyde and benzene). The impact of wildfires on air quality depends on weather patterns (including temperature, humidity, and wind speed), fire plume dynamics, amount and chemical composition of the emissions, and atmosphere into which the emissions are dispersed. Geography also plays a role; mountains and other features may contribute to inversion layers that can keep smoke contained in certain areas (or keep smoke out).

   If fires reach the wildland-urban interface, other toxic chemicals are likely to be released from the burning of household or industrial materials, such as plastics, pesticides, and other hazardous waste. The Air Resources Board (ARB) compared air quality data from the 2018 Camp Fire that destroyed nearly 19,000 buildings with three other large wildfires that burned mostly vegetation. ARB's analysis showed that elevated levels of lead, zinc, iron, and manganese were located as far as 150 miles away. During the Camp Fire, levels of lead — a potent neurotoxin — in Chico were about 50 times greater average.

   Wildfire smoke and ash are challenges to California's public health that have the potential to increase with continuing climate change.

4) **Health impacts.** By some measures, increased wildfire smoke has reversed gains in air quality created by improved emission in transportation and other sectors in parts of California. Evidence also suggests that smoke's public health effects are even more significant than the tragic burns and deaths caused directly by wildfire in California.

   A growing body of scientific evidence links wildfire smoke exposure to various adverse health effects. Although it is often assumed that most healthy people will recover from short-term exposure to wildfire smoke, others may experience more severe symptoms due to biological factors, such as pre-existing medical conditions, and extrinsic, non-biologic factors, including socioeconomic status, lack of access to adequate housing, lack of access to healthcare, etc.

   The risk of health effects due to wildfire smoke exposure appears to vary throughout a lifetime, being generally higher in childhood, lower in young adults, and increasing in middle age through older age as the prevalence of heart, lung, and metabolic disease increases. Pregnancy is also a period of unique vulnerability for both the pregnant person and developing fetus.

   Exposure to PM is currently the most well-described public health threat from wildfire smoke. Fine particles from smoke and coarse particles from ash are respiratory irritants that can cause coughing, wheezing, and difficulty breathing. PM may also affect the body's physiological mechanisms that remove inhaled foreign materials from the lungs, such as

pollen and bacteria, and may cause systemic inflammation that can affect multiple organs. Studies of ambient air pollution have found that exposure to fine and coarse particles is linked with increased risk of premature mortality and aggravation of pre-existing respiratory and cardiovascular disease.

During the October 2017 Northern California wildfires, in nine San Francisco Bay Area counties, fire-related PM2.5 was most consistently linked to emergency room visits for respiratory disease, asthma, chronic lower respiratory disease and acute myocardial infarction.

According to the Office of Environmental Health Hazard Assessment, since 2010, potential population exposures to wildfire smoke have been increasing in California, peaking in 2020. In 2020, smoke plumes covered every county for at least 46 days; by contrast, from 2010 to 2014, only 11 counties had at least 46 days on average each year. A record-high 4.2 million acres burned in 2020, and several large wildfires burned at once, leading to unprecedented air quality impacts.

5) **Current state efforts.** The state has responded to this increase in wildfire smoke by creating efforts to better monitor smoke, increase public awareness, create clean air shelters, and research smoke health effects.

   In alignment with the administration's Cutting Green Tape Initiative, a collaborative effort to improve regulatory processes to increase the pace and scale of ecological restoration and stewardship, the Task Force, which includes the Air Resources Board among its agency partners, recommended and the state has implemented the following efforts:

   - Through the interagency Smoke Communications Working Group, which includes more than 15 federal, state, and local agencies and stakeholders, ARB developed a Smoke Ready California campaign to provide coordinated messaging and content to help Californians plan for and protect themselves from smoke impacts.

   - NRA collaborated with ARB to update its Prescribed Fire Information Reporting System (PFIRS), which is designed to capture statewide details on prescribed fires and enable estimations of smoke pollution. ARB is enhancing PFIRS to improve data collection and ease-of-use by local air districts and burn managers to expand the safe application of prescribed fire. ARB is also leading an interagency analysis of prescribed fire smoke data to document public health impacts compared with wildfire smoke exposure.

   - ARB developed a California Smoke Spotter app to provide the public with information on nearby prescribed fires, hourly data gathered from permanent and portable air monitors, as well as personalized alerts. It also offers a 24-hour smoke forecast, information on wildfires, and educational content to help people prepare for possible smoke impacts. The app's public release is expected to be in early 2021, with more enhancements planned in the coming years.

   Outside of CAL FIRE and the Task Force's efforts, CDPH's Air Quality Section staff are conducting ongoing investigations with other state, federal, and university partners to identify any unique chemical and physical exposures associated with wildfire events and minimize their impacts.

6) **This bill.** The bill states that the purposes for integrating wildfire smoke and health data include, but are not limited to, providing adequate information to understand the negative health impacts on California's population caused by wildfire smoke and evaluating the effectiveness of investments in forest health and wildfire mitigation on health outcomes in California.

7) **Double referral**. This bill was heard in the Assembly Health Committee on June 25 and approved 16-0.

REGISTERED SUPPORT / OPPOSITION:

Support

American Red Cross California Chapter
Bear Yuba Land Trust
California Cattlemen's Association
California Farm Bureau Federation
California Forest Watershed Alliance
California Society for Respiratory Care
California Special Districts Association
County of Placer
CPCA Advocates, Subsidiary of The California Primary Care Association
Eastern Sierra Land Trust
El Dorado Irrigation District
Feather River Land Trust
Humboldt Redwood Company LLC
Megafire Action
Mountain Counties Water Resources Association
Nevada; County of
Placer Land Trust
Sierra Business Council
Sierra Consortium
Sierra County Land Trust
Sierra Foothill Conservancy
Sierra Nevada Alliance
Truckee Donner Land Trust
Union of Concerned Scientists
Upper Mokelumne River Watershed Authority

Opposition

None on file

Analysis Prepared by: Paige Brokaw / NAT. RES. /

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Isaac G. Bryan, Chair
SB 1053 (Blakespear) – As Amended June 20, 2024

SENATE VOTE: 31-7

SUBJECT: Solid waste: reusable grocery bags: standards: plastic film prohibition

SUMMARY: Revises the state's single-use carryout bag ban to eliminate the distribution of thicker film plastic bags and limit the distribution of bags at the point of sale to recycled paper bags. Prohibits stores from selling reusable grocery bags to consumers unless they meet specified standards.

EXISTING LAW:

1) Pursuant to federal law, establises requirements relating to the use of recyclability claims. (Code of Federal Regulation Section 260.12)

2) Prohibits stores from distributing of single-use carryout bags to customers at the point of sale. (Public Resources Code (PRC) 42281)

3) Defines "store" as a retail establishment that meets any of the following:

   a) A full-line, self-service retail store with gross annual sales of $2 million or more that sells a line of dry groceries, canned goods, or nonfood items, and some perishable items;

   b) Has at least 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law and has a licensed pharmacy;

   c) Is a convenience food store, foodmart, or other entity that is engaged in the retail sale of a limited line of goods, generally including milk, bread, soda, and snack foods, and that holds a specified license from the Department of Alcoholic Beverage Control; or,

   d) Is a convenience food store, foodmart, or other entity that is engaged in the retail sale of goods intended to be consumed off the premises and that holds a specified license from the Department of Alcoholic Beverage Control. (PRC 42280)

4) Beginning January 1, 2025, prohibits a store from providing a precheckout bag to a customer if the bag is not compostable or recycled paper, as specified. (PRC 42281.2)

5) Defines "plastic" as a synthetic or semisynthetic material chemically synthesized by the polymerization of organic substances that can be shaped into various rigid and flexible forms, and includes coatings and adhesives. (PRC 42041)

6) Defines "covered flame retardant chemical" as any chemical that meets both of the following criteria:

a) A functional use for the chemical is to resist or inhibit the spread of fire or as a synergist to chemicals that resist or inhibit the spread of fire, including, but not limited to, any chemical for which the term "flame retardant" appears on the Occupational Safety and Health Administration substance safety data sheet pursuant to subdivision (g) of Section 1910.1200 of Title 29 of the Code of Federal Regulations as it read on January 1, 2019.

b) The chemical is a halogenated, organophosphorus, organonitrogen, or nanoscale chemical, a chemical defined as a "designated chemical" in Section 105440 of the Health and Safety Code, or a chemical listed on the Washington State Department of Ecology's list of Chemicals of High Concern to Children and identified as a flame retardant or as a synergist to flame retardants in the rationale for inclusion in the list. (Business and Professions Code (BPC) 19100)

7) Defines "textile" to mean any item made in whole or part from a natural, manmade, or synthetic fiber, yarn, or fabric, and includes, but is not limited to, leather, cotton, silk, jute, hemp, wool, viscose, nylon, or polyester. (Health and Safety Code (HSC) 108970)

THIS BILL:

1) Specifies that all provisions of the bill become effective on January 1, 2026.

2) Specifies that stores may stock or display for sale or distribution reusable bags at a location other than the point of sale if the reusable bag meets or exceeds the following requirements:

a) Is made of either cloth or woven textile or other washable fabric.

b) Has at least one strap and all straps and seams are sewn with thread.

c) Is capable of carrying 22 pounds over a distance of 175 feet for a minimum of 300 uses.

d) Has a minimum fabric weight of 80 grams per square meter and is not made from plastic film. Exempts cloth or woven textile bags from this requirement.

e) Has printed on the bag or on a tag attached to the bag:

i) The name of the manufacturer;

ii) The country it was manufactured;

iii) A statement that the bag is reusable for at least 300 uses;

iv) A statement that the bag does not contain lead, cadmium, flame-retardant chemicals, or any other toxic material; and,

v) That the bag complies with the federal regulations governing the use of recycling claims.

3) Repeals the third-party certification requirements for reusable grocery bags made from plastic film.

4) Prohibits a store from providing a single-use carryout bag or a reusable bag at the point of sale.

5) Allows stores to sell recycled paper bags at the point of sale for not less than 10 cents. Allows stores to distribute recycled paper bags at no cost for consumers using a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children or an electronic benefit transfer card.

6) Repeals an obsolete reference to the At-Store Recycling Program.

7) Defines additional terms, including:

   a) "Flame-retardant chemical" as having the same meaning as the term "covered flame retardant chemical" as defined in BPC 19100;

   b) "Plastic" as having the same meaning as PRC 42041;

   c) "Point of sale" to mean a place where purchased goods may be transferred to a customer, including, but not limited to, a checkout counter, self-checkout kiosk, in-store pickup, curbside delivery, and home delivery; and,

   d) "Textile" to have the same meaning as HSC 108970.

8) Revises the definition of "recycled paper bag" to require that the bag contain a minimum of 50% postconsumer recycled materials on and after January 1, 2028.

FISCAL EFFECT: According to the Senate Appropriations Committee, annual revenue loss of an unknown amount, likely in the low hundreds of thousands of dollars (Reusable Grocery Bag Fund), to the Department of Resources, Recycling, and Recovery (CalRecycle) once it stops collecting certification fees from reusable grocery bag producers on January 1, 2026. CalRecycle reports it has collected approximately $1.3 million in certification fees to date. The statute requires fee revenue to cover, but not exceed, CalRecycle's reasonable costs for program administration and implementation.

COMMENTS:

1) **Plastic pollution**. Plastics pose a threat to the environment from origin to end-of-life. Plastic production is responsible for three and a half percent of all greenhouse gas emissions—more than the entire aviation sector. In 2021, global plastics production was estimated at 390.7 million metric tons, a 4% increase from the previous year. The United Nations Environment Programme reports that only 9%of all plastic ever made has been recycled, 12% has been incinerated, and the remaining 79% has accumulated in landfills or the environment.

   Once plastics enter the environment, they remain there for hundreds to thousands of years. Plastics do not break down into their constituent parts, but instead break down into smaller and smaller particles, or microplastics. Because they are so small, microplastics can travel in the air and water, and can be easily absorbed by living things and accumulate up the food chain. Microplastics have been found in the most pristine natural environments on earth,

including in the deep ocean, Antarctic sea ice, and in the sand of remote deserts. Micoplastics are found in household dust and drinking water (bottled and tap), and humans are inhaling and consuming them. A March, 2024, study published in Science of the Total Environment identified microplastics in all human tissues sampled, with the polyvinyl chloride being the dominant polymer. The highest abundance of microplastics were found in human lung tissue, followed by the small intestine, large intestine, and tonsils. A February, 2024 study published in *Toxicological Sciences* analyzed samples of 62 human placentas and found microplastics present in every sample. Shockingly little information exists about the potential health impacts of microplastics exposure. Laboratory studies have found that microplastics increase the risk of cancer and disrupt hormone pathways in lab rats.

Plastic pollution and the impacts of microplastics on human health fall disproportionately on marginalized communities. Nearly all plastic is produced from fossil fuels and generates greenhouse gas emissions and toxic chemicals that impact air and water quality. About 14% of oil is used in petrochemical manufacturing, a precursor to producing plastic. By 2050, plastic production is predicted to account for 50% of oil and fracked gas demand growth. According to *Feeding the Plastics Industrial Complex: Taking Public Subsidies, Breaking Pollution Limits*, a report released on March, 14, 2024, by the Environmental Integrity Project, "more than 66% of people within three miles of factories that manufacture the main ingredients in plastic products are people of color living in communities that are over-exposed to air pollution while schools and other public services are chronically underfunded." The report notes that these facilities receive billions in subsidies while repeatedly violating environmental laws and regulations. For example, Indorama, the world's largest producer of polyethylene terephthalate (PET) resins used in beverage containers and other single-use packaging, operates a facility in Louisiana that cracks natural gas or oil into ethylene. The facility received both a $1.5 million grant from the state and an exemption from local taxes – a subsidy estimated to be worth at least $73 million over 10 years. In return, Indorama violated its permitted air pollution control limits. In one example, over five months in 2019, the facility released more than 90 times the permitted level of volatile organic compounds. Instead of coming into compliance after multiple violations, the state revised the facility's pollution control permit to allow higher levels of emissions.

Recycling plastic into new products is one way to reduce plastic pollution, as it keeps the recycled plastic out of the environment and reduces our dependence on virgin resin. However, recycling is currently only feasible for some of the more common, and least toxic, forms of plastic. The most effective way to tackle the plastic pollution crisis is to use less of it.

2) **Plastic bags**. According to United Nations Environmental Programme, up to five trillion (5,000,000,000,000) plastic bags are used worldwide every year. While cigarette butts are the most common type of plastic waste, food wrappers, plastic bottles, plastic bottle caps, plastic grocery bags, plastic straws, and stirrers are the next most common items. According to the report *Advancing Sustainable Materials Management: Facts and Figures 2018*, the United States Environmental Protection Agency found that the United States generated 4.2 million tons of plastic bags, sacks, and wraps in 2018. Of that amount, 3.04 million tons were landfilled; only 10% was recycled. This is in a large part due to how difficult film plastic, the type of plastic used to make plastic bags, is to recycle. In curbside recycling

systems, film plastic contaminates the plastic recycling stream and clogs up the machinery used to sort recyclables. In compost systems, plastic bags act as a contaminant that must be screened out, or is ground into the finished compost, contributing to microplastic pollution. The state's dedicated film plastic collection program, which required stores to collect film plastic bags for recycling, expired in 2020. Efforts to extend the at-store recycling program have failed in the Legislature.

3) **The Bag Ban**. In 2016, California voters approved Proposition 67, the statewide referendum to approve the Single-Use Carryout Bag Ban (SB 270, [Padilla], Chapter 850, Statutes of 2014). As a result, most grocery stores, retail stores with a pharmacy, convenience stores, food marts, and liquor stores no longer provide single-use, light-weight carry-out bags to their customers at the point of sale. The ban does not apply to the bags consumers use prior to the point of sale, such as produce bags and bags used for bulk items. The bag ban resulted in significant reductions in the number of plastic bags collected at beach cleanup days in the state. However, the definition used for "reusable bag" in SB 270 allowed the use of thicker film plastic bags that meet the requirements for reuse, but are not typically reused by consumers.

   While the use of plastic bags did appear to go down after the passage of the bag ban, more recent waste characterization studies show a reversal in that trend. The bag ban required film plastic bags to contain specified percentages of postconsumer recycled content and be recyclable in the state. However, the state law requiring stores to accept plastic bags back for recycling sunset in 2020, so few stores continue to accept them back for recycling and curbside collection programs generally cannot accommodate film plastics for recycling. Even when film plastic bags are collected for recycling, they may not be recycled. In December, 2022, ABC News placed 46 tracking devices in plastic bag collection systems throughout the country. By May, 2023, half of the trackers were pinging at landfills or trash incinerators. Three made their way to Asia, where much of the plastic collected for recycling in the United States ends up, because the country has not developed significant markets for recyclable content materials, including plastic. Much of the plastic generated here pollutes oceans across the globe. As bales of plastic exported for recycling are processed, the plastic with value is collected and recycled, and the rest is discarded or incinerated. In countries with inadequate waste management systems, this plastic enters waterways and flows to the ocean.

   In December of 2021, the California Commission on Recycling Markets and Curbside Recycling, comprised of public agencies, private solid waste enterprises, and environmental organizations, asked the Attorney General (AG) to investigate film plastic bag manufacturers' use of labels indicating that the bags are recyclable. In November of 2022, the AG asked Novolex, Revolution, Interplast, Advance Polybag, Metro Polybag, and Papier-Mettler asking them to substantiate their claims regarding the recyclability of plastic bags sold in California. Last month, the companies sued the state saying that the information requested is confidential and disclosing the information would violate their right to free speech. The following week, the AG asked a state court to enforce subpoenas against the American Chemistry Council and the Plastics Industry Association to release documents related to the industry's claims about plastic recycling.

4) **Author's statement**:

> We are choking our planet with plastic waste. A plastic bag has an average lifespan of 12 minutes and then it is discarded, often clogging sewage drains, contaminating our drinking water and degenerating into toxic microplastics that fester in our oceans and landfills for up to 1,000 years. It's time to improve on California's original plastic bag ban and do it right this time by completely eliminating plastic bags from being distributed by stores to carry food home.
>
> According to a report by CALPIRG, we have seen a 47% growth in plastic bag waste discarded compared to the year California passed the initial bag ban and 2022. What this data illustrates is that the original plastic bag ban passed in 2014 did not accomplish what it set out to do, which was to reduce the overall use of plastic, and it actually resulted in a substantial increase.
>
> Petrochemical companies and the plastics industry have known of the technical and economic limitations that make plastics unrecyclable and have failed to overcome them. Despite this knowledge, the plastics industry has continued to increase plastic production, while carrying out a well-coordinated campaign to deceive consumers, policymakers, and regulators about plastic recycling.
>
> We are fed up and we can see through this façade. People do not want more landfills, more incineration or more plastic in the environment. We want to create a sustainable and thriving environment that is not littered with plastic waste and that is why we must eliminate plastic from our waste streams by passing SB 1053, will once and for all eliminate plastic film bags from grocers, while increasing the recyclability rate of paper bags.

5) **This bill**. This bill is intended to reduce the proliferation of plastic pollution by eliminating the existing provision of law that allows film plastic bags to be distributed as reusable bags under the state's bag ban and instead limit the distribution of bags at the point of sale to recyclable paper bags. This bill makes other, related changes to the bag ban, including establishing standards for all bags sold by stores as reusable bags.

6) **Should the state regulate the sale of all bags**? This bill establishes extensive requirements for reusable bags sold by stores for the purpose of carrying purchased goods. Under the bill, any bag sold by a store (other than recycled paper bags sold at point of sale), and therefore made available to consumers to purchase for the potential use of carrying purchased goods, must be made from cloth or other washable textile, have at least one "strap," have a minimum fabric weight, be sewn with thread, be capable of carrying 22 pounds over 175 feet at least 300 times, and either be imprinted with, or have an attached tag that, includes a significant amount of information. This bill also repeals the certification requirements to verify that bags met these standards.

   These requirements are well-intentioned, as there is clear legislative intent to encourage consumers to use reusable bags, reduce plastic waste, and require stores to distribute only recycled paper bags at the point of sale. However, this requirement seems to go beyond the

intent of the bill, which is to ban the distribution of plastic carryout bags and allow only recycled paper bags at the point of sale. Consumers may wish to purchase and use a wide variety of bags to carry purchased items. It is not clear which bags would be covered by this provision, as stores may sell baskets, backpacks, purses, and other items that consumers could use to carry purchased items. Moreover, it's not clear how or by whom these requirements would be enforced, as the bill repeals the certification requirements for reusable bags. Even if the bill maintained the certification requirement, it would be a monumental task for CalRecycle to identify, manage, and enforce the requirements for all bags sold by stores to consumers in California.

Moreover, it is not clear that a standard is necessary. Current law does not establish a minimum standard for bags sold by stores to consumers other than those distributed at checkout, but overwhelmingly, stores have operated within the intent of the law.

The committee was not able to identify another bag ban with specific requirements for reusable bags sold to customers outside of the point of sale. For example, Colorado's bag law (Colorado Revised Statutes 25-17-503) authorizes stores to provide customers with recycled paper bags at the point of sale for a minimum fee of 10 cents, but does not establish a standard for bags sold by stores outside of point of sale.

A January 2024 report by Environment California, U.S. PIRG Education Fund, and the Frontier Group, *Plastic Bag Bans Work*, states that "well-designed plastic bag bans across the country have successfully reduced single-use plastic bag consumption, cut down on plastic bag litter, and driven consumers to make more sustainable bag choices." The report includes recommendations for policymakers on how to draft strong bag bans, including providing public education and assistance and charging a minimum fee for bags distributed at the point of sale. The report states:

- Grocery stores, restaurants and retail shops should not be permitted to distribute plastic film bags of any thickness at checkout.

- Stores should be required to charge a fee of at least 10 cents for single-use paper bags. A 10-cent paper bag fee will limit the expected increase in paper bag use after a bag ban is imposed and may even reduce paper bag consumption altogether.

- Local and state governments should conduct regular enforcement to ensure compliance.

If the Legislature wishes to establish a reusability standard for all bags sold in the state that are sold as carryout bags, it may be more appropriate for a future bill that will have the time necessary to work with stakeholders, relevant policy committees, and the administration to identify the bags included, develop an appropriate standard, and establish appropriate oversight and enforcement.

7) **Suggested amendment**. The *committee may wish to amend the bill* to clarify the bill's intent and reduce potential confusion and enforcement challenges by removing the definition of

reusable bags and the prohibition on the sale of bags that do not meet that definition.

The *committee may also wish to amend the bill* to make a cleanup change by deleting PRC 42283.6, which requires stores to comply with a program that sunset in 2020.

8) **Related legislation**. AB 2236 (Bauer-Kahan) is identical to this bill and has been referred to the Senate Environmental Quality Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

350 Bay Area Action
350 Sacramento
5 Gyres Institute
7th Generation Advisors
A Voice for Choice Advocacy
Acterra
Active San Gabriel Valley
Alameda Natural Grocery
Alexandre Monteiro, Councilmember, Hawthorne
American Sustainable Business Council
Angie Reyes English, Councilmember, Hawthorne
Ariel Kelley, Councilmember, Healdsburg
Aveson Global Leadership Academy
Aveson Schools
Azul
Ban Single Use Plastic
Bay Area Youth Lobbying Initiative
Breast Cancer Prevention Partners
CA Rethink Disposables
Caity Maple, Vice Mayor, Sacramento
California Coastkeeper Alliance
California Product Stewardship Council
California Public Interest Research Group Students
California State Lands Commission
Californians Against Waste
California Public Interest Research Group
Carlos Romero, Councilmember, East Palo Alto
Center for Biological Diversity
Center for Environmental Health
Charles Palmares, Councilmember, Vallejo
Chris Herrod - Healdsburg City Councilmember
Christine Boles, Councilmember, Pacifica
City of Emeryville Councilmember John Bauters
City of Eureka
City of Goleta
City of San Jose
City of San Jose, Councilmember David Cohen,
City of San Jose, Sarah Zárate, Director of Administration, Policy, and Intergovernmental Relations
Clean Earth 4 Kids
Clean Water Action
Climate Action California
Climate Reality Project, California Coalition
Climate Reality Project, San Fernando Valley
Climate Reality San Francisco Bay Area Chapter
Community Environmental Council
Councilmember Jenny Kassan, Fremont
County of Los Angeles Board of Supervisors
Courage California
Culver City Democratic Club
Daniel Brotman, Councilmember, Glendale
David Oro, Vice Mayor, American Canyon
David Polivy, Mayor, Truckee
David Zito, Councilmember, Solana Beach
Debora Fudge, Councilmember, Windsor
Dennis Rodoni, Board of Supervisors President, Marin County

Donna Colson, Mayor, Burlingame
Earthensoul
Ecology Center
Eduardo De LA Riva, Mayor, Maywood
Elizabeth Alcantar, Vice Mayor, Cudahy
Elizabeth Ontiveros-Cole, Councilmember, Pomona
Elizabeth Talbott, Councilmember, Waterford
Environmental Working Group
Every Neighborhood Partnership
Every Neighborhood Project
Facts Families Advocating for Chemical and Toxics Safety
Felicia Williams, Councilmember, Pasadena
Felipe Hernandez, Supervisor, Santa Cruz
Flax Art & Design
Freddy Puza, Councilmember, Culver City
Friends Committee on Legislation of California
Friends of The Los Angeles River
GAIA
George Syrop, Councilmember, Hayward
George Weiss, Councilmember, Laguna Beach
Glendale Environmental Coalition
Green America
Green Behind the Scenes
Green Science Policy Institute
Harvey Rarback, Vice Mayor Half Moon Bay
Heal the Bay
Indivisible Alta Pasadena
Indivisible California Statestrong
International Paper
Jack Shu, Councilmember, LA Mesa
James Breitling, Mayor Pro Tem, Upland
James Coleman, Mayor, City of South San Francisco
Janice Hahn, Board Supervisor, Los Angeles
Jay Vandenburg, Councilmember, Galt
Jen Cavenaugh, Mayor, Piedmont
Jill W. Macdonald, Councilmember, Solana Beach
Jorgel Chavez, Councilmember, Bell Gardens
Jose A. Moran, Mayor, Livingston
Juan Munoz-Guevara, Councilmember, Lynwood
Justin Massey, Mayor, Hermosa Beach
Kaia Eakin, Councilmember, Redwood City
Kashef Qaadri, Councilmember, Dublin
Katherine Aleman, Councilmember, Norco
Kathleen Treseder - Irvine City Councilmember
Kevin Mcdonnell, Mayor, Petaluma
Kings River Land Trust
Kristi Becker, Councilmember, Solana Beach
Kroger Company
Laura Capps, Supervisor, Santa Barbara County
Le Beau Nob Hill Market
Leslie Marden Ragsdale - Hillsborough City Councilmember
Lisa Gillmor, Mayor, City of Santa Clara
Los Angeles Waterkeeper
Maria Pacheco, Mayor, Kerman
Marilyn Ezzy Ashcraft - Mayor of Alameda
Mark Enmeier, Mayor Pro-tem, San Clemente
Mayor Brianne Zorn, City of Martinez
Mayor Lesa Heebner, City of Solana Beach
Mayor Paula Perotte, City of Goleta
Michael Brownrigg - Mayor of Burlingame
Michael McCorriston, Councilmember, Dublin
Montecito Village Grocery
Monterey Bay Aquarium
Mothers Out Front
Naturepedic
Northern California Recycling Association
Occidental Arts and Ecology Center
Ocean Conservancy
Oceana
Office of Lieutenant Governor Eleni Kounalakis
Okapi Reusables
Oscar De LA Torre, Councilmember, Santa Monica
Otto Lee, District 3 Supervisor, Santa Clara County
Pacific Environment

Patrick Kennedy, Sacramento County Supervisor District 2
Pennywise Market
Plastic Free Future
Plastic Pollution Coalition
Pleasanton; City of
R.World
Race to Zero Waste
Rachel Farac, Councilmember, Novato
Regeneración - Pajaro Valley Climate Action
Republic Services - Western Region
Resource Recovery Coalition of California
Rethink Disposable
Richmond City Councilmember Gayle Mclaughlin
Rolan Resendiz, Vice Mayor, Hollister
San Fernando Valley Chapter of The Climate Reality Project
San Francisco Bay Area Physicians for Social Responsibility
San Francisco Baykeeper
Sandiego350
Santa Monica Democratic Club
Save Our Shores
Save the Albatross Coalition
Save the Bay
Scisters Salon
Scott Bauer, Councilmember, Eureka
Scott Sakakihara - Union City Councilmember
Sea and Sage Audubon Society
Sea Hugger
Sergio Lopez, Vice Mayor, Campbell
Shivaughn Alves, Councilmember, Patterson
Sierra Club California
So Cal 350 Climate Action
Socal 350
Solana Center for Environmental Innovation
Solano County Democratic Central Committee
Stacy Miles Holland, Councilmember, Atherton
Stopwaste
Sunnyvale Mayor, Larry Klein
Supervisor Das Williams, First District, County of Santa Barbara
Supervisor Joan Hartmann, County of Santa Barbara
Supervisor Manu Koenig, First District, County of Santa Cruz
Surfrider Foundation
Surfrider San Francisco
Susan Candell, Councilmember, Lafayette
Susan Hollingsworth Adams, Mayor, Rohnert Park
Sustain LA
Sustainable Rossmoor
Tarrell Kullaway, Vice Mayor, San Anselmo
Teresa Onoda, Mayor, Moraga
The Keep a Breast Foundation
The Last Plastic Straw
The Refill Shoppe
The Story of Stuff Project
Tygarjas Twyrls Bigstyck, Councilmember, Pacifica
Upstream
Valeria Arkin, Councilmember, Pleasanton
Valley Improvement Projects
Valley Improvement Projects
Village Market
Voices for Progress
Wendy Root Askew, Supervisor, Monterey County
Wholly H2O
Wishtoyo Foundation
Xouhoa Bowen, Councilmember, San Leandro
Yasmine-Imani Mcmorrin, Mayor, Culver City
Zein E Obagi Jr., Councilmember, Redondo Beach
Zero Waste US

Opposition

American Chemistry Council
Association of Plastic Recyclers
California Black Chamber of Commerce
California Retailers Association
EFS Plastics US Inc.
Kamilo, Inc.
Mettler Packaging, LLC
Omega Extruding of California
Peninsula Plastics Recycling, Inc.
Polyfit Inc.
Recycling Partnership
Western Plastics Association

Analysis Prepared by: Elizabeth MacMillan / NAT. RES. /

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Isaac G. Bryan, Chair
SB 1062 (Dahle) – As Amended June 24, 2024

SENATE VOTE: 38-0

SUBJECT: Energy: conversion of biomass energy generation facilities.

SUMMARY: Requires the Department of Conservation (DOC) to develop the Biomass Technology Transition Program (Program) to support the conversion of biomass generation facilities using traditional combustion technologies to newer advanced bioenergy technology facilities by December 1, 2025. Requires DOC to establish a grant program to support the distribution of advanced bioenergy technologies by January 1, 2032.

EXISTING LAW:

1) Requires the California Public Utilities Commission (CPUC) to direct electrical corporations to collectively procure at least 250 megawatts (MW) of cumulative rated generation capacity from bioenergy derived from organic waste diversion, dairy and agricultural resources, and byproducts of forest management. Requires the CPUC to encourage investor-owned utilities (IOUs) to develop programs and services that facilitate development of bioenergy and biogas. This program is known as the Bioenergy Market Adjusting Tariff (BioMAT). (Public Utilities Code (PUC) 399.20)

2) Requires CPUC to establish a renewables portfolio standard (RPS) that requires retail sellers of electricity to procure 60% from eligible renewable energy resources by 2030. (PUC 399.15)

3) Includes biomass in the definition of "renewable electrical generation facility" for purposes of the state's RPS. (Public Resources Code (PRC) 25741)

4) Defines "biomass conversion" as the production of heat, fuels, or electricity by the controlled combustion of, or the use of other noncombustion thermal conversion technologies on specified materials when separated from other solid waste. (PRC 40106)

5) Establishes the State Board of Forestry and Fire Protection (Board) to represent the state's interest in the acquisition and management of state forests, protect the state's interests in forest resources on private lands, and determine, establish, and maintain an adequate forest policy. (PRC 730 and 740)

6) Requires an electrical corporation, local publicly owned electric utility, or community choice aggregator with a contract to procure electricity generated from biomass that expires or expired on or before December 31, 2028, to seek to amend the contract to include, or seek approval for a new contract that includes, an expiration date five years later than the expiration date in the contract that was operative in 2022, except as specified. (PUC 8388)

THIS BILL:

1) Requires DOC, in consultation with the California Energy Commission (CEC), the Air resources Board (ARB), the Governor's Office of Business and Economic Development (GO-Biz), the California Infrastructure and Economic Development Bank (I-Bank), and air pollution control districts or air quality management districts (air districts), to establish the Program with relevant program terms to support the conversion of biomass generation facilities using traditional combustion technologies to newer advanced bioenergy technology facilities by December 1, 2025.

2) Requires DOC to identify generation facilities with a generation capacity of 10 MW or greater that use, or are in the process of recommissioning or redeveloping those facilities to use, forest biomass waste and the operators of those facilities have demonstrated to DOC their intent to convert their facilities to advanced bioenergy technology facilities.

3) Requires DOC to request the relevant air district to provide information for each identified generation facility about best available control technologies, and other potential advanced emission control technologies, as applicable to the air district, that would be required if the generation facility requests a permit. As part of the evaluation of a grant application, requires DOC to consider the upgrades needed by the generation facility to meet the emission limits equivalent to, or more stringent than, the applicable best available control technology, as determined by the air district.

4) Requires DOC, in consultation with CEC, CPUC, ARB, GO-Biz, I-Bank, air districts, and relevant federal agencies, to assess market conditions for products from advanced bioenergy technology facilities, including, but not limited to, by estimating feasible market demand and technology readiness, by January 1, 2026.

5) Requires DOC to update the assessment of market conditions for products from "advanced bioenergy production facilities," including, but not limited to, by estimating feasible market demand and technology readiness, by January 1, 2030.

6) Requires an operator of a generation facility to develop and submit business plans to DOC by January 1, 2027. Authorizes the business plans to include a carbon sequestration component. Requires DOC to develop guidelines that, at a minimum, incorporate:

    a) On or before January 1, 2030, if DOC estimates feasible market demand and technology readiness for products from advanced bioenergy technology facilities pursuant to the assessment, require the operator to begin converting the existing generation facility within two years. Authorizes DOC to provide assistance to those converted generation facilities to obtain offtake agreements for new products.

    b) After January 1, 2030, if DOC determines that feasible market demand and technology readiness pursuant to an updated assessment, require the operator to begin converting the existing generation facility within two years.

c) Ensure that the business plans are consistent, as applicable, with the State Board of Forestry and Fire Protection's Joint Institute for Wood Products Innovation (Institute) Recommendations to Expand Wood and Biomass Utilization in California.

7) Requires DOC to establish a grant program to support the conversion of generation facilities to advanced bioenergy technology facilities by January 1, 2030. Specifies that actions taken by DOC and operators of generation facilities pursuant to the bill shall not be funded by ratepayers.

8) Defines terms used in the bill, including:

a) "Advanced bioenergy technology facility" as a noncombustion bioenergy facility that results in reductions in the emissions of criteria pollutants, toxic air contaminants, and greenhouse gases relative to traditional technologies, and may include, but is not limited to, sustainable aviation fuel or other biofuel production, or renewable natural gas or biomass conversion to hydrogen.

b) "Forest biomass waste" as forest biomass that is removed to reduce or mitigate the risk of wildfire, reduce the risk to public safety or infrastructure from falling trees or tree limbs, create defensible space, or for forest restoration projects; and,

c) "Generation facility" as an electrical generation facility using biomass.

FISCAL EFFECT: According to the Senate Committee on Appropriations:

1) DOC notes that any costs estimates ultimately would be dependent on the amount of funding allocated to the grant program, but estimates, if the Legislature were to appropriate $50 million in funding, one-time costs of $250,000 (special fund) for a contract to develop bioenergy market benchmarks, and ongoing costs of $486,000 annually (special fund) for grant planning, administration, and oversight.

2) ARB estimates ongoing costs of about $220,000 annually (special fund) to meet the consultation requirements of the bill.

3) Unknown but likely significant cost pressure (various funds) to provide funding for the grant program established by this bill.

COMMENTS:

1) **Biomass.** Biomass includes agricultural and forest residue. There are a variety of bioenergy technologies that use biomass as feedstock, including direct combustion (biomass conversion) and combustion of biomass derived gases (biogas), which are generated from digesters and landfills or through technologies like gasification and pyrolysis.

Forest operations such as logging, thinning, fuels reduction programs, and ecosystem restoration create huge amounts of woody biomass, and as much as half of that biomass is left in the forest. According to CEC, there are approximately 47 million bone dry tons (BDT) of biomass resource potential in California. According to the Board, state requirements to remove forest fuels on one million acres per year to reduce wildfire risk will generate 10 to 15 million BDT of forest biomass annually. Biomass materials are often piled

and burned, creating air pollutants like black carbon, or left to decay, creating methane, which has a global warming potential 28 times more powerful than carbon dioxide (CO_2) over a 100-year time horizon. Identifying uses for this material, including energy generation, has the potential to reduce the overall emissions and reduce the fire risk of this material.

2) **California Joint Institute for Wood Products Innovation**. The Institute was established by Executive Order B-52-18 to facilitate innovation to develop and expand a robust and sustainable forest products market. The Institute's goal is to identify market and workforce gaps and opportunities for innovation, as well as supporting research to develop new uses for forest products. The Institute includes representatives from academia and the state, and reports to the Board. In November of 2020, the Institute released its *Recommendations to Expand Wood and Biomass Utilization in California*, which identifies goals and recommendations for the state to expand wood and biomass products markets with the intent of supporting "carbon-beneficial, sustainable forest management." In addition to extensive specific initial actions, the recommendations include the following activities:

   - Provide financial incentives, leveraging public dollars to attract private capital to support demand for innovate wood and biomass products markets.
   - Identify priority wood products manufacturing centers in or near forested communities throughout the state, based on the New Markets Tax Credit, Opportunity Zones, locations that reduce hauling costs, proximity to solid infrastructure (roads, highways, ports, etc.), and brownfields incentives.
   - Provide grants to support workforce development.
   - Develop science and technology-based regional strategies that prioritize achievable solutions.
   - Encourage coordination among agencies delivering funding or conducting procurement or relevant regulatory activities to enhance overall outcomes of state investments.
   - Facilitate information flow between state, federal, tribal, and local governments; utilities; and, other non-governmental organizations.
   - Identify and harmonize cross-jurisdictional regulatory and permitting requirements for wood and biomass infrastructure.
   - Leverage agency expertise in forest management, funding, or regulation.
   - Provide consistent and coordinated messaging to stakeholders and the public.
   - Measure progress and monitor outcomes to inform future activities.

3) **Biomass energy**. In 2019, California increased its aggressive renewable energy goals to require that renewable sources provide 60% of electricity by 2030, and renewable and carbon-free sources must provide 100% of electricity by 2045. Unlike variable renewable energy resources (i.e., solar and wind), bioenergy technologies can provide reliable and renewable baseload generation, or firm power, meaning that electricity can be generated consistently during scheduled times and at predetermined power levels.

   The technical electricity potential of biomass feedstock products is 35,000 gigawatt hours (GWh) or enough to support 4,650 MW of capacity. CEC's report, *Utility-Scale Renewable Energy Generation Technology Roadmap,* estimates that the resulting electricity generation possible from bioenergy if the entire technical capacity is captured is 21,500 GWh, which would be enough electricity to provide 6.6% of the state's 2045 goal.

Currently, there are currently about 30 direct-combustion biomass facilities in operation with a capacity of 640 MW. These biomass plants use about five million BDT of biomass per year – or about 10% of the total BDT biomass resource potential.

Last session, the Legislature approved SB 1109 (Caballero), Chapter 364, Statutes of 2022, to extend requirements on electric IOUs and community choice aggregators to procure energy from biomass generating electric facilities by five years and requires extension of existing contracts by five years. The bill also extended electrical corporations' obligation to collectively procure their proportionate share of 125 MW of cumulative rated generating capacity from existing bioenergy projects commencing operation before June 1, 2013, through financial commitments of 5 to 15 years.

4) **Challenges to biomass energy.** CEC's *Estimated Cost of New Utility-Scale Generation in California: 2018 Update* states that some of California's biomass plants that began operation in the 1980s and 1990s have either shut down or been idled as their production contracts expired. Meanwhile, California's forestry waste has increased as drought, heat, and tree die-off have resulted in large amounts of fuel for forest fires. As a result, some idled biomass generation has come back into operation, though not necessarily at full capacity, and new projects are being developed. There are limitations to utility scale biomass combustion, including cost of feedstock, which is highly variable due to the transportation from rural, mountainous areas to biomass facilities. Air quality standards presents another challenge, as biomass conversion produces air emissions.

   While these facilities play an important role in mitigating wildfire risk, many facilities are decades-old and still rely on combustion technology. Remaining biomass facilities may have opportunities for technological improvements to reduce emissions and increase forest waste processing capabilities.

5) **DOC funding.** In Fiscal Year 21-22, the Legislature appropriated $50 million to DOC to create carbon-negative fuels from materials resulting from forest vegetation management. DOC established the Forest Biomass to Carbon-Negative Biofuels Pilot Program, which has awarded six $500,000 awards to applicants within the Sierra Nevada region for projects that demonstrate technologies and plan for the creation of energy from Sierra Nevada-sourced forest biomass to offset the use of fossil fuel, improve forest and community resilience, and create regional economic opportunities. If successfully constructed and operated, the biofuels facilities proposed by the grantees have the potential to use more than 800,000 BDT of forest waste woody biomass annually, which would help facilitate the management of 80,000 acres for environmental health and wildfire resilience. Proposed future grant selections will offer funding for facility construction, and will include financial commitments to up to four individual projects of up to $20 million. DOC administers the grant program in coordination with CEC, ARB, CPUC, GO-Biz, the I-Bank, and other entities.

6) **This bill**. SB 1062 is intended to build on the existing coordinating between DOC and the other state entities listed in the bill to further biomass energy generation by providing grants to support the conversion of biomass generation facilities with a generation capacity of 10 MW or more using traditional combustion technologies to newer advanced bioenergy technology facilities that result in reductions in the emissions of criteria pollutants, toxic air contaminants, and greenhouse gas emissions.

7) **Jurisdiction**. Both Senate policy committees that heard this bill proposed moving the Program from DOC to CEC. This amendment was rejected by the author, who wished to keep the Program at DOC.

   DOC was allocated $50 million in the 2022 Budget to focus on creating carbon-negative hydrogen and/or liquid fuel from forest biomass coming from forest vegetation management within California's Sierra Nevada. This aligns with the focus of SB 1062, but it was also DOC's entrance into the biomass-into-biofuels arena. A draft of program solicitation guidelines was released in November of last year, but no grants have been awarded.

   CEC, on the other hand, has been active in this space since the passage of SB 771 (Kehoe), Chapter 598, Statutes of 2011, which created the Biomass Development Program. That program was intended to accelerate the development of sustainable emerging biomass energy technologies in California by addressing the technical issues and providing long-term support, funding, or seed money in order to achieve prompt commercial readiness and maximize benefits to the state. CEC has also previously administered the Energy Technology Advancement Program and currently runs the Public Interest Energy Research Program, both of which touch upon these technologies.

   This array of programs suggests CEC has considerable expertise in the biomass facilities targeted by the Program created by SB 1062. CEC could further have other important technical knowledge that could be helpful in administering the Program, including the future grants available under it. The committee and the author may wish to consider whether DOC is the appropriate entity to administer the Program.

8) **Author's statement**:

   > California has experienced some of the worst wildfires in state history in recent years. The millions of tons of dry wood waste that have been building up in our forests is one of the many reasons why recent fires have gotten out of control. I have supported the recent efforts to expand the use of biomass energy so we can ensure this harmful waste is removed and wildfire risk is reduced. However, there is more to be done. Biomass facilities across the state are struggling to keep up with emissions regulations and many simply cannot afford to acquire new technologies. This bill will help biomass facilities acquire new emissions reducing technology while also providing them with the financial security needed to allow them to continue clearing our forests of the excess woody debris.

9) **Double referral**. This bill was passed by the Assembly Utility and Energy Committee on June 19th, with a vote of 13-0.

10) **Suggested amendments**. This bill requires DOC to develop the Program to support emissions reductions by encouraging the conversion of biomass generation facilities to advanced bioenergy technology facilities. However, the definition of advanced bioenergy technology facility applies to a facility or upgrade that results in any amount of emission reductions, no matter how small those reductions may be. The *committee may wish to amend the bill* to require that the advanced bioenergy technology facility must result in *significant* emissions reductions.

The committee may also wish to amend the bill to correct a drafting error by replacing the word "production" with "technology" on page 5, line 3.

In addition to the committee amendments, *the committee may wish to adopt author's amendments* to the bill that the author was unable to submit due to the timing of the double referral. The author's amendments establish a definition of "agricultural biomass waste" and add agricultural biomass waste as eligible feedstock under the bill.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

Center for Biological Diversity
Natural Resources Defense Council

Analysis Prepared by: Elizabeth MacMillan / NAT. RES. /

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Isaac G. Bryan, Chair
SB 1143 (Allen) – As Amended June 10, 2024

SENATE VOTE: 30-7

SUBJECT: Household hazardous waste: producer responsibility

SUMMARY: Establishes the Household Hazardous Waste Producer Responsibility Act of 2024 (Act) to require producers of household hazardous wastes (HHW) to develop an expanded producer responsibility (EPR) program for the purposes of providing a convenient collection and management system for HHW at no cost to residents or local governments.

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 United States Code (USC) 6901 *et seq*.)

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

3) 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))

4) 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))

5) Requires cities and counties to 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)

6) Requires DTSC to develop a hazardous waste management report by March 1, 2023, that includes an analysis of available data related to hazardous waste. Requires DTSC to prepare a state hazardous waste management plan by March 1, 2025, and update the plan every three years. Requires the plan to be based on the report and serve as a comprehensive planning document for the management of hazardous waste in the state, as a useful informational

source to guide state and local hazardous waste management efforts, and as a guide for DTSC's implementation of its hazardous waste management program. (HSC 25135)

7) Establishes the Plastic Pollution Prevention and Packaging Producer Responsibility Act, which imposes minimum content requirements for single-use packaging and food ware and source reduction requirements for plastic single-use packaging and food ware, to be achieved through an EPR program. (Public Resources Code (PRC) 42040 *et seq*.)

8) Establishes the Used Mattress Recovery and Recycling Act, which creates an EPR program for the collection and recycling of used mattresses. (PRC 42985 *et seq*.)

9) Establishes the Electronic Waste Recycling Act of 2003, which requires consumers to pay a fee for specified electronic devices, defined to include video screens larger than four inches and battery-embedded products and establishes processes for consumers to return, recycle, and ensure the safe disposal of covered electronic devices. (PRC 42460 *et seq*.)

10) Establishes the Architectural Paint Recovery Program, which establishes an EPR program for the collection and recycling of architectural paint. (PRC 48700 *et seq*.)

THIS BILL establishes the Act, which:

1) States the purpose of the Act is to provide for the safe and proper management of HHW, 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.

2) Requires the Department of Resources Recycling and Recovery (CalRecycle), in coordination with the DTSC, to adopt, amend, or repeal regulations to implement the Act. Specifies that regulations pursuant to this Act must have an effective date no earlier than July 1, 2027.

3) 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.

4) Requires DTSC, on or before January 1, 2026, to establish and post a list of HHW subject to the Act (covered products) on its website.

5) Requires CalRecycle, on or before January 1, 2027, to approve one producer responsibility organization (PRO) that meets the requirements of the Act.

6) Defines terms used in the bill, including:

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

      i) The product either meets the criteria for HHW at the time of disposal, or is defined by DTSC in regulations as HHW;

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

(1) Aerosols, cleaners, glues, solvents, oxidizers, and adhesives;
(2) 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;
(3) Electronics and paint products not covered under statutorily required programs;
(4) Fire extinguishers with up to 50 pounds of water capacity;
(5) Degreasers, lubricants, liquid adhesives, and strippers;
(6) Gas cylinders;
(7) Lamp kerosene and lighter fluid;
(8) Rust, tar, and bug remover;
(9) Fertilizers, pesticides, insecticides, herbicides, fungicides, and soil fumigants;
(10) Products containing asbestos, mercury, or polychlorinated biphenyls;
(11) Pool chemicals and photochemicals;
(12) Concrete mix containing corrosive lime; and,
(13) Universal waste.

iii) The product is not:

(1) A product that is subject to another statewide program pursuant to state law;
(2) Health and beauty products; or,
(3) 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.

b) “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.

c) "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.

d) "Producer responsibility plan" or "plan" (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.

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

8) 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.

9) 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.

10) 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.

11) 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) 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) 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.

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

12) 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 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.

13) 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.

14) Authorizes CalRecycle to audit the PRO annually.

15) 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.

16) 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 its internet website a list of the names of producers that are compliant with the Act.

17) Authorizes CalRecycle to administratively impose on any person who is in violation of the act a civil penalty of up to $10,000 per day, or up to $50,000 per day, if the violation is intentional or knowing.

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

19) Adds several paint-related products to the Architectural Paint Recovery Program.

FISCAL EFFECT: Unknown

COMMENTS:

1) **EPR**. According to CalRecycle, EPR is a strategy that places shared responsibility for end of life management for products on the producers and all entities involved in the product chain, instead of entirely on local governments and ratepayers. EPR programs rely on industry, formalized in a product stewardship organization, to develop and implement approaches to create a circular economy that makes business sense, with oversight and enforcement

provided by a government entity. This approach provides flexibility for manufacturers to design products in a way that facilitates recycling and to develop systems to capture those products at the end-of-life to meet statutory goals.

There are several key elements that should be carefully evaluated to develop a successful EPR program. These elements are part of CalRecycle's "EPR checklist" and include considerations of: (1) the scope of the program (what and who is captured in the covered product and PRO universe); (2) requirements for the PRO; (3) funding for the program; and, (4) oversight for the program.

2) **Hazardous and universal waste**. 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 is waste that 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.

3) **HHW**. Many common household products are also hazardous, and when these products are discarded, they become "household hazardous waste." There are potentially thousands of types of HHW, but common HHW includes antifreeze, 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 dumped, and must be disposed of through an HHW Program that provides for the safe collection and management of HHW. Most HHW programs are run by local government agencies.

4) **Statewide Commission on Recycling Markets and Curbside Recycling**. In 2019, The California Recycling Market Development Act was enacted to require CalRecycle to convene a Statewide Commission on Recycling Markets and Curbside Recycling (Commission) consisting of representatives of public agencies, private solid waste enterprises, and environmental organizations that have expertise in recycling. The Commission released a report containing recommendations regarding the state's "ambitious recycling and organic materials recovery goals from the perspective of professionals working in many aspects of this complicated industry" on June 30, 2022.

   The report's recommendations included developing an "Extending Producer Responsibilities Framework for Household Hazardous Waste (HHW)," which recommended that California enact EPR legislation all hazardous products. The report states:

   > 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, mismanaged 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.

5) **Capacity and timing**. This bill requires CalRecycle to oversee and regulate an extensive new EPR program for HHW, which will require the regulation of thousands of new products produced by hundreds of producers and discarded by millions of consumers. While ensuring the proper collection and management of HHW is important, CalRecycle may not have the capacity to take on such a significant program while it is still implementing the Plastic Pollution Prevention and Packaging Producer Responsibility Act, enacted by SB 54 (Allen), Chapter 75, Statutes of 2022, which established an EPR program for thousands of plastic products and types of packaging. Under SB 54, CalRecycle is required to publish a list of recyclable and compostable materials annually and conduct ongoing enforcement of the program. Additionally, CalRecycle has numerous requirements under SB 54 each year for the next few years, including reviewing and approving PRO plans and establishing recycling rates in 2026.

   DTSC is also in the process of developing the first hazardous waste management plan, which must be finalized by March 1, 2025. The hazardous waste management report was released on November 28, 2023, includes HHW. The plan will be based, at least in part, on the information in the report, so it is likely to include a discussion of HHW management.

6) **This bill**. SB 1143 is intended to ensure that consumers have access to convenient collection of HHW by requiring manufacturers of HHW to be responsible for the end-of-life management of those products. SB 1143 requires these manufacturers to form a PRO that will be required to establish program that enables consumers to dispose of their products at no cost to be safely managed. While many local governments have HHW collection facilities, many consumers are either unaware that these facilities exist or the facilities are not conveniently located, which results in consumers improperly disposing of these products.

7) **Author's statement**:

   > 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.

8) **Double referral**. This bill was heard by the Environmental Safety and Toxic Materials Committee on June 25th and passed 5-2.

REGISTERED SUPPORT / OPPOSITION:

Support

American Coatings Association
California Environmental Voters
California Product Stewardship Council
California Professional Firefighters
City of Cupertino
County of San Joaquin
County of Santa Clara
Los Angeles County Sanitation Districts
National Stewardship Council

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
Responsible Industry for A Sound Environment
Western Aerosol Information Bureau
Western Plant Health Association

Analysis Prepared by: Elizabeth MacMillan / NAT. RES. /

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Isaac G. Bryan, 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 land is located within the Tijuana River National Estuarine Research Reserve (Reserve) or within an area that is tributary to the Tijuana River, except as specified.

EXISTING LAW:

1) Establishes the National Pollutant Discharge Elimination System (NPDES) permit program and authorizes the State Water Resources Control Board (SWRCB) and the nine regional water boards to prescribe waste discharge requirements (WDRs) which, among other things, regulate the discharge of pollutants in stormwater, including municipal stormwater systems. (33 United States Code 1342 and Water Code (WC) 13377)

2) Prohibits, pursuant to the Porter-Cologne Water Quality Control Act, the discharge of pollutants to surface waters unless the discharger obtains a permit from SWRCB or a regional water board. (WC 13000, *et seq*.)

3) Prohibits a regional water board from issuing a waste discharge permit for a new landfill, or lateral expansion of an existing landfill, which 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, except as specified. (Public Resources Code (PRC) 40060 (a))

THIS BILL:

1) Prohibits a 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 Reserve or within an area that is a tributary to the Tijuana River.

2) Specifies that this prohibition does not apply to a public agency restoration and beneficial reuse project for abandoned sand and gravel mining quarries located within the Reserve or within an area that is a tributary to the Tijuana River.

3) Expands the definition of "landfill used for the disposal for nonhazardous solid waste" to include Class II landfills.

4) States that the Legislature finds and declares that the use of areas within the Tijuana River watershed for landfill disposal and related activities create the potential for pollution and other hazardous conditions that can adversely affect human health and the environment.

FISCAL EFFECT: According to the Senate Appropriations Committee, SWRCB estimates ongoing costs of approximately $900,000 annually (Waste Discharge Permit Fund) to address

unintended consequences that SWRCB anticipates resulting from this bill's provisions. The costs would be primarily associated with enforcement actions, involving minor, moderate, and major violations of water quality statutes and regulations, and would depend on the number, type, and severity of the violations that occur.

COMMENTS:

1) **Tijuana River and Estuary**. The Tijuana River flows north from Tijuana into the Tijuana River and Estuary (TJRE) in the United States, emptying into the Pacific Ocean at Imperial Beach. The TJRE is severely contaminated by untreated sewage, industrial waste, and urban run-off due to inadequate infrastructure and urbanization. The watershed is classified as an impaired water body according to the federal Clean Water Act. This contamination is a persistent environmental and public health threat with substantial economic, legal, social, and health implications for the nearby communities, such as San Ysidro and Imperial Beach.

2) **The East Otay Mesa Recycling Collection Center and Landfill**. In 2011, there was a proposal submitted for a class III (nonhazardous) solid waste landfill occupying approximately 340 acres. The proposed project would have been 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 site is 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 United States/Mexico border.

   On June 8, 2010, a San Diego County initiative, Proposition A, which asked voters "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?" The measure was approved by 84.49% to revise the county's general plan to allow for the construction and operation of a recycling center and a landfill on the site. According to 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. The San Diego Solid Waste Local Enforcement Agency notes that as of June 14, 2024, the applicant is actively working on the environmental review process; however, the current plans don't appear to include a recycling facility.

3) **Pollution burden**. In order to address the cumulative effects of pollution burden and socioeconomic factors and identify which communities might be in need of policy, investment, or programmatic interventions, the Office of Environmental Health Hazard Assessment (OEHHA) maintains the CalEnviroScreen tool on behalf of the California Environmental Protection Agency. The tool applies a framework, developed by OEHHA in 2010, for assessing cumulative environmental and socioeconomic 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. Otay Mesa and the neighboring communities of San Ysidro and Nestor have among the most burdened CalEnviroScreen scores in the state. Citing a new solid waste landfill in this area would

increase the pollution burden on these communities.

4) **Capacity**. According to the County of San Diego's Five-Year Review, which was completed as part of the solid waste Countywide Integrated Waste Management Plan in 2022, the county has sufficient landfill capacity to accommodate disposal through 2053. The projected capacity is based on the assumption that the Sycamore Landfill will apply for projected expansions to their daily permitted capacity and that the county will achieve landfill disposal reductions targets through increased conservation and recycling, expanding composting and construction and demolition recycling, and implementing mandatory recycling ordinances. The expansion of Sycamore Landfill is expected to occur before two of the county's four landfills are estimated to close in 2030. Sycamore Landfill has completed California Environmental Quality Act requirements for the expansions; however, the Local Enforcement Agency has not received an application to revise the facility's Solid Waste Facility Permit.

5) **This bill**. This bill would prohibit the regional water board from issuing a waste discharge permit for the proposed East Otay Mesa landfill or any other new or expanded solid waste disposal facility that might be proposed in the Reserve or in a Tijuana River tributary in the future.

6) **Prior legislation**. AB 2601 (Eduardo 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, if the land is located within three miles of the United States' border with Mexico. Additionally, this bill 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 United States' border with Mexico. This bill was held in the Assembly Appropriations Committee.

7) **Author's statement**:

> 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.

8) **Double referral**. This bill was previously heard by the Assembly Environmental Safety and Toxic Materials Committee, which has jurisdiction over water quality permitting. This bill passed that committee on June 25th with a vote of 5-0.

Due to the timing of the committees' hearings, amendments agreed to in the Environmental Safety and Toxic Materials Committee will be adopted in this committee, should the bill pass. Those amendments:

- Require the Secretary of the California Environmental Protection Agency 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.

- Require a regional water board to make a finding that the waste discharge requirements protect water quality, meet water quality objectives, and protect beneficial uses.

- Add a severability clause.

REGISTERED SUPPORT / OPPOSITION:

Support

Activist San Diego
Alliance San Diego
Alonso Gonzalez, Deputy Mayor, Chula Vista
California Environmental Voters
California Latino Environmental Advocacy Network
Clean Earth 4 Kids
Food and Water Watch
Jennifer Campbell, Councilmember, San Diego
Jose Rodriguez, Council Member, Nevada City
Marni Von Wilpert, Councilmember, San Diego
Monica Montgomery Steppe, Supervisor, San Diego County
Natural Resources Defense Council
Nora Vargas, Chair, San Diego County Board of Supervisors
Paloma Aguirre, Mayor, City of Imperial Beach
Ron Morrison, Mayor, National City
San Diego Pediatricians for Clean Air
Sean Elo Rivera, Council President, City of San Diego
Sierra Club California
UDW/AFSCME Local 3930
Unite Here Local 30
1,000 individuals

Opposition

National Enterprises, Inc.

Analysis Prepared by: Elizabeth MacMillan / NAT. RES. /

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Isaac G. Bryan, Chair
SB 1231 (Allen) – As Introduced February 15, 2024

SENATE VOTE: 37-0

SUBJECT: Plastic Pollution Prevention and Packaging Producer Responsibility Act: environmental advertising

SUMMARY: Establishes a new process by which producers of covered materials in the Plastic Pollution Prevention and Packaging Producer Responsibility Act can petition the Department of Resources Recycling and Recovery (CalRecycle) to authorize a material as meeting the requirements of the state's recyclability labeling law if it is trending towards the recyclability standard set by the state's truth in labeling law.

EXISTING LAW:

1) Requires all rigid plastic bottles and containers sold in the state to be labeled with a code that indicates the resin type of their basic material. The code shall be placed inside a triangle, and letters indicating resin abbreviation shall be placed below the triangle. (Public Resources Code (PRC) 18015 *et seq*.)

2) Pursuant to SB 343 (Allen), Chapter 507, Statutes of 2021:

    a) Establishes a "truth in labeling" requirement for product recyclability. A product that displays the chasing arrows symbol or other statement of recyclability is deemed deceptive or misleading unless at least 60% of jurisdictions can collect, sort, and bale a material for sale to a recycler. (PRC 42355.51)

    b) Requires CalRecycle to conduct and publish a material characterization study of the types and forms of material that are collected, sorted, sold, or transferred by solid waste facilities by January 1, 2024. Requires the study to be updated every five years, beginning Jan 1, 2027.

    c) Establishes an "on-ramp" clause allowing materials that are moving toward the standard for recyclability in SB 343 but do not yet reach that standard to continue to use the chasing arrows symbol on material that is both (1) part of a statewide program aimed at increasing the recycling rate for that material on or after January 1, 2022 (i.e., SB 54); and, (2) has been determined by CalRecycle not to contaminate the recycling stream if placed in a recycling collection bin.

    d) Specifies that products have 18 months following an initial characterization study and after subsequent updates in which progress towards SB 343 recyclability goals for different material types is evaluated to ensure their labeling aligns with the requirements of SB 343.

3) Pursuant to SB 54 (Allen), Chapter 75, Statutes of 2022, establishes the Plastic Pollution Prevention and Packaging Producer Responsibility Act, which:

a) Imposes minimum recycled content requirements and source reduction requirements for single-use packaging and plastic food service ware, to be achieved through an extended producer responsibility (EPR) program. (PRC 42040 *et seq*.)

b) Requires CalRecycle to conduct a material characterization study of covered material categories that are disposed of in California landfills before July 1, 2025, and to report to the Legislature the status of materials at solid waste facilities pursuant to SB 343 by January 1, 2024. Requires CalRecycle to update the material characterization study required pursuant in 2028, 2030, 2032, and at least every four years thereafter.

c) Authorizes CalRecycle to identify covered materials that are trending toward meeting the requirements of SB 343, and requires those material types and forms to be considered and labeled as recyclable in the state as long as the material types and forms meet specified requirements.

THIS BILL:

1) Authorizes a producer or a group of producers of covered material to petition CalRecycle to identify material types and forms that are trending toward meeting the requirements of SB 343 and measurable increase of statewide collection and sorting rates, as specified, for which the continued increase in the collection, sorting, and viable responsible end market development will be disrupted by a loss of a recyclable designation.

2) Requires CalRecycle to approve or deny a petition within 60 days, and to consider information provided in the petition as well as information received through the waste characterization study. Specifies that a denial must be accompanied by a statement detailing the reasons for the denial and additional information that may be helpful in approving future petitions.

3) Extends, from 18 months to 24 months, the amount of time a covered material has to achieve compliance with SB 343 recyclability criteria following the publication of a waste characterization study.

FISCAL EFFECT: According to the Senate Appropriations Committee, CalRecycle estimates ongoing costs of about $468,000 annually (California Circular Economy Fund) to revise SB 54 regulations, review petitions, draft determinations, validate accuracy of information submitted in the petition, and evaluate the trend line of subject material types.

COMMENTS:

1) **Plastic pollution**. Plastics pose a threat to the environment from origin to end-of-life. Plastic production is responsible for three and a half percent of all greenhouse gas emissions—more than the entire aviation sector. In 2021, global plastics production was estimated at 390.7 million metric tons, a 4% increase from the previous year. The United Nations Environment Programme reports that only 9% of all plastic ever made has been recycled, 12% has been incinerated, and the remaining 79% has accumulated in landfills or the environment.

   Once plastics enter the environment, they remain there for hundreds to thousands of years.

Plastics do not break down into their constituent parts, but instead break down into smaller and smaller particles, or microplastics. Because they are so small, microplastics can travel in the air and water, and can be easily absorbed by living things and accumulate up the food chain. Microplastics have been found in the most pristine natural environments on earth, including in the deep ocean, Antarctic sea ice, and in the sand of remote deserts. Laboratory studies have found that microplastics increase the risk of cancer and disrupt hormone pathways in lab rats.

Recycling plastic into new products is one way to reduce plastic pollution, as it keeps the recycled plastic out of the environment and reduces our dependence on virgin resin. However, recycling is currently only feasible for some of the more common, and least toxic, forms of plastic. One of the major factors that intrinsically impacts California's recycling efforts is the market for recyclable materials. In order for material to be recycled, the cost of processing and using the recycled material must be competitive with the cost of virgin material. Prices for scrap materials can fluctuate wildly over both the short term and the long term, influenced by global factors. While recycling is one important tool to address plastic pollution, the most effective way to tackle the plastic pollution crisis is to use less of it.

2) **SB 54**. SB 54 created sweeping new minimum recycling requirements for single-use plastic packaging and food service ware (covered material), source reduction requirements for plastic covered material, and prohibits the sale or distribution of expanded polystyrene unless it meets accelerated recycling rates. SB 54 requires producers to comply with the bill's requirements through an expanded producer responsibility program. Under SB 54, covered material must meet specified recycling and source reduction requirements by 2027, which ramp up until all covered material must achieve and maintain a 65% recycling rate and a 25% source reduction requirement by 2032. This bill additionally requires producers, through the producer responsibility organization, to pay $500 million per year for ten years (from 2027 to 2037) to be deposited into the California Plastic Pollution Mitigation Fund, which is established to fund various environmental and public health programs.

3) **What is recyclable?** It is frequently unclear to consumers what is and is not recyclable. There have historically been several reasons for this, including:

- In California, rigid plastic bottles and containers are required to display a resin identification code (RIC) inside of a triangle or a chasing arrows symbol. Consumers may assume this code means a package is recyclable, but that is often not the case. According to CalRecycle, only plastics with the code #1 for polyethylene terephthalate (PET), used in beverage bottles, and #2 for high-density polyethylene (HDPE), used in milk jugs and shampoo bottles, are commonly recycled. The rest of the resin types (#3-7) are generally not recycled.

- Recycling varies by jurisdiction. What can be recycled in one area of the state may not be recyclable in another. Recycling varies based on the solid waste infrastructure available within a jurisdiction, and available markets.

- Plastic materials may be technologically recyclable, but the cost to collect, sort, and process the materials and lack of available market make them economically infeasible to actually recycle into new products.

4) **SB 343**. To give consumers clarity and curtail misinformation or "greenwashing" that promotes products as recyclable when they are actually not recycled, the Legislature enacted SB 343. The law prohibits producers from making a false claim of recyclability on their products, such as using a chasing arrow symbol on material that does not meet strict standards for recyclability. Under SB 343, a product is considered "recyclable" if at least 60% of jurisdictions in the state can collect, sort, and bale a material for sale to a recycler.

   SB 343 included an "on-ramp" for materials that do not meet the bill's recyclability standards, but that are covered by SB 54. This on-ramp allows covered material to be labeled as recyclable if producers demonstrate to CalRecycle an improvement in the material's recycling rate.

5) **This bill**. This bill is intended to address a drafting issue in SB 54 that requires CalRecycle to identify covered material under SB 54 that qualifies for the SB 343 on-ramp before there have been sufficient waste characterization studies to determine whether or not a material is trending toward compliance. This bill replaces the current requirement for CalRecycle to identify covered materials that are "trending toward" meeting the requirements of SB 343 and allow those material types and forms to be considered and labeled as recyclable and instead allows producers to petition CalRecycle to have their materials evaluated by CalRecycle to be eligible for the on-ramp.

   It is not clear what metric CalRecycle should use to determine whether or not a covered material is "trending toward" meeting the state's requirements. Additionally, CalRecycle may need additional clarity in the bill or may need to establish regulations to develop requirements for the petition process. The author may wish to consider incorporating additional authority and guidance for CalRecycle to develop and implement the petition process. Finally, CalRecycle is in the midst of implementing SB 54. Depending on the volume of petitions submitted, implementation of this bill has the potential to impede CalRecycle's ability to effectively implement SB 54.

6) **Author's statement**:

   > In 2021, the Legislature passed SB 343, which established a clear definition in California law for recyclability and prohibited producers from making recyclability claims on their products, including using the ubiquitous chasing arrows symbol, unless the product meets the standards in the definition. The measure included an "on-ramp" clause allowing the use of the chasing arrows symbol on material if that material is part of a statewide program aimed at increasing the recycling rate for that material (SB 54) and CalRecycle determines the material will not contaminate the recycling stream. The purpose of this on-ramp clause was to ensure that if producers were investing in recycling infrastructure under SB 54 and could demonstrate that those investments were increasing the recyclability of their material, they could continue encouraging consumers to put the material in the blue recycle bin. Otherwise, when SB 343 is fully implemented next year, consumers will not know how to recycle the material, and producers of that material could not comply with SB 54 despite their efforts.

However, the language in SB 54 inadvertently precludes CalRecycle from identifying which material could qualify for this on-ramp until the deadline for removing the recyclability claim and chasing arrows has passed. SB 1231 addresses this time gap by allowing producers to petition CalRecycle for the continued use of recycling claims for a product if the producer can demonstrate sufficient investments that will allow the material to meet California's definition. The bill continues to give CalRecycle full discretion to determine which materials meet this high bar.

7) **Suggested amendments**. This bill is intended to create a temporary bridge for producers of materials covered by SB 54 to use the on-ramp authorized by SB 343. The *committee may wish to amend the bill* to require petitions to be submitted to CalRecycle on or before January 1, 2026.

   This bill extends the window from 18 months to 24 months for all covered material after CalRecycle completes required waste characterization studies. The *committee may wish to amend the bill* to narrow that extension by limiting it to those materials for which a producer has submitted a petition to CalRecycle.

REGISTERED SUPPORT / OPPOSITION:

Support

Agricultural Council of California
American Chemistry Council
Association of Home Appliance Manufacturers
Association of Plastic Recyclers
California Chamber of Commerce
California Farm Bureau
California League of Food Producers
California Manufacturers & Technology Association
Consumer Brands Association
Dairy Institute of California
Danone North America
Flexible Packaging Association
Household and Commercial Products Association
International Dairy Foods Association
Keurig
Dr Pepper, Inc.
Kraft Heinz Company
National Stewardship Action Council
Nestle USA
Personal Care Products Council
Pet Food Institute
Recycling Partnership
The Toy Association
Unilever United States

Opposition

350 Bay Area Action
Air Alliance Houston
Aquatic Genesis LLC
Arms of Andes USA Corp
Association for Farmers Rights Defense
Beyond Plastics
Breathe Free Detroit
Bureo, Inc.
California Safe Schools
Clean Earth 4 Kids
Climdev-Africa
Comite Pro Uno
Earth Ethics, Inc
EJCW
Environmental & Public Health Consulting
Environmental Justice Coalition for Water
Fenceline Watch
Fractracker Alliance
Gallifrey Foundation
Glendale Environmental Coalition
Greenpeace USA
Hamraah Foundation
My Zero Waste Store
Next Highest Good
Non Toxic Communities
Pacific Marine Mammal Center
Paddle Out Plastic
Plastic Pollution Coalition
Santa Cruz Climate Action Network
Save the Albatross Coalition
Sea Hugger
See Turtles
Sierra Club California
Society of Native Nations
Steel Straw
Story of Stuff
Sustain LA
The Descendants Project
The Green Room Corporation
The Last Beach Cleanup
The Last Plastic Straw
The Ride Guides
Tiny Textiles Wilder Color
Turtle Island Restoration Network
Zero Waste Sonoma

Analysis Prepared by: Elizabeth MacMillan / NAT. RES. /

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Isaac G. Bryan, Chair
SB 1298 (Cortese) – As Amended June 24, 2024

SENATE VOTE: 33-0

SUBJECT: Certification of thermal powerplants: data centers

SUMMARY: Authorizes the California Energy Commission (CEC) to exempt a thermal powerplant with generating capacity of up to 150 megawatts (MW) from the powerplant certification chapter of the Warren-Alquist Act, if the powerplant is used solely as a backup generation facility for a data center and specified conditions are met.

EXISTING LAW:

1) The California Environmental Quality Act (CEQA) requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA. (Public Resources Code (PRC) 21000 *et seq.*)

2) The Warren-Alquist Act grants the CEC exclusive authority to license thermal powerplants 50 MW and larger (including related facilities such as fuel supply lines, water pipelines and electric transmission lines that tie the plant to the grid). The CEC must consult with specified agencies, but the CEC may override any contrary state or local decision. The CEC process is a certified regulatory program (determined by the Resources Secretary to be the functional equivalent of CEQA), so the CEC is exempt from having to prepare an EIR. The certified program, however, does require environmental analysis of the project, including an analysis of alternatives and mitigation measures to minimize any significant adverse effect the project may have on the environment. (PRC 25500 *et seq.*)

3) Authorizes the CEC to exempt thermal powerplants with a generating capacity of up to 100 MW if the CEC finds that no substantial adverse impact on the environment or energy resources will result from the construction or operation of the proposed facility. (PRC 25541)

4) Authorizes air district boards to establish a permit system that requires that before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance which may cause the issuance of air contaminants, the person obtain a permit to do so from the air pollution control officer of the district. (Health and Safety Code (HSC) 42300)

5) Generally requires "best available control technology" (BACT) for new sources permitted by an air district, and defines BACT as an emission limitation that will achieve the lowest achievable emission rate for the source to which it is applied (i.e., the more stringent of (a) the most stringent emission limitation that is contained in the state implementation plan for the particular class or category of source, unless the owner or operator of the source demonstrates that the limitation is not achievable or (b) the most stringent emission limitation that is achieved in practice by that class or category or source). (HSC 40405)

THIS BILL expands the small powerplant exemption to authorize the CEC to exempt thermal powerplants up to 150 MW, subject to all of the following conditions:

1) The facility is used solely as a backup generation facility for a data center.

2) The facility is located on the customer side of the meter and is not interconnected to the distribution system.

3) A skilled and trained workforce will be used to perform all construction work on the facility, as specified.

4) The CEC finds that no substantial adverse impact on the environment or energy resources will result from the construction and operation of the facility.

5) The CEC obtains a determination from the applicable air district that the facility's backup generation technology meets BACT.

6) The CEC finds that energy efficiency technologies, including Energy Star appliances and demand response options, have been considered first to reduce data center load.

7) The applicant provides a report to the CEC on the expected energy use of the facility, including, but not limited to, energy intensities, peak factors, load profiles, and other related information.

8) Sunsets January 1, 2030.

FISCAL EFFECT: According to Senate Appropriations Committee:

To the extent this bill results in the installation of large diesel generators that increase diesel emissions or have negative impacts on air quality, unknown but potentially significant ongoing costs (General Fund or special fund) to the Air Resources Board (ARB) for activities and actions to address these emissions and/or negative impacts. Committee amendments would likely lower ARB costs significantly by ensuring that any emissions, pollutants, or toxic air contaminants would be as low as technologically feasible.

Unknown ongoing costs (General Fund or special fund) for the CEC to make certain findings and implement provisions of this bill. The 4/22 version of this bill would require the CEC to make a finding before it issues an exemption (to find that no substantial adverse impact on the environment or energy resources would result from the construction or operation of the proposed data center). The CEC anticipated no cost related to this provision. Committee amendments would add another finding requirement to the conditions of certification exemption.

COMMENTS:

1) **Background**. The CEC has exclusive jurisdiction to review, and ultimately approve or deny, applications to construct and operate thermal power plants that generate 50 MW or more. For projects that will generate more than 50 MW but less than 100 MW, the CEC may grant the proposed project an exemption from the CEC's exclusive jurisdiction whereby local permitting entities would obtain jurisdiction over the approval of the site and related facility. The CEC acts as the CEQA lead agency these projects projects, and must find that a proposed project would not create a substantial adverse impact on the environment or on energy resources in order to approve the project or grant it an SPPE. Air districts maintain their authorities under the state and federal Clean Air Acts to review and permit these SPPE projects, which cannot be overridden by the CEC.

   Data centers are facilities that house large volumes of high-performance computers, storage systems, and computing infrastructure. They are crucial for maintaining internet-based communications and providing certain services, including virtually all cloud-based computing. These systems require continuous power and cooling, which requires a substantial amount of electricity. According to the U.S. Department of Energy, data centers consume 10 to 50 times more energy than similarly sized commercial office buildings. The CEC estimated that data centers accounted for 2% of California's electricity demand in 2019. Since then, the technology sector has seen a boom in artificial intelligence (AI) and a corresponding growth in load. As a result, grid planners expect electricity consumption by data centers to accelerate more rapidly over the next five years and beyond.

   Since the establishment of the SPPE process in the 1980s, the CEC has provided a total of 36 SPPEs, including 17 for data centers' backup power generation. All of the SPPE applications filed since 2011 have been for backup generating facilities serving data centers, and all but one of the 17 data center exemptions were provided for diesel generator systems. Fuel costs, fuel availability, and energy capacity shape the selection of diesel generators over lower and zero-emitting backup power systems.

2) **Author's statement**:

   > Recognizing the critical demand for data processing capabilities, SB 1298 allows infrastructure development to keep pace with advancements in cloud computing. The current vacancy rate of data centers in Silicon Valley is a mere 1.6%, underscoring the need to expand capacity to meet the growing demand. By streamlining the approval process for data centers and maintaining clear guidelines for development, SB 1298 will ensure that innovation is thriving and sustainable in Silicon Valley and across California. Expanding our data center infrastructure is essential for the continued growth and competitiveness of our tech industry, supporting and expanding the economy throughout California in many sectors.

3) **Suggested amendment**. To address opposition concerns and confirm the authority of air districts in the review of projects eligible for the SPPE under this bill, *the author and the committee may wish to consider* adding the following language to subdivision (b):

Nothing in this subdivision affects the authority of the applicable air pollution control district or air quality management district pursuant to Division 26 of the Health and Safety Code or the federal Clean Air Act.

Note, this amendment may be adopted in the Labor and Employment or Appropriations Committee due to timing issues.

4) **Triple referral**. This bill passed the Utilities and Energy Committee on June 19 by a vote of 14-0. Should it pass this committee, it will be heard by the Labor and Employment Committee on July 2.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Association of Electrical Workers
California State Pipe Trades Council
Data Center Coalition
Microsoft Corporation
Silicon Valley Leadership Group
State Building & Construction Trades Council of California
Western States Council of Sheet Metal Workers

Opposition

American Lung Association in California
Bay Area Air Quality Management District (unless amended)
Clean Power Campaign
Coalition for Clean Air
Environmental Defense Fund
South Coast Air Quality Management District
Union of Concerned Scientists
Western Electrical Contractors Association

Analysis Prepared by: Lawrence Lingbloom / NAT. RES. /

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Isaac G. Bryan, Chair
SB 1324 (Limón) – As Amended April 10, 2024

SENATE VOTE: 38-0

SUBJECT: California Ocean Science Trust: agreements.

SUMMARY: Authorizes the Natural Resources Agency (NRA), the California Environmental Protection Agency (CalEPA), or a department, board, commission, or conservancy within NRA or CalEPA to enter into a direct agreement with the Ocean Science Trust (OST) for the delivery of peer reviews, technical guidance, or scientific reports and analyses.

EXISTING LAW:

1) Authorizes the Secretary of the Natural Resources Agency (NRA) to enter into an agreement with an existing nonprofit corporation with broad experience as the trustee of public funds, court-ordered mitigation funds, or other funds used to assist public agencies in carrying out their responsibilities to establish a nongovernmental trust, to be known as the OST. (Public Resources Code (PRC) 36990)

2) Establishes the purposes of the OST to seek funds for California ocean resource science projects, emphasizing the development of new funding sources; to fund California ocean resource science projects that help fulfill the missions of the state's ocean resource management agencies; to encourage coordinated, multiagency, multi-institution approaches to ocean resource science to deliver actionable science solutions that accelerate equitable climate change adaptation, among other responsibilities.

FISCAL EFFECT: According to the Senate Appropriations Committee, this bill will result in negligible state costs.

COMMENTS:

1) **Author's statement**:

> Understanding the dynamics of biodiversity and ecological health in the ocean through research is instrumental in maintaining the balance between economic growth and environmental conservation. Organizations such as the Ocean Science Trust help support this important work through their research. SB 1324 would enable California Natural Resources and Environmental Protection Agencies to access the best available information by contracting with Ocean Science Trust for further science services such as peer reviews, technical guidance, or reports.

2) **Ocean Science Trust**. Created by the California Legislature in 2000 pursuant to the California Ocean Resources Stewardship Act (CORSA), OST encourages coordinated, multi-agency, multi-institution approaches to translating and applying ocean science to management and policy. It is a 501(c) 3 non-profit organization supported by the state, academic institutions, federal government, philanthropy, and private industry.

In 2004, the OPC was given explicit authority to contract with the OST, which has been an important resource to the OPC, but no other state entity is explicitly authorized to contract with the OST for scientific studies.

When OST was first established, the Legislature knew there were a number of factors involved in careful ocean resource management. Over the last two decades, the impacts of climate change have added new challenges to that list. To complicate things further, those challenges fall within the jurisdictions of many departments outside the NRA, including the Air Resources Board, the Department of Food and Agriculture, the California Coastal Commission, the State Lands Commission, Department of Transportation, and the Department of Insurance, to name a few.

OST advances a constructive role for science in decision-making, and access to their scientific knowledge could benefit the programmatic decision making at other state agencies. But, without an ability to directly contract for the science and research services that OST provides, other state agencies and departments are not able to benefit from a resource that informs best available outcomes.

AB 2287 (Stone), Chapter 208, Statutes of 2021, updated CORSA to provide clear authority for the OST to enter into contracts with agencies and departments outside NRA.

3) **Double referral.** This bill was heard in Assembly Water, Parks, and Wildlife Committee on June 25 and approved 13-0.

4) **This bill**. AB 1324 statutorily authorizes the 43 entities within NRA and the six entities within CalEPA to directly contract with OST for peer reviews, technical guidance, or scientific reports and analyses.

REGISTERED SUPPORT / OPPOSITION:

Support

Monterey Bay Aquarium Foundation
Ocean Science Trust

Opposition

None on file

Analysis Prepared by: Paige Brokaw / NAT. RES. /

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Isaac G. Bryan, Chair
SB 1420 (Caballero) – As Amended June 24, 2024

SENATE VOTE: 30-1 (not relevant)

SUBJECT: Hydrogen

SUMMARY: Eliminates or revises several conditions that currently apply to hydrogen claimed as "renewable" for purposes of the 2006 law requiring 33.3% of hydrogen dispensed at public fueling stations to be renewable. Provides for expedited California Environmental Quality Act (CEQA) and California Energy Commission (CEC) review for hydrogen production facilities that have received state or federal funding.

EXISTING LAW:

1) SB 1505 (Lowenthal), Chapter 877, Statutes of 2006, requires the Air Resources Board (ARB) to adopt hydrogen fuel regulations that ensure state funding for the production and use of hydrogen fuel contributes to the reduction of the emissions of greenhouse gases (GHG), criteria air pollutants, and toxic air contaminants, and ensure the production and direct use of hydrogen fuel in motor vehicles also contributes to a reduced dependence on petroleum. SB 1505 requires no less than 33.3% of the hydrogen produced for, or dispensed by, fueling stations that receive state funds be made from eligible renewable energy resources, as defined in the California Renewables Portfolio Standard (RPS). (Health and Safety Code (HSC) 43869)

2) SB 149 (Caballero), Chapter 60, Statutes of 2023, establishes procedures for expedited administrative review (i.e., concurrent preparation) and judicial review (i.e., requiring the courts to resolve lawsuits within 270 days, to the extent feasible) for four categories of public and private "infrastructure" projects, including the following energy infrastructure project types:

   a) Renewable energy generation eligible under the RPS (excluding resources that utilize biomass fuels);

   b) New energy storage systems of 20 megawatts or more (excluding specified pumped hydro facilities);

   c) Manufacture, production, or assembly of specified energy storage and renewable energy components;

   d) Electric transmission facilities (with projects in the Coastal Zone subject to regulation by the Coastal Commission).

   SB 149 explicitly excludes projects utilizing hydrogen as a fuel. (Public Resources Code (PRC) 21189.80 *et seq.*)

3) AB 205 (Budget Committee), Chapter 61, Statutes of 2022, authorizes eligible projects to "opt-in" to an expedited, 270-day CEC process for CEQA review until June 30, 2029, in lieu

of review by the appropriate local lead agency. These opt-in permitting procedures apply to the following energy-related projects:

a) A solar photovoltaic or terrestrial wind electrical generating powerplant with a generating capacity of 50 MW or more.

b) An energy storage system capable of storing 200 megawatthours or more of electrical energy.

c) A stationary electrical generating powerplant using any source of thermal energy, with a generating capacity of 50 MW or more, excluding any powerplant that burns, uses, or relies on fossil or nuclear fuels.

d) A project for the manufacture, production, or assembly of an energy storage, wind, or photovoltaic system or component, or specialized products, components, or systems that are integral to renewable energy or energy storage technologies, for which the applicant has certified that a capital investment of at least $250 million will be made over a period of five years.

e) An electric transmission line carrying electric power from an eligible solar, wind, thermal, or energy storage facility to a point of junction with any interconnected electrical transmission system.

AB 205 provides the CEC exclusive power to certify the site and related facilities, and provides that the CEC's approval preempts state, local, or regional authorities, except for the authority of the State Lands Commission to require leases and receive lease revenues, if applicable, or the authority of the California Coastal Commission, the San Francisco Bay Conservation and Development Commission, the State Water Resources Control Board, or the applicable regional water quality control boards, and, for manufacturing facilities, the authority of local air quality management districts or the Department of Toxic Substances Control. (PRC 25545 *et seq.*)

4) AB 209 (Budget Committee), Chapter 251, Statutes of 2022, requires the CEC to establish and administer the Hydrogen Program to provide financial incentives to eligible in-state hydrogen projects for the demonstration or scale-up of the production, processing, delivery, storage, or end use of hydrogen derived from water using, or produced from, eligible renewable energy resources. (PRC 25664.1)

5) The RPS requires utilities and other retail sellers of electricity to procure 60% of their retail electricity sales from eligible renewable energy resources by 2030 and thereafter, including interim targets of 33% by 2020, 44% by 2024, and 52% by 2027. (Public Utilities Code (PUC) 399.11 *et seq.*)

6) Provides that RPS-eligible generation facilities must use biomass, solar thermal, photovoltaic, wind, geothermal, renewable fuel cells, small hydroelectric, digester gas, limited non-combustion municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current. (PRC 25741)

7) Establishes a policy that RPS-eligible renewable energy resources and zero-carbon electric generating facilities will supply 100% of electricity procured to serve California customers by December 31, 2045, and directs the Public Utilities Commission, CEC, and ARB to incorporate this policy into all relevant planning and programs. (PUC 454.53)

8) Declares the policy of the state to achieve net zero GHG emissions as soon as possible, but no later than 2045, and to achieve and maintain net negative GHG emissions thereafter. (HSC 38562.2)

THIS BILL:

1) Revises SB 1505 to permit ARB to determine an alternative to the 33.3% renewable requirement, eliminate the renewable requirement for hydrogen that is produced or dispensed through stations that are not state funded, eliminate the prohibition on double counting renewable resources also claimed in the Renewables Portfolio Standard, eliminate specified emission reduction requirements, and eliminate specified ARB reporting and process requirements.

2) Strikes the exclusion of hydrogen-fueled projects from SB 149 and adds a hydrogen production facility and associated onsite storage and processing facilities that have received funding from the state or federal government on or before January 1, 2032. Also revises SB 149's exclusion of biomass-fueled projects so that it only excludes resources that *combust* biomass fuels.

3) Adds to the AB 205 process a hydrogen production facility and associated onsite storage and processing facilities that have received funding from the state or federal government on or before January 1, 2032.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Background**. The environmental impacts of hydrogen, including effects on climate and air quality, can range from very favorable to very unfavorable, depending on production, delivery, end use, and the fuel the hydrogen is replacing. For example, hydrogen produced with fossil fuels and used in a combustion application that replaces a renewable energy source is not a good environmental solution. However, hydrogen produced with zero-carbon energy and used in a zero-emission application that replaces diesel combustion has clear climate and air quality benefits.

   The source of the hydrogen and the source of the energy used to split hydrogen plays a significant role in determining the lifecycle emissions associated with hydrogen use. Today, there are several means of hydrogen production and it is likely that these will evolve as technology advances.

   Green hydrogen can result in almost no GHG emissions. Produced by electrolyzing water, green hydrogen is made using 100% renewable electricity to split hydrogen from water molecules. Less than 0.1% of hydrogen production globally comes from water electrolysis.

Ninety six percent of the hydrogen today is considered to be gray hydrogen. Gray hydrogen is produced by heating natural gas, or methane, with steam to form syngas (a mixture of hydrogen and carbon monoxide and carbon dioxide). The syngas is separated to produce hydrogen. This process results in a relatively high release of GHGs.

Blue hydrogen attempts to mitigate some of the GHG emission release during the production of gray hydrogen by pairing production with carbon capture and storage. However, not all carbon dioxide emissions can be captured, and some carbon dioxide is emitted during the production of blue hydrogen. Carbon capture increases the cost and inefficiency of the production of blue hydrogen.

Currently hydrogen branded "renewable" is produced mainly by steam methane reformation of biomethane from North American landfills. Since 2008, SB 1505 has required 33.3% of the hydrogen produced for fueling stations that receive state funds be made from eligible renewable energy resources. However, compliance is achieved largely on paper, through the use of credits from out of state renewable energy sources, rather than direct production and use of renewable hydrogen in California.

Both California and the federal government have taken steps to encourage the development of clean hydrogen. In 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA), which included $8 billion to the federal Department of Energy (DOE) to establish regional clean hydrogen hubs across the nation. AB 157 (Budget Committee), Chapter 570, Statutes of 2022, authorized GO-Biz to take steps to prepare and submit an application to receive funding from the regional clean hydrogen hubs program. This legislation led to the establishment of California's clean hydrogen hub administrator, known as the Alliance for Renewable Clean Hydrogen Energy Systems (ARCHES).

In addition to funding provided under the IIJA, President Biden also signed the Inflation Reduction Act (IRA). The IRA provides a number of production tax credits for certain types of clean energy and manufacturing acceleration projects. The IRA tasked the federal Treasury Department with developing a federal tax credit to incentivize the production of clean hydrogen, otherwise known as the 45V production tax credit. The 45V tax credit is structured to provide up to $3 per kilogram of hydrogen produced, with higher credits granted to lower-carbon hydrogen. In December 2023, the Treasury Department released its draft proposal, which included a version of the "three pillars," which are principles intended to ensure that hydrogen production supports decarbonization and does not result in an increase in emissions. These pillars include the following:

- Additionality/Incrementality: the hydrogen must be produced from new units of renewable electric generation to prevent hydrogen from diverting clean energy resources away from the grid.
- Deliverability: the hydrogen must be regionally deliverable to ensure that the hydrogen is not being produced from dirty resources that cannot be verified or are so far away as to never being delivered to the facility.
- Hourly Matching: the hydrogen's production must match a clean power supply on an hourly basis to ensure that hydrogen production does not increase demand for fossil fuel generation.

The generous 45V tax credit has the potential to shape the growth of the hydrogen industry. However, even as this industry is drawing these incentives to scale up production, the development of the 45V tax credit has also elevated a debate about the hydrogen industry's ability and willingness to comply with the three pillars. Several researchers and environmental organizations have asserted that without the three pillars, hydrogen production could lead to substantial grid emissions and reliability impacts by increasing consumption of electricity generated from fossil fuels, including fossil electricity used to meet peak demand when renewable generation declines. To the extent that hydrogen increases fossil fuel consumption, decarbonization benefits associated with using that hydrogen would be limited.

2) **Author's statement**:

> California has some of the finest educational research institutions, the most ambitious climate goals in the country and the highest number of electric vehicles and residential rooftop solar in the country and billions of dollars in tax payer funds have been invested in industries to support our climate change goals. Still, California needs a diverse set of solutions to ensure that we can achieve our carbon reduction goals by 2045. SB 1420 will accelerate clean hydrogen production to deeply decarbonize industry, transportation, and make our electric grid more reliable while stabilizing costs for consumers and creating high road jobs to transition workers to the new green economy.

3) **Updating the 2006 renewable hydrogen law**. The June 24 amendments to this bill replace Section 1 and significantly change the focus of the bill. Section 1 now revises the renewable hydrogen requirements enacted by SB 1505 in 2006, which were intended at the time to track requirements on electricity imposed by the RPS. However, SB 1505 never included comparable delivery requirements as the RPS, and the result has been that virtually all hydrogen dispensed in California is produced from fossil fuels. Also, the RPS has been updated multiple times since 2006 to increase its ambition, with a current target of 60% by 2030. SB 1505 seems ripe for an update.

   However, this bill's amendments to SB 1505 do not increase its targets or otherwise make the law comparable to the RPS. Instead, the amendments make the renewable requirements of SB 1505 significantly less stringent, including by (1) permitting ARB to determine an unspecified alternative to the 33.3% renewable requirement, (2) eliminating the renewable requirement for hydrogen that is produced or dispensed through stations that are not state funded, (3) eliminating the prohibition on double counting renewable resources also claimed in the RPS, and (4) eliminating certain emission reduction requirements.

   The bill does add an encouraging statement that it is the policy of the state that hydrogen produced for fuel cell vehicles have a carbon intensity equal to grid electricity used to charge electric vehicles. However, this policy includes a significant exception ("To the extent it does not inhibit the state's ability to access federal incentives"). Also, it is not connected to implementation of the operative provisions of the bill or any other law. Therefore, the effect of this policy statement is unclear.

   The author and the committee may wish to consider increasing the stringency of the renewable hydrogen fuel standard in Section 1 to bring it up to par with the RPS, or striking Section 1 from the bill.

4) **Hydrogen project streamlining may be broader than intended**. For energy project streamlining, both SB 149 and AB 205 were focused on renewable energy and energy storage – zero-emission facilities consistent with established renewable and zero-carbon goals. This bill adds hydrogen production, which stands to reason to the extent the construction of new clean hydrogen projects is being supported by the state-funded Hydrogen Program and/or ARCHES. However, this bill is not limited to the renewable/non-fossil focus of the Hydrogen Program and ARCHES. *The author and the committee may wish to consider* amending the bill to clarify that an eligible hydrogen project does not use fossil fuel as the feedstock or energy source for production of hydrogen. Alternatively, the same standard included in AB 209 for the Hydrogen Program (HSC 25664) could be used:

   For purposes of this article, hydrogen projects that produce, process, deliver, store, or use hydrogen derived from water using eligible renewable energy resources, as defined in Section 399.12 of the Public Utilities Code, or produced from these eligible renewable energy resources, shall be eligible for financial incentives pursuant to this article.

   In addition, the state or federal funding condition in this bill seems overly broad. Read literally, it would apply to a project that has received any amount of state or federal funding, for any purpose, at any point in time before 2032. *The author and the committee may wish to consider* amending the bill to limit eligibility to a new facility that has received a specific award of funds after January 1, 2024 to support development of the facility.

5) **Adding hydrogen facilities to AB 205 inappropriately preempts air districts**. As noted above, the AB 205 process gives the CEC authority to preempt state, local, or regional authorities, with specified exceptions. For the most part, AB 205 projects would not be major sources of air pollution. The manufacturing facilities category is an exception, therefore AB 205 preserved the authority of local air quality management districts and the Department of Toxic Substances Control (see PRC 25545.1(b)(3)). *The author and the committee may wish to consider* if the same standard should apply to hydrogen facilities.

6) **Discrepancy in mitigation for projects in disadvantaged communities**. A key provision of SB 149 was a requirement to protect disadvantaged communities from the impacts of eligible projects (see PRC 21189.82(c)). This provision applies to a hydrogen facility that applies for streamlining under Section 2 of this bill, but it does not apply to the same project that applies for streamlining under Section 3. The author and the committee may wish to consider adding a comparable provision to this bill, as follows:

   25545.14. An applicant applying for certification of a hydrogen production facility under this chapter shall do all of the following:
   (a) Avoid or minimize significant environmental impacts in any disadvantaged community.
   (b) If measures are required pursuant to Division 13 (commencing with Section 21000) to mitigate significant environmental impacts in a disadvantaged community, mitigate those impacts consistent with that division, including Section 21002. Mitigation measures required under this section shall be undertaken in, and directly benefit, the affected community.
   (c) Enter into a binding and enforceable agreement to comply with this section before the commission's certification of the environmental impact report for the project.

7) **Double referral**. This bill passed the Utilities and Energy Committee, with amendments, by a vote of 13-0 on June 19.

REGISTERED SUPPORT / OPPOSITION:

Support

Abound Food Care
Agricultural Energy Consumers Association
AltaSea
Antelope Valley Community College District
Bioenergy Association of California
BizFed Central Valley
Boys & Girls Clubs of The Los Angeles Harbor
Brotherhood Crusade
Building Industry Association of Southern California
California Association of Sanitation Agencies
California Biomass Energy Alliance
California Center for Public Policy
California Chamber of Commerce
California Construction & Industrial Materials Association
California Hydrogen Business Council
California Hydrogen Car Owners Association
California Hydrogen Coalition
California Renewable Transportation Alliance
California State University, Bakersfield
Capstone Green Energy
Center for Transportation and the Environment
City of Visalia
Clean Energy
Clean Energy Institute at University of California Irvine
County of Fresno
Dana Point Chamber of Commerce
Desert Valleys Builders Association
Glendora Chamber of Commerce
Greater Irvine Chamber of Commerce
Greater Ontario Business Council
Green Hydrogen Coalition
Imperial Valley Economic Development Corporation
Iwatani
Joby Aero
Latino Restaurant Association
LAX Coastal Chamber of Commerce
Los Angeles Area Chamber of Commerce
Los Angeles County Business Federation
Los Angeles County Sanitation Districts
Mega Toys
Monarch
Moreno Valley Chamber of Commerce

Murrieta Temecula Group
National Fuel Cell Research Center
North Orange County Chamber of Commerce
Omnitrans - San Bernardino County Public Transit
Orange County Business Council
Palo Verde Valley Transit Agency
Reedley College
Renewable Natural Gas Coalition
Resource Recovery Coalition of California
San Bernardino International Airport
San Diego Gas and Electric Company
Santa Barbara South Coast Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Southern California Gas Company
The Transport Project
Toyota Motor Company
United Chambers of Commerce
Valley Industry and Commerce Association
West Kern Community College District
Westside Council of Chambers of Commerce
Yosemite Clean Energy

Opposition

350 Bay Area Action
350 Humboldt
350 Southland Legislative Alliance
Action Asian Pacific Environmental Network
California Environmental Justice Alliance (CEJA) Action
California Environmental Voters
Californians Against Waste
Center for Biological Diversity
Center for Community Action and Environmental Justice
Center on Race, Poverty & the Environment
Cleanearth4kids.org
Climate Action California
Communities for a Better Environment
Democrats of Rossmoor
Earthjustice
Environmental Working Group
Leadership Counsel for Justice & Accountability
Natural Resources Defense Council
Physicians for Social Responsibility - Los Angeles
Planning and Conservation League
Rural County Representatives of California (RCRC) (unless amended)
Sierra Club California
Sustainable Rossmoor
The Climate Center
The Greenlining Institute

The Utility Reform Network (TURN) (unless amended)

Analysis Prepared by: Lawrence Lingbloom / NAT. RES. /

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Isaac G. Bryan, Chair
SJR 12 (Min) – As Introduced February 13, 2024

SENATE VOTE: 29-2

SUBJECT: Oil and gas leases: bankruptcy

SUMMARY: Resolves that the Legislature urges the President of the United States and the United States Congress to (1) modify bankruptcy rules to treat the plug and abandonment and lease restoration obligations for debtor held oil and gas leases, quitclaimed or accepted, as nondischargeable obligations, and (2) modify bankruptcy rules to provide, in the event of liquidation and termination of oil and gas leases under the United States Bankruptcy Code, that priority is given to plug and abandonment and restoration obligations, to protect the environment, over all secured creditor claims.

EXISTING LAW:

1) Establishes the Division of Geologic Energy Management (CalGEM) in the Department of Conservation, under the direction of the State Oil and Gas Supervisor (supervisor), who is required to supervise the drilling, operation, maintenance, and abandonment of oil and gas wells, as provided. (Public Resources Code (PRC) 3000 *et seq*.)

2) Establishes certain bonding and other methods of financial surety to help indemnify the state in the event the operator is no longer viable and the state becomes responsible to plug-and-abandon the well, decommission associated equipment and infrastructure, and remediate the site. (PRC 3204, 3205, among others)

3) Establishes the State Lands Commission (SLC) in the Natural Resources Agency and has exclusive jurisdiction over ungranted tidelands and submerged lands owned by the state.

THIS BILL:

1) Resolves that the Legislature of the State of California respectfully urges the President of the United States and the United States Congress to:

    a) Modify bankruptcy rules to treat the plug and abandonment and lease restoration obligations for debtor held oil and gas leases, quitclaimed or accepted, as nondischargeable obligations; and,

    b) Modify bankruptcy rules to provide, in the event of liquidation and termination of oil and gas leases under Chapters 7 and 11 of the United States Bankruptcy Code (11 U.S.C. Sec. 101 *et seq*.), that priority is given to plug and abandonment and restoration obligations, to protect the environment, over all secured creditor claims.

2) Resolves that the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, the

Majority Leader of the Senate, and each Senator and Representative from California in the Congress of the United States, and to the author for appropriate distribution.

FISCAL EFFECT: This measure is non-fiscal.

COMMENTS:

1) **Oil & gas in California**. Commercial oil production started in the middle of the 19th century. In 1929, at the peak of oil development in the Los Angeles Basin, California accounted for more than 22% of total world oil production. California's oil production reached an all-time high of almost 400 million barrels in 1985 and has generally declined since then. Despite that decline, California remains the third largest oil and gas producing state, and as of 2022, produced 3% of the crude oil of the nation. That same year, California supplied about 26% of all oil going into the state's 17 oil refineries.

   An idle well is a well that has not been used for two years or more and has not yet been properly plugged and abandoned (sealed and closed). According to CalGEM, there are more than 37,000 known idle wells in California, all of which will eventually come to their end of life. Idle wells can become orphan wells if they are deserted by insolvent operators. When this happens, there is the risk of shifting responsibilities and costs for decommissioning the wells to the state. As of December 31, 2021, CalGEM had identified more than 5,300 wells as orphan or potentially orphan. The cost to plug a well is highly variable depending on well and facility condition, size, location, and other factors, but a recent CalGEM analysis found the average cost to be about $95,000 per well.

   In August 2022, California was awarded $25 million in initial grant funding from the federal government's orphan well program authorized in the bipartisan Infrastructure Investment and Jobs Act. California is potentially eligible for an additional $140 million in future grants. These are taxpayer dollars that would be used to plug and abandon a well financially deserted by its owner.

2) **Bankruptcy**. In 2016, Rincon Island Limited Partnership (RILP), a lessee of state oil and gas leases offshore of the County of Ventura, filed for bankruptcy in federal court. Later, in 2017, RILP quitclaimed their three leases to the state. RILP failed to fulfill their obligations to plug-and-abandon 75 oil and gas wells and decommission two related oil production facilities.

   In 2017, Venoco, LLC, also a lessee of state oil and gas leases offshore of the County of Santa Barbara, surrendered its leases to the state and then declared bankruptcy in the Delaware. Venoco failed to plug-and-abandon 32 wells across its leases or to decommission Platform Holly and its associated facilities.

   The Venoco and RILP bankruptcies allowed the two companies to avoid the costs of lease and permit compliance and decommissioning. Due to the bankruptcy protections provided in federal law, the state, largely SLC as lessor, ultimately had to take over the plugging-and-abandonment of wells, and decommissioning and site restoration efforts in order to ensure public and environmental health and safety.

The Venoco and RILP bankruptcies have cost the state's taxpayers more than $200 million from the General Fund thus far. The state is likely to incur significant additional expenses associated with the final disposition of Platform Holly and Rincon Island.

In 2020, California Resources Corporation (CRC), the state's largest oil and gas company, filed for Chapter 11 bankruptcy protection and sought relief from $5 billion in debt and interest payments. Under a Chapter 11 restructuring filed in U.S. Bankruptcy Court for the Southern District in Texas, CEC's plan cancelled pre-existing debt and consolidated its ownership in the Elk Hills power plant and cryogenic gas plant.

On the heels of the CRC bankruptcy case, Haynes and Boone, a law firm that tracks bankruptcies in American and Canadian oilfields, reported that 248 oil and gas producers carrying more than $175 billion in debt entered bankruptcy between 2015-2020, with 49 in 2019-2020 alone.

3) **Bankruptcy rules**. Bankruptcy is covered under Chapters 7 and 11 in the United States Bankruptcy Code (11 United States Code Sec. 101 *et seq*.). Chapter 11 generally provides for reorganization, usually involving a corporation or partnership. A Chapter 11 debtor usually proposes a plan of reorganization to keep its business alive and pay creditors over time. Usually, the debtor remains "in possession," has the powers and duties of a trustee, may continue to operate its business, and may, with court approval, borrow new money. Chapter 7 deals with liquidation; it wipes out most of a corporation's (or person's) debts and, in return, the corporation may have to surrender some of its property. Chapter 7 doesn't include a repayment plan; debts are simply eliminated forever.

   The resolution finds that despite active participation in past bankruptcies, the State of California will likely receive little to no compensation from the debtor's estates for the public monies spent to safely manage and abate the facilities deserted by the debtors. The author expressed concern in the resolution that other companies could seek bankruptcy protection, requiring future plug and abandonment by the State of California, without compensation. The risk remains that oil and gas companies could, in the future, employ the strategy of filing bankruptcy to circumvent their decommissioning responsibilities, thereby shifting the costs of remediation and abatement to California taxpayers.

4) **SJR 12**. Since bankruptcy is federally regulated, this resolution would urge the federal government to modify bankruptcy rules to treat the plug and abandonment and lease restoration obligations for debtor held oil and gas leases, quitclaimed or accepted, as nondischargeable obligations, and modify bankruptcy rules to provide, in the event of liquidation and termination of oil and gas leases under the United States Bankruptcy Code, that priority is given to plug and abandonment and restoration obligations, to protect the environment, over all secured creditor claims.

REGISTERED SUPPORT / OPPOSITION:

Support

Azul
California Coastal Protection Network
California Environmental Voters

California State Lands Commission
Climate Action California
Environment California
Environmental Defense Center
Orange County Coastkeeper
Surfrider Foundation

Opposition

None on file

Analysis Prepared by: Paige Brokaw / NAT. RES. /