California State Assembly

NATURAL RESOURCES

LUZ RIVAS
CHAIR

AGENDA

Monday, April 10, 2023
2:30 p.m. -- State Capitol, Room 447

BILLS HEARD IN SIGN-IN ORDER

** = Bills Proposed for Consent

1.	AB 65	Mathis	Energy: nuclear generation facilities.
2.	AB 80	Addis	Coastal resources: ocean research: West Coast Offshore Wind Science Entity.
3.	AB 356	Mathis	California Environmental Quality Act: aesthetic impacts.
4.	AB 408	Wilson	Climate-resilient Farms, Sustainable Healthy Food Access, and Farmworker Protection Bond Act of 2024.
5.	**AB 573	Garcia	Organic waste: meeting recovered organic waste product procurement targets.
6.	**AB 585	Robert Rivas	California Global Warming Solutions Act of 2006: literature review and progress report.
7.	AB 593	Haney	Carbon emission reduction strategy: building sector.
8.	AB 625	Aguiar-Curry	Forest biomass: management: emissions: energy.
9.	AB 673	Bennett	Hydrogen-fueling stations: preference.
10.	**AB 748	Villapudua	California Abandoned and Derelict Commercial Vessel Program.
11.	AB 891	Irwin	Beverage container recycling: nonpetroleum materials.
12.	AB 1159	Aguiar-Curry	California Global Warming Solutions Act of 2006: natural and working lands: market-based compliance mechanisms.
13.	AB 1267	Ting	Zero-emission vehicle incentive programs: gasoline superusers.
14.	**AB 1284	Ramos	Tribal ancestral lands and waters: cogovernance and comanagement agreements.
15.	AB 1305	Gabriel	Voluntary carbon offset disclosures.
16.	**AB 1307	Wicks	California Environmental Quality Act: noise impact: residential projects.
17.	AB 1449	Alvarez	Affordable housing: California Environmental Quality Act: exemption.
18.	AB 1534	Irwin	Methane emissions: municipal solid waste landfills: remote sensing data.
19.	AB 1686	Grayson	Ports and harbors: Martinez Marina.
20.	AB 1705	McKinnor	Solid waste facilities: state policy goals.
21.	**AB 1706	Bonta	Public trust lands: Encinal Terminals public trust lands: City of Alameda.

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 65 (Mathis) – As Amended February 14, 2023

SUBJECT: Energy: nuclear generation facilities

SUMMARY: Exempts "small modular reactors" (SMR, a nuclear reactor up to 300 megawatts per unit) from the conditional moratorium on permitting new nuclear fission powerplants in California. Requires the Public Utilities Commission to adopt a plan to increase the procurement of electricity generated from nuclear facilities and to phase out the procurement of electricity generated from natural gas facilities.

EXISTING LAW prohibits any new nuclear fission power plant until the California Energy Commission (CEC) has determined that technologies exist for the reprocessing of nuclear fuel rods and the disposal of high-level nuclear waste. (Public Resources Code 25524.1 and 25524.2)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Background**. Since 2012, only one of the four nuclear power plants developed in California by electric utilities has continued to operate: PG&E's Diablo Canyon powerplant. Two others, PG&E's Humboldt Bay plant and SMUD's Rancho Seco plant, have been decommissioned. Developed in the early 1960's, Humboldt Bay was shut down in 1976 for refueling and never restarted due to seismic and cost issues. Developed in the early 1970's, Rancho Seco was shut down in 1989 in response to voter referendum. The fourth, the San Onofre Nuclear Generating Station (SONGS) jointly owned by Southern California Edison and San Diego Gas and Electric, was closed in 2012 for repairs, permanently retired in 2013, and is in the process of decommissioning. High-level radioactive waste from these plants' operation remains stored on site.

   In 1976, the Legislature passed AB 2820 (Goggin) and AB 2822 (Nestande) to establish a moratorium on permitting new nuclear powerplants. Since that time, the CEC has not found that a high-level waste disposal technology has been demonstrated or approved. Likewise, the U.S. Nuclear Regulatory Commission (NRC), which regulates commercial nuclear power plants and other uses of nuclear materials, has never made a finding that a demonstrated technology exists for either nuclear fuel rod preprocessing plants or the disposal of high-level nuclear waste.

   The moratorium was challenged by PG&E and ultimately reviewed by the U.S. Supreme Court. In *PG&E v. Energy Commission*, 461 U.S. 190 (1983), the Supreme Court upheld California's moratorium law. A key basis of the Court's decision was a division of authority to make safety determinations (federal) and economic determinations (state). The Court found that the absence of a permanent waste disposal site could lead to unknown negative economic consequences. So the moratorium has remained in effect and no new nuclear plant has been proposed in California since the Diablo Canyon and SONGS units that were in the permitting pipeline at the time the moratorium was enacted.

The federal government is responsible for providing for the permanent disposal of high-level radioactive waste and spent nuclear fuel and was required to begin accepting spent nuclear fuel from nuclear power plants by 1998. However, although Congress selected the Yucca Mountain site in Nevada for a permanent deep geologic repository for the disposal of spent nuclear fuel, the federal waste disposal program has been plagued with technical and legal challenges, managerial problems, licensing delays, persistent weaknesses in quality assurance for the program, and increasing costs.

No repository or reprocessing facility for spent nuclear fuel has been licensed in the U.S. The federal waste disposal program is paid for by the nuclear electricity generators and waste owners. Under the provisions of the federal Nuclear Waste Policy Act, utilities pay regular fees to the Nuclear Waste Fund to pay for siting, construction and operating a federal waste repository. California ratepayers have paid billions to fund a repository that has never been built. Reprocessing (the separation of spent fuel into high-level wastes and reusable fuel) remains substantially more expensive than waste storage and disposal and has adverse implications for the U.S. effort to halt the proliferation of nuclear weapons.

2) **Author's statement**:

> AB 65 will allow the state to capitalize on and maximize the economic, energy security, and environmental benefits of SMRs whilst simultaneously phasing out a reliance on electricity generated from natural gas facilities.

3) **Is it safer or more economical to manage the spent fuel from SMRs**? Although the author has not offered a specific rationale for exempting SMRs, presumably the smaller size and/or more modern design might minimize concerns with the cost and safety of managing the nuclear waste.

However, writing in opposition, the Alliance for Nuclear Responsibility points to a research article, *Nuclear waste from small modular reactors*, published last May in the Proceedings of the National Academy of Sciences. Quoting from the abstract:

> Small modular reactors (SMRs; i.e., nuclear reactors that produce <300 MW_{elec} each) have garnered attention because of claims of inherent safety features and reduced cost. However, remarkably few studies have analyzed the management and disposal of their nuclear waste streams. Here, we compare three distinct SMR designs to an 1,100-MW_{elec} pressurized water reactor in terms of the energy-equivalent volume, (radio-) chemistry, decay heat, and fissile isotope composition of (notional) high-, intermediate-, and low-level waste streams. Results reveal that water-, molten salt–, and sodium-cooled SMR designs will increase the volume of nuclear waste in need of management and disposal by factors of 2 to 30. The excess waste volume is attributed to the use of neutron reflectors and/or of chemically reactive fuels and coolants in SMR designs. That said, volume is not the most important evaluation metric; rather, geologic repository performance is driven by the decay heat power and the (radio-)chemistry of spent nuclear fuel, for which SMRs provide no benefit. SMRs will not reduce the generation of geochemically mobile ^{129}I, ^{99}Tc, and ^{79}Se fission products, which are important dose contributors for most repository designs. In addition, SMR spent fuel will contain relatively high concentrations of fissile nuclides, which will demand novel approaches to evaluating criticality during storage and disposal. Since waste stream properties are

influenced by neutron leakage, a basic physical process that is enhanced in small reactor cores, SMRs will exacerbate the challenges of nuclear waste management and disposal. https://www.pnas.org/doi/full/10.1073/pnas.2111833119

4) **Prior legislation**.

AB 1035 (DeVore) exempted from the CEC power plant certification laws the first nuclear power plant to obtain an early site permit from the NRC. Failed in this Committee on April 20, 2009.

AB 1776 (DeVore) repealed the moratorium on the construction of new nuclear fission power plants in California and established new conditions on siting new nuclear plants related to seismic hazard, cooling water outflow and waste storage. Failed in this Committee on April 7, 2008.

AB 2788 (DeVore) exempted from the CEC power plant certification laws the first nuclear power plant to obtain an early site permit from the NRC. Failed in this Committee on April 7, 2008.

AB 719 (DeVore) repealed the moratorium on the construction of new nuclear fission power plants in California. Failed in this Committee on April 16, 2007.

5) **Double referral**. This bill is double-referred to the Assembly Utilities and Energy Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Generation Atomic
FissionTransition

Opposition

Alliance for Nuclear Responsibility
California Coastal Protection Network
Committee to Bridge the Gap
Environmental Working Group

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 80 (Addis) – As Amended March 23, 2022

SUBJECT: Offshore Wind Coastal Protection Act.

SUMMARY: Requires the Ocean Protection Council (OPC) to establish and oversee, in coordination with other state agencies, a West Coast Offshore Wind Science Entity (Entity).

EXISTING LAW:

1) Establishes the OPC to coordinate activities of state agencies that are related to the protection and conservation of coastal waters and ocean ecosystems to improve the effectiveness of state efforts to protect ocean resources within existing fiscal limitations. (Public Resources Code (PRC) 35615 (a)(1))

2) Provides the Public Utilities Commission (PUC) with authority to establish a renewable portfolio standard (RPS) requiring all retail sellers, defined as including electrical corporations, community choice aggregators, and electric service providers, to procure a minimum quantity of electricity products from eligible renewable energy resources, as defined, so that the total kilowatt hours of those products sold to their retail end-use customers achieves 44% of retail sales by December 31, 2024, 52% by December 31, 2027, and 60% by December 31, 2030. (Public Utilities Code 399.11)

3) Establishes the Voluntary Offshore Wind and Coastal Resources Protection Program (Program) to be administered by the California Energy Commission (CEC) for the purpose of supporting state activities that complement and are in furtherance of federal laws related to the development of offshore wind facilities, including federal laws providing for offshore wind lease conditions of the U.S. Department of the Interior's Bureau of Ocean Energy Management (BOEM). Requires the Program to award moneys to public and private entities, including, but not limited to, state agencies, tribal entities, local governmental agencies, research institutions, and nonprofit entities, through various mechanisms, including, but not limited to, grants. (PRC 25992.10 (a)(1))

4) Establishes the Voluntary Offshore Wind and Coastal Resources Protection Fund and continuously appropriates the funding without regard to fiscal year to the CEC for purposes of implementing the Program. (PRC 25992.20 (a))

THIS BILL:

1) Requires the OPC, upon appropriation by the Legislature, to establish and oversee, in coordination with other state agencies, an Entity for the purpose of ensuring that comprehensive baseline monitoring of the California ocean ecosystem as well as targeted research are available and used to inform state and federal decisions about offshore wind development in federal waters and the management of any impacted marine resources.

2) Requires the Entity to collaboratively support and recommend science and research pathways to ensure that decisions about offshore wind development and wildlife are made in an environmentally responsible manner that safeguards coastal and marine resources.

3) Requires the Entity to be supported by subcommittees of scientists and traditional knowledge holders and led by a steering committee composed of state and federal agencies, tribal groups, the offshore wind industry, and environmental nonprofit organizations.

4) Requires the Entity to perform all of, but not be limited to, the following functions:
   a) Reviewing and incorporating existing research, monitoring, and data standardization;
   b) Ensuring appropriate data and standards are in place to support science priorities;
   c) Identifying research needs or data gaps and recommending how to coordinate and prioritize research to address these gaps;
   d) Identifying tools, methods, and technologies that may be used to support needed monitoring and research and recommending applications;
   e) Hosting a data portal and housing publicly available information to support transparency in decision-making; and,
   f) Allocating funds to address science priorities.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement:**

> Responsible development of offshore wind energy includes a robust scientific research and monitoring plan to understand how habitat and marine life will interact with offshore wind energy infrastructure and development activities.
>
> The appropriate state entity to convene the best managers, stakeholders, and experts to inform and lead this work is [OPC], which was created to coordinate with state agencies on policies that affect coastal waters and to convene a science advisory team to provide research and evaluation to decision makers in this subject area.
>
> [An Entity] initiated by OPC would ensure that state and federal agencies, tribal groups, the offshore wind industry and environmental non-profits develop a coordinated approach to research, monitoring, and data-sharing to inform state and federal decisions about offshore wind development and the management of any impacted marine and coastal resources.
>
> While California is in the early stages of development of offshore wind energy in our federal waters, there is clear momentum for it to help us meet our climate and clean energy goals. This is the right time to lay a robust foundation of responsible, science-based planning for offshore wind energy development that will assist decision makers as we forge ahead, and at the same time fulfill our collective obligation to be good stewards of the ocean for this generation and the generations to come.

2) **Clean energy goals.** The 100 Percent Clean Energy Act of 2018 (SB 100, De León, Chapter 321, Statutes of 2018) increased California's RPS goal to 60% by 2030 and requires RPS-

eligible resources and zero-carbon resources to supply 100% of California's electricity retail sales and electricity procured to serve state agencies by 2045.

Based on a joint analysis by the CEC, the PUC, and the California Air Resources Board (ARB), an estimated six gigawatts (GW) of renewable energy and storage resources need to come online annually to meet the state's 2045 carbon neutrality goal. To meet these bold renewable energy targets, California's offshore waters are quickly emerging as a prime location for new floating offshore wind projects.

3) **California's ocean is a special place to protect.** California boasts the largest ocean-based economy in the United States. Valued at $45 billion annually, the ocean employs more than half a million people and supports a vast diversity of marine life, as well as fishing communities that depend on fish, shellfish, and seaweeds for their livelihoods. California's fisheries support 19,750 recreational fishing jobs, with the commercial fishing and seafood industry generating 155,258 jobs and $28.8 billion in sales in 2017. Coastal tourism and recreation industries in California are valued at approximately $27 billion annually. California's marine wildlife – including whales, dolphins, and the threatened southern sea otter – attract millions of visitors a year to our coastline. California's coastline counties are home to 68% of the state, and millions of people visit California coastal state parks every year.

   California's world-leading clean energy goals are driving a lot of interest in exploring use of coastal resources to achieve those goals, including mineral mining for materials like lithium and assessing offshore wind capacity and feasibility. With such ambitious clean energy mandates and 1,100 miles of coast line with abundant resources, it is important to have a robust scientific understanding of the impacts of achieving those goals through use of the ocean in order to preserve the cultural, recreational, economic, and environmental values of our coast and ocean.

4) **Offshore wind**. The advantage of offshore wind over its land-based counterpart is that the offshore wind resource is far more consistent, reliable, and energetic, with little of the topographic and small-scale variability typically seen on land. Offshore wind is a clean energy source at night complementing solar energy by providing energy generation at the end of the day and into the evening as the sun sets.

   Off the coast of California, a steep continental shelf and increased wind speeds combine to make floating turbines the primary technically feasible option. A June 15, 2021, OPC staff memo, *Existing Offshore Wind Technology Will Inform Design Considerations*, explains that California's offshore deep waters cannot support fixed-bottom structures, which are limited to depths shallower than about 165 feet, so floating wind turbines are currently being considered. This technology relies on attaching a wind turbine to a floating structure that is tethered to the seabed. Floating offshore wind technologies use wind turbines that essentially operate in the same way as onshore wind technologies.

   The BOEM is responsible for overseeing renewable energy development in federal waters of the outer continental shelf. Floating offshore wind energy projects are complex and will require close coordination between BOEM, the state of California, and other federal and local agencies and tribal governments. To help facilitate this coordination, the Intergovernmental Renewable Energy Task Force (Task Force) was established in 2016.

The Task Force works to identify opportunities for renewable energy leasing and development off the coast of California. Through coordination with the Task Force, BOEM is moving forward with further environmental review for leasing two areas, one off the north coast and one off the central coast, for additional evaluation of floating offshore wind development. These areas, referred to as the Humboldt Wind Energy Area and the Morro Bay Wind Energy Area, have the combined potential to generate up to 4.6 GW of renewable energy.

In September 2021, the Legislature passed AB 525 (Chiu, Chapter 231, Statutes of 2021) requiring the CEC, in coordination with several state agencies, to develop a strategic plan for offshore wind energy developments installed off the California coast in federal waters. AB 525 requires the CEC to evaluate and quantify the maximum feasible offshore wind capacity to achieve reliability, ratepayer, employment, and decarbonization benefits and to establish offshore wind energy planning goals for 2030 and 2045, by no later than June 1, 2022.

Last August, the CEC adopted the first AB 525 report, which included an evaluation of studies that have assessed nearly 21.8 GW of offshore wind technical potential in federal waters off the California coast. The assessments are based on wind speed, ocean depth, bottom slope, distance to grid interconnection, and distance to existing port infrastructure that are technically suitable for current floating technologies. The 21.8 GW number is a reference point for technically *feasible* capacity. In the report, the CEC established planning goals of 2,000-5,000 megawatts (MW) of offshore wind by 2030 and 25,000 MW by 2045 – the latter being noted as being aspirational – and which would be enough electricity to power 3.75 million homes initially and 25 million homes by 2050.

These AB 525 reports will provide important information for the state's decision-makers, but a lot of unknowns will remain where rigorous science can fill in the gaps with independent research. The report states:

> However, because the floating offshore wind market is in the early stages and the technology is rapidly advancing, additional study and analysis are needed to fully understand the degree, magnitude, and extent of potential impacts of offshore wind development on coastal resources, fisheries, Native American and Indigenous peoples, and national defense and identify effective strategies for addressing those potential impacts.

According to the bill's sponsors, AB 80 proposes to establish the Entity to coordinate that additional scientific information on the impacts of offshore wind technologies to coastal and cultural resources and existing users.

5) **This bill.** Myriad factors make siting offshore wind in state waters complicated, including environmental, cultural, socioeconomic, regulatory, and economic considerations. Grid connectivity and lack of understanding of potential environmental impacts are current barriers to offshore wind that require further investigation and mitigation. California is prioritizing actions and approaches to balance the advancement of a floating offshore wind industry and preservation of the unique and diverse ecosystems off the coast.

OPC's *Strategic Plan to Protect California's Coast and Ocean 2020-2025* includes a goal to develop, with partners, a statewide policy to establish criteria by 2024 that will ensure responsible evaluation and potential implementation of offshore wind projects, and to work

towards development of a commercial scale offshore project by 2026. The OPC received funding ($2 million in Fiscal Year (FY) 2021-22) to support research on impacts on offshore marine life, habitats, the fishing community, and cultural resources.

AB 80 would further require OPC to establish and oversee the Entity to ensure that comprehensive baseline monitoring of the California ocean ecosystem as well as targeted research are available and used to inform state and federal decisions about offshore wind development in federal waters and the management of any impacted marine resources.

The Entity itself would be modeled after the Regional Wildlife Science Collaborative (RWSC), which is a collection of interested parties working to develop and guide ecosystem science for offshore wind on the east coast in the Atlantic Ocean. Like the RWSC, the author and sponsors intend for the work of the Entity in this bill to be supported by a subcommittee of scientists and a steering committee of state and federal regulators, offshore wind industry, environmental nonprofit organizations, and Native American Tribes in a manner in which Tribes would like to participate.

The state and federal agencies that would likely participate on the steering committee would be the BOEM, the National Marine Fisheries Service, U.S. Fish and Wildlife Service, the California Coastal Commission, the California State Lands Commission, the CEC, and the Department of Fish and Wildlife.

The bill does not detail the makeup of the Entity or the steering committee.

6) **Committee amendments**. *The Committee may wish to consider* amending the bill as follows to outline the participants of the steering committee and whether they shall receive compensation for participation.

> (c) (1) The council shall assemble representatives from relevant groups to develop a steering committee to provide governance and oversight on the processes and procedures of the West Coast Offshore Wind Science Entity and to be the final decision-making body on process and procedural governance of the Entity.
>
> (2) The steering committee shall be composed of at least two representatives from each of the following: state agencies, federal agencies, California tribes including federally recognized tribes or California Native American tribes identified on the contact list maintained by the California Native American Heritage Commission, the offshore wind industry, and environmental nonprofit organizations.
>
> (3) The steering committee and the Entity shall be supported by subcommittees of scientists, traditional knowledge holders, and other stakeholders. ~~The entity shall be supported by subcommittees of scientists and traditional knowledge holders and led by a steering committee composed of state and federal agencies, tribal groups, the offshore wind industry, and environmental nonprofit organizations.~~
>
> …
>
> (e) (1) Members of the steering committee, the West Coast Offshore Wind Science Entity, and any subcommittee shall serve without compensation, except members who are participating on behalf of a Native American tribe, who shall receive compensation.

(2) Members of the West Coast Offshore Wind Science Entity shall receive reimbursement for travel, per diem, or other expenses.

7) **State investments in offshore wind**. Last year's budget (AB 209, Committee on Budget, Chapter 251, Statutes of 2022) established the Voluntary Offshore Wind and Coastal Resources Protection Program to be administered by the CEC for the purpose of supporting state activities that complement and are in furtherance of federal laws related to the development of offshore wind facilities, including federal laws providing for offshore wind lease conditions of the BOEM. It included a fund for voluntarily deposited investments.

   This bill would require OPC to establish the Entity only upon appropriation by the Legislature to provide the funding to do so. On March 17, Assemblymember Addis and Senator Laird sent a letter to the Legislative Budget Committees requesting $6 million budget augmentation to be expended over six years for the OPC to "create a West Coast Offshore Wind Wildlife Science Entity to advise, coordinate, and oversee important science and monitoring necessary to inform the environmentally responsible development of offshore wind energy off the coast of California." If that request is enacted in the budget, it would support the implementation of this bill.

8) **Related legislation**.

   AB 3 (Zbur) would require the CEC to prepare a report that identifies potential alternatives, analyzes, and makes recommendations regarding procurement mechanisms and procurement strategies for offshore wind energy projects to be financed, entitled, constructed, and operated within the timeframes necessary for meeting the state's carbon neutrality goals. This bill is scheduled to be heard in the Assembly Natural Resources Committee on April 24.

   SB 286 (McGuire) would establish the California Offshore Wind Energy Fisheries Working Group composed of state agencies and industry stakeholders to develop a statewide strategy for ensuring that offshore wind energy projects avoid and minimize impacts to ocean fisheries to the maximum extent possible, fully mitigate unavoidable impacts, and fairly compensate persons engaged in commercial and recreational fishing for economic impacts to ocean fisheries resulting from offshore wind energy projects. This bill is scheduled to be heard in the Senate Natural Resources and Water Committee on April 11.

   AB 525 (Chiu, Chapter 231, Statutes of 2021) requires the CEC to establish 2030 and 2045 planning goals, as specified, for electricity generated by offshore wind. Additionally requires the CEC, in coordination with specified agencies, to develop a five-part strategic plan for offshore wind development and to submit the plan to the Natural Resources Agency the Legislature by June 30, 2023.

   SB 413 (McGuire, 2021) would have required the CEC, in consultation with the Offshore Wind Project Certification, Fisheries, Community, and Indigenous Peoples Advisory Committee, which the bill would create, to establish a process for the certification of offshore wind generation facilities that is analogous to the existing requirements for certification of thermal powerplants. This bill was referred to, but never heard in, the Senate Energy, Utilities and Communications Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

350 Bay Area Action
American Bird Conservancy
Audubon
Azul
California Association of Professional Scientists
California Coastal Protection Network
California Coastkeeper Alliance
California Environmental Voters
California Institute for Biodiversity
California Marine Sanctuary Foundation
Defenders of Wildlife
Environmental Defense Center
Environmental Protection Information Center
Humboldt Baykeeper
Monterey Bay Aquarium
National Wildlife Federation, National Advocacy Center
Natural Resources Defense Council
Ocean Conservation Research
Santa Cruz Climate Action Network
Surfrider Foundation
The Climate Center
The Marine Mammal Center

Opposition

None on file

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 356 (Mathis) – As Amended March 7, 2023

SUBJECT: California Environmental Quality Act: aesthetic impacts

SUMMARY: Eliminates the January 1, 2024 sunset on a section of the California Environmental Quality Act (CEQA) which eliminates consideration of aesthetic effects for specified projects involving the refurbishment, conversion, repurposing, or replacement of an existing abandoned, dilapidated, or vacant building, provided the new structure does not substantially exceed the height of the existing structure or create a new source of substantial light or glare

EXISTING LAW:

1) 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. (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines.) (Public Resources Code (PRC) 21000, et seq.)

2) Defines "environment" as the physical conditions that exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, or objects of historic or *aesthetic* significance. (PRC 21060.5)

3) Prohibits the consideration of aesthetic impacts of a residential, mixed-use residential, or employment center project on an infill site within a "transit priority area" (an area within one-half mile of a major transit stop). (PRC 21099)

4) Requires the Office of Planning and Research (OPR) to prepare and develop proposed guidelines for the implementation of CEQA by public agencies, then transmit them to the Secretary of the Natural Resources Agency, who must certify and adopt the guidelines, and update them at least once every two years. Requires the CEQA Guidelines to include a list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from CEQA (i.e., "categorical exemptions"). (PRC 21083 and 21084)

5) The categorical exemptions are subject to exceptions to ensure eligible projects do not have a significant effect on the environment, including when cumulative impacts of successive projects of the same type in the same place may result in significant effect or there is a reasonable possibility that the project will have a significant effect due to unusual circumstances. (CEQA Guidelines 15300.2)

6) The CEQA Guidelines include categorical exemptions for buildings as follows:

   a) 15301. EXISTING FACILITIES. Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures,

facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

b) 15302. REPLACEMENT OR RECONSTRUCTION. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

7) Until January 1, 2024, eliminates consideration of aesthetic effects under CEQA for specified projects involving the refurbishment, conversion, repurposing, or replacement of an existing abandoned, dilapidated, or vacant building, provided the new structure does not substantially exceed the height of the existing structure or create a new source of substantial light or glare. (PRC 21081.3)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Background**. CEQA provides a process for evaluating the environmental effects of applicable projects undertaken or approved by public agencies. If a project is not exempt from CEQA, an initial study is prepared to determine whether the project may have a significant effect on the environment. If the initial study shows that the project would not have a significant effect on the environment, the lead agency must prepare a negative declaration. If the initial study shows that the project may have a significant effect, the lead agency must prepare an EIR.

   Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Prior to approving any project that has received environmental review, an agency must make certain findings. If mitigation measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

   Aesthetics are among the 18 environmental factors that must be evaluated by lead agencies in an initial study to determine the appropriate level of CEQA review. Significant aesthetic effects of a project include blocking a scenic vista or creating a new source of substantial light or glare. In 2013, SB 743 (Steinberg), Chapter 386, Statutes of 2013, enacted a new provision to prohibit the consideration of aesthetic, as well as parking, impacts of a residential, mixed-use residential, or employment center project on an infill site within a "transit priority area" (an area within one-half mile of a major transit stop). In 2018, AB 2341 (Mathis), Chapter 298, Statutes of 2018, eliminated consideration of aesthetic effects for projects involving the refurbishment, conversion, repurposing, or replacement of an existing abandoned, dilapidated, or vacant building – with a sunset of January 1, 2024.

   As noted in the Existing Law section above, the CEQA Guidelines include categorical exemptions for renovation, reconstruction and replacement of existing buildings, provided the project doesn't involve a significant expansion of existing uses. However, these exemptions could be subject to an exception, if a fair argument is presented that the project may have a significant effect on the environment related to aesthetics.

2) **Author's statement**:

> In removing the existing January 1, 2024 expiration, AB 356 continues to allow for the very narrow exemption which ultimately promotes a positive atmosphere in disadvantaged communities. While the measure has no impact on streamlining the construction of a building, it does promote building beautification projects.

3) **Has AB 2341 been used**? While Section 21081.3 has been in effect for more than four years, the Committee was unable to find any record of its use. State Clearinghouse records are likely incomplete or nonexistent because there is no requirement for a local lead agency to report use of this provision. However, the lack of State Clearinghouse records does not mean the provision hasn't been used.

   To support evaluation of the use of this provision going forward, *the author and the committee may wish to consider* amending the bill to add a notice requirement and extending the sunset an additional five years, rather than repealing it:

   > *(e) If the lead agency determines that it is not required to evaluate the aesthetic effects of a project pursuant to this section, and the lead agency determines to carry out that project, the lead agency shall file a notice with the Office of Planning and Research and the county clerk of the county in which the project is located in the manner specified in subdivisions (b) and (c) of Section 21152.*
   >
   > *(f) This section shall remain in effect until January 1, 2029, and as of that date is repealed.*

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association
California Building Industry Association
California Chamber of Commerce
California State Association of Counties
League of California Cities
Rural County Representatives of California

Opposition

None on file

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 408 (Wilson) – As Amended March 16, 2023

SUBJECT: Climate-resilient Farms, Sustainable Healthy Food Access, and Farmworker Protection Bond Act of 2024

SUMMARY: Enacts the Climate-resilient Farms, Sustainable Healthy Food Access, and Farmworker Protection Bond Act of 2024, which, if approved by the voters, would authorize the issuance of bonds in the amount of $3.365 billion to finance programs related to, among other things, agricultural lands, food and fiber infrastructure, climate resilience, agricultural professionals, including farmers, ranchers, and farmworkers, workforce development and training, air quality, tribes, disadvantaged communities, nutrition, food aid, meat processing facilities, and fishing facilities.

EXISTING LAW:

1) Requires, except under certain circumstances, a $^2/_3$ vote of the Legislature and a majority vote of the people at an election, before the state may issue a general obligation (GO) bond. (Article XVI of the California Constitution.)

2) Prescribes the state's responsibilities regarding the issuance and sale of GO bonds. (Government Code 16720 et seq.)

3) Provides, pursuant to voter-approved Proposition 68, $4 billion through the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018 (SB 5, de León, Chapter 852, Statutes of 2017).

THIS BILL:

1) Establishes the Climate-Resilient Farms, Sustainable Healthy Food Access, and Farmworker Protection Bond Act of 2024.

2) Defines various terms used throughout the bill.

3) Authorizes up to 5% of the moneys made available to each agency pursuant to the bond to be used for administrative costs.

4) Provides that not more than 10% of the moneys made available to an administering agency may be expended for planning and monitoring necessary for the design, selection, and implementation of projects to be funded by those moneys. Makes exceptions for exceeding that 10% cap.

5) Requires at least 40% of the moneys made available to each agency to be allocated to projects that provide direct and meaningful benefits to socially disadvantaged farmers or ranchers, disadvantaged communities, and vulnerable populations, to the greatest extent feasible.

6) Requires priority to be given to projects that leverage private, federal, and local funding or produce the greatest public benefit.

7) Requires agencies to prioritize projects that support community-based organizations; promote public health, environmental stewardship, climate resiliency, social services, and job creation; build infrastructure for socially disadvantaged farmers or ranchers; expand and retrofit infrastructure to meet California's climate goals and the regional needs of California's communities; reduce food insecurity; and, accelerate the transition away from synthetic pesticides and fertilizers, among other specified priorities.

8) Requires funded projects to include signage indicating the project was funded by this bond.

9) Prohibits any bond funds from being used to fulfill any environmental mitigation requirements imposed by law.

10) Authorizes agencies to offer advance payments up to 50% of a grant award to support disadvantaged communities.

11) Allows up to 10% of funding available to agencies to be allocated for technical assistance. Makes exceptions for exceeding that 10% cap.

12) Provides that all proceeds of bonds sold shall be available to individuals regardless of their immigration status.

13) Provides $950 million for Improving Agricultural Resilience and Advancing Sustainable Agriculture, including:

    a) $250 million to Department of Food and Agriculture (CDFA) to improve the climate resilience and sustainability of agricultural lands;

    b) $60 million for grants for farmers and tribal producers to improve water use efficiency through improved irrigation management, including surface and groundwater use efficiency measures;

    c) $60 million for grants for livestock and dairy producers to reduce their methane emissions and increase carbon sequestration through the transition from wet manure handling and storage to dry manure handling and storage, including, but not limited to, pasture-based practices, manure composting, solids separation, prescribed grazing, and compost bedded pack barns;

    d) $35 million for grants for farmers and tribal producers to transition land for purposes of organic certification and to implement organic farming practices;

    e) $15 million for grants to nonprofit organizations, public agencies, tribal governments, tribal organizations, crop or pest advisers, farmers, and insectaries to construct insectaries to produce beneficial organisms in support of ecological integrated pest management;

f) $35 million for grants to support limited resource farmers or ranchers and socially disadvantaged farmers and ranchers to implement climate-smart practices and provide relief from drought, wildfire, flood, and other climate impacts;

g) $140 million for the Wildlife Conservation Board to implement projects that restore, expand, or maintain multibenefit floodplain reconnection and associated habitat restoration in priority groundwater basins pursuant to the Sustainable Groundwater Management Act;

h) $5 million for the Department of Pesticide Regulation (DPR) for grants to socially disadvantaged farmers and ranchers and limited resource farmers or ranchers to implement sustainable pest management projects;

i) $35 million to the Department of Forestry and Fire Protection for grants for equipment and infrastructure to support prescribed grazing in order to accomplish vegetation or conservation goals, including reducing the risk of wildfire by reducing fuel loads, controlling undesirable or invasive plants, and promoting biodiversity and habitat for special status species;

j) $420 million to the Department of Conservation to protect agricultural land and support improved climate resilience, and specifies how that funding should be allocated; and,

k) $70 million to the Department of Water Resources to support improved climate resilience, and specifies how that funding should be allocated.

14) Provides $750 million to the Strategic Growth Council (SGC) to award grants through the Affordable Housing and Sustainable Communities Program for projects that include the development of multifamily affordable housing for farmworker families and households. Establishes project eligibility requirements. Requires the SGC to develop guidelines for the awarding of grants. Identifies eligible recipients of the SGC grants. The $750 million includes:

a) $50 million to the Department of Community Services and Development for grants to improve the energy efficiency, indoor air quality, renewable energy use, and climate resilience of farmworker housing, including single-family homes, multifamily buildings, mobilehomes, and manufactured housing;

b) $25 million to the Division of Occupational Safety and Health for the creation of a stockpile of personal protection equipment, including, but not limited to, cloth, disposable, reusable, or certified N95 face masks, for farmworkers to be used during emergencies, such as wildfires or disease outbreaks;

c) $100 million to the State Water Resources Control Board for grants to provide safe drinking water and promote public health for farmworker families who lack access to safe and reliable drinking water sources, including, but not limited to, for projects that include septic tank upgrades or consolidation of septic systems to address water quality contamination and public health threats in farmworker communities and projects that promote resilience and adaptation of small community wastewater treatment facilities at

risk from sea level rise or saltwater intrusion, with preference for projects that provide wastewater recharge recycling;

d) $25 million to the Office of Emergency Services to expand its California State Warning Center to include targeted alerts for public health dangers, as specified; and,

e) $100 million to the Department of Community Services and Development to provide grants to establish farmworker resource centers and drinking water infrastructure for farmworkers.

15) Provides $750 million for Sustainable Healthy Food Access and Nutrition Security, including:

a) $320 million to the Department of General Services to provide aid to local educational agencies, school food authorities, California American Indian education centers, the federal Office of Indian Education, schools operated by the federal Bureau of Indian Education, and tribal schools for improving kitchen, meal preparation, meal service, and dining infrastructure used for school nutrition programs;

b) $50 million to the State Department of Social Services to provide aid to participants in the Emergency Food Assistance Program administered by the Food and Nutrition Service of the United States Department of Agriculture, Feeding America food banks located in California, California Association of Food Banks members, nonprofit hunger relief organizations, nonprofit organizations that administer medically tailored meal and grocery programs, emergency meal providers that support county and city shelter activities during emergencies and disasters, senior nutrition programs, operators of the federal Food Distribution Program on Indian Reservations, and other organizations serving Native Americans;

c) $360 million to CDFA for grants to ensure communities and tribes are able to obtain or produce foods that are healthy, are nutrient dense, are culturally relevant, reflect traditional Native American foodways, and are grown or produced in California, prioritizing California-produced organic food products, for residents who are food insecure or members of a disadvantaged community. Specifies how the funds should be allocated; and,

d) $20 million to the California Department of Aging to fund infrastructure that will expand senior nutrition programs under the Mello-Granlund Older Californians Act.

16) Provides $615 million for Strengthening Regional Food Economies, including:

a) $470 to CDFA for grants to enhance local and regional food and fiber infrastructure in response to changing climate conditions, to strengthen urban-rural connectivity, and to support the development of a resilient and equitable food economy;

b) $30 million to the State Coastal Conservancy for grants and expenditures for the development, restoration, and reconstruction of fishing facilities and related infrastructure serving the commercial fishing industry in urban coastal waterfront areas;

c) 60 million to CDFA for grants to develop meat processing facilities and expand or upgrade meat processing facilities to increase meat processing capacity;

d) $110 million to the State Energy Resources Conservation and Development Commission for allocation to accelerate the adoption of energy-efficient and renewable energy technologies at California food processing plants, help California food processors work towards a low-carbon future, and benefit disadvantaged communities and priority populations by reducing emissions of greenhouse gases;

e) $15 million to CDFA for grants to develop regional farmer training centers to provide culturally relevant assistance for farmers and ranchers;

f) $30 million to DOC for grants to develop small and underserved farmer equipment and cooperative resource programs for growers by funding existing and new programs to provide technical assistance and grants to purchase equipment and infrastructure, upgrade and create facilities that store tools, equipment, and infrastructure, and fund maintenance, training, and personnel costs; and,

g) $200 million to the Department of Resources Recycling and Recovery for grants or performance payments to commercial compost facilities, public agencies, tribal governments, tribal organizations, producers, or tribal producers to support the development and implementation of projects to improve outdoor air quality through avoidance of black carbon and of nitrous oxide and methane emissions through increased diversion of organics from combustion or landfill disposal to composting facilities, including composting facilities with the capacity to remove glass and plastic contamination from the organic waste so that organic waste can be safely applied to agricultural lands.

17) Authorizes bonds in the total amount of $3,365,000,000 be issued and sold for the purposes expressed in this bill and to reimburse the GO Bond Expense Revolving Fund.

18) Provides for standard provisions in GO bond law, either explicitly or by reference, as specified.

19) Specifies the bond will be on the November 5, 2024 ballot.

20) Establishes the Climate-resilient Farms, Sustainable Healthy Food Access, and Farmworker Protection Committee (Committee) for the purpose of authorizing the issuance and sale pursuant to the State General Obligation Bond Law of the bonds authorized by this bill. Establishes governance of the Committee.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Making ends meet with bonds**. Bonds are a way the state can borrow money to pay various state investments. The state sells bonds to investors to receive “up-front” funding for these projects and then repays the investors, with interest, over a period of time. The state repays

GO bonds using the state General Fund. Under the California Constitution, state GO bonds must be approved by voters.

After selling bonds, the state makes annual payments until the bonds are paid off. The annual cost of repaying bonds depends primarily on the interest rate and the time period over which the bonds have to be repaid. The state often makes bond payments over a 30-year period. Over the last five fiscal years, the state has issued an average of $7.3 billion of GO bonds annually. In 2021-22, the state issued $6.6 billion of GO bonds.

2) **State budget deficit.** The state is facing a $22.5 billion deficit, and multi-billion dollar deficits over the next several future fiscal years. Governor Newsom's proposed budget for fiscal year 2023-2024 proposes to cut $6 billion (~27% of the total cuts) from its climate change agenda.

   The Legislature is currently considering several environmental bond proposals as potential funding options to both fill the gaps where budget cuts may be made and augment funding where the authors want to prioritize spending. Those measures include:

   - AB 1567 (Garcia) - $15.105 billion for the Safe Drinking Water, Wildfire Prevention, Drought Preparation, Flood Protection, Extreme Heat Mitigation, and Workforce Development Bond Act of 2023.

   - SB 638 (Eggman) - $6 billion for the Climate Resiliency and Flood Protection Bond Act of 2024.

   - SB 867 (Allen) - $4.1 billion for the Drought and Water Resilience, Wildfire and Forest Resilience, Coastal Resilience, Extreme Heat Mitigation, Biodiversity and Nature-Based Climate Solutions, Climate Smart Agriculture, and Park Creation and Outdoor Access Bond Act of 2023.

3) **Previous natural resource and water bonds**. Since the 2000, California voters have authorized the state to take on more than $19.6 billion in GO bond debt to fund various water, natural resource, and flood protection programs (out of more than $30 billion of all voter-authorized bonds). Administered by a number of state departments, agencies, boards, and conservancies, bond proceeds are expended on various capital outlay projects, and are also disbursed to federal, state, local, and non-profit entities in the form of grants, contracts, and loans.

   According to the state's Bond Accountability website, roughly $281 million from Proposition 68 (2018), $40 million from Proposition 1 (2014), $3.6 million from Proposition 84 (2006), and $29 million from Proposition 1E (2006) are uncommitted to a specific grantee or project at this time. If voters approved this bill, funding would not likely be appropriated and available until after January 2025. Bond funding is typically appropriated over multiple fiscal years.

   Treasurer Fiona Ma stated the Treasurer's October 2021 Debt Affordability Report that "persistent low interest rates have extended an opportunity for our state to access long-term capital at extremely attractive borrowing costs to finance capital projects needed to support the state's missions."

4) **Bond indebtedness**. The State Treasure's office's (STO) Public Finance Division (PFD) manages the state's debt portfolio, overseeing the issuance of debt, and monitors and services the state's outstanding debt. According to PFD, the state has approximately $949 million of variable rate GO bonds outstanding as of the end of 2021-22.

   Using certain assumptions for debt issuance, the STO estimates debt service payments from the General Fund will increase by $63.7 million in 2022-23 and $618.6 million in 2023-24.

   The most recent reported ratio of General Fund-supported debt service to General Fund revenues was 3.42% in 2021-22. The STO estimates this ratio will be 3.50% in 2022-23.

5) **Author's statement:**

   > California's food and farming system is on the front lines of the climate crisis and if the state wants to create a more climate resilient agricultural sector then it must act now to scale up investments.
   >
   > AB 408 proposes $3.4 billion in bond funding to support four pillars of our food system: climate smart agriculture, farmworker well-being, healthy food access, and regional food infrastructure.
   >
   > Advancing climate smart agriculture practices not only helps farmers, fishers, and ranchers, these practices also bring a host of co-benefits such as supporting biodiversity, improved air and water quality, and support for local jobs and economic development.
   >
   > With this proposed bond the state has an opportunity to scale work up across the state and ensure California's food and farming system is ready, resilient, and helping our state fight climate change while continuing to feed our communities.

6) **Committee amendments.** *The Committee may wish to amend the bill* to align the provision of advance payments with current law authorizing various agencies to provide advance payments as follows:

   80708.
   For moneys allocated for a project that serves a disadvantaged community, vulnerable population, or socially disadvantaged farmer or rancher, the administering agency may provide advanced payments consistent with Section 11019.1 of the Government Code.~~in the amount of 50 percent of the allocation to the recipient to initiate the project in a timely manner, and may maintain advance payments in increments of 25 percent of the allocation, as needed, throughout the project's implementation. The administering agency shall adopt additional requirements for additional advance payments to ensure that the moneys are used properly and the project is completed.~~

7) **Double referral**. This bill was heard in the Assembly Agriculture Committee on April 29, where it was approved by a vote 10-0.

8) **Urgency**. As an urgency statute, AB 408 must be approved by 2/3 vote of each house of the Legislature.

9) **Related legislation**. AB 125 (R. Rivas, 2021) proposed the Equitable Economic Recovery, Healthy Food Access, Climate Resilient Farms, and Worker Protection Bond Act of 2022, which, if approved by the voters, would have authorized a $3.302 billion in GO bonds to finance programs related to, among other things, agricultural lands, food and fiber infrastructure, climate resilience, agricultural professionals, including farmers, ranchers, and farmworkers, workforce development and training, air quality, tribes, disadvantaged communities, nutrition, food aid, meat processing facilities, fishing facilities, and fairgrounds. It was referred to the Assembly Natural Resources Committee and held pursuant to Art. IV, Sec. 10(c) of the Constitution.

REGISTERED SUPPORT / OPPOSITION:

Support

1000 Grandmothers for Future Generations
A Voice for Choice Advocacy
Acterra: Action for A Healthy Planet
Agricultural Institute of Marin
Alameda County Community Food Bank
Alchemist CDC
American Farmland Trust
Butte County Local Food Network
California Association of Food Banks
California Catholic Conference
California Cattlemen's Association
California Certified Organic Farmers
California Climate & Agriculture Network
California Compost Coalition
California Environmental Voters
California Farmers Union
California Farmlink
California Food and Farming Network
California Nurses for Environmental Health and Justice
Californians Against Waste
Californians for Pesticide Reform
Carbon Cycle Institute
Center for Food Safety
Central California Environmental Justice Network
Ceres Community Project
Chez Panisse
Climate Reality Project, Los Angeles Chapter
Climate Reality Project, Orange County
Community Alliance With Family Farmers
Community Health Councils
Del Norte and Tribal Lands Community Food Council
Ecological Farming Association
Ecology Center
Environmental Working Group
Everyone's Harvest
Families Advocating for Chemical and Toxics Safety
Farm to Pantry
Fibershed
Food Forward
Foodshare Ventura County
Foodwise
Fresh Approach
Gmo Science
Health Care Without Harm
Heart of The City Farmers' Market
Interfaith Sustainable Food Collaborative
Kaya Bird LLC
Kiss the Ground
Kitchen Table Advisors
Los Angeles Food Policy Council
Los Angeles Regional Food Bank
Mandela Partners
Marin Food Policy Council
Mcgrath Family Farm
Modesto Certified Farmers Market
Monterey Bay Central Labor Council, AFL-CIO
Monterey County Food System Coalition
Mount Shasta Farmers' Market
Natural Resources Defense Council
North Coast Growers Association
Nutrition and Fitness Collaborative of The Central Coast
Ojai Valley Fire Safe Council
Paicines Ranch

Pesticide Action Network
Pesticide Action Network North America
Public Health Advocates
Recology
Regenerate America Coalition
Roots of Change
San Francisco Bay Physicians for Social Responsibility
San Francisco-Marin Food Bank
Santa Clara Valley Open Space Authority
Santa Cruz Climate Action Network
Second Harvest of Silicon Valley
Shepherdess Land and Livestock Co
Sierra Harvest
Slow Food Sonoma County North
Sonoma Safe Agriculture Safe Schools
Sustainable Agriculture Education
Taylor Farms
The Climate Center
The Edible Schoolyard Project
The Praxis Project
Wild Farm Alliance

Opposition

None on file

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 573 (Garcia) – As Amended March 16, 2023

SUBJECT: Organic waste: meeting recovered organic waste product procurement targets

SUMMARY: Allows local jurisdictions to comply with the state's recovered organic waste procurement requirements by procuring California-derived organic waste products processed at out-of-state facilities.

EXISTING LAW:

1) Requires the Air Resources Board (ARB), pursuant to California Global Warming Solutions Act of 2006 [AB 32 (Núñez), Chapter 488, Statutes of 2006], to adopt a statewide greenhouse gas (GHG) emissions limit equivalent to 1990 levels by 2020 and adopt regulations to achieve maximum technologically feasible and cost-effective GHG emission reductions. AB 32 authorizes ARB to permit the use of market-based compliance mechanisms to comply with GHG reduction regulations once specified conditions are met. Requires ARB to approve a statewide GHG emissions limit equivalent to 85% below the 1990 level by 2045. (Health and Safety Code (HSC) 38500-38599.11)

2) Requires ARB to develop a comprehensive strategy to reduce the emissions of short-lived climate pollutants (SLCP) to achieve a 40% reduction in methane emissions, 40% reduction in hydrofluorocarbon gases, and 50% reduction in anthropogenic black carbon below 2013 levels by 2030. (HSC 39730-39730.5)

3) Requires the state to reduce the disposal of organic waste by 40% from the 2014 level by 2020 and 75% by 2025 to help achieve the state's methane reduction goal. (HSC 39730.6)

4) Requires, beginning January 1, 2022, local jurisdictions to annually procure a quantity of recovered organic waste products that meet or exceed its current annual recovered organic waste product procurement target. Requires CalRecycle to calculate the annual recovered organic waste product procurement target based on the per capita procurement target of 0.8 tons of organic waste per resident per year and the jurisdiction's population. Authorizes jurisdictions to comply by either directly procuring recovered organic waste products for use or giveaway, or through a direct service provider contract. (Title 14 18993.1 of the California Code of Regulations (CCR))

5) Defines "compostable materials" as any organic material that when accumulated will become active compost. (Title 14 17852 CCR)

6) Defines "jurisdiction" as a city, county, a city and county, or a special district that provides solid waste collection services. (Title 14 18982 CCR)

THIS BILL:

1) Authorizes a local jurisdiction, until December 1, 2039, to procure California-derived organic waste that the local jurisdiction sends for processing to an operation or facility located

outside the state that processes compostable materials to meet the state's organic waste product procurement requirements.

2) Requires that the out of state operation or facility meet the following requirements:

   a) It has been in operation since on or before January 1, 2022;

   b) It has been appropriately permitted in the jurisdiction in which it is located; and,

   c) It provides all information to the local jurisdiction needed to allow it to comply with the appropriate recordkeeping requirements, as specified.

3) Specifies that the amount of a local jurisdiction's procurement requirement is limited to the amount of California-derived recovered organic waste that the local jurisdiction sent outside the state for processing.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**:

   > As jurisdictions ramp up their organic waste collection programs, many cities and counties have struggled to meet their procurement targets due to a limited amount of organic waste infrastructure across the state. In some cases, purchasing compost from within state borders and delivering it to a jurisdiction can require trucking compost hundreds of miles, unnecessarily increasing vehicle miles traveled and ratepayer costs. CalRecycle acknowledges that the state still needs approximately 50-100 new or expanded facilities for the successful implementation of SB 1383 and that it can take years to site and permit new facilities. While jurisdictions wait for in-state compost facilities to get sited and permitted, AB 573 will help local jurisdictions in meeting procurement requirements by allowing California-derived material processed at existing out-of-state compost facilities to count towards procurement, which will both reduce vehicle miles traveled and potential financial impacts on ratepayers.

2) **Organic waste recycling**. An estimated 35 million tons of waste are disposed of in California's landfills annually. More than half of the materials landfilled are organics subject to SB 1383 (Lara, Chapter 395, Statutes of 2016) requirements. CalRecycle's 2021 waste characterization study, found that 34% of disposed waste is organic waste. SB 1383 requires the ARB to approve and implement a comprehensive SLCP strategy to achieve, from 2013 levels, a 40% reduction in methane, a 40% reduction in hydrofluorocarbon gases, and a 50% reduction in anthropogenic black carbon, by 2030. In order to accomplish these goals, the bill specified that the methane emission reduction goals include targets to reduce the landfill disposal of organic waste 50% by 2020 and 75% by 2025 from the 2014 level.

   In order to achieve these goals, California's waste management infrastructure is going to have to recycle much higher quantities of organic materials, involving significant investments in additional processing infrastructure. Organic waste is primarily recycled by composting the material, which generates compost that can be used in gardening and

agriculture as a soil amendment and engineering purposes for things like slope stabilization. Anaerobic digestion is also widely used to recycle organic wastes. This technology uses bacteria to break down the material in the absence of oxygen and produces biogas, which can be used as fuel, and digestate, which can also be used as a soil amendment. Tree trimmings and prunings can also be mulched.

In order to ensure that there are adequate markets for the state's increasing quantities of products made from organic waste, like much, compost, and digestate, CalRecycle established procurement requirements for jurisdictions. The procurement targets are based on the average amount of organic waste generated by Californians annually multiplied by the population of a jurisdiction. Currently, the regulations require that the procurement targets be met by purchasing materials from in-state organic waste processors. While many jurisdictions are able to use in-state organic waste processing facilities, some ship materials out of state for processing. Many rural areas, for example, are closer to facilities across state lines than they are to California-based processors. Organic waste is heavy, and therefore expensive to transport, making it economically infeasible for these jurisdictions to ship to distant in-state facilities. Additionally, California does not yet have sufficient capacity to process all of the material generated in-state.

3) **This bill**. AB 573 would allow local jurisdictions, until 2039, to meet the state's organic waste procurement targets by purchasing recovered organic waste products from out-of-state facilities. This bill limits this procurement allowance to California-derived products and to the amount of organic waste material that the jurisdictions sends out-of-state. These limitations ensure that procurement targets will not be met using material produced from organic waste generated in other states. Instead, it simply allows jurisdictions to essentially purchase finished organic waste products produced from material generated within the jurisdiction. The sunset on this bill is intended to allow time for the state's organic waste processing infrastructure to develop and encourage local jurisdictions to procure from in-state facilities when it becomes feasible to do so.

REGISTERED SUPPORT / OPPOSITION:

Support

California Compost Coalition
Californians Against Waste
City of Blythe
County of Imperial
CR&R, INC (sponsor)
League of California Cities
Republic Services - Western Region
Rural County Representatives of California
Town of Paradise
Town of Truckee
Waste Management

Opposition

None on file

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 585 (Robert Rivas) – As Amended March 23, 2023

SUBJECT: California Global Warming Solutions Act of 2006: literature review and progress report

SUMMARY: Requests the California Council on Science and Technology (CCST) to perform a biennial literature review to assess the infrastructure projects necessary to achieve the quantities of renewable energy, and the distribution and transmission networks necessary, to achieve the state's energy, climate change, and air quality goals. Requires the State Clearinghouse at the Office of Planning and Research (OPR) to provide an annual progress report to the Joint Legislative Committee on Climate Change (JLCCCP) regarding the status of infrastructure projects identified in the CCST report.

THIS BILL:

1) Requests CCST, every two years, to perform a literature review, including source materials, to assess the infrastructure project types, scale, and pace necessary to achieve the quantities of renewable energy, and the distribution and transmission networks necessary, to achieve the state's energy, climate change, and air quality goals, including specified state agency reports regarding energy, climate change, and air quality.

2) Requires the list of infrastructure projects to include all of the following: renewable and carbon-free energy capacity, substations, transformers, miles of upgraded or hardened distribution and transmission lines, charging stations, renewable hydrogen production and distribution, hydrogen refueling stations, renewable natural gas projects, methane mitigation projects, refinery conversions, the Carbon Capture, Removal, Utilization, and Storage Program, the short-lived climate pollutant mitigation strategy, acres of natural and work lands, and any other project types mentioned in the planning documents that may be assessed to determine annual construction needs to achieve the interim and long-term energy, climate change, and air quality goals.

3) Requires the State Clearinghouse annually to provide to the JLCCCP a progress report regarding the numbers of permit applications, permitted projects, and commission projects in each of the infrastructure categories identified in the CCST report.

4) Requires the State Clearinghouse report to analyze the annual progress being made toward the infrastructure that will result in emission reductions, including findings about whether the scale and pace of construction in the previous calendar year align with the infrastructure commissioned, and, if the report indicates that the scale and pace of construction in the previous calendar year did not align with the infrastructure commissioned, the report shall indicate whether that failure was due to insufficient permit applications, insufficient permit approvals, delayed construction approvals, or delayed commissioning approvals.

5) Requires funding required for the purposes of the bill to be provided upon appropriation by the Legislature pursuant to Section 38597, which authorizes the Air Resources Board (ARB)

to adopt a schedule of fees to be paid by the sources of greenhouse gas emissions regulated pursuant to AB 32 (i.e., the AB 32 cost of implementation fee), to the extent permitted by law.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Background**. CCST was established in 1988 pursuant to Assembly Concurrent Resolution 162 (Farr and Garamendi) and modeled after the U.S. National Academies. CCST convenes experts from California's academic and research institutions to provide objective advice and analysis in response to requests from the governor, Legislature and other state entities on policy issues relating to science and technology. CCST's mission is carried out via two primary programs: Science Advice and the Science Policy Fellows. CCST delivers policy-relevant science information via briefings, workshops, and peer-reviewed reports and CCST recruits, trains, and places PhD scientists and engineers in a year-long fellowship, working as staff in the California state government.

   CCST serves state offices on their science advice needs. For example CCST completed a report on underground natural gas storage in 2018 titled, "*Long-Term Viability of Underground Natural Gas Storage in California: An Independent Review of Scientific and Technical Information."* In this capacity, CCST works with their academic and research institution partners and other experts to develop assessments of the available information around a specified topic. CCST gathers information through meetings with experts, reviews of the scientific literature, submission of information by outside parties, and investigations by the author team and/or CCST staff. These commissioned reports then undergo independent external peer review.

   Established in 1973, the State Clearinghouse at OPR coordinates state-level review of environmental documents prepared pursuant to the California Environmental Quality Act (CEQA). The Clearinghouse is at the center of state agency involvement in the CEQA environmental review process. It is responsible for reviewing and distributing environmental documents to state agencies for review, advising and assisting government agencies and the public on the environmental review process, and maintaining records of all environmental documents and notices that it receives for public access.

2) **Author's statement**:

   California has set ambitious climate goals, but is not building clean infrastructure – such as renewable energy generation and electric vehicle charging – fast enough to achieve them on schedule. AB 585 requires the state to regularly assess clean infrastructure needs across sectors and publish annual progress reports identifying where faster buildout of clean infrastructure is necessary. In addition to analyzing progress toward building the clean infrastructure needed to reduce greenhouse gas emissions, AB 585 also requires improved reporting on progress toward building infrastructure that reduces criteria air pollutants that do not warm the climate but do impact human health, such as particulate matter and sulfur dioxide. Together, these important provisions will help keep California on schedule to meet our ambitious climate goals and dramatically improve air quality for all.

REGISTERED SUPPORT / OPPOSITION:

Support

California Council for Environmental & Economic Balance (sponsor)
California Environmental Voters
California Trucking Association
Clean Air Task Force

Opposition

None on file

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 593 (Haney) – As Amended March 9, 2023

SUBJECT: Carbon emission reduction strategy: building sector

SUMMARY: Requires the California Energy Commission (CEC) to identify an emission reduction strategy, including milestones, for the building sector to support the achievement of the state's greenhouse gas (GHG) emission reduction goals.

EXISTING LAW:

1) Requires the Air Resources Board (ARB), pursuant to California Global Warming Solutions Act of 2006 [AB 32 (Núñez), Chapter 488, Statutes of 2006], to adopt a statewide GHG emissions limit equivalent to 1990 levels by 2020 and adopt regulations to achieve maximum technologically feasible and cost-effective GHG emission reductions. AB 32 authorizes ARB to permit the use of market-based compliance mechanisms to comply with GHG reduction regulations once specified conditions are met. Requires ARB to approve a statewide GHG emissions limit equivalent to 85% below the 1990 level by 2045. (Health and Safety Code (HSC) 38500-38599.11)

2) Establishes the California Climate Crisis Act, which creates a policy of the state to:

    a) Achieve net zero GHG emissions as soon as possible, but not later than 2045, and to achieve and maintain net negative GHG emissions thereafter; and,

    b) Ensure that by 2045, statewide anthropogenic GHG emissions are reduced to at least 85% below the statewide GHG emissions limit equivalent to 1990 levels. (HSC 38562.2)

3) Requires, by January 1, 2021, the CEC, in consultation with ARB, the Public Utilities Commission (PUC), and the Independent System Operator, to assess the potential for the state to reduce GHG emissions from the state's residential and commercial building stock by at least 40% below 1990 levels by January 1, 2030. (Public Resources Code (PRC) 25403)

4) Requires the CEC, by December 31, 2023 and in coordination with the Governor's Office of Business and Economic Development, PUC, and the State Treasurer, to:

    a) Identify available state and federal financing or investment solutions that are consistent with the United States Environmental Protection Agency's inclusive utility investments policies or other industry best practices that will enable electrical corporations, community choice aggregators, or other eligible entities to provide zero-emission, clean energy, or decarbonizing building upgrades;

    b) Apply for federal financing or investment solutions, where applicable; and

    c) Provide technical assistance to electrical corporations, community choice aggregators, or other eligible entities to apply for state and federal financing or investment solutions. (PRC 25235)

5) Establishes the Equitable Building Decarbonization Program, which:

   a) Requires CEC to establish a direct install program to reduce GHG emissions and, where feasible, resilience to extreme heat, indoor air quality improvements, energy affordability, and grid reliability. Specifies that eligible projects include installation of energy efficient electric appliances, energy efficiency measures, demand flexibility measures, wiring and panel upgrades, building infrastructure upgrades, efficient air conditioning systems, ceiling fans, and other measures to protect against extreme heat, where appropriate, and remediation and safety measures to facilitate the installation of new technologies; and,

   b) Requires CEC to establish and administer a statewide incentive program for low-carbon building technologies in coordination with other program administrators. Specifies that eligible measures include funding for low-carbon building technologies such as heat pumps, space and water heaters, and other efficient electric technologies. (PRC 25665-25665.6)

THIS BILL:

1) Requires CEC, on or before June 1, 2024, to identify an emission reduction strategy, with milestones, for the building sector to support achieving the GHG emissions reduction goals established by the California Climate Crisis Act.

2) Requires the emission reduction strategy to:

   a) Maximize workforce development;

   b) Provide clear market signals to appliance manufacturers and installers;

   c) Lessen impacts on ratepayers;

   d) Support extreme heat goals;

   e) Reduce barriers for low-income individuals; and,

   f) Identify how to deploy zero-emission bidirectional air conditioning to meet the needs of communities impacted by climate change and extreme weather events.

3) Requires, on or before July 1, 2025, CEC to implement the emission reduction strategy as part of the Equitable Building Decarbonization Program.

4) Requires, on or before July 1, 2025, CEC to take actions specified in PRC § 25235 (see bullet 4 above) for purposes of implementing the emissions reduction strategy.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**:

   Out of control greenhouse admissions have forced our planet in to a climate crisis that is more and more apparent with every extreme weather forecast.

In California, commercial and residential buildings that burn methane gas are responsible for approximately 25% of the state's greenhouse gas emissions—second only to the transportation sector.

AB 593 requires the Energy Commission to take action to create an emissions reduction strategy for our building sector that will set low emission targets and create an action plan to move California's buildings away from methane and towards modern electrification.

2) **Embodied carbon**. The term "embodied carbon" refers to the GHG emissions arising from the manufacturing, transportation, installation, maintenance, and disposal of building materials. The majority of a building's total embodied carbon is released upfront at the beginning of a building's life. Unlike with operational carbon, there is no chance to decrease embodied carbon with updates in efficiency after the building is constructed.

   In California, according to ARB's GHG Emission Inventory, residential and commercial buildings account for more than 10% of the state's total GHG emissions. However, residential and commercial buildings are responsible for roughly 25% of California's GHG emissions when accounting for fossil fuels consumed onsite and electricity demand. Refrigerants used in heating and cooling systems also contribute to building-related GHG emissions. It is unclear what the exact breakdown is between embodied and operating emissions, but due to California's mild climate, increasing renewable electricity supply, and relatively efficient building stock, our state's operational emissions may be a smaller percentage of total building energy use, compared to the embodied carbon in new construction.

3) **Reducing building emissions**. Achieving net zero GHG emissions – when GHG emissions are either zero or are offset by equivalent atmospheric GHG removal – is an important part of reducing GHG emissions and minimizing the effects of climate change. Net zero GHG emissions is also often used interchangeably with carbon neutrality; however, net zero GHG emissions includes GHGs other than those that contain carbon, such as nitrous oxide. Constructing buildings to be net zero will substantially reduce the state's GHG emissions.

   Buildings can also sequester carbon. Building materials, depending on how they are manufactured, can be considered to sequester carbon. For example, the carbon that comprises wood (roughly 50% by weight) is from the carbon dioxide (CO_2) the tree absorbed from the air. California policies typically consider a 100-year time horizon for the sequestration to be considered permanent. Thus, if atmospheric CO_2 could—reliably and accountably—be stored in wood used in buildings for at least a century, those could potentially be counted as sequestered. Given California's stated goal of net zero GHG emissions by 2045, there is a need for GHG emissions to be balanced by atmospheric GHG removal.

4) **Buy Clean California Act**. The BCCA establishes limits on embodied carbon emissions and construction materials procured by the state for public construction projects. By January 1, 2022, the law requires the Department of General Services (DGS) to publish acceptable maximum global warming potential (GWP) limits for structural steel, concrete reinforcing steel (rebar), flat glass, and mineral wool board insulation. In order to determine and

compare the GWPs of different products and materials, DGS relies on environmental product declarations (EPDs).

5) **Environmental product declarations and life cycle assessments**. An EPD is a widely-accepted, verified report of the ways in which product affects the environment throughout its life cycle. It provides information about a product's impact upon the environment, such as GWP, air emissions, ozone depletion, and water pollution. EPDs allow purchasers to have comparable, objective, and third-party verified data to better understand a product's environmental impacts so they can make more informed product selections.

   Life cycle analyses attempt to quantify the environmental impacts associated with a given product. The analyses can vary depending on the assumptions made and the extent of the life cycle considered. For life cycle analyses of building materials, assessments are usually either cradle-to-gate or cradle-to-grave. Cradle-to-gate analyses consider the emissions associated from extraction up until arrival at the project site, while cradle-to-grave continue further to consider any emissions associated with the product's use within the project and building and, ultimately, its end of life.

6) **Building decarbonization framework**. AB 2446 (Holden), Chapter 352, Statutes of 2022, requires ARB to develop a framework for measuring and reducing GHG emissions associated with new building construction. This bill requires the framework to include a comprehensive strategy to achieve a 40% net reduction in the carbon intensity of construction and materials used in new construction as soon as possible, but no later than December 31, 2035 and an interim target to achieve a 20% net reduction in carbon intensity by the end of 2030.

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

   a) Replace "lessen" with "minimize" on page 2, line 12.

   b) Clarify that the emission reduction strategy identify zero emission home heating and cooling technologies, including bidirectional heat pumps.

REGISTERED SUPPORT / OPPOSITION:

Support

Building Decarbonization Coalition
California Environmental Voters
Call 4 Change
Carbon Zero Buildings
Climate Action California
Efficiency First California
Electric Action
Green Building Architects
Hammond Climate Solutions
Let's Green CA!
Marin Clean Energy

Menlo Spark
Redwood Energy
Rewiring America
Rising Sun Center for Opportunity
RMI
Sierra Club of California
Southern California Edison
SPUR
Stand.earth
UndauntedK12
USGBC-LA

Opposition

California Association of Realtors

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 625 (Aguiar-Curry) – As Amended March 27, 2023

SUBJECT: Forest biomass: management: emissions: energy

SUMMARY: Establishes the Forest Waste Biomass Utilization Program to develop an implementation plan to meet the goals and recommendations of the state's wood utilization policies and priorities and focused market strategy of specified statewide forest management plans, and to develop a workforce training program to complement the workforce needs associated with the implementation plan.

EXISTING LAW:

1) Establishes in the California Natural Resources Agency (NRA) the Department of Forestry and Fire Protection (CAL FIRE), and requires CAL FIRE to be responsible for, among other things, fire protection and prevention, as provided. (Public Resources Code (PRC) 4003, et seq.)

2) Establishes the State Board of Forestry and Fire Protection (Board of Forestry) in CAL FIRE to represent the state's interest in the acquisition and management of state forests and requires the Board of Forestry to maintain an adequate forest policy. (PRC 4002)

3) Establishes, pursuant to Executive Order No. B-52-18, a Forest Management Task Force (Task Force), now known as the Wildfire and Forest Resilience Task Force, involving specified state agencies to create the action plan for wildfire and forest resilience. The executive order also established a Joint Institute for Wood Products Innovation (Institute).

4) Designates, under the California Global Warming Solutions Act of 2006, the State Air Resources Board (ARB) as the state agency charged with monitoring and regulating sources of greenhouse gases (GHG) emissions. Requires the ARB to adopt specified statewide GHG limits below 1990 levels and to achieve the maximum technologically feasible and cost-effective GHG reductions. (Health & Safety Code (HSC) 38561)

5) Requires ARB to prepare and approve a Scoping Plan for achieving reductions in GHG emissions from sources or categories of sources of GHGs. Requires the Scoping Plan to identify and make recommendations on direct GHG emissions reduction measures, among other things. Requires ARB to update Scoping Plan for at least once every five years. (HSC 38561)

6) Requires ARB, in consultation with CAL FIRE, to develop a report on or before December 31, 2020, and every five years thereafter that assesses GHGs associated with wildfire and forest management activities. (HSC 38535)

7) Establishes, pursuant to the Warren-Alquist State Energy Resources Conservation and Development Act, the State Energy Resources Conservation and Development Commission (CEC). Requires the CEC, in consultation with specified state and federal agencies and at least every two years, to conduct assessments and forecasts of all aspects of energy industry

supply, production, transportation, delivery and distribution, demand, and prices. (PRC 25000, et seq.)

8) Requires the CEC to adopt a biennial integrated energy policy report (IEPR) containing an overview of major energy trends and issues facing the state, including, but not limited to, supply, demand, pricing, reliability, efficiency, and impacts on public health and safety, the economy, resources, and the environment. (PRC 25302)

9) Establishes, pursuant to the Clean Transportation Program to provide funding to specified eligible entities to develop and deploy innovative technologies that transform California's fuel and vehicle types to help attain the state's climate change policies. (HSC 44270)

10) Requires the Public Utilities Commission (CPUC) to establish a renewable portfolio standard (RPS) requiring all retail sellers, as defined, to procure a minimum quantity of electricity products from eligible renewable energy resources, as defined, so that the total kilowatt hours of those products sold to their retail end-use customers achieves 44% of retail sales by December 31, 2024, 52% by December 31, 2027, and 60% by December 31, 2030. (Public Utilities Code (PUC) 399.11)

11) Requires the CPUC to direct electrical corporations, collectively, to procure at least 250 megawatts (MW) of cumulative rated generating capacity from developers of bioenergy projects that commence operation on or after June 1, 2013. Pursuant to this requirement, the PUC has established and revised the Bioenergy Market Adjusting Tariff (BioMAT) program. (PUC 399.20)

THIS BILL:

1) Requires, as part of the 2025 update to the report that assesses GHGs associated with wildfire and forest management activities, ARB to include both of the following:

    a) A methodology to quantify GHG and short-lived climate pollutant emissions, including black carbon, from wildfire, pile burning, and forest management activities.
    b) A list of the data needed to use the methodology prepared.

2) Requires ARB, in developing the Scoping Plan, to consider the results of the latest report mentioned above.

3) Establishes the Forest Biomass Waste Utilization Program (Biomass Program) in the Institute.

4) Defines the following terms for purposes of the Biomass Program:

    a) "California Forest Carbon Plan" means the "California Forest Carbon Plan: Managing our Forest Landscapes in a Changing Climate" issued by the California Environmental Protection Agency, the NRA, and CAL FIRE in May 2018;

    b) "Forest Biomass Waste Utilization Plan" means the "Joint Institute Recommendations to Expand Wood and Biomass Utilization in California" report issued by the Board of Forestry Institute in November 2020;

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

d) "Wildfire and Forest Resilience Action Plan" means the "California Wildfire and Forest Resilience Action Plan" (Action Plan) issued by the Task Force in January 2021.

5) Requires the Biomass Program to do all of the following:

a) Develop an implementation plan, in coordination with the Task Force, Office of Planning and Research (OPR), Governor's Office of Business and Economic Development, Department of Toxic Substances Control, Department of Conservation (DOC), CEC, and CPUC, to meet the goals and recommendations of the Forest Biomass Waste Utilization Plan, and the comprehensive framework to align the state's wood utilization policies and priorities and the focused market strategy required by the Action Plan. Requires the implementation plan to do both of the following:

i) Identify, with particular emphasis on the development of new forest biomass waste utilization projects on developed property that is located near forested land that sources forest biomass waste, funding needs, gaps in research and demonstration, necessary regulatory changes, and other needs.

ii) Adopt best practices for biomass feedstock aggregation that are consistent with the recommendations of OPR.

b) In collaboration with governmental, nonprofit, and for-profit entities that have expertise in workforce development, including, but not limited to, the California Community College system and the California Workforce Development Board, develop a workforce training program that will complement the workforce needs associated with implementation of the biomass utilization program.

6) Requires, beginning January 1, 2025, and annually thereafter, the Board of Forestry, in coordination with the Task Force, to prepare and submit an annual report to the Legislature on the progress made on implementing the implementation plan.

7) Requires NRA to facilitate the integration of recommendations for forest biomass waste uses in relevant state climate adaptation plans.

8) Requires the CEC, in coordination with CAL FIRE, NRA, and DOC, to consider funding qualifying projects pursuant to the Clean Transportation Program that use forest biomass waste for advanced biofuel technology development, including, but not limited to, projects that use noncombustion conversion technologies for electrical vehicle charging or hydrogen vehicle fueling.

9) Requires the CEC, in coordination with NRA and DOC, to prepare and submit a report to the Legislature, on or before December 31, 2024, that evaluates innovative bioenergy technologies that use forest biomass waste. Requires the report to present recommendations, where appropriate, for opportunities to maximize environmental performance, grid reliability benefits, and value to electricity ratepayers. Requires the report to assess the potential to

facilitate the use of forest biomass waste produced within fire-threat areas, as identified by the PUC, to support the integration of innovative biomass power for the purpose of supporting rural microgrids, or providing other grid support, or both, including an assessment of any technological or feasible challenges, including, but not limited to, challenges associated with reliability and fueling concerns. Authorizes the report to include a review of, and recommendations for, alternative programming or financing considerations. Sunsets the report requirements on January 1, 2028.

10) Requires the CEC, as part of the 2025 edition of the IEPR, to include an assessment of the potential for forest biomass waste energy to provide firm renewable power.

11) Requires the PUC to continue the BioMAT program until the implementation of paragraph (5) of subdivision (f) of Section 399.20 is resolved within CPUC rulemaking proceeding R.22-10-010 and adequate time is given to community choice aggregators to participate in the program.

12) States that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution.

FISCAL EFFECT: Unknown

COMMENTS:

1) **According to the author:**

> California's forests cover nearly one-third of the state and provide enormous benefits for the climate, the environment, and the economy. Our forests are, however, increasingly vulnerable to wildfire, invasive species, drought, and other threats. State law requires forest fuel removal on one million acres per year, which will generate millions of tons of forest waste biomass. The Air Board's 2022 Climate Change Scoping Plan calls for forest management on 2.3 million acres a year to reduce wildfire risks and restore healthier, more resilient forests. Without a productive way to use that biomass, it will be piled and burned, which emits significant climate and air pollution. Converting forest waste biomass to beneficial re-uses can, instead, reduce emissions from pile and burn while creating renewable power and fuels, biochar, cross-laminated timber, and other valuable wood products. Doing so will also boost jobs, economic growth, and energy security in many of California's poorest and most vulnerable regions. AB 625 will address the need to put California's forest biomass waste to reduce wildfires and create healthier forests by establishing the Forest Waste Biomass Utilization Program and directing state agencies to help promote the processing of biomass waste into bioenergy and other wood products. This bill also extends the existing Bioenergy Feed-in Tariff (BioMAT) Program until the California Public Utilities Commission implements past legislation that allows Community Choice Aggregators to participate in the program.

2) **Biomass**. California covers about 100 million acres and approximately 40% of the state is forest. National Forest System lands, managed by the US Forest Service (USFS), cover in excess of 18 million acres (approximately 58% of California forestland). Forest operations

such as logging, thinning, fuels reduction programs, and ecosystem restoration create a huge amount of woody biomass. Some of this is brought out of the forest for use, but as much as half of the biomass is left in the forest. When residues from mastication and slash from timber harvests are left scattered throughout the forest, they act as additional dry surface fuel and serve to increase intensity and severity if a wildfire burns through the area. Often woody biomass materials are piled and burned creating air pollution, such as black carbon, or left to decay, creating methane.

According to the CEC, there are currently approximately 47 million bone dry tons (BDT) of biomass resource potential in California. According to the Board of Forestry, state requirements to remove forest fuels on a combined one million acres per year will lead to 10 to 15 million bone dry tons of forest waste biomass annually.

SB 901 (Dodd, Chapter 626, Statutes of 2018) requires California to double forest fuel removal to reduce the risks of catastrophic wildfires. More recently, California entered an agreement with the USFS to reduce forest fuels on one million acres per year. While some of that will be accomplished with prescribed fire, much of it will require mechanical thinning that will generate millions of tons of forest waste per year.

3) **Biomass markets**. Biomass piles reflect the severely underdeveloped forest biomass supply chain in California. One key obstacle to effectively using them is the cost of loading and transportation, since forested areas tend to be rural, mountainous, and remote. The main use of biomass today is as a fuel for California's existing biomass power plants. Currently, there are about 30 direct-combustion biomass facilities in operation with a capacity of 640 megawatts (MW). These biomass plants use about five million BDT of biomass per year – or about 10% of the total BDT biomass resource potential.

   According to the CEC's September 2020 report *Utility-Scale Renewable Energy Generation Technology Roadmap,* forest fire prevention through bioenergy systems is limited by cost. While wood residue and thinning collection is one of the most noticeable and currently relevant aspects of bioenergy conversion, the cost of collecting and delivering distributed wood resources remains prohibitively expensive. In general, woody biomass generation has a higher cost compared to other renewables even without accounting for collection of the types of wood resources that most often lead to wildfires.

   Wood products manufacturing and various biomass utilization pathways contribute to local and regional economies by creating jobs and generating revenue through forest management and restoration activities; commercial harvesting; product manufacturing and energy or fuels production and related support businesses; and, transportation and shipping. A more robust market for biomass could help pay for forest treatments or provide income for landowners.

4) **Wildfire prevention**. Wildfires have been growing in size, duration, and destructivity over the past 20 years. Growing wildfire risk is due to accumulating fuels, a warming climate, and expanding development in the wildland-urban interface. The 2020 fire season broke numerous records. In August 2020, California and the USFS agreed to scale up vegetation treatment and maintenance to one million acres of federal, state, and private forest and wildlands annually by 2025.

   California is responsible for fire and resource protection on nearly 13.3 million acres of private and state-owned forested lands. The state owns about 1.1 million acres of these lands,

and 12.2 million acres of lands are under private ownership. In the past several years, forest management has significantly expanded on these lands. CAL FIRE has increased its forest thinning and prescribed fire activities from about 30,000 acres in 2016 to more than 50,000 acres in 2020. Partners receiving state-funded grants treated more than 30,000 acres in 2020. Private landowners currently actively manage 250,000-300,000 acres through fuels reduction, mechanical thinning, and timber harvest projects.

Implementing innovative and recommended strategies for forest fuel load reduction and creating end-use markets for biomass can encourage and ideally accelerate healthy forest management to prevent wildfire spread while ideally reducing GHG emission.

5) **Forest Biomass Waste Utilization Program**. The Institute at the Board of Forestry is dedicated to providing California forest product information, research, and analysis to increase economic drivers for healthy forests. Institute work focuses on long-term ecological and economic sustainability; education and outreach; increased forest resilience, long-term carbon storage, and local economies; and, industry retention and development in California.

   On November 4, 2020, the Institute and the Board of Forestry released a set of recommendations to promote biomass utilization in California, including: providing financial incentives and leveraging public dollars to attract private capital to support demand for innovate wood and biomass products markets; identifying priority wood products manufacturing centers in or near forested communities throughout the state; providing grants to support workforce development; facilitating information flow between state, federal, tribal, and local governments; utilities; and other non-governmental organizations; and, measuring progress, among others.

   This bill establishes the Biomass Program under the administration of the Institute to meet the goals and recommendations of the Forest Biomass Waste Utilization Plan, the comprehensive wood utilization strategy, and market framework required by the Action Plan.

   More specifically, the Biomass Program would develop an implementation plan, with the Task Force and other state agencies, to identify, with particular emphasis on the development of new forest biomass waste utilization projects on developed property that is located near forested land that sources forest biomass waste, funding needs, gaps in research and demonstration, necessary regulatory changes, and other needs, and adopt best practices for biomass feedstock aggregation that are consistent with the recommendations of OPR. Under the Biomass Program, a workforce training program that will complement the workforce needs associated with implementation of the biomass utilization program would also be developed.

   In furtherance of the program, the bill requires NRA to facilitate the integration of recommendations for forest biomass waste utilization in relevant, state climate adaptation plans.

6) **Air Resources Board**. In its *Short Lived Climate Pollutant Reduction Strategy*, ARB acknowledges that the only practical way to rapidly reduce the impacts of climate change is to immediately reduce emissions of short-lived climate pollutants, which include black carbon and methane, among others. Short-lived climate pollutants have atmospheric lifetimes on the order of a few days to a few decades, and their relative climate forcing impacts, when measured in terms of how they heat the atmosphere, can be tens, hundreds, or even thousands

of times greater than that of carbon dioxide (CO_2). Black carbon is emitted from burning fuels such as biomass, as well as from various forms of non-fuel biomass combustion (destruction of excess woody wastes, wildfires, etc.). Black carbon contributes to climate change both directly by absorbing sunlight and indirectly by depositing on snow and by interacting with clouds and affecting cloud formation. While methane has a global warming potential 28 times more powerful than CO_2 over a 100-year time horizon, black carbon has a warming impact on climate 460-1,500 times stronger than CO_2 per unit of mass.

Current law requires ARB, in coordination with CAL FIRE, to develop a standardized system for quantifying the direct carbon emissions and decay from fuel reduction activities for purposes of meeting the accounting requirements for Greenhouse Gas Reduction Fund expenditures, and develop a historic baseline of GHG emissions from California's natural fire regime reflecting conditions before modern fire suppression. AB 625 augments that reporting requirement for a 2025 report to include a methodology to quantify the GHG and short-lived climate pollutant emissions, including black carbon, from wildfire, pile burning, and forest management activities.

Under the Global Warming Solutions Act [AB 32 (Núñez), Chapter 488, Statutes of 2006], ARB is tasked with developing the Scoping Plan – the state's road map for reducing anthropogenic GHGs to specified targets below 1990 levels to meet our GHG reduction and carbon neutrality goals. AB 625 further requires ARB to consider the results of the report that quantifies the direct carbon emissions and short-lived climate pollutant emissions from wildfires and fuel reduction activities.

ARB has historically not included GHG data from California's natural fire regime because it would skew the focus away from human-made emissions (i.e., from the fossil fuel sector). Given the SB 901 report pursuant to HSC 68535, it is not necessary to include that information additionally in the Scoping Plan.

7) **Energy Commission**. The Clean Transportation Program, also known as the Alternative and Renewable Technology Program (AB118 (Núñez), Chapter 750, Statutes of 2007), invests up to $100 million annually in a broad portfolio of transportation and fuel transportation projects, including biomethane, which is a renewable natural gas produced from decaying organic matter such as waste water treatment sludge, food waste, animal manures, landfill gas, dead trees, and municipal solid waste through a process called anaerobic digestion.

   AB 625 requires the CEC, in furtherance of the Biomass Program, to consider funding qualifying projects pursuant to that program that use forest biomass waste for advanced biofuel technology development, including, but not limited to, projects that use noncombustion conversion technologies for electrical vehicle charging or hydrogen vehicle fueling.

   Further, the bill requires CEC to prepare and submit a report to the Legislature, on or before December 31, 2024, that evaluates innovative bioenergy technologies that use forest biomass waste. In addition to the recommendations the CEC would be required to make, the author may wish to consider additionally requiring the CEC to consider the air quality improvement to nonattainment areas with existing or proposed bioenergy facilities.

   Current law requires the CEC to prepare a biennial IEPR, which contains an integrated assessment of major energy trends and issues facing California's electricity, natural gas, and

transportation fuel sectors. AB 625 would require CEC to include an assessment in the IEPR of the potential for forest biomass waste energy to provide firm renewable power.

8) **Public Utilities Commission**. The BioMAT is a Feed-in-Tariff program that ordered 250 MW of procurement for electricity from bioenergy projects. Electricity generated as part of the BioMAT program must count towards the utilities' RPS targets. The intent of BioMAT is to create a program that differentiated small renewable biomass and biogas projects from other renewable distributed generation technologies to ensure that there are contracting opportunities for these facilities that capture existing methane emissions or use materials from agricultural and sustainable forestry activities. The procurement is allocated among three distinct bioenergy technology categories:

   Category 1: Biogas from wastewater treatment, municipal organic waste diversion, food processing, and co-digestion - 110 MW

   Category 2: Dairy and other agricultural bioenergy - 90 MW

   Category 3: Bioenergy using byproducts of sustainable forest management (including fuels from high hazard zones) - 50 MW

   According to the October 2018 CPUC *BioMAT Program Review and Staff Proposal*, during the first two years of the program's inception, participation was low, undermining the competition needed for offer prices to adjust. As of 2018, the program has contracts for 33 MW of capacity, or 13% of the 250 MW procurement goal. At that time, CPUC staff noted it could take approximately 20 years to reach the BioMAT program procurement goal of 250 MW.

   In September 2020, the PUC adopted Rulemaking 18-07-003 to extend BioMAT until December 31, 2025.

   In October 2022, the PUC issued Rulemaking 22-10-010 to implement AB 843 (Aguiar-Curry, Chapter 843, Statutes of 2021) and authorize Community Choice Aggregators to participate in the BioMAT program.

   In consideration of that ongoing rulemaking, AB 625 was amended in the Assembly Utilities & Energy Committee to require the CPUC continue the BioMAT program until the implementation of AB 843 is resolved within that rulemaking and adequate time is given to community choice aggregators to participate in the program.

9) **Committee amendments**. *The Committee may wish to consider amending the bill* as follows to strike subdivision (g) from Sec. 38561 to remove the proposed changes to the Scoping Plan.

10) **Double referral**. This bill was heard in the Assembly Utilities and Energy Committee on March 22, where it was approved 13-0.

11) **Related legislation**.

AB 998 (Connolly) requires the CEC to report on the utility-scale biomass combustion facilities still in operation as of January 1, 2024 and specifies information the report must contain. This bill is scheduled to be heard in the Assembly Utilities and Energy Committee.

AB 2878 (Aguiar-Curry, 2022) would have established the Forest Biomass Waste Utilization Program to develop an implementation plan to meet the goals and recommendations of the Biomass Waste Utilization Plan and to develop a workforce training program to complement the workforce needs associated with implementation of this program. This bill was held in the Senate Appropriations Committee.

AB 2587 (E. Garcia, 2022) among its provisions, expands the type of firm resources to be considered in an upcoming CEC assessment to include bioenergy and biomass. This bill was held in the Senate Appropriations Committee.

SB 1109 (Caballero, Chapter 364, Statutes of 2022) extends requirements on electric utilities and CCAs to procure energy from biomass generating electric facilities by five years and requires extension of existing contracts by five years.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Water Agencies
California Biomass Energy Alliance
California Compost Coalition
California Forestry Association
Coalition for Renewable Natural Gas
Humboldt and Mendocino Redwood Companies
Marin Clean Energy
Pioneer Community Energy
Placer County Air Pollution Control District
Rural County Representatives of California
Silicon Valley Clean Energy

Opposition

350 Humboldt: Grass Roots Climate Action
Center for Biological Diversity
Climate Action California
Sierra Club
Sempra Energy

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 673 (Bennett) – As Amended March 13, 2023

SUBJECT: Hydrogen-fueling stations: preference

SUMMARY: Requires the California Energy Commission (CEC), when considering funding hydrogen fueling stations for medium- and heavy-duty vehicles, to evaluate whether the project needs to also serve light-duty vehicles, subject to specified considerations and exceptions for existing programs that may provide funding for hydrogen fueling stations.

EXISTING LAW:

1) Establishes Clean Transportation Program (CTP), administered by CEC, with funding from vehicle and vessel registration, vehicle identification plates, and smog-abatement fees that provide up to $100 million annually for grants, revolving loans, loan guarantees, and other financial assistance to accelerate the development and deployment of clean, efficient, low carbon alternative fuels and technologies. Projects to develop alternative and renewable low-carbon hydrogen fuels are eligible. The fees that fund CTP sunset January 1, 2024. (Health and Safety Code (HSC) 44272)

2) Requires CEC to allocate $20 million annually, not to exceed 20% of the money appropriated by the Legislature from the Alternative and Renewable Fuel and Vehicle Technology Fund, to fund hydrogen fueling stations until there are at least 100 public hydrogen fueling stations in operation in California. This section sunsets January 1, 2024. (HSC 43018.9)

THIS BILL:

1) Requires the CEC, when considering providing funding for projects for the construction and operation of hydrogen-fueling medium- and heavy-duty stations, to evaluate whether the project needs to also include access for light-duty vehicles.

2) Requires the CEC to consider safety, regional light-duty vehicle hydrogen fueling needs, and the station fueling capacity.

3) Provides this requirement does not apply to funding provided pursuant to the CTP or HSC 43018.9, if that allocation continues beyond January 1, 2024.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Background**. According to the CEC's 2022-23 CTP Investment Plan Update, between public and private investments, CEC staff anticipates that California will meet the goal of 200 hydrogen refueling stations with sufficient capacity to serve 273,000 fuel cell vehicles. Automakers expect to have 65,000 light-duty fuel cell vehicles on the road in 2028, so station capacity should not be a near-term barrier to light-duty fuel cell vehicle deployment once these stations are operational.

Recent investments focus on the medium- and heavy-duty sector. According to the Alternative Fuels Data Center, "the rollout of heavy-duty hydrogen trucks, such as line-haul trucks, will necessitate very large stations compared to light-duty needs. The increase in production and distribution of hydrogen for these stations could improve efficiency and utilization of expensive capital equipment leading to lower fuel costs per kilogram, benefiting both heavy- and light-duty customers."

Historically, CTP has been the main program funding zero-emission vehicle (ZEV) infrastructure, receiving $100 million annually from various fees. However, recent budget surpluses allowed the Legislature to appropriate General Fund (GF) money for ZEV infrastructure. The 2023 Budget Act AB 179 (Committee on Budget) Chapter 45, Statutes of 2022 and accompanying legislation AB 211 (Committee on Budget) Chapter 574, Statutes of 2022 appropriated $484 million GF to the CEC for projects consistent with CTP. Of that amount, $96 million is for ZEV drayage infrastructure, $215 million for ZEV light-duty charging infrastructure, and $99 million for ZEV infrastructure for clean trucks, buses, and off-road equipment.

2) **Author's statement**:

> AB 673 is an attempt to direct the CEC to give bonus points to funding when medium and heavy duty hydrogen refueling station proposals include a refueling option for light-duty vehicles. In these early stages of California's transition from a carbon-based transportation system to a carbonless system we should keep both electric battery and hydrogen fuel cell technology competing with each other in as many areas as possible. We should not allow a lack of hydrogen fueling infrastructure to be an impediment to California's transition to clean energy.

3) **Related legislation**. AB 241 (Reyes) and SB 84 (Gonzalez) revise and expand the CTP, and extend the fees that support the program until 2035. Neither bill extends the hydrogen station funding commitment in HSC 43018.9. AB 241 is pending in the Assembly Transportation Committee. SB 84 is pending in the Senate Transportation Committee. In addition, Department of Finance has proposed a budget trailer bill extending the CTP and related. The trailer bill extends HSC 43018.9 until 2035, but does not change the 100 station target.

4) **Double referral**. This bill passed the Assembly Transportation Committee on March 20 by a vote of 15-0.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

350 Bay Area Action
350 Humboldt: Grass Roots Climate Action

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 748 (Villapudua) – As Amended March 23, 2023

SUBJECT: California Abandoned and Derelict Commercial Vessel Program.

SUMMARY: Establishes the California Abandoned and Derelict Commercial Vessel Program (Program) to identify, prioritize, and fund, as specified, the removal of abandoned and derelict commercial vessels from commercially navigable waters. This bill establishes the California Abandoned and Derelict Commercial Vessel Program Task Force (Task Force) to oversee and provide policy direction for the Program. This bill generally prohibits a commercial vessel that is at-risk of becoming derelict from occupying, anchoring, mooring, or otherwise being secured in or on commercially navigable waters.

EXISTING LAW:

1) Vests with the State Lands Commission (SLC) control over specified public lands in the state, including tidelands and submerged lands. (Public Resources Code (PRC) 6101, et seq)

2) Authorizes SLC to take immediate action, without notice, to remove from areas under its jurisdiction a vessel that is left unattended and is moored, docked, beached, or made fast to land in a position as to obstruct the normal movement of traffic or in a condition as to create a hazard to navigation, other vessels using a waterway, or the property of another. (PRC 6302.1 (a)(1))

3) Authorizes SLC to take immediate action to remove a vessel that poses a significant threat to public health, safety, or welfare; or, to sensitive habitat, wildlife, or water quality, or that constitutes a public nuisance or that is placed on areas under its jurisdiction without its permission. (PRC 6302.1 (a)(2))

4) Authorizes SLC to remove and dispose of an abandoned or derelict vessel on a navigable waterway in the state that is not under the jurisdiction of SLC, as specified, if requested to do so by another public entity that has regulatory authority over the area where the vessel is located. (PRC 6302.1 (d))

5) Authorizes SLC to recover all costs incurred in removal actions undertaken pursuant to these provisions, including administrative costs and the costs of compliance with the California Environmental Quality Act. (PRC 6302.1 (e))

6) Defines a "vessel" as a vessel, boat, raft, other watercraft, buoy, anchor, mooring, other ground tackle used to secure a vessel, boat, raft or similar watercraft, hulk derelict, wreck, or parts of a ship, vessel, or other water craft. (PRC 6302.1 (f)(4))

7) Establishes the Abandoned Watercraft Abatement Fund to be used by the Division of Boating and Waterways, in the California Department of Parks and Recreation (State Parks), for grants to be awarded to local agencies for the abatement, removal, storage, and disposal of abandoned vessels. Prohibits these grants from being used for abatement, removal,

storage, or disposal of commercial vessels. (Harbors and Navigation Code (HNC) 525 (d)(1)(A))

8) Authorizes any state, county, city, or other public agency having jurisdiction and authority to remove and destroy, or otherwise dispose of marine debris or solid waste that is floating, sunk, partially sunk, or beached in or on a public waterway, public beach, or on state tidelands or submerged lands. (HNC 551 (a)(1))

THIS BILL:

1) Provides that a commercial vessel that is at risk of becoming derelict shall not occupy, or anchor, moor, or otherwise be secured in or on, the commercially navigable waters. A commercial vessel is "at risk of becoming derelict" when specified conditions exist.

2) Authorizes a peace officer to find that a commercial vessel is "at risk of becoming derelict" if the peace officer determines that any of the conditions described above exist. Authorizes a peace officer to seize or order the removal of a commercial vessel that is at risk of becoming derelict in compliance with current law and only after providing notice.

3) Requires all provisions in the bill relating to the storage, custody, possession, sale, claims, and disbursement of wrecked property after seizure or removal to also apply to a commercial vessel that is at risk of becoming derelict that is seized or removed by a peace officer.

4) Subjects a person who anchors, moors, or otherwise secures a commercial vessel that is at risk of becoming derelict in or on the commercially navigable waters, or allows a commercial vessel that is at risk of becoming derelict to occupy the commercially navigable waters, to liability for a civil penalty of not less $1,000 and not more $5,000 per violation.

5) Requires each civil penalty imposed for a separate violation to be separate and in addition to any other civil penalty imposed pursuant to this bill or to any other civil or criminal penalty imposed pursuant to any other law.

6) Authorizes a civil action brought under this bill to be brought by the Attorney General upon complaint by the Task Force, or by a district attorney or city attorney in the name of the people of the State of California, and any actions relating to the same violation may be joined or consolidated.

7) Requires a court, when determining the amount of a civil penalty, to take into consideration all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation. In making this determination, a court shall consider the extent of harm caused by the violation, whether the effects of the violation may be reversed or mitigated, and, with respect to a defendant, the ability to pay, the effect of a civil penalty on the ability to continue in business, all voluntary cleanup efforts undertaken, the prior history of violations, the gravity of the behavior, the economic benefit, if any, resulting from the violation, and all other matters the court determines justice may require.

8) States that, in a civil action in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it is not necessary to allege or prove at any stage of the

proceeding that irreparable damage will occur if the temporary restraining order, preliminary injunction, or permanent injunction is not issued, or that the remedy at law is inadequate.

9) Requires a court, after a party seeking the injunction has met its burden of proof, to determine whether to issue a temporary restraining order, preliminary injunction, or permanent injunction without requiring a defendant to prove that the defendant will suffer grave or irreparable harm. A court shall make the determination whether to issue a temporary restraining order, preliminary injunction, or permanent injunction by taking into consideration, among other things, the nature, circumstance, extent, and gravity of the violation, the extent of environmental harm caused by the violation, and measures taken by the defendant to remedy the violation.

10) Requires a court, to the maximum extent possible, to tailor a temporary restraining order, preliminary injunction, or permanent injunction narrowly to address the violation in a manner that will otherwise allow a defendant to continue business operations in a lawful manner.

11) Requires all civil penalties collected to be apportioned in the following manner:

    a) 75% shall be deposited into the Abandoned and Derelict Commercial Vessel Program Trust Fund (Trust Fund).
    b) 25%, upon appropriation by the Legislature, shall be distributed to the Attorney General, district attorney, or city attorney prosecuting the action.

12) Requires the costs of removing or destroying a commercial vessel that is at risk of becoming derelict to be borne by the owner or operator of the vessel or the occupant or person in possession of the vessel at the time of the violation. These costs shall be ordered by a court upon a finding of civil liability. Requires the costs of removal or destruction to be deposited into the Trust Fund.

13) Provides that the civil penalties do not apply to a commercial vessel that is moored to a private dock with the consent of an owner of a licensed commercial vessel repair facility or yard for the purpose of being repaired.

14) Establishes the Program within the Natural Resources Agency (NRA). Requires the Program to be administered by SLC to bring federal, state, and local agencies together to identify, prioritize, and, upon appropriation by the Legislature, fund the removal of abandoned and derelict commercial vessels and other debris from the commercially navigable waters and, at a minimum, do both of the following:

    a) On or before July 1, 2025, create, and regularly update and maintain thereafter, an inventory of all abandoned and derelict commercial vessels on or in the commercially navigable waters. The inventory may be conducted by means of an aerial survey, from currently available data from federal, state, and local agencies, or from other data available to the commission.
    b) On or before July 1, 2026, develop, in coordination with the Task Force, an Abandoned and Derelict Commercial Vessel Plan (Plan) to provide a strategic framework to facilitate and track actions in support of strategies that prevent or reduce abandoned and derelict commercial vessels on or in the commercially navigable waters, including the Sacramento-San Joaquin Delta. SLC shall update the Plan periodically as needed to

include, among other things, SLC's progress on implementing the Plan. SLC shall provide a copy of the plan, and each Plan update, to the relevant policy and fiscal committees of the Legislature.

15) Establishes the Task Force as an advisory body within NRA to do all of the following:

a) Provide policy guidance for the Program;
b) Advise on the prevention, removal, destruction, and disposal of abandoned and derelict commercial vessels and other debris, including the recovery of state-incurred costs for the prevention, removal, destruction, and disposal of these vessels and debris, and methods to sustainably fund the Program; and,
c) On or before July 1, 2026, with the support of SLC, research and evaluate the efficacy of abandoned and derelict commercial vessel prevention measures, including, but not limited to, dual registration and insurance requirements and guidelines for government public auctions and make recommendations to the Legislature to implement viable measures.

16) Requires the Task Force to consist of the following members:

a) The executive officer of SLC, or their designee;
b) The Director of Fish and Wildlife (DFW), or their designee;
c) The Director of Toxic Substances Control (DTSC), or their designee;
d) The Director for State Parks, or their designee;
e) The Executive Officer of the State Water Resources Control Board, or their designee; and,
f) Two members appointed by the Delta Protection Commission, who shall be a representative from a county that encompasses a portion of the Sacramento-San Joaquin Delta, and one appointed by the executive officer of the commission

17) Requires the Task Force to consist of the following members if the specified federal agencies agree:

a) A representative appointed by the United States Coast Guard;
b) A representative appointed by the United States Environmental Protection Agency;
c) A representative appointed by the United States Army Corp of Engineers; and,
d) A representative appointed by the National Oceanic and Atmospheric Administration.

18) Sunsets the Task Force on December 31, 2031.

19) Requires the Task Force to develop a system for prioritizing the removal of the abandoned and derelict commercial vessels identified by SLC.

20) Requires the Task Force to consider the severity of the potential threats posed by an abandoned and derelict commercial vessel to human health and safety and the environment, and evaluate the severity of the threats based on specified factors.

21) Requires SLC, on or before December 1, 2024, to enter into a memorandum of agreement (MOA) with DFW, DTSC, and, as determined by the executive officer of SLC in consultation with the Task Force , any other relevant federal, state, or local agency, to clean

up and remove abandoned and derelict commercial vessels and other debris from the commercially navigable waters. Authorizes the MOA to address, but be not limited to, the expertise and abilities of the respective parties to prevent the impacts associated with abandoned or derelict vessels, respond to related hazardous materials releases and pollution cleanup, and remove and dispose of abandoned and derelict commercial vessels.

22) Requires, upon execution of the MOA, and pursuant to available funds in the Trust Fund, or a determination by the parties to the agreement of the availability of existing funds eligible for use for purposes of this section, SLC to immediately authorize and execute the removal of abandoned and derelict commercial vessels and other debris as follows:

    a) Before SLC completes the inventory of all abandoned and derelict commercial vessels on or in the commercially navigable waters and the Task Force develops a system for prioritizing the removal of these vessels, SLC shall authorize and execute the removal of abandoned and derelict commercial vessels and other debris using the Risk-Based Priority Matrix included in SLC's Plan.
    b) After SLC completes the inventory of all abandoned and derelict commercial vessels on or in the commercially navigable waters and the Task Force develops a system for prioritizing the removal of these vessels, SLC shall authorize and execute the removal of abandoned and derelict commercial vessels and other debris using the inventory and prioritization system.

23) States that nothing in the bill limits or restricts the SLC's authority to identify, remove, or otherwise address vessels pursuant to state law.

24) Provides that the Program shall not be funded by the Abandoned Watercraft Abatement Fund.

25) Establishes the Trust Fund in the State Treasury and specifies any moneys appropriated by the Legislature for purposes of the Program and any civil penalties or costs collected pursuant to the Program be deposited into the Trust Fund.

26) Requires, upon appropriation by the Legislature, moneys in the Trust Fund to be used by SLC to fund the removal of abandoned and derelict commercial vessels and other debris pursuant to the Program.

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's statement**.

    AB 748 is needed to coordinate the safe and efficient removal of commercial abandoned and derelict vessels in order to keep our waterways clear and clean. Through the statewide coordinating council that this bill creates it will help streamline the removal by working with local, state, and federal agencies.

2) **Derelict vessels**. Abandoned and derelict vessels are vessels that are no longer taken care of and pose a threat to people and the environment. Though the legal definition of abandoned and derelict vessels varies, "derelict" often refers to vessels that are neglected with an

identifiable owner, while "abandoned" vessels are those where the owner is unknown or has surrendered rights of ownership.

Abandoned and derelict commercial vessels usually consist of, but are not limited to, ferries, tugs, barges, cranes, dredges, work boats and work platforms that were designed and utilized for commercial work, and military craft, but at end of life are often sold at auction to any willing buyer. These vessels evolve into a dilapidated condition and eventually end up in an unusable state, leading the vessel to either be sunk, partially sunk, or a sinking hazard.

Vessels become abandoned and derelict for many reasons. Owners may neglect or abandon their boats when they can no longer afford to maintain them. Some boats may break loose from anchors or moorings and drift away, and some may be stolen. Severe weather events, like hurricanes or flooding, can also result in large numbers of vessels becoming abandoned and derelict. In these conditions boats can sink at moorings, become submerged in tidal areas, or strand on shorelines, reefs, or in marshes.

Abandoned and derelict vessels can cause problems for our ocean, lakes, and waterways by blocking navigational channels, damaging ecosystems, and diminishing the recreational value of the surrounding area. Some vessels may contain fuel and hazardous materials, including solvents, asbestos-containing materials, polychlorinated biphenyls or PCBs, lead paint, batteries, and petroleum products, such as fuel, oil, oily waste, hydraulic fluid, and grease, which could leak into the surrounding water.

Removing abandoned and derelict vessels is often complicated and expensive. Costs range from tens of thousands to several million dollars per vessel depending in part on its size, location, and condition. Some vessels are located in hard-to-reach areas, requiring large, specialized equipment for recovery and transportation. The wreckage may last for many years, breaking apart and creating widespread debris that threatens marine and coastal resources. Assessing, removing, and disposing of these vessels also requires significant financial and technical resources.

3) **Abandoned Vessel programs**. The California Legislature has created a number of programs that authorize the removal and disposal of abandoned and derelict vessels and marine debris.

Local public agencies that have jurisdiction over their area of responsibility (AOR) have authority to remove, store and dispose of wrecked property within their AOR. SLC was granted statewide authority to remove abandoned and derelict vessels through the Abandoned Vessel Program (SB 595, Wolk, Chapter 595, Statutes of 2011), which established an administrative removal and disposal process for abandoned and trespassing vessels on waterways under SLC's jurisdiction. SLC has authority to immediately remove a vessel from

areas under its jurisdiction without prior notice if the vessel seriously hinders navigation, is a threat to vessel operators, a hazard to the natural environment, or creates a public nuisance.

In 2015, the Legislature enacted AB 1323 (Frazier, Chapter 645, Statues of 2015) to assist local governments with derelict vessel removal by authorizing a public agency to remove and dispose of marine debris after 10 days if the debris is floating, sunk, partially sunk, or beached in or on a public waterway, public beach, or on state tidelands or submerged.

The abandoned recreational vessel removal program administered by State Parks' Division of Boating and Waterways facilitates recreational vessel removal through the Surrendered and Abandoned Vessel Exchange program (SAVE), which includes the Abandoned Watercraft Abatement Fund and the Vessel Turn-In Program. The SAVE program is used for removing and disposing of abandoned recreational vessels but SAVE funds may not be used to abate commercial vessels.

The Delta Protection Commission and the Office of Spill Prevention and Response (OSPR) in the Department of Fish and Wildlife sponsored a 2017 study that found the Sacramento San Joaquin Delta region contained roughly 240 abandoned and derelict vessels of which approximately 50 were commercial vessels, such as barges or larger ships. The study estimated that the removal cost was on the order of $33 million, and most of the cost was associated with the removal of commercial vessels (at $500,000 each). According to OSPR, roughly two additional commercial vessels are abandoned in the Sacramento-San Joaquin Delta annually.

A 2019 SLC report to the Legislature, *Abandoned Commercial Vessel Removal Plan*, recommends expanding to a statewide program to help prevent additional commercial vessels from becoming abandoned.

AB 748 would establish this proposed Program to compel coordination amongst federal, state, and local agencies, which have varying roles and authorities, to identify, prioritize, and fund the removal of abandoned and derelict commercial vessels and other debris from the commercially navigable waters.

4) **Inventorying abandoned and derelict vessels.** California has the fourth largest boating population in the nation, with more than 772,000 registered recreational vessels. Because many vessels are registered for years, sometimes decades, before they are abandoned, it's hard to predict, based on trend, the percentage of registered vessels that will be left to rot.

   According to SLC's 2019 report to the Legislature, efforts to document abandoned vessels in the Delta area had been conducted by DFW's Office of Spill Prevention and Response (OSPR) using aerial surveys and the U.S. Coast Guard Auxiliary, and visual data from SLC staff from site visits. OSPR's website has an Abandoned Derelict Vessel Reporting tool to track abandoned derelict vessels in California, but it has never been formally used and data is not, in fact, collected or reviewed by OSPR.

   Under California law, recreational vessels are required to be registered, but commercial vessels are not, challenging the effort to identify the number of vessels in California's waterways and the total potential for abandoned and derelict vessel management.

This bill would create the Program to require SLC to create and update an inventory of all abandoned and derelict commercial vessels. The inventory would include currently available data from federal, state, and local agencies – such as OSPR's tool -- or may be conducted by means of an aerial survey. While it's not explicit, the inventory could include data from local agencies, peace officers, boaters and waterway users, and others "on the ground" who can report an abandoned vessel to SLC.

The inventory would inform the Abandoned and Derelict Commercial Vessel Plan (Plan), which SLC would create under the Program to provide a strategic framework to facilitate and track actions in support of strategies that prevent or reduce abandoned and derelict commercial vessels on or in the commercially navigable waters, including the Sacramento-San Joaquin Delta.

In 2018, the Pacific States/British Columbia Oil Spill Task Force (Task Force) formed an abandoned and derelict vessels Workgroup comprised of experts and program leads from each of the five Task Force jurisdictions: Alaska, California, Hawaii, Oregon, and Washington. The January 2020 Task Force report, *Abandoned and Derelict Vessel Blue-Ribbon Program for Western U.S. States*, recommended states to establish a comprehensive database to track and (potentially) prioritize abandoned and derelict vessels:

> Identifying vessels of concern and developing and maintaining a comprehensive database of these identified vessels is one of the most important aspects of prevention. States should develop robust tracking systems for vessels of concern that include location, condition assessment, and (to help with disposal decisions) prioritization. Ranking/ prioritizing the vessels for state-funded removal is important in order to stretch limited resources.

The Task Force further recommends prioritization based on risk, impact, and ease of removal. Consistent with that, the bill would establish the Task Force to come up with a system for prioritizing the removal of the abandoned and derelict commercial vessels identified on SLC's inventory. Prioritization would be based on the severity of the potential threats to human health and the environment, the toxicity of the vessel, weather conditions, proximity to sensitive habitats, and others.

5) **No time like the present**. Abandoned commercial vessels are a huge pollution problem now, and the bill will not require SLC to wait until the final plans are complete to jump into action.

   AB 748 would require SLC to enter into an MOA with the DFW, DTSC, and any other relevant federal, state, or local agency, to clean up and remove abandoned and derelict commercial vessels and other debris. The MOA will compel the agencies with cross-jurisdictional oversight to bring the Plan to fruition and cleanup the hazardous waste and pollution stemming from abandoned and derelict commercial vessels, and remove, destroy, and dispose of the abandoned and derelict commercial vessels. Until that Plan is adopted in July 2025 and until the Task Force has completed its prioritization of identified vessels, the MOA will require SLC to authorize and execute the removal of abandoned and derelict commercial vessels and other debris using the existing data and resources, specifically including SLC's 2019 Risk-Based Priority Matrix.

6) **State funding**. Current funding for abandoned recreation vessels cannot be used to support this proposed Program for commercial vehicles. The bill specifically states the "California

Abandoned and Derelict Commercial Vessel Program shall not be funded by the Abandoned Watercraft Abatement Fund established pursuant to Section 525 of the Harbors and Navigation Code."

The Governor's proposed budget does not include any funding for SLC or State Park's abandoned and derelict vessel efforts. The 2021-22 budget did include $12 million for SLC to remove abandoned and derelict vessels from the Sacramento-San Joaquin Delta region.

In recognition of the exorbitant costs of vessel removal and the need for funding, AB 748 declares that effective response to identify, remove, and dispose of abandoned and derelict commercial vessels requires that the state have sufficient funds available in the Trust Fund, and that maintenance of the Trust Fund is of utmost importance to the state.

7) **Double referral**. Should this committee approve the bill, it will be referred to the Assembly Judiciary Committee.

8) **Related legislation**. SB 1065 (Eggman, 2022) was identical to AB 748. It was vetoed by the Governor due to cost concerns.

REGISTERED SUPPORT / OPPOSITION:

Support

County of Sacramento

Opposition

None on file

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 891 (Irwin) – As Introduced March 15, 2023

SUBJECT: Beverage container recycling: nonpetroleum materials

SUMMARY: Requires beverage containers subject to the California Beverage Container Recycling and Litter Reduction Act (Bottle Bill) to include specified minimum percentages of nonpetroleum materials.

EXISTING LAW:

1) Requires the Air Resources Board (ARB), pursuant to California Global Warming Solutions Act of 2006 [AB 32 (Núñez), Chapter 488, Statutes of 2006], to adopt a statewide greenhouse gas (GHG) emissions limit equivalent to 1990 levels by 2020 and adopt regulations to achieve maximum technologically feasible and cost-effective GHG emission reductions. AB 32 authorizes ARB to permit the use of market-based compliance mechanisms to comply with GHG reduction regulations once specified conditions are met. Requires ARB to approve a statewide GHG emissions limit equivalent to 85% below the 1990 level by 2045. (Health and Safety Code 38500-38599.11)

2) Establishes as the policy of the state that eligible renewable energy resources and zero-carbon resources supply 100% of all retail sales of electricity to California end-use customers and 100% of electricity procured to serve all state agencies by December 31, 2045. (Public Utilities Code 454.53)

3) Establishes the Bottle Bill (Public Resources Code 14500-14599), which:

   a) Requires beverage containers, as defined, sold in-state to have a California redemption value (CRV) of 5 cents for containers that hold fewer than 24 ounces and 10 cents for containers that hold 24 ounces or more. Requires beverage distributors to pay a redemption payment to the Department of Resources Recycling and Recovery (CalRecycle) for every beverage container sold in the state.

   b) Defines "beverage" as:

      i) Beer and other malt beverages;
      ii) Wine and distilled spirit coolers;
      iii) Carbonated water;
      iv) Noncarbonated water;
      v) Carbonated soft drinks;
      vi) Noncarbonated soft drinks and sports drinks;
      vii) Noncarbonated fruit juice drinks that contain any percentage of fruit juice;
      viii) Coffee and tea drinks;
      ix) Carbonated fruit drinks; and,
      x) Vegetable juice in beverage containers of 16 ounces or less.

c) Beginning January 1, 2024, adds wine and distilled spirts to the definition of "beverage."

d) Specifies that "beverage" does not include:

i) Any product sold in a container that is not aluminum, glass, plastic, or bimetal, as specified;
ii) Wine and wine from which the alcohol has been removed, in whole or in part;
iii) Milk, medical food, and infant formula; and,
iv) 100% fruit juice sold in containers that are 46 ounces or more in volume.

e) Beginning January 1, 2024, removes wine from the list of beverages excluded from the definition of "beverage."

f) Defines "beverage container" as the individual, separate bottle, can, jar, carton, or other receptacle in which a beverage is sold, and which is constructed of metal, glass, plastic, or any other material, or any combination of these materials. Specifies that "beverage container" does not include cups or other similar open or loosely sealed receptacles.

g) Requires plastic beverage containers subject to the Bottle Bill to contain the following percentages of postconsumer recycled plastic annually:

i) From January 1, 2022, until December 31, 2024, no less than 15%;

ii) From January 1, 2025, until December 31, 2029, no less than 25%; and,

iii) On and after January 1, 2030, no less than 50%.

h) Requires glass beverage containers to contain a minimum of 35% postfilled (i.e., recycled) glass, as specified.

i) Requires CalRecycle to establish a processing payment for a beverage container covered under the program that has a scrap value less than the cost of recycling, to be determined as specified, that is at least equal to the difference between the scrap value of the material and the sum of the cost of recycling and a reasonable financial return.

j) Requires beverage manufacturers to pay a processing fee to CalRecycle for each container sold in the state equal to 65% of the processing payment. Reduces the amount of the processing fee based on the recycling rate of the type of container, as specified.

4) Excludes beverage containers subject to the Bottle Bill from the Plastic Pollution Prevention and Packaging Producer Responsibility Act. (Public Resources Code 42041)

THIS BILL:

1) Defines "nonpetroleum biomaterials" as materials produced from nonpetroleum feedstocks not fit for human or animal consumption that provide biobased or biogenic carbon, as specified, including:

a) Agricultural crop residues;

b) Bark, lawn, yard, and garden clippings;

c) Leaves, silvicultural residue, and tree and brush pruning;

d) Wood, wood chips, and wood "paste";

e) Nonrecyclable pulp and nonrecyclable paper materials;

f) Old corrugated cardboard;

g) Cotton waste products; and,

h) Other nonpetroleum biomaterials authorized by CalRecycle.

Specifies that nonpetroleum biomaterials do not include crops grown for the express purpose of creating feedstocks pursuant to this bill or materials or processes that undermine or contaminate the recyclability of a plastic container.

2) Beginning January 1, 2025, specifies that a beverage manufacturer uses nonpetroleum materials in containers covered by the Bottle Bill receive a reduction in the processing fee "equal to 10% of the processing fee applicable only to the certified percentage of the beverage container, by weight, that derives from nonpetroleum biomaterials."

3) Requires certification of the percentage of the beverage container, by weight, that derives from nonpetroleum biomaterials by a third-party certification entity, which shall be independent and accredited, as specified.

4) Requires CalRecycle to charge a fee to a beverage manufacturer who applies for a processing fee reduction under the bill that is sufficient to cover, but not exceed, CalRecycle's reasonable costs to implement the bill.

5) Codifies legislative intent that beverage manufacturers transition toward increasing levels of nonpetroleum biomaterials when producing recyclable plastic beverage containers with a companywide and industrywide goal of 15% or more by January 1, 2030.

6) Authorizes beverage manufactures to report the amount of virgin plastic derived from nonpetroleum biomaterials in the report they submit annually to CalRecycle regarding postconsumer recycled content.

7) States related legislative findings and declarations.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**:

> I introduced AB 891 with the intent to reduce fossil fuel based plastics and instead incentivize the use of recyclable non petroleum based plastics in plastic bottles. As joint author of AB 793 with Assemblymember Ting, I believe the time is right

to work towards reducing fossil fuel based plastics and supporting the circular economy.

2) **Plastic production**. While the conversation around plastic has generally focused on its end of life, plastic pollution starts with fossil fuel extraction, and continues through manufacturing, transportation, usage, and finally disposal. Hundreds of petrochemical facilities throughout the United States create the pellets used in the production of plastic products. The vast majority of plastic is synthesized from fossil fuels, including oil, coal, and natural gas. About 14% of oil is used in petrochemical manufacturing, a precursor to producing plastic. By 2050, it is predicted to account for 50% of oil and fracked gas demand growth.

   Plastic production is a significant driver of climate change. According to the Organisation for Economic Co-operation and Development, plastics generated 18 billion metric tons of GHGs in 2019. By 2060, GHG emissions from plastics are expected to reach 4.3 billion metric tons, given the ongoing exponential increase in production.

3) **Plastic pollution**. An estimated 8 million metric tons of plastic waste enters the world's oceans annually. By 2040, that number is expected to triple to 24 million metric tons. Ocean plastic pollution is driven by ocean currents and accumulates in certain areas throughout the ocean. The North Pacific Central Gyre is the ultimate destination for much of the marine debris originating from the California coast. However, plastic generated in California pollutes oceans across the globe, as bales of plastic collected for recycling here are exported for processing and recycling. The plastic with value is collected and recycled, and the rest is landfilled or incinerated.

   As plastic circulates in the environment, it breaks down into smaller particles, known as microplastic. Microplastic refers to plastic particles that are less than 5 millimeters in length (about the size of a sesame seed). They come from a variety of sources, including primary microplastics, which are purposely manufactured for use in products, such as "microbeads" used in cosmetics, household cleaners, and personal care products, and pellets used for plastic manufacturing, and secondary microplastics that are generated as larger plastic debris degrades into smaller and smaller pieces over time, and microfibers, which are small plastic fibers that are shed from polyester fabrics, such as polyester fleece, and from plastic-based textiles like upholstery and carpet.

   Microplastics have become ubiquitous in the environment. They are floating in outdoor and indoor air, even in areas far from any identifiable source. The particles are small enough to be carried by wind currents. They have been found in waterways and drinking water. Like all plastic in the environment, these particles accumulate toxins like pesticides, heavy metals, and other chemicals. Humans are breathing and ingesting microplastics, but there is almost no research into their health impacts.

   Policies that target plastic production help to reduce its impacts on the environment and public health; however, these policies alone are not a solution. To address the plastic pollution crisis, we need to produce less of it.

4) **Alternative plastics**. Concerns about plastic have contributed to the development of alternative types of plastics. These plastics are intended to, or claim to, address different

environmental impacts associated with plastic production and use. These generally fall into two categories – biobased plastics and compostable or degradable plastics.

Biobased plastics are intended to reduce the environmental impacts associated with the production of plastic. They are conventional resin types, generally PET, produced out of materials other than fossil fuels. Source materials can include crops, like corn and soy, or waste materials, like crop residues and yard waste. These plastics are identical to fossil fuel-derived resins and can be recycled with other types of plastic in conventional recycling systems. Like conventional plastics, they do not degrade into their organic constituents when released into the environment; instead, they persist in the environment indefinitely and eventually break down into microplastics.

Compostable and "degradable" plastics are intended to reduce the environmental impacts associated with plastic's end-of-life. These are plastics that are designed to break down into their organic constituents in composting operations. In California, plastics have to meet specified standards to be labeled compostable (both for industrial composting operations and home composting). Even those that meet California's strict standards may not actually compost in the state's compost facilities, as most facilities process material faster than compostable plastics can break down. Additionally, compost containing compostable plastics does not meet federal organic standards and cannot be labeled organic, greatly reducing the marketability of the finished compost. Other plastics claim to be "degradable" or "biodegradable," which are intended to break down into their organic constituents under various environmental conditions, such as the presence of certain microbes. California law prohibits labeling plastic products biodegradable or degradable, as there are no approved testing standards to verify these claims. Real world conditions don't necessarily replicate the specific conditions under which these products degrade, so they may persist in the environment for extended periods of time. These plastics are contaminants in recycling streams and must be either composted, if compostable, or disposed of as solid waste.

The various claims about less impactful plastics have created consumer confusion about what their benefits are, if any, and about how to manage them. For example, consumers may feel more comfortable littering a product labeled "biodegradable," even though the product may persist in the environment for years. A 2014 CalRecycle report, *Biobased and Degradable Plastics Understanding New Packaging Materials and Their Management in California*, concluded that "While producing bioplastics in the state may offer some environmental benefits, currently the potential value is overshadowed by end-of-life concerns."

5) **Bottle Bill**. The Bottle Bill was established in 1986 to be a self-funded program that encourages consumers to recycle beverage containers and to prevent littering. The program accomplishes this goal by requiring consumers to pay a deposit for each eligible container purchased. Then the program guarantees consumers repayment of that deposit, the CRV, for each eligible container returned to a certified recycler. Statute includes two main goals for the program: (1) reducing litter; and, (2) achieving a recycling rate of 80% for eligible containers. Containers recycled through the Bottle Bill's certified recycling centers also provides a consistent, clean, uncontaminated stream of recycled materials with minimal processing.

6) **Eligible beverage containers**. Only certain containers containing certain beverages are part of the CRV program. Most containers made from glass, plastic, aluminum, and bimetal

(consisting of one or more metals) are included. Containers for wine, spirits, milk, fruit juices over 46 ounces, vegetable juice over 16 ounces, and soy drinks are not part of the program. Container types that are not included in the CRV program are cartons, pouches, and any container that holds 64 ounces or more. Beginning January 1, 2024, the Bottle Bill will include containers for wine and distilled spirits.

7) **Processing payments and processing fees**. The largest challenge facing the Bottle Bill is the closure of more than 1,000 recycling centers, leaving many Californians without redemption opportunities. While a number of factors have contributed to the closures, one of the key challenges facing recycling centers is the volatile nature of the per container "processing payments" that are made to recycling centers by the program. These payments are intended to cover the cost of recycling so that the recycled plastic collected by the centers can compete with virgin plastic in the marketplace. Unfortunately, the methodology used to calculate the payments does not adequately reflect recyclers' costs, and the timelines of adjustments to the payments have resulted in sudden and significant shifts in funding for recycling centers. For example, at the end of 2022, the processing payment for PET was $0.13 per pound. In January, the payment dropped to just $0.04 per pound. Earlier this month, CalRecycle exercised its authority to revise the processing payment every three months and increased it to just over $0.08 per pound. This instability causes significant financial strain on recycling centers.

   Processing payments are intended to be funded by processing fees paid by beverage manufactures. Processing fees are designed to cover the cost of recycling the beverage containers marketed by the manufacturers, and are the only producer responsibility component of the Bottle Bill. The fees are discounted, or "offset," based on the recycling rate (i.e., collection rate), and the total amount of the proceeding fees paid by manufacturers are capped at 65% of the processing payment, so while intended to assist with the cost of recycling, they cover only about 20% of the processing payments made to manufacturers. The difference is funded by the Beverage Container Recycling Fund (BCRF). For example, in the 2020-21 Fiscal Year (FY), total processing fees were over $155 million, but after the processing fee offsets, the amount paid by beverage manufacturers totaled just over $30 million. The same year, processing payments made to recyclers were just over $153 million.

7) **This bill**. California has adopted a number of statutes that are intended to move the state away from fossil fuels; however, the state has not taken action to begin to transition away from fossil fuel-based plastic. This bill is intended to begin to transition the state away from fossil-fuel based virgin plastic. AB 891 mirrors the feedstocks that are approved for use under the state's renewable energy procurement law and adds old, nonrecyclable cardboard and cotton waste, which are currently used by some nonpetroleum biomaterial plastic producers. These feedstocks are waste materials that are difficult to manage. This bill also excludes the use of crops grown for the purpose of creating biomaterial and materials that undermine or contaminate the recyclability of the container. The use of the biomaterials authorized by the bill has the potential to reduce the GHG emissions and other pollutants associated with the production of virgin plastic. Additionally, by limiting the approved feedstock to waste materials, it encourages a way to use those materials and avoids the environmental and social problems associated with raising crops for industrial purposes, such as pollution from the use of pesticides, fertilizers, and herbicides, GHG emissions associated with industrial farming practices, and contributing to global deforestation,.

This bill establishes minimum nonpetroleum-derived plastic content requirements for beverage containers covered by the state's Bottle Bill program. This would be a first step toward reducing the state's dependence on oil for plastic production.

8) **The right reward?** It is not clear that processing fee reductions are the appropriate incentive for the purposes of this bill. While this bill is structured to provide an incentive to producers who use nonpetroleum biomaterial for the production of virgin plastic bottles, the incentive used is an additional reduction in the amount of processing fees paid by beverage manufacturers. The Bottle Bill is intended to manage the end-of-life of beverage containers by reducing litter and increasing recycling, not govern the production of virgin plastic.

   In keeping with the intent of the Bottle Bill, the processing fee is intended to reflect the cost of recycling and support the state's recycling infrastructure, and the offsets are intended to incentivize higher recycling rates. This bill, however, does not improve the recyclability or recycling rates of plastic beverage containers. Moreover, the processing fee is already significantly discounted for beverage manufacturers and does not fully fund the cost of recycling beverage containers, which is subsidized by the BCRF. This additional reduction will require the BCRF to cover the costs of the further reduced processing fees. For FY 2021-22, for example, PET processing fees were nearly $67 million, but after offsets, beverage manufacturers paid just $9.1 million. This bill proposes to discount the processing fees "imposed" up to 10%, based on the amount of biomaterials used in the beverage container, further reducing the amount beverage manufacturers who use biomaterials would pay for processing fees. The author's office indicates that this language is intended to apply to the amount of the processing fee after offsets, so, for FY 2021-22, up to $900,000.

9) **One piece of the puzzle**. Policies that encourage the use of biomaterials in the production of plastic need to avoid undermining other plastic production reduction and recycling efforts. Lower-polluting production methods are one piece of the plastic pollution puzzle, but they do not solve the myriad issues associated with plastic's end of life. Policies like this bill should be in addition to, and not combined with or overlapping, other policies like source reduction, recycling, and postconsumer recycled-content requirements.

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

    a) Correct drafting errors by replacing the word "paste" on page 3, line 36 with "waste" and correcting a reference to "nonpetroleum materials" on page 4, line 34.

    b) Clarify that the definition of "nonpetroleum biomaterials" does not include crops grown for the express purpose of creating feedstocks for plastic production.

    c) Limit the percentage of a beverage container that is eligible for processing fee reduction to 50%.

    d) Specify that the certification body must certify that the nonpetroleum biomaterials do not require any change to collection or processing of the beverage containers.

REGISTERED SUPPORT / OPPOSITION:

Support

Californians Against Waste

Opposition

American Beverage Association
Consumer Brands Association
International Bottled Water Association

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1159 (Aguiar-Curry) – As Introduced February 16, 2023

SUBJECT: California Global Warming Solutions Act of 2006: natural and working lands: market-based compliance mechanisms

SUMMARY: Clarifies that projects and actions that receive state funding, excluding federal funds dispensed by state agencies, for the primary purpose of reducing greenhouse gas (GHG) emissions are prohibited from being eligible to generate credits under any market-based compliance mechanism.

EXISTING LAW:

1) Requires the GHG emissions reduction limit, pursuant to AB 1279 (Muratsuchi, Chapter 337, Statutes of 2022) to be at least 85% below the 1990 level by 2045, and establishes a goal of zero net carbon emissions by 2045, commonly known as carbon neutrality. (Health and Safety Code (HSC) 38500 et seq.)

2) Requires the Air Resources Board (ARB) to prepare and approve a Scoping Plan for achieving the maximum technologically feasible and cost-effective reductions in GHG emissions from sources or categories of sources of GHGs. Requires ARB to consult with all state agencies with jurisdiction over sources of GHGs. Requires the Scoping Plan to identify and make recommendations on direct GHG emissions reduction measures, among other things. Requires ARB to update Scoping Plan at least once every five years. (HSC 38561)

3) Authorizes ARB to include in their California Global Warming Solutions Act of 2006 (Act) regulations the use of market-based compliance mechanisms to comply with the regulations. (HSC 38570)

4) Requires any reduction of GHG emissions used for compliance purposes to be real, permanent, quantifiable, verifiable, enforceable, and additional. (HSC 38562(d)(1)-(2))

5) Establishes a goal of reducing at least five million metric tons of GHG emissions per year through the development and application of compost on working lands. (Public Resources Code 42649.87)

6) Requires, on or before January 1, 2024, the Natural Resources Agency (NRA), in collaboration with ARB, the California Environmental Protection Agency (CalEPA), the Department of Food and Agriculture (CDFA), the expert advisory committee, and other relevant state agencies, to determine an ambitious range of targets for natural carbon sequestration and for nature-based climate solutions that reduce GHGs for 2030, 2038, and 2045 to support state goals to achieve carbon neutrality and foster climate adaptation and resilience. Requires these targets to be integrated into the Scoping Plan. (HSC 38561.5 (b)(1))

7) Prohibits emissions reduction projects and actions that receive state funding are not eligible to generate credits under any market-based compliance mechanism. (HSC 38561.5 (b)(3)(B))

FISCAL EFFECT: Unknown

COMMENTS:

1) **Need for the bill**. According to the author:

> Last year, the Legislature passed AB 1757 (C. Garcia and R. Rivas), which required the Natural Resources Agency to determine a range of targets for natural carbon sequestration and for nature-based carbon solutions for GHG reductions. AB 1757 also includes well-intended provisions to ensure any emission reductions work used toward achieving targets is not double-counted and that projects or actions that receive state funding are not eligible to generate credits under any market-based mechanisms. However, the existing law under AB 1757, is overly broad, and could be interpreted to apply to *all* state funds, not just funds intended for carbon sequestration or GHG emissions reduction. This interpretation has the potential to halt projects that return ancestral lands to tribes because these projects rely on state funds for the acquisition and restoration grants, but also generate carbon sequestration projects.
>
> This bill clarifies that the prohibition established in AB 1757 against generating credits under a market-based compliance mechanism - if a project or activity receives state funds - *only* applies to actions and projects that receive state funding for the *primary* purpose of reducing GHG emissions.
>
> This clarification will allow land managers to seek and receive state acquisition and restoration grants for projects on properties that generate carbon sequestration credits (without the use of state funds) to move forward with legal certainty.

2) **California's climate goals**. Under the Act, California has adopted GHG reduction targets to reduce GHG emissions to at least 85% below the 1990 level by 2045, and establishes a goal of zero net carbon emissions by 2045.

   Under the Act, ARB adopted the cap-and-trade program as a market-based compliance mechanism to establish a declining limit on major sources of GHG emissions throughout California, and ARB creates allowances equal to the total amount of permissible GHG emissions (i.e., the "cap"). Each year, fewer allowances are created and the annual cap declines. Under the program, covered entities can invest in "offsets" – projects that sequester carbon in forests, flooded rice fields, biogas control systems for manure management on dairy cattle and swine farms, and others – to satisfy a small percentage of their overall compliance obligation. Any reduction of GHG emissions used for compliance purposes must be real, permanent, quantifiable, verifiable, enforceable, and additional.

3) **Natural and working lands**. Current law defines natural lands as lands consisting of forests, grasslands, deserts, freshwater and riparian systems, wetlands, coastal and estuarine areas, watersheds, wildlands, or wildlife habitat, or lands used for recreational purposes such as parks, urban and community forests, trails, greenbelts, and other similar open-space land. Working lands include lands used for farming, grazing, or the production of forest products. Natural and working lands cover approximately 90% of the state's 105 million acres, including California Native American tribes' ancestral and cultural lands and waters.

In response to the Governor's executive order N-82-20, the state released the draft *Natural and Working Lands Climate Smart Strategy* in 2021, which describes how these lands can deliver on our climate change goals and identifies options to track nature-based climate action and measure progress.

Although natural and working lands can remove carbon dioxide from the atmosphere and sequester it in soil and vegetation, disturbances such as severe wildfire, land degradation, and conversion can cause these landscapes to emit more carbon dioxide than they store.

California's natural and working lands and the critical ecosystem services they provide, including their ability to sequester carbon from the atmosphere, are at risk. Actions to protect, restore, and sustainably manage the health and resiliency of these lands can greatly accelerate our progress to mitigate climate change and our ability to reduce worsening climate change impacts. Recent research has shown that California's working lands have the ability to sequester up to 100 million metric tons of carbon dioxide per year.

AB 1757 (C. Garcia, R. Rivas, Chapter 341, Statutes of 2022) requires ARB, by January 1, 2024, with NRA, CalEPA, and CDFA, to determine an ambitious range of targets for natural carbon sequestration, and for nature-based climate solutions, that reduce GHGs for 2030, 2038, and 2045 to support state goals to achieve carbon neutrality and foster climate adaptation and resilience.

4) **Current law impacts on offset eligibility.** AB 1757 provides that any emissions reduction project that receives state funding is not eligible to generate credits under cap-and-trade. The intent was to ensure that there is no "double payment" for stored carbon or avoided emissions from natural and working lands projects.

   This creates an either/or scenario for project proponents: either receive financial recognition for stored carbon or avoided emissions as an offset project completed under an ARB-approved compliance offset protocol or receive state funding with the primary purpose being to help the state achieve its climate targets developed pursuant to AB 1757.

   The author argues that provision effectively prohibits landowners from using state funds, even those that may have a federal origin, to implement ecological land management for the betterment of habitat without jeopardizing their ability to generate carbon offsets.

   For example, The Conservation Fund, a national nonprofit organization, since 2004 has owned and managed more than 75,000 acres on California's north coast. The Conservation Fund's restoration and progressive management regimes have improved habitat for the endangered Northern Spotted Owl and state-threatened Coho salmon and steelhead trout. Instrumental to the ability of The Conservation Fund to manage these vast forestlands is the revenue generated through the sale of carbon offsets via the cap-and-trade program. In 2022, The Conservation Fund secured more than $900,000 in state grants in partnership with Trout Unlimited and California Department of Fish and Wildlife for the improvement of salmon and trout habitat. With the passage of AB 1757, according to the author, The Conservation Fund must now decline those grants.

   ARB issued guidance to interpret how AB 1757 applies to various project. In the context of state funding for sustainable forest management practices or conservation easements projects, ARB explains, "A project receiving compliance offset credits in the Cap-and-Trade Program

can still receive State funding for actions that do not have as their primary purpose climate mitigation and increases in quantified stored carbon or avoided GHG emissions." In addition to its issued guidance, ARB works with offset project registries and third-party verifiers on a case-by-case basis to verify projects are in compliance with AB 1757 before issuing offset credits under the project. The intent with AB 1159 is to be consistent with ARB's guidance.

It is important to note that the Act explicitly requires any reduction or avoidance of GHG emissions used for market mechanism compliance purposes be *additional*, amongst other criteria. Meeting the criterion of additional GHG reductions ensures the integrity of the ARB offset credit and its eligibility for use in the cap-and-trade program.

The provision in AB 1757 at the heart of this bill starts with "notwithstanding any other law," which null and voids the requirement to assess whether the proposed offset provides additional GHG reductions or avoidance. Striking the "notwithstanding" verbiage would restore compliance with the Act under this provision. Further, to be consistent with the Act, but without creating a higher standard, the bill could be amended to require only the eligibility of GHG emissions *in addition* to those that would otherwise occur for offset compliance.

5) **Rewording AB 1757**. AB 1159 proposes to amend the AB 1757 provision to instead provide that "projects and actions that receive state funding for the *primary* purpose of reducing greenhouse gas emissions are not eligible to generate credits under any market-based compliance mechanism."

   Many state-funded projects have the intended purpose of restoration or other environmental benefit and have the incidental benefit of GHG reductions. Examples include, but are not limited to, land acquisition for conservation, forest health management or fire prevention projects, or wetland restoration. Landowners of those properties want to maintain the opportunity for offset compliance, which provides a funding source for further land management. Hence, the inclusion of the word "primary" in AB 1159.

   However, maintaining the intent of the state's GHG reduction laws necessitates the need to avoid "double dipping" (getting paid twice for the same GHG reduction project) and "double counting" (counting a project's GHG reductions twice under different programs or goals).

   To achieve that, the language from AB 1757 needs to address the nuances of state-funded projects – specifically, the proportion of those projects funded with state funds for GHG emission reductions so that it is clear that the prohibition is on generating offsets from the project or action the state paid for to reduce GHGs.

6) **Committee amendments**. To make both the intent and interpretation of AB 1757 clearer, *the Committee may wish to amend* subdivision (B) as follows:

   (B) ~~Notwithstanding any other law~~ To ensure that all greenhouse gas emission reductions and removals are in addition to any reductions and removals that would otherwise occur, natural and working lands projects and actions that receive state funding ~~for the primary purpose of reducing greenhouse gas emissions~~ are not eligible to generate credits under any market-based compliance

mechanism for any greenhouse gas emissions reduced or removed as a result of the state funding.

While these amendments will provide further clarity, the author and stakeholders may need to continue to identify the various permutations of project funding, such as an acquisition project that involves multiple funding sources, including both state funding and offset revenue, to further refine this provision of law to recognize all potential project eligibility.

REGISTERED SUPPORT / OPPOSITION:

Support

Hoopa Valley Tribe
Trout Unlimited

Opposition

None on file

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1267 (Ting) – As Amended March 16, 2023

SUBJECT: Zero-emission vehicle incentive programs: gasoline superusers.

SUMMARY: Requires the Air Resources Board (ARB) to ensure that beginning January 1, 2025, an additional incentive is awarded under a zero-emission vehicle (ZEV) incentive program to a recipient who is a gasoline superuser, as defined.

EXISTING LAW:

1) Requires ARB, pursuant to California Global Warming Solutions Act of 2006 [AB 32 (Núñez), Chapter 488, Statutes of 2006], to adopt a statewide greenhouse gas (GHG) emissions limit equivalent to 1990 levels by 2020 and to reduce GHGs to 40% below 1990 levels by 2030 and to 85% below 1990 levels by 2045. (Health & Safety (HSC) Code 38500 et seq)

2) Establishes, pursuant to the Clean Energy and Pollution Reduction Act of 2015 [SB 350, De León, Chapter 547, Statutes of 2015] to increase the renewable electricity procurement goal to 50% by 2030. (Public Utilities Code 399.15 (b)(2)(B))

3) Establishes the Charge Ahead California Initiative pursuant to SB 1275 [(de León), Chapter 530, Statutes of 2014], that, among other things, includes the goal of placing at least one million ZEV and near-zero emission vehicles (NZEV) into service by January 1, 2023, and increasing access to these vehicles for disadvantaged, low-income, and moderate income communities and consumers. (HSC 22458)

4) Establishes the Air Quality Improvement Program (AQIP), administered by ARB in consultation with local air districts, to fund programs that reduce criteria air pollutants, improve air quality, and provide research for alternative fuels and vehicles, vessels, and equipment technologies. (HSC 44274)

5) Establishes the Clean Cars 4 All Program (CC4A) to be administered by ARB to focus on achieving reductions in the emissions of GHG, improvements in air quality, and benefits to low-income state residents through the replacement of high-polluter motor vehicles with cleaner and more efficient motor vehicles or a mobility option. Requires ARB to set specific, measurable goals for the replacement of passenger vehicles and light- and medium-duty trucks that are high polluters. (HSC 44124.5)

6) Establishes the Clean Vehicle Rebate Project (CVRP) established as a part of AQIP to expand financing mechanisms, including, but not limited to, a loan or loan-loss reserve credit enhancement program to increase consumer access to zero-emission and near-zero-emission vehicle financing and leasing options that can help lower expenditures on transportation and

prequalification or point-of-sale rebates or other methods to increase participation rates among low- and moderate-income consumers. (HSC 44274.9(e)(1)(2))

7) Establishes the Clean Vehicle Assistance Program (CVAP) under AQIP to provide grants and other financing opportunities to low-income drivers to offset the cost of electric vehicles and associated charging infrastructure. (HSC 44274)

THIS BILL:

1) Defines the following terms for purposes of this bill:

   a) "Gasoline superuser" means a person who consumes an amount of gasoline in excess of a threshold established by ARB in the operation of an internal combustion engine vehicle registered to that person.

      i) Requires ARB to establish the threshold in a manner that maximizes the displacement of gasoline, the reduction of emissions of criteria pollutants and GHG per dollar spent, and the turnover of older vehicles resulting from incentives provided. Requires ARB to consider establishing that threshold at an average annual amount of 700 gallons in a calendar year.

   b) "Zero-emission vehicle incentive program" or "ZEV incentive program" means a program that provides incentives to an individual for the purchase of a light-duty ZEV and that receives funding from, or is administered by, ARB. A ZEV incentive program includes, but is not limited to, all of the following programs: CC4A, CVRP, and CVAP.

2) Requires, on or before January 1, 2025, ARB to develop and implement a strategy for doing all of the following:

   a) Identifying the drivers who are gasoline superusers and are low income or moderate income;

   b) Expediting the replacement of gasoline-powered vehicles of drivers with ZEVs;

   c) Identifying barriers that prevent gasoline superusers from accessing ZEV incentive programs and adopting ZEVs; and,

   d) Developing ZEVoutreach protocols to target gasoline superusers and prioritize those superusers who are low income or moderate income and measure the success of outreach to gasoline superusers in each district in the state.

3) Requires ARB, in advertising the availability of ZEV incentive programs to gasoline superusers, to consider coordinating with districts and local nonprofit and community organizations, prioritizing those organizations that have a strong and ongoing local presence in areas within the applicable district.

4) Requires ARB, upon appropriation by the Legislature, ensure that beginning January 1, 2025, an additional incentive, to be known as the "superuser incentive," is awarded under a ZEV

incentive program to a gasoline superuser who otherwise qualifies for an incentive under the ZEV incentive program.

5) Requires ARB to set the amount of the incentive at a level that maximizes the displacement of gasoline and the reduction of emissions criteria pollutants and GHGs per dollar spent.

6) Requires ARB to require an applicant to provide the vehicle identification number, the odometer reading from the applicant's vehicle registration, and the current odometer reading from the applicant's vehicle under penalty of perjury to verify whether the applicant qualifies as gasoline superuser.

7) Requires ARB to report to the Legislature no later than January 1, 2025, and biennially thereafter, all of the following information:

   a) The gasoline emissions reduced per dollar spent on ZEV incentive programs;
   b) The impacts of ZEV incentive program spending in terms of quantifiable carbon emissions reductions and transportation savings among low- to moderate-income individuals; and,
   c) The changes in annual gasoline use at local levels by census tract or ZIP Code.

8) Requires the report to be submitted to the Legislature in compliance with Section 9795 of the Government Code.

9) Provides that no reimbursement is required by this act pursuant to the California Constitution.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Need for the bill.** According to the author:

> California has a variety of incentive programs aimed at getting more drivers into zero emission vehicles (ZEVs), but we are still seeing slow adoption of ZEVs among the biggest gasoline users (superusers). Many gasoline superusers are lower-income consumers who cannot afford to live near their workplaces and must spend much of their income on fuel. To reduce greenhouse gas emissions efficiently and equitably, the state must maximize its investments to reduce gasoline consumption, especially among lower-income consumers. AB 1267 furthers that goal by requiring the California Air Resources Board (CARB) to create an additional ZEV incentive award for gasoline superusers, targeting our top gasoline consumers in the state. It would also require CARB to measure the emissions reductions achieved by our ZEV incentive programs to track our progress in meeting our ambitious climate and transportation goals.

2) **Zero Emission Vehicles**. ZEV is an umbrella term for hydrogen fuel cell electric vehicles, battery electric vehicles (EVs), and plug-in hybrid electric vehicles (PHEVs). California has some of the most ambitious GHG reduction goals in the nation, which include goals to reduce petroleum use in California up to 50% from 2015 levels by 2030, phase out passenger combustion-engine cars by 2035, and reduce GHG emissions 85% below 1990 levels by 2045. The transportation sector represents about 40% of California's total GHG emissions portfolio, and replacing traditional gas-powered cars with ZEVs is a significant part of California's effort to reduce climate emissions.

   Governor Newsom's ZEV Executive Order N-79-20 set the following ZEV targets for California: 100% of in-state sales of new passenger cars and light-duty trucks will be zero emission by 2035; 100% zero-emission medium and heavy-duty vehicles in the state by 2045, where feasible, and by 2035 for drayage trucks; and, 100% zero-emission off-road vehicles and equipment operations by 2035, where feasible.

3) **ZEV rebate programs**. CC4A is an existing program that focuses on providing incentives up to $9,500 per vehicle through California Climate Investments to help lower-income California drivers scrap their older, high-polluting cars and replace them with zero- or near-zero emission replacements. Eligible applicants must fall below 300% of the Federal Poverty Level ($83,250 for a family of 4). As of February 2021, more than 10,000 scrapped old, dirty cars had been replaced with ZEVs under this program. These incentive funds can be stacked with incentive dollars from the statewide CVRP so that a low-income participant can receive up to $14,000 for a new battery-electric vehicle. The average vehicle retired is about 22 years old with an estimated fuel economy of 21.5 miles per gallon. The average replacement vehicle has a fuel economy of 80 miles per gallon equivalent. According to ARB's CC4A annual report for FY 2020/2021, "even with the past [years'] global economic and health crisis, demand for all air quality management district car incentives remained strong. This indicates a continued high level of interest and demand for these incentives among the priority populations."

   The CVRP offers rebates up to $7,000 on a first-come, first-served basis to offset the cost of ZEVs. Rebates are available to California residents that meet income requirements and purchase or lease an eligible vehicle. To-date, more than 30,000 low-income consumers have been assisted under CVRP. The income eligibility is higher for this program; eligible applicants can earn up to $135,000 for single filers; $175,000 for head-of-household; and, $200,000 for joint filers.

   The CVAP supports lower-income consumers' access loans to purchase or lease ZEVs, including up to $5,000 down payment assistance, special financing, and free vehicle charger and installation opportunities. Eligible recipients may not exceed $69,680 for max gross income for 2 people. It is important to note that CVAP is a financing assistance program, not an incentive program, like CVRP and CC4A.

   Through the support of these programs, as of February 25, 2022, more than one million plug-in electric cars, pickup trucks, sport utility vehicles (SUV), and motorcycles have been sold in California. The data also show that California, with only 10% of the nation's cars, now accounts for more than 40% of all ZEVs in the country. In fact, a recent study shows that more than 50% of ZEV purchasers would not have purchased a ZEV without a rebate.

ARB's incentive amounts for these programs are set through an extensive public process that occurs annually through the development of ARB's funding plan. They are also informed by statute, climate and air quality goals, funding availability, and need projections.

4) **Gas displacement.** Gasoline is the most used transportation fuel in California, with 97% of all gas being consumed by light-duty cars, pickup trucks, and SUVs. In 2021, 13.8 billion gallons of gasoline were sold, according to the California Department of Tax and Fee Administration. ARB's 2022 Scoping Plan, the roadmap for achieving the state's GHG reduction goals below 1990 levels, calls for a 50% reduction in gasoline use between 2021 and 2030 to meet the statutorily mandated GHG reduction requirements.

   This bill would require ARB to provide an *additional* incentive, layered on top of the existing ZEV incentive programs, to a gasoline superuser who receives an incentive or rebate under one of the existing programs. ARB would be tasked with identifying a threshold for gas usage to define "superuser," and would have the discretion to set the amount of the incentive at a level that maximizes the displacement of gasoline and the reduction of emissions criteria pollutants per dollar spent. The bill encourages ARB to consider establishing the gas usage threshold at an average annual usage of 700 gallons in a calendar year.

5) **Equity**. Though the goal of this bill is notably to reduce GHG associated with transportation, and reducing GHGs does benefit low income and disadvantaged communities who are disproportionately impacted by ozone and exhaust pollution**,** calculating an incentive based on the amount of gas that would be replaced can create concerns around equity.

   This bill would require ARB to develop and implement a strategy for identifying gasoline "superusers" who are low income or moderate income, identifying barriers to superusers getting ZEV incentives, and doing outreach to superusers about ZEV incentive programs, but concern remains that a superuser who uses enough gas to exceed the threshold that ARB establishes for incentive eligibility has the financial means to afford the car, and/or afford the gas.

   According to Coltura, the sponsor of the bill, the lower fuel economy cars and the cars being driven a lot of miles are the target cars to replace since they will reap greater GHG reductions if removed from the road, which will also provide environmental benefits (cleaner air) to all Californians. Coltura also explains that their research shows that on the whole, wealthier people tend to drive less than lower income drivers. Lower income drivers often have to drive longer distances in older, less efficient vehicles either because they can't afford to live near where they work, or because they drive for their work. Many lower income drivers are in the top bracket for gasoline consumption, spending 25% or more of their household income on vehicle fuel.

6) **Funding**. The 2022-23 fiscal year budget included $54 billion over five years to support transformative climate investments in transportation, energy, housing, education, wildfire resilience, drought, and health. The Budget included $6.1 billion for new zero-emission transportation investments over four years. Of these investments, $4.2 billion was appropriated to ARB and the California Energy Commission for heavy duty zero-emission technology advancement and to expand investments in passenger vehicle incentives and infrastructure.

This year, the state is facing a $22.5 billion budget deficit and the Governor's January 10 budget is proposing significant cuts across the board for the state's climate investments and environmental programs, including $6 billion in cuts to last year's 5-year climate spending plan. More than half of those proposed cuts – $3.3 billion – come from the state's clean transportation initiatives. Money for ZEV incentive programs, such as rebates for car buyers, and charging infrastructure would be cut by $2.5 billion. About $1.4 billion of that amount would be shifted to the state's fund for its cap-and-trade program, a market that is paid into by fossil fuel companies, amongst others. That leaves a net decrease of $1.1 billion.

While the Governor does propose to maintain the full funding amount for the CC4A program ($656 million), CVRP is anticipated to run out of money before this bill would go into effect.

7) **Double referral**. This bill was heard in the Assembly Transportation Committee on March 27 by a vote 15-0.

8) **Related legislation**. AB 2816 (Ting, 2022) would have required ARB to award incentives for passenger ZEVs based on the amount of gasoline or diesel the applicant's vehicle consumed. This bill was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Interfaith Power & Light
Coltura
Elders Climate Action, Norcal and Socal Chapters
Fossil Free Mid Peninsula
Plug in America
Rapid Substitution
Silicon Valley Youth Climate Action
Zev 2030

Opposition

None on file

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1284 (Ramos) – As Amended March 23, 2023

SUBJECT: Tribal ancestral lands and waters: cogovernance and comanagement agreements

SUMMARY: Establishes the Tribal Cogovernance of Ancestral Lands and Waters Act to encourage the state to enter into agreements with federally recognized tribes for the purposes of shared responsibility, decision-making, and partnership in resource management and conservation within a tribe's ancestral lands and waters.

EXISTING LAW:

1) Requires the Office of Federal Acknowledgment (OFA) within the Office of the Assistant Secretary Indian Affairs of the Department of the Interior to implement the Procedures for Establishing that an American Indian Group Exists as an Indian Tribe. (25 Code of Federal Regulations Part 83)

2) Encourages and authorizes all state agencies, as defined, to cooperate with federally recognized California Indian Tribes on matters of economic development and improvement for the tribes. (Government Code11019.8 (a))

3) Provides that the Legislature encourages the State of California and its agencies to consult on a government-to-government basis with federally recognized tribes and to consult with nonfederally recognized tribes and tribal organizations, as appropriate, in order to allow tribal officials the opportunity to provide meaningful and timely input in the development of policies, processes, programs, and projects that have tribal implications.

4) Provides that the Legislature encourages the state and its agencies to consult with a federally recognized tribe, at the tribe's request for a government-to-government consultation on a specified agency action, within 60 days of the request.

THIS BILL:

1) Establishes the Tribal Cogovernance of Ancestral Lands and Waters Act.

2) Defines the following terms:

   a) "Ancestral lands and waters" means lands and waters within a federally recognized tribe's ancestral territory that are state owned or controlled;

   b) "Cogovernance" is governance that emphasizes collaboration and shared decisionmaking on a nation-to-nation, government-to-government level;

   c) "Comanagement," as adopted by the Fish and Game Commission, means a collaborative effort established through an agreement in which two or more sovereigns mutually negotiate, define, and allocate amongst themselves the sharing of management functions and responsibilities for a given territory, area or set of natural resources; and,

d) "Federally recognized tribe" means a tribe located in the state and acknowledged by the federal government pursuant to the annual list published under the Federally Recognized Indian Tribe List Act of 1994 (25 United States Code 5131) in the Federal Register.

3) Encourages the California Natural Resources Agency (NRA) to enter into cogovernance and comanagement agreements with federally recognized tribes. Requires the Secretary of NRA (Secretary) to be the signatory for the state, and authorizes the Secretary to enter into agreements with federally recognized tribes for the purposes of shared responsibility, decisionmaking, and partnership in resource management and conservation within a tribe's ancestral lands and waters.

4) Authorizes, at the request of a federally recognized tribe, the Secretary or a delegate to, within 90 days of the request, begin government-to-government negotiations on cogovernance and comanagement agreements with the tribe.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Indigenous peoples in California.** In the early decades of California's statehood, the relationship between the state and Native Americans Tribes was fraught with violence, exploitation, dispossession, and the attempted destruction of tribal communities, as expressed by Governor McDougall in his 1851 address to the Legislature: "[t]hat a war of extermination will continue to be waged between the two races until the Indian race becomes extinct must be expected."

   Imbedded in that intrinsic racism, elitism, and greed was an inherent ignorance about the Native American Tribes and how they had sustainably lived on the land for many generations before the land was settled by Europeans, rushed for gold, and established as part of the United States. During those years, Native American Tribes were enslaved by settlers and coerced to live in hastily organized reservations that provided little in the way of support, lacking game and suitable agricultural lands and water. Despite every effort to remove them, many Native American Tribes prevailed.

   The amazingly adaptive capabilities of California's Native American Tribes has demonstrated the resiliency and genius of these much misunderstood and what the hardworking tribes can achieve under the most unfavorable of circumstances. Current state leaders have the opportunity to give them a greater voice in land management, ecosystem preservation, and co-governance to protect and restore California's lands, and maintain the commitment to continue learning from them.

2) **Tribal recognition**. The OFA within the Office of the Assistant Secretary Indian Affairs implements the federal procedures for federally recognizing Indian Tribes. Federal acknowledgment of tribal existence is a prerequisite to the protection, services, and benefits of the federal government available to Indian Tribes by virtue of their status as tribes. The federal acknowledgment regulations establish procedures by which a non-federally recognized group may seek federal acknowledgment as an Indian tribe, establishing a government-to-government relationship with the United States. Within the government-to-government relationship, the federal government provides services directly or through contracts, grants, or compacts to 109 federally recognized Indian Tribes in California. There

are several non-federally recognized tribes petitioning for federal recognition through the Bureau of Indian Affairs.

3) **Land management by Indigenous peoples.** Researchers are turning to what is known as traditional ecological knowledge (TEK) to fill out an understanding of the natural world. TEK is deep knowledge of a place that has been painstakingly discovered by those who have adapted to it over thousands of years and relied on this detailed knowledge for their survival. TEK has been studied as biocultural diversity, ethno-ornithology, and has been receiving more attention from scientists due to efforts to better understand the world in the face of climate change and the accelerating loss of biodiversity. One estimate suggests that while native peoples only compromise 4%-5% of the world's population, they manage up to 11% of its forests. "In doing so, they maintain 80% of the planet's biodiversity in, or adjacent to, 85% of the world's protected areas," stated Gleb Raygorodetsky, a researcher at the University of Victoria.

   There are examples of TEK incorporation into land management policies around the world, from the Skolt Sami people of Finland to the Maya people of Mesoamerica. California, with its 163,696 square miles of territory and wide range of topography and geography, stands to learn so much more from the Native American Tribes that inhabit nearly every corner of the state.

4) **State policies on Native American inclusion.** The NRA recognizes that California Native American Tribes and tribal communities have sovereign authority over their members and territories and a unique relationship with California's resources. All California tribes and tribal communities, regardless of federal recognition, have distinct cultural, spiritual, environmental, and economic and public health interests and unique traditional cultural knowledge about California resources.

   On September 19, 2011, Governor Brown issued Executive Order B-10-11 to direct state agencies and departments to implement effective government consultation with California Native American Tribes. That Executive Order also sought to establish a tribal advisor under the Governor [the advisor was ultimately codified in AB 880 (Gray, Chapter 801, Statutes of 2018)]. The purpose of the policy is to ensure effective government-to-government consultation between NRA, its departments and agencies, and Native American Tribes and tribal communities to further the mission and to provide meaningful input into the development of regulations, rules, policies, and activities that may affect tribal communities. Furthermore, the Executive Order requires NRA and its departments to identify Native American Tribes to consult at the earliest possible time in the planning process and allow a reasonable opportunity for tribes to respond and participate.

   On June 18, 2019, Governor Newsom issued Executive Order N-15-19, which acknowledges and apologizes on behalf of the state for the historical "violence, exploitation, dispossession and the attempted destruction of tribal communities" which dislocated California Native Americans from their ancestral land and sacred practices and establishes the California Truth and Healing Council. The destructive impacts of this forceful separation persist today, and meaningful, reparative action from the state can begin to address these wrongs in an effort to heal its relationship with California Native Americans. In addition, Executive Order N-15-19 reaffirms and incorporates by reference the principles of government-to-government engagement established by Executive Order B-10-11.

On September 25, 2020, Governor Newsom released a Statement of Administration Policy on Native American Ancestral Lands to encourage state entities to seek opportunities to support California Tribes' co-management of and access to natural lands that are within a California tribe's ancestral land and under the ownership or control of the state of California, and to work cooperatively with California tribes that are interested in acquiring natural lands in excess of State needs.

On October 7, 2020, Governor Newsom issued Executive Order No. N-82-20, which directed NRA to collaborate with tribal partners to incorporate tribal expertise and traditional ecological knowledge to better understand our biodiversity and the threats it faces. As a result, NRA appointed an assistant Secretary for Tribal Affairs to help cultivate and ensure the participation and inclusion of tribal governments and communities within the work of NRA, supporting the effective integration of these governments' and communities' interests in environmental policymaking. The assistant also works to further support and expand the NRA's effort to institutionalize tribal consultation practices into its program planning, development, and implementation decisions.

The NRA's Assistant Secretary for Tribal Affairs is appointed to cultivate and ensure the participation and inclusion of tribal governments and communities within the work of NRA.

5) **30x30.** As part of Executive Order N-82- 20, California committed to the goal of conserving 30% of our lands and coastal waters by 2030. California's 30x30 initiative is part of an international movement to conserve natural areas across our planet. This global initiative seeks to protect biodiversity, expand equitable access to nature and its benefits, combat climate change, and build our resilience to climate impacts.

   Tribal uses of ancestral and traditional areas—including fishing, hunting, gathering, and ceremony—are central not only to tribal identity and sovereignty but also biodiversity protection and ecosystem function.

   The draft *Pathways to 30x30 California: Accelerating Conservation of California's Nature* provides the following principle for strengthening Tribal partnerships:

   - Engage in meaningful government-to-government consultation with California Native American Tribes for the protection, care, access, and stewardship of cultural landscapes, celestial-scapes, and seascapes, as well as other sacred sites and ceremonial places.

5) **Author's statement:**

   Tribes have always been the stewards of their ancestral lands and waters and have thousands of years of traditional management knowledge. Climate impacts are having devastating effects on our state. Tribal Governments have the ability to manage lands and waters in a way that is conservation focused and can address climate impacts and increase biodiversity. There is no clear authority for state agencies to enter into co-governance and co-management agreements with Tribal Governments. This lack of clear authority has resulted in piecemeal attempts for agreements that do not provide for co-management as envisioned by Tribes or the state. The Tribes in the state wish to be equitable partners with the Resources

Agency in combating climate impacts, enhancing biodiversity, ensuring durable conservation, and protecting their natural and cultural resources. Ultimately, AB 1284 recognizes Tribal stewardship capabilities to manage resources in their ancestral territories and helps the state achieve its conservation goals.

6) **This bill.** AB 1284 encourages NRA to enter into cogovernance and comanagement agreements with federally recognized tribes and authorizes the Secretary to enter into agreements with federally recognized tribes for the purposes of shared responsibility, decision-making, and partnership in resource management and conservation within a tribe's ancestral lands and waters.

   The Resighini Rancheria, sponsor of the bill, write, "AB 1284 creates a space where Indigenous knowledge drives decision-making that results in healthy and viable communities and ecosystems for future generations."

REGISTERED SUPPORT / OPPOSITION:

Support

Cher-ae Heights Indian Community of The Trinidad Rancheria
Tolowa Dee-ni' Nation

Opposition

None on file

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1305 (Gabriel) – As Introduced February 16, 2023

SUBJECT: Voluntary carbon offset disclosures

SUMMARY: Requires disclosure of specified information by sellers and buyers of voluntary carbon offsets. Subjects violators to an unspecified civil penalty.

EXISTING LAW:

1) The California Global Warming Solutions Act requires the Air Resources Board (ARB) to adopt a statewide greenhouse gas (GHG) emissions limit equivalent to 1990 levels by 2020, to ensure that statewide GHG emissions are reduced to at least 40% below the 2020 statewide limit no later than December 31, 2030, and declares the policy of the state to achieve net zero greenhouse gas emissions by 2045. (Health and Safety Code 38500 et seq.)

2) The Act requires ARB, among other things, to:

    a) Adopt rules and regulations to achieve maximum technologically feasible and cost-effective GHG emission reductions;

    b) Ensure any direct regulation or market-based compliance mechanism achieves GHG reductions that are real, permanent, quantifiable, verifiable, and enforceable by ARB;

    c) Limit offsets used in the cap and trade regulation to 4% of a covered entity's compliance obligation from 2021 to 2025 and 6% from 2026 to 2030, of which no more than one-half may be sourced from projects that do not provide direct environmental benefits in state; and,

    d) Adopt methodologies for the quantification of voluntary GHG emission reductions.

3) Generally prohibits the use of false or misleading statements in advertising, including any untruthful, deceptive, or misleading environmental marketing claim. Provides that a violation is a misdemeanor punishable by imprisonment in the county jail not to exceed six months, or by a fine not to exceed $2,500, or by both. Provides an affirmative defense when an environmental marketing claim conforms to voluntary guidelines published by the Federal Trade Commission (FTC). (Business and Professions Code 17580-17581)

THIS BILL:

1) Requires a business entity that is selling voluntary carbon offsets to disclose on the business entity's internet website all of the following information:

    a) Details regarding the applicable carbon offset project including all of the following information:

        i) The specific methodology used to estimate emission reductions or removal benefits;

ii) The location of the offset project site;

iii) The project timeline;

iv) The date when the project started or will start;

v) The date when the emission reductions or removals started or will start;

vi) The type of project; and,

vii) Whether the project meets any standards established by law or by a nonprofit entity.

b) Details regarding accountability if a project is not completed or does not meet the projected emission reductions or removal benefits, including, but not limited to, details regarding what happens under all of the following circumstances:

i) If carbon storage projects are reversed;

ii) If future emission reductions do not materialize; and,

iii) If past reductions are reversed.

c) All data and calculation methods needed to independently reproduce the number of credits issued.

2) Requires a purchaser of voluntary carbon offsets that makes claims regarding the achievement of net-zero emissions, claims to be "carbon neutral," or other claims implying the company does not add net carbon dioxide to the climate or has made significant reductions to its carbon dioxide emissions to disclose on the purchaser's internet website all of the following information:

a) The offset registry or program;

b) The project identification number, if applicable;

c) The project name as listed in the registry or program, if applicable;

d) The offset project type and site location;

e) The specific methodology used to estimate emission reductions or removal benefits; and,

f) How a "carbon neutral," "net-zero emission," or other similar claim was determined to be accurate or actually accomplished.

3) Subjects a person who violates the bill's disclosure requirements to an unspecified civil penalty for each violation, assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by a district attorney, county counsel, or city attorney in a court of competent jurisdiction.

4) Defines "voluntary carbon offset" as any product sold in the state that claims to be a "greenhouse gas emission offset," a "voluntary emission reduction," a "retail offset," or any like term, which connotes that the product represents or corresponds to a reduction, not required by any law or regulation, in the amount of GHGs present in the atmosphere or that prevents the emission of GHGs into the atmosphere that would have otherwise been emitted. Excludes any GHG reduction measures, including voluntary GHG emission reduction measures or market-based compliance mechanisms, used to comply with GHG emission limits established by any law or regulation, including, but not limited to, limits established pursuant to the California Global Warming Solutions Act, the California Environmental Quality Act (CEQA), or federal law or regulation.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**:

> The voluntary carbon offset industry is currently a wild west with all transparency or regulation being entirely voluntary. While offsets used for compliance market are regulated, voluntary carbon offset credits sold to consumers or businesses to voluntarily offset their emissions are completely unregulated. With a variety of recent reports all demonstrating consistent over-crediting and lack of legitimate additionality in voluntary offset projects, there is a clear and pressing need for increased accountability and transparency.
>
> Requiring important details about the offsets being sold and purchased, such as the site location and how the total number of credits to be sold were calculated allows researchers and the public to better evaluate the validity of the credits being sold. By doing this, AB 1305 will combat greenwashing and give consumers a meaningful tool to decide which projects are worth investing in to reduce their carbon footprint.

2) **The voluntary offset market**. Individuals and corporations purchase carbon offsets to compensate for the GHG emissions they create or contribute to. As more people purchase these reductions to compensate for their carbon footprint, questions arise as to what is being done to ensure that they are purchasing genuine carbon offsets. There is growing concern about the validity of emission reductions from projects sold and the potential for fraud. Despite the growth of the voluntary offset market in supporting advertising claims and even legal requirements, such as mitigation of GHG emissions under CEQA, the market remains fairly opaque, and is not regulated by ARB or any other state entity.

   The FTC's "Guides for the Use of Environmental Marketing Claims," which are intended to help marketers avoid making environmental marketing claims that are unfair or deceptive, includes the following brief guidance regarding carbon offsets:

> 260.5 Carbon Offsets.
>
> (a) Given the complexities of carbon offsets, sellers should employ competent and reliable scientific and accounting methods to properly quantify claimed emission reductions and to ensure that they do not sell the same reduction more than one time.

(b) It is deceptive to misrepresent, directly or by implication, that a carbon offset represents emission reductions that have already occurred or will occur in the immediate future. To avoid deception, marketers should clearly and prominently disclose if the carbon offset represents emission reductions that will not occur for two years or longer.

(c) It is deceptive to claim, directly or by implication, that a carbon offset represents an emission reduction if the reduction, or the activity that caused the reduction, was required by law.

3) **Exclusions from the definition of "voluntary carbon offset" may be too broad**. This bill includes a sweeping exclusion from its disclosure requirements for offsets used to comply with GHG emission limits established by any law or regulation. It may be appropriate to draw a distinction between voluntary offsets and compliance offsets used to comply with ARB's cap and trade regulation or a similar GHG emissions reduction requirement, as compliance offsets are subject to more stringent standards and an existing enforcement scheme. However, it is not clear why the bill's disclosure requirements should not apply to voluntary offsets used for CEQA mitigation or to any future law that may be captured by the bill's broad exclusion, such as a law that requires a large corporation to disclose its GHG emissions.

4) **What is the civil penalty cap**? This bill establishes a new civil penalty for violations of its provision, with a blank limit on the amount recoverable per violation. The bill has been referred to the Judiciary Committee due to the civil penalty provision, so it may be prudent to defer resolution of the civil penalty amounts to the Judiciary Committee.

5) **Prior legislation**. AB 376 (Nava, 2009) required a person selling a GHG emission offset for voluntary purposes to disclose specified information in advertising materials and ensure the offset has a unique serial number and is tracked by a registry, and included a civil penalty up to $10,000 for each violation. AB 376 passed this committee, but was held in the Assembly Appropriations Committee.

6) **Double referral**. This bill has been double referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Climate Reality Project, Los Angeles Chapter
Climate Reality Project, San Fernando Valley

Opposition

Western States Petroleum Association

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1307 (Wicks) – As Amended March 16, 2023

SUBJECT: California Environmental Quality Act: noise impact: residential projects

SUMMARY: For purposes of the California Environmental Quality Act (CEQA), provides that noise generated by the unamplified voices of residents is not a significant effect on the environment for residential projects.

EXISTING LAW:

1) 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) Defines "environment" as the physical conditions that exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, *noise*, or objects of historic or aesthetic significance. (PRC 21060.5)

3) Defines “significant effect on the environment” as a substantial, or potentially substantial, adverse change in the environment. (PRC 21068)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Background**. CEQA provides a process for evaluating the environmental effects of applicable projects undertaken or approved by public agencies. If a project is not exempt from CEQA, an initial study is prepared to determine whether the project may have a significant effect on the environment. If the initial study shows that the project would not have a significant effect on the environment, the lead agency must prepare a negative declaration. If the initial study shows that the project may have a significant effect, the lead agency must prepare an EIR.

   Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Prior to approving any project that has received environmental review, an agency must make certain findings. If mitigation measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

   Regulation of noise pollution dates back to ancient Greece and Rome. Noise is perhaps the original environmental impact. Noise analysis has always been a part of CEQA review. Noise is included in the original CEQA definition of “environment,” dating to 1972. Noise is among the 18 environmental factors that must be evaluated by lead agencies in an initial

study to determine the appropriate level of CEQA review. For many projects, such as roads, manufacturing, or a large event venue, the noise analysis may include noise from both construction and operation of the project. For residential projects, the noise analysis may consider whether the project generates noise in excess of standards established in the local general plan or noise ordinance, and noise generated by residents occupying the project usually would not be considered a significant effect.

2) **The People's Park case**. On February 24, 2023, the First District Court of Appeal issued an opinion in *Make UC a Good Neighbor v. Regents of University of California*. The Court rejected challenges to the CEQA review of UC Berkeley's long range development plan, but directed UC to consider alternative locations, and to assess potential noise impacts from student parties, for a student housing project proposed at the site of People's Park. Even though substantial evidence of social noise impacts was presented during the project's CEQA review, UC decided to not analyze potential noise from future residents and determine if the impacts were significant or not. According to the opinion:

> (UC) failed to assess potential noise impacts from loud student parties in residential neighborhoods near the campus, a longstanding problem that the EIR improperly dismissed as speculative…The Regents must analyze the potential noise impacts relating to loud student parties. Their decision to skip the issue, based on the unfounded notion that the impacts are speculative, was a prejudicial abuse of discretion and requires them now to do the analysis that they should have done at the outset…We express no opinion on the outcome of a noise analysis. The Regents must determine whether the potential noise impacts are in fact significant, and, if so, whether mitigation is appropriate; ultimately, CEQA provides discretion to proceed with a project even if some impacts cannot be mitigated.

3) **Author's statement**:

> AB 1307 would remove the potential for litigants to challenge residential development based on the speculation that the new residents will create unwanted noises. It would also reestablish existing precedent that minor and intermittent noise nuisances, such as from unamplified human voices, be addressed through local nuisance ordinances and not via CEQA. As such, no longer could CEQA consider "people as pollution."

REGISTERED SUPPORT / OPPOSITION:

Support

AMG & Associates
California Apartment Association
California Association of Realtors
California Building Industry Association
California Housing Consortium
California Housing Partnership Corporation
CRP Affordable Housing and Community Development
East Bay YIMBY
Grow the Richmond
Housing Action Coalition
Housing California

How to ADU
Linc Housing
MidPen Housing Corporation
Mountain View YIMBY
Napa-Solano for Everyone
Non-Profit Housing Association of Northern California
Northern Neighbors SF
Peninsula for Everyone
People for Housing Orange County
Progress Noe Valley
Resources for Community Development
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco YIMBY
San Luis Obispo YIMBY
Santa Cruz YIMBY
Santa Rosa YIMBY
Satellite Affordable Housing Associates
South Bay YIMBY
Southside Forward
The Pacific Companies
Urban Environmentalists
Ventura County YIMBY
YIMBY Action

Opposition

None on file

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1449 (Alvarez) – As Amended March 23, 2023

SUBJECT: Affordable housing: California Environmental Quality Act: exemption

SUMMARY: Exempts from the California Environmental Quality Act (CEQA) specified actions related to approval of an affordable housing project that meets specified conditions, including construction labor standards established by AB 2011 (Wicks), Chapter 647, Statutes of 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 (GC) 65457)

3) Exempts from CEQA specified residential housing 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) Establishes a ministerial approval process (i.e., not subject to CEQA) for certain multifamily affordable housing projects that are proposed in local jurisdictions that have not met regional housing needs. Requires eligible projects to meet specified standards, including paying prevailing wage to construction workers and use of a skilled and trained workforce. (GC 65913.4, added by SB 35 (Wiener), Chapter 366, Statutes of 2017)

9) Establishes a ministerial approval process for affordable housing projects in commercial zones. Requires eligible projects to pay prevailing wage to construction workers and requires projects of 50 units or more to participate in an apprenticeship program and make specified healthcare contributions for construction workers. (GC 65912.100 et seq., added by AB 2011)

THIS BILL:

1) Defines “affordable housing project” as a project consisting of multifamily residential uses only or a mix of multifamily residential and nonresidential uses, with at least two-thirds of the square footage of the project designated for residential use, where all residential units are dedicated to lower income households, as defined, and the projects meets the “AB 2011” standards for construction labor, requiring payment of prevailing wage, and for projects with 50 or more units, participation in apprenticeship programs and healthcare contributions.

2) Exempts from CEQA the following actions:

   a) The issuance of an entitlement by a public agency for an affordable housing project;

b) An action to lease, convey, or encumber land owned by a public agency for an affordable housing project;

c) An action to facilitate the lease, conveyance, or encumbrance of land owned or to be purchased by a public agency for an affordable housing project;

d) Rezoning, specific plan amendments, or general plan amendments required specifically to allow the construction of an affordable housing project; and,

e) An action to provide financial assistance in furtherance of implementing an affordable housing project.

3) Requires the affordable housing project to meet all of the following requirements:

a) The affordable housing project is subject to a recorded California Tax Credit Allocation Committee (TCAC) regulatory agreement for at least 55 years upon completion of construction;

b) The affordable housing project site is consistent with specified TCAC regulations;

c) The affordable housing project site can be adequately served by existing utilities or extensions;

d) A public agency confirms both of the following:

i) The affordable housing project site does not have any value as a wildlife habitat, protected species are not known to be present at the site, and the project does not cause the destruction or removal of any species protected by a local ordinance.

ii) The affordable housing project site is not within a high or very high fire hazard severity zone as specified, except for sites excluded by a local agency or sites that have adopted fire hazard mitigation measures as specified.

e) The affordable housing project site is not subject to a landslide hazard, flood plain, floodway, or tsunami restriction zone, unless the applicable general plan, specific plan, or zoning ordinance contains provisions to mitigate the risk of a landslide or flood;

f) The affordable housing project site is subject to a preliminary phase I environmental assessment to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated in compliance with the California environmental screening criteria before the issuance of building permits; and,

g) The affordable housing project is funded, in whole or in part, by TCAC.

4) Requires the lead agency to file a notice of exemption with the Office of Planning and Research and the relevant county clerk.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**:

> Although the CEQA process was established with good intentions and serves an important function in mitigating the environmental impact of government-led projects, it often hinders development and growth in the state, especially as it relates to housing. Although the silver bullet does not exist to resolve CEQA-related issues, AB 1449 is an important step to curb some of the excesses of CEQA while increasing affordable housing development. It also strikes a balance that streamlines affordable housing projects without sacrificing labor and environmental qualities. If we grant CEQA exemptions for billionaires building stadiums, we should be able to give the same exemption for affordable housing projects in underserved communities.

2) **CEQA exemptions for housing**. CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines, for a wide range of residential projects. Since 1978, CEQA has included statutory exemptions for housing. There are now at least 14 distinct CEQA exemptions for housing projects. The majority of residential projects are approved via exemption or negative declaration under CEQA, or through ministerial permits where CEQA does not apply.

   A few existing CEQA exemptions 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. More recently, bills such as SB 35 and AB 2011 have established ministerial approval for housing projects, where local discretionary review, including CEQA, is replaced with construction labor requirements and exclusion of specified sensitive sites.

3) **This bill lacks many of AB 2011's conditions, and would apply to many more sites throughout the state**. While AB 2011 doesn't go into effect until July 1, 2023, this bill relies on AB 2011's construction labor requirements as a condition for exempting affordable housing projects in residential zones. However, the bill lacks many of the conditions included in AB 2011 and would apply to a significantly larger area. For example, this bill includes:

   a) No requirement that the project be in an urbanized area;

   b) No requirement that the project be on an infill site or anywhere near existing development, public transit, jobs, or essential services;

   c) Less stringent exclusions regarding use of the exemption in high wildfire hazard zones;

   d) No consideration or protection of tribal cultural resources;

e) No required setbacks from freeways or oil and gas wells;

f) No exclusion of prime farmland, wetlands, or listed hazardous waste sites;

g) No effective limit to sites currently zoned for residential, as the bill includes an exemption for rezoning; and,

h) No sunset.

The author and the committee may wish to consider amending the bill to include the relevant conditions from AB 2011.

4) **Opposition concerns**. Opposition to this bill comes from two poles – the Building and Construction Trades on the basis that the bill's labor requirements are not strong and/or durable enough to justify the CEQA exemption, and the Realtors on the basis that the exemption should be broader and apply to market-rate housing projects.

According to the Building Trades:

> With any streamlining bill, we believe that worker protection and training standards must include both prevailing wage coverage and skilled and trained workforce requirements to adequately protect the workforce and the public…AB 1449 relies on labor and safety protections for workers in the residential sector that are unproven and likely run afoul of federal law, the Employee Retirement Income Security Act of 1974 (ERISA). This "labor" language was first used in AB 2011, and, while that bill was signed into law, it does not go into effect until July 2023. Of particular concern is the healthcare coverage requirements of those code sections. These are the sections of law that will likely be ruled as preempted by ERISA and, in fact, the author of AB 2011 explicitly added a severability clause to the healthcare requirements of AB 2011 if that occurs…It gives the illusion of a health care requirement, but the requirement will not be enforceable. What that will mean is that affordable housing developers will get the streamlining they want in AB 1449 with no requirements to provide healthcare to the construction workers they employ. The lack of healthcare coverage is already prevalent in the underground economy-driven residential construction sector.

According to the Realtors:

> The (Realtors) will OPPOSE AB 1449 unless it is amended to expand the proposed CEQA exemption to entry level market rate housing development intended for owner occupancy by our state low- and moderate-income families, and to place guardrails around the deed restriction provisions established within the bill.

5) **Double referral**. This bill has been double referred to the Assembly Housing and Community Development Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

AMG & Associates
California Housing Consortium
California Housing Partnership
CRP Affordable Housing and Community Development
East Bay YIMBY
Grow the Richmond
Housing California
How to ADU
Linc Housing
MidPen Housing Corporation
Mountain View YIMBY
Napa-Solano for Everyone
Northern Neighbors SF
Peninsula for Everyone
People for Housing - Orange County
Progress Noe Valley
Resources for Community Development
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco YIMBY
San Luis Obispo YIMBY
Santa Cruz YIMBY
Santa Rosa YIMBY
South Bay YIMBY
Southside Forward
The Pacific Companies
Urban Environmentalists
Ventura County YIMBY
YIMBY Action

Opposition

California Association of Realtors (unless amended)
Livable California
State Building and Construction Trades Council of California (unless amended)

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1534 (Irwin) – As Introduced February 17, 2023

SUBJECT: Methane emissions: municipal solid waste landfills: remote sensing data

SUMMARY: Requires the Air Resources Board (ARB), no later than June 30, 2026, to evaluate, and, if feasible and to the extent data is available, revise the regulations relating to methane emissions from municipal solid waste landfills to incorporate the use of methane remote sensing data.

EXISTING LAW:

1) Requires ARB, pursuant to California Global Warming Solutions Act of 2006, to adopt a statewide greenhouse gas (GHG) emissions limit equivalent to 1990 levels by 2020 and adopt regulations to achieve maximum technologically feasible and cost-effective GHG emission reductions. AB 32 authorizes ARB to permit the use of market-based compliance mechanisms to comply with GHG reduction regulations once specified conditions are met. Requires ARB to approve a statewide GHG emissions limit equivalent to 85% below the 1990 level by 2045. (Health and Safety Code (HSC) 38500-38599.11)

2) Requires ARB to develop a comprehensive strategy to reduce the emissions of short-lived climate pollutants (SLCP) to achieve a 40% reduction in methane emissions, 40% reduction in hydrofluorocarbon gases, and 50% reduction in anthropogenic black carbon below 2013 levels by 2030. (HSC 39730-39730.5)

3) Requires the state to reduce the disposal of organic waste by 40% from the 2014 level by 2020 and 75% by 2025 to help achieve the state's methane reduction goal. (HSC 39730.6)

4) Establishes regulations for methane emissions from municipal solid waste landfills that govern gas collection and control systems, surface methane emission standards, construction activities, permanent shutdown and removal of gas collection and control systems, monitoring requirements, recordkeeping and reporting requirements, and test methods and procedures, among other things. (California Code of Regulations Title 17 94560-95476)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**:

> The fight against climate change remains one of the pressing issues facing California. As technology improves, we must adopt these new methods to help measure and improve how we address this challenge. AB 1534 would allow the California Air Resources Board to identify and regulate significant methane emissions from landfills by using remote sensing technology and reduce contributions to global warming.

2) **Waste disposal in California**. More than 40 million tons of waste are disposed of in California's landfills annually, of which 28.4% is organic materials, 13% is plastic, and 15.5% is paper. The Department of Resources Recycling and Recovery (CalRecycle) is charged with diverting at least 75% of solid waste from landfills statewide by 2020. Local governments have been required to divert 50% of the waste generated within the jurisdiction from landfill disposal since 2000. AB 341 (Chesbro), Chapter 476, Statutes of 2011, requires commercial waste generators, including multi-family dwellings, to arrange for recycling services for the material they generate and requires local governments to implement commercial solid waste recycling programs designed to divert solid waste generated by businesses out of the landfill. A follow up bill, AB 1826 (Chesbro), Chapter 727, Statutes of 2014, requires generators of organic waste (i.e., food waste and yard waste) to arrange for recycling services for that material to keep it out of the landfill.

   SB 1383 (Lara), Chapter 395, Statutes of 2016, requires ARB to approve and implement a comprehensive SLCP strategy to achieve, from 2013 levels, a 40% reduction in methane, a 40% reduction in hydrofluorocarbon gases, and a 50% reduction in anthropogenic black carbon, by 2030. In order to accomplish these goals, the bill specified that the methane emission reduction goals include targets to reduce the landfill disposal of organic waste 50% by 2020 and 75% by 2025 from the 2014 level.

2) **Short lived climate pollutants**. SLCPs are GHGs that linger in the atmospheres for a shorter period of time than carbon dioxide, but have much larger impacts on climate over their lifetimes. The primary SLCPs are methane, black carbon, tropospheric ozone, and hydrofluorocarbons, which are estimated to account for up to 45% of current climate change. Reducing SLCP emissions reduces near-term climate impacts.

   The global warming potential of methane is more than 25 times greater than carbon dioxide over its short atmospheric life (approximately 12 years). According to the United States Environmental Protection Agency, municipal solid waste landfills are the third-largest human-generated source of methane emissions in the United States. Landfills are required to have methane collection systems in place to capture and manage methane emissions, but these systems in modern landfills only capture roughly 60% to 90% of the methane emitted.

3) **Remote sensing technology**. Remote methane sensing technology includes the use of satellites, drones, or airplanes to identify methane emission sources. Between 2016 and 2018, ARB and the California Energy Commission (CEC) partnered with the National Aeronautics and Space Administration's (NASA) Jet Propulsion Laboratory (JPL) to conduct a California Methane Survey (Survey) to map point sources of methane emissions to help prioritize investments to reduce GHG emissions. JPL flew remote sensing equipment over the state and identified hundreds of point sources, including "super-emitters," or sources that emit an outsized proportion of methane emissions. According to the Survey, 10% of point sources were responsible for 60% of the total methane emissions detected. Based on this finding, researchers estimate that relatively few sources are responsible for one-third of California's methane emissions. In total, the Survey identified more than 550 point sources emitting methane plumes.

   Landfills accounted for 41% of the emissions identified by the Survey; the other two highest emitting sectors were manure management operations and oil and gas operations, which each accounted for 26% of emissions. Of the 270 landfills surveyed, 30 were observed emitting

large methane plumes; however, those 30 were responsible for 40% of the total point source emissions detected by the Survey. The lead scientist on the study, Riley Duren, stated "these findings illustrate the importance of monitoring point sources across multiple sectors of the economy and broad regions, both for improved understanding of methane budgets and to support emission mitigation efforts."

As a result of the Survey, regulators were able to identify facilities with the highest emissions and work with operators to reduce them. For example, the Survey found very high emissions from the Sunshine Canyon Landfill in Los Angeles County. When notified of the plume, the operator was able to identify problems with the landfill cover and gas capture system. Over the following year, the operator was able to make a number of changes that dramatically reduced methane emissions. These improvements also resulted in fewer odor complaints from nearby residents.

Since the Survey, California has partnered with other entities, including JPL, universities, satellite data companies, and philanthropic entities on the deployment of a satellite using new technology to identify and quantify methane and carbon dioxide emissions. The operation will be managed by a nonprofit organization called Carbon Mapper, which is on track to launch two satellites in 2023 to detect and quantify high emission methane and carbon dioxide emissions sources. The California State Budget Act of 2022 allocated $100 million for investments in satellite mapping of methane and other GHG emission sources.

4) **This bill**. This bill requires ARB to evaluate the inclusion of remote sensing technology into its regulations for methane emissions from municipal solid waste landfills. This change, if adopted by ARB, could identify methane plumes from landfills that may be missed by current inspection and monitoring procedures. Once identified, the operators of the facilities emitting the highest levels of methane can make the changes necessary to reduce their emissions, resulting in lower SLCP emissions statewide and significant benefits to the climate.

REGISTERED SUPPORT / OPPOSITION:

Support

California Resource Recovery Association
Californians Against Waste
Climate Action California
Coalition for Clean Air
Elders Climate Action NorCal Chapter
Elders Climate Action SoCal Chapter
Republic Services – Western Region
The Climate Center
Zero Waste Sonoma

Opposition

None on file

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1686 (Grayson) – As Amended March 16, 2023

SUBJECT: Ports and harbors: Martinez Marina

SUMMARY: Extends the sunset date, until June 30, 2033, of the authorization for the State Lands Commission (SLC) to relieve the City of Martinez (City) of its obligation to transmit gross revenues to the state so the City can instead can invest in improving conditions at the Martinez Marina.

EXISTING LAW:

1) Requires that the City, as trustee, annually transmit 20% of all gross revenue generated from specified trust lands to SLC for allocation by the Treasurer to the General Fund and Land Bank Fund.

2) Authorizes SLC, in recognition of deteriorated conditions at the Martinez Marina, until June 30, 2021, to relieve the trustee of its obligation to transmit those gross revenues so the trustee can take action to address those conditions, including the dredging of sediment to restore adequate depth for launching, berthing, and safe navigation at the marina.

3) Requires the City, as the trustee, to provide an annual statement and standardized reporting form that includes a summary explaining how it is using trust revenues to revitalize the marina and prevent its closure.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement:**

> The Martinez Marina was envisioned as the economic driver that would generate revenue for both the State and City. Unfortunately, the City has never been able to generate sufficient revenues to pay for the ongoing infrastructure challenges at the Marina and it continues to be in a deteriorated condition. These infrastructure challenges now total in the tens of millions of dollars for the necessary improvements and repairs/replacements to the Marina's breakwater and docks.
>
> Additionally, the City will need to address ongoing issues related to sea level rise which are being evaluated now and expected to also cost in the millions of dollars to address. Remitting this 20% of gross revenues obligation to the SLC is counterproductive, as all revenues generated through the Trust Lands at this time should continue to be dedicated to improving the Marina and Trust Lands.
>
> Without the much-needed extra time to make the infrastructure improvements necessary for the economic viability of the Martinez Marina and greater waterfront, the City will remain in a position of having to subsidize the Marina's

costs with General Fund dollars while also diverting its already limited Marina Fund revenues away from these pressing infrastructure needs.

It is crucial that we to provide the City of Martinez that much-needed extra time for necessary improvements to the Marina to make it profitable. This will benefit the State, the City of Martinez, as well as the residents of Martinez and the surrounding communities that use Waterfront Park for recreation and the enjoyment of the Carquinez Strait.

2) **Martinez Marina**. The City was granted certain sovereign lands in trust in 1851. In 2014, the previous grant and statutory amendments were repealed and a new statute was enacted granting the City four trust land parcels, included the marina.

The marina is just north of San Francisco, near the city of Martinez, along the Carquinez Strait. The marina has been in operation for more than 40 years.

In 1993, a Marina Master Plan was adopted by the City that called for upgrading and replacing the marina. Plans included a new boat launch ramp, deeper water channels for the boats in the marina, new bait shop, boat storage, waterfront restaurant, and more.

Despite the adoption of the Master Plan, the marina remained in a deteriorated state. By 2014, only five of the six docs were usable, and of the 400 slips in the marina (parking spots for boats), only approximately 140 were in use. The condition of the docks are deteriorated due to the high levels of siltation that flowed downstream and through its breakwater since its construction in 1960. Due to the location of the marina, the dredge cycle is every three years.

Over the last 17 years, the City has incurred expenses totaling $2,389,803 for dredging construction, design, and mitigation. In fiscal year (FY) 2017-18 alone, the City incurred costs of $772,736 to dredge this small area. Ultimately, in order for the marina to be economically viable, the siltation issue needed a long term solution and a plan to be adopted to guide redevelopment of the Martinez Waterfront for the benefit of the greater Contra Costa and Solano County region.

As of November 2020, the City had completed an above water assessment of the fishing pier at a cost of $33,800. The initial assessment indicated approximately $800,000 of pier repairs were necessary to maintain the facility in a safe manner for public access. This assessment did not include any additional costs associated with repair of deteriorated pilings, which a subsequent underwater assessment notes will be an additional cost of $28,250.

On the marina's website, it states that progress to date includes removal of the old ferry pier, construction of the Ferry Point Plaza, new boat launch, and initial dredging of the marina entrance. The next phase will include more dredging, break water wall repair, and entrance

reconfiguration. This is a multi-phase project that will take place over the next several years and is contingent upon the availability of public and private funding.

3) **Current law**. At the end of each fiscal year, 20% of all gross revenues generated from the trust lands are required to be transmitted to SLC. Of the amount transmitted, SLC is required to allocate 80% to the Treasurer for deposit in the General Fund, and 20% to the Treasurer for deposit in the Land Bank Fund for management of SLC's granted lands program.

   Due to the marina's infrastructure needs, the revenue generated by the land had barely been enough for the City to keep pace with basic maintenance and operational costs. In recognition of those deteriorated conditions at the marina and the capital improvements needed, SB 1424 (Wolk, Chapter 628, Statutes of 2014) granted SLC the discretion to relieve the City of this obligation from June 30, 2015, until June 30, 2021**.**

   As a result, the City has requested relief authorized by SB 1424 each year they have been authorized to do so. The permission was granted, the City maintains the additional revenues in the Marina Service Enterprise Fund and uses them toward infrastructure needs and redevelopment on the Marina.

   The most recent request, posted November 12, 2020, explains that significant silting continues to require costly dredging to maintain adequate channel depth to the boat launch and channel facing slips.

   In 2021, Martinez reported $244,077 as the gross revenue received, which includes rents ($193,483), "other" ($35,796), taxes ($2,181), and interest income ($2,617). With the law allowing the City to retain the funds for improvements, in 2021, the City spent $266,707 on maintenance and repair, administration, and interest expenses. The City is conducting a dredge study and expects to spend approximately $1 million in FY 2023.

   The permission for SLC to relieve the City for remitting revenues to the state expired on June 30, 2021, so Martinez has been required to transmit 20% of the gross revenues to SLC since then. In 2022, the City remitted the full gross revenues, in total $13,510, to SLC.

4) **Giving Martinez more time**. AB 1686 extends the sunset date until June 30, 2033, to allow SLC to let the City to keep the full revenues so the city can further invest in improving conditions at the Martinez Marina, including dredging of sediment to restore adequate depth for launching, berthing, and safe navigation at the marina.

   The City estimates that $18 million is what is needed to fully improve the marina to a condition in which only regular maintenance is required.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Martinez

Opposition

None on file

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1705 (McKinnor) – As Amended March 21, 2023

SUBJECT: Solid waste facilities: state policy goals

SUMMARY: Prohibits the establishment or expansion of a transformation facility or engineered municipal solid waste (EMSW) conversion facility until the Department of Resources Recycling and Recovery (CalRecycle) has determined that the state has achieved the state's waste reduction and methane reduction goals for three consecutive years.

EXISTING LAW:

1) Requires the Air Resources Board (ARB), pursuant to California Global Warming Solutions Act of 2006 [AB 32 (Núñez), Chapter 488, Statutes of 2006], to adopt a statewide greenhouse gas (GHG) emissions limit equivalent to 1990 levels by 2020 and adopt regulations to achieve maximum technologically feasible and cost-effective GHG emission reductions. AB 32 authorizes ARB to permit the use of market-based compliance mechanisms to comply with GHG reduction regulations once specified conditions are met. Requires ARB to approve a statewide GHG emissions limit equivalent to 85% below the 1990 level by 2045. (Health and Safety Code (HSC) 38500-38599.11)

2) Requires ARB to develop a comprehensive strategy to reduce the emissions of short-lived climate pollutants (SLCP) to achieve a 40% reduction in methane emissions, 40% reduction in hydrofluorocarbon gases, and 50% reduction in anthropogenic black carbon below 2013 levels by 2030. (HSC 39730-39730.5)

3) Requires the state to reduce the disposal of (i.e., divert) organic waste by 40% from the 2014 level by 2020 and 75% by 2025 to help achieve the state's methane reduction goal. (HSC 39730.6)

4) Requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan containing specified components, including a source reduction component, a recycling component, and a composting component, and is required to divert 50% of all solid waste from landfill disposal or transformation by January 1, 2000, through source reduction, recycling, and composting activities. (Public Resources Code (PRC) 41780)

5) Declares that it is the policy goal of the state that, annually, not less than 75% of solid waste generated be source reduced, recycled, or composted. (PRC 41780.01)

6) Defines "disposal" as the final deposition of solid waste onto land, into the atmosphere, or in to the waters of the state. Specifies that disposal includes landfill disposal, transformation, and EMSW conversion. (PRC 40192)

7) Defines EMSW conversion as the conversion of solid waste through a process that meets the following requirements:

a) The waste to be converted is beneficial and effective in that it replaces or supplements the use of fossil fuels;
b) The waste to be converted, the resulting ash, and any other products of conversion do not meet the criteria or guidelines for the identification of a hazardous waste, as specified;
c) The conversion is efficient and maximizes the net caloric value and burn rate of the waste;
d) The waste to be converted contains less than 25% moisture and less than 25% noncombustible waste;
e) The waste received at the facility for conversion is handled in compliance with requirements for solid waste handling, and no more than a seven-day supply of that waste, based on the throughput of the facility, is stored at the facility at any time;
f) No more than 500 tons per day of waste is converted at the facility;
g) The waste has an energy content equal to, or greater than, 5,000 British thermal units per pound; and,
h) The waste to be converted is mechanically processed at a transfer or processing station to reduce the fraction of chlorinated plastics and materials. (PRC 40131.2)

8) Defines "transformation" as incineration, pyrolysis, distillation, or biological conversion other than composting. Specifies that transformation does not include composting, gasification, EMSW conversion, or biomass conversion. (PRC 40201)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**:

> Incineration facilities have been producing toxic waste that is polluting the air and creating health disparities for Californians, particularly in low-income communities. A moratorium on the development of these facilities needs to be established in order to decrease negative health outcomes that people can develop from the toxic materials they are exposed to in their communities.

2) **California's recycling goals**. An estimated 35 million tons of waste are disposed of in California's landfills annually. Local governments have been required to divert 50% of the waste generated within the jurisdiction from landfill disposal since 2000. AB 341 (Chesbro), Chapter 476, Statutes of 2011, established a statewide recycling goal of 75%. AB 341 also requires commercial waste generators, including multi-family dwellings, to arrange for recycling services for the material they generate and requires local governments to implement commercial solid waste recycling programs designed to divert solid waste generated by businesses out of the landfill. A follow up bill, AB 1826 (Chesbro), Chapter 727, Statutes of 2014, requires generators of organic waste (i.e., food waste and yard waste) to arrange for recycling services for that material to keep the material out of the landfill. SB 1383 (Lara, Chapter 395, Statutes of 2016) requires the state to reduce the disposal of organic waste by 40% from the 2014 level by 2020 and 75% by 2025 to help achieve the state's methane reduction goal. In spite of these ambitious goals, California's recycling rate, which reached 50% in 2014, dropped to 40% in 2021. In 2021, organics disposal dropped 11% from the 2014 baseline, from 22.9 million tons to 20.3 million tons. It is worth noting that

total disposal went up significantly over that time span, from 31.1 million tons in 2014 to 40.5 million tons in 2021.

3) **Transformation**. Transformation refers to the incineration of solid waste to produce heat or electricity. Under the Integrated Waste Management Act, transformation also includes pyrolysis, distillation, or biological conversion other than composting; however, it excludes biomass conversion. Transformation facility operators are required to report tonnages and origins of waste transformed and report the information to CalRecycle's Disposal Reporting System, maintain compliance with all applicable laws and permit requirements, and test ash quarterly for hazardous materials and manage it appropriately. Transformation reduces the volume of material by about 90%, and the remaining 10% is ash that is either landfilled in a solid waste landfill or a hazardous waste facility. California has two remaining transformation facilities, Covanta Stanislaus Inc. in Stanislaus County and Southeast Resource Recovery in Long Beach.

   According to the United States Environmental Protection Agency, solid waste incinerators typically emit hazardous air pollutants, including dioxin, furan, mercury, lead, cadmium, and other heavy metals. Other emissions from transformation facilities include nitrogen oxides, volatile organic compounds, particulate matter, and carbon monoxide. In addition to air emissions, incinerator ash is also an environmental concern. In March 2018, both the Los Angeles County Department of Public Health and CalRecycle inspection reports noted ash concerns at Southeast Resource Recovery, including ash accumulation along the roads at and near the site, and nearby drain grates were clogged with ash, posing health concerns for nearby residents and potential impacts to waterways.

   Proponents of transformation state that it reduces GHG emissions over landfilling by avoiding methane emissions, recovers the metals from solid waste that would otherwise be landfilled, and provides a reliable energy source. The claim that transformation reduces GHG emissions over landfilling is disputed by a number of organizations and relies on the assumption that the portion of waste that is "biogenic" (e.g., food scraps, paper, wood, etc.) should not be counted because it is "carbon neutral" since plants and trees regrow. However, even without including the biogenic portion of the waste steam, transformation facilities emit more carbon dioxide per megawatt hour than coal power plants.

   Transformation facilities in California are located in disadvantaged communities. According to a report by Earthjustice, East Yard Communities for Environmental Justice, and the Valley Improvement Projects, the population within a 5-mile radius of Southeast Resource Recovery is 81% people of color with a per capita income of $28,312; the population within a 5-mile radius of Covanta Stanislaus is 80% people of color with a per capita income of $23,534.

4) **Conversion**. The term conversion generally refers to a variety of technologies that process solid waste through "non-combustion" thermal technologies to produce energy or fuels. Thermochemical conversion processes include high-heat technologies like gasification and pyrolysis. Thermochemical conversion is characterized by high temperatures and fast conversion rates. It is best suited for lower moisture feedstocks. Thermochemical routes can convert the entire organic portion of suitable feedstocks. The inorganic fraction does not contribute to the energy products and is generally disposed as ash after conversion, but it may accelerate some of the conversion reactions. Thermochemical conversion of source separated organic waste, such as forest biomass and yard trimmings, is categorized as

diversion in the state and does not require an EMSW permit. Thermochemical conversion of solid waste, including organic waste mixed with solid waste, requires an EMSW facilities permit and is categorized as disposal in California.

The environmental impacts of conversion technologies vary according to the type of technology used and the feedstocks converted. One recent study published earlier this year by the American Chemical Society looked at the environmental impacts of using gasification and pyrolysis to convert plastic waste to fuels. The plastics industry often refers to these types of technologies as advanced recycling, or chemical recycling, because they can turn plastic back into chemicals that can be used for fuels or other industrial uses. However, these processes are not circular, and are not considered recycling in California. The study found that "the economic and environmental metrics of pyrolysis and gasification are currently 10-100 times higher than virgin polymers due to low yields of monomers suitable for repolymerization and high energy requirements for the conversion and subsequent upgrading processes." Emissions from facilities that use municipal solid waste as feedstock can vary significantly due to the constant variation in the contents of the waste. The types of air emissions systems used by the facilities also affects the amount and types of emissions. In general, conversion facilities emit dioxins, furans, heavy metals, acidic gases, particulates, and nitrous oxide.

According to CalRecycle's Solid Waste Information System (SWIS), there are two permitted EMSW facilities in California. Lehigh Cement West, located in Tehachapi, and CEMEX Black Mountain Quarry, located in Apple Valley. One additional facility is currently listed as proposed, CEMEX Black Mt. Quarry Kiln 2, located in Victorville. In addition to the proposed facility identified by SWIS, H Cycle, LLC indicates it intends to apply for an EMSW permit to produce hydrogen from waste materials in the near future. H Cycle has submitted an application to be considered diversion for purposes of the state's organic waste reduction requirement, which identifies three potential feedstocks: a mixture of construction and demolition waste and post-materials recovery facility (MRF) (i.e., a waste sorting facility) non-recyclable fibers; residential black bin organics post-primary processing at a MRF or transfer station, with additional processing to a high organic content; and, material obtained from a high-diversion organics MRF containing an expected maximum of 9% plastic. CalRecycle's and ARB's evaluation of the technology based on these scenarios determined that they did not demonstrate sufficient GHG emissions reductions to qualify as diversion from landfill disposal, in part because they were unable to verify that the feedstocks used would not vary from these scenarios. According to H Cycle, they are in the process of resubmitting an updated application.

5) **This bill**. This bill would prohibit the establishment of new transformation or EMSW conversion facilities in the state until the state achieves its waste diversion and organic waste diversion goals for three consecutive years. Given the state's current low recycling rate, this bill would essentially result in an indefinite ban on these types of facilities.

6) **Prior legislation**:

AB 1857 (Cristina Garcia, Chapter 342, Statutes of 2022) repealed the provision of law that allowed jurisdictions to count up to 10% the waste sent to transformation toward their 50% diversion requirement. This bill also established the Zero-Waste Equity Grant

Program to support strategies and investments in communities transitioning to a zero-waste circular economy.

AB 1126 (Gordon, Chapter 411, Statutes of 2013) established regulatory and permitting standards for facilities that convert EMSW for energy generation.

REGISTERED SUPPORT / OPPOSITION:

Support

5 Gyres Institute
Active San Gabriel Valley
Breast Cancer Prevention Partners
California Resource Recovery Association
Californians Against Waste
Center for Oceanic Awareness, Research, and Education
Clean Seas Lobbying Coalition
Clean Water Action
Coalition for Clean Air
Earth Care
East Yard Communities for Environmental Justice
Elders Climate Action NorCal Chapter
Elders Climate Action SoCal Chapter
Families Advocating for Chemical and Toxics Safety
Food Empowerment Project
Fort Ord Environmental Justice Network
Global Alliance for Incinerator Alternatives
Greenpeace USA
Heal the Bay
Mi Familia Vota
Modesto Peace/Life Center
Natural Resources Defense Council
Northern California Recycling Association
Plastic Free Future
Plastic Oceans International
Plastic Pollution Coalition
San Diego 350
Save Our Shores
Seventh Generation Advisors
Surfrider Foundation
The Last Plastic Straw
The Story of Stuff Project
Valley Improvement Projects
West Berkeley Alliance for Clean Air and Safe Jobs
Wishtoyo Chumash Foundation
Youth United for Climate Crisis Action
Zero Waste BC
Zero Waste Sonoma
Zero Waste USA

Opposition

H Cycle, LLC
Rural County Representatives of California

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

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1706 (Bonta) – As Amended March 30, 2023

SUBJECT: Public trust lands: Encinal Terminals public trust lands: City of Alameda.

SUMMARY: Authorizes the State Lands Commission (SLC) to convey to the City of Alameda (City), in trust, and grants the Encinal Terminals public trust lands, as defined, to the City, in accordance with the terms and conditions of the Encinal Terminals exchange agreement.

EXISTING LAW:

1) Protects, pursuant to the common law doctrine of the public trust (Public Trust Doctrine), the public's right to use California's waterways for commerce, navigation, fishing, boating, natural habitat protection, and other water oriented activities. The Public Trust Doctrine provides that filled and unfilled tide and submerged lands and the beds of lakes, streams, and other navigable waterways (public trust lands) are to be held in trust by the state for the benefit of the people of California. (National Audubon Society v. Superior Court (1983) 33 Cal.3d 419)

2) Establishes that SLC is the steward and manager of the state's public trust lands. SLC has direct administrative control over the state's public trust lands and oversight authority over public trust lands granted by the Legislature to local public agencies (granted lands). (Public Resources Code (PRC) 6009)

3) Authorizes SLC to enter into an exchange, with any person or any private or public entity, of filled or reclaimed tide and submerged lands or beds of navigable waterways, or interests in these lands, that are subject to the public trust for commerce, navigation, and fisheries, for other lands or interests in lands, if specified conditions are met. (PRC 6307)

FISCAL EFFECT: Unknown.

THIS BILL:

1) Defines the following terms:

   a) "Encinal Terminals exchange agreement" as that certain exchange agreement entitled "Land Exchange and Title Settlement Agreement for the Encinal Terminals Project" by and among the City, SLC, and North Waterfront Cove LLC, and dated for reference February 8, 2023, entered into pursuant to Section 6307 of PRC and providing for an exchange resulting in a configuration of trust lands substantially similar to the configuration described in Section 5 of this bill;

   b) "Encinal Terminals public trust lands" as those lands to be exchanged into the trust pursuant to the Encinal Terminals exchange agreement; and,

   c) "City" as the City of Alameda.

2) Authorizes SLC to convey to the City, in trust, and the City is authorized to accept any lands to be exchanged into the trust pursuant to an exchange agreement to which the City is a party. Upon conveyance of any such lands to the City in accordance with the exchange agreement, requires the lands to deemed included in the grant described in the granting act and to be held by the City in trust, subject to the terms and conditions of the granting act and the common law public trust.

3) Grants the Encinal Terminals public trust lands to the City in trust, effective upon their conveyance to the City in accordance with the terms and conditions of the Encinal Terminals exchange agreement, to be held by the City subject to the terms and conditions of the granting act and the public trust.

4) Requires SLC, if the conveyances authorized in the Encinal Terminals exchange agreement have not been completed within the term of the Encinal Terminals exchange agreement, to notify the appropriate committees of the Legislature and explain why the conveyances did not proceed. Requires SLC to post that information on its internet website.

5) Requires an exchange agreement to be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding in a court of competent jurisdiction to determine the validity of such agreement commenced within one year after the recording of the exchange agreement, or, if the exchange agreement was recorded more than 10 months before January 1, 2024, within 60 days after January 1, 2024.

6) Authorizes that an action may be brought under current law to establish title to any lands conveyed pursuant an exchange agreement and to confirm the validity of the agreement. Notwithstanding Section 764.080 of the Code of Civil Procedure, if the exchange agreement was authorized by the granting act, the statement of decision in the action shall include a recitation of the underlying facts and a determination as to whether the conveyance or agreement meets the requirements of the granting act, the California Constitution, if applicable, and any other law applicable to the validity of the agreement.

7) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances regarding the development of property previously granted to the City pursuant to the granting act.

8) Provides that no reimbursement is required by this act pursuant to the California Constitution.

COMMENTS:

1) **Author's statement:**

> The Encinal Terminals property is a 32-acre site located in the City of Alameda. It consists of four parcels, three of which are privately owned and a 6.4-acre tideland parcel that is publicly owned. Ten years ago, the City of Alameda re-zoned the property for housing but due to the intersection of the private and public land, has not been able to begin any development. Currently, the publicly owned parcel is inaccessible to the public because the parcel is land-locked with no access to water, no utilities, and no public access. The City of Alameda has

approved a plan to build 589 housing units, provide access to more than 4 acres of waterfront parks, and turn 13 acres of submerged lands into a marina. Additionally, the City of Alameda, the private property owner, and the State Lands Commission entered into an exchange agreement to reconfigure the property lines for the benefit of the public, facilitating the construction of housing on the property. However, existing law prohibits the State Lands Commission from transferring state public trust lands without legislative authorization. AB 1706 is needed to allow for the land to be redeveloped and used for housing and public shoreline open space.

2) **Public Trust.** The foundational principle of the common law Public Trust Doctrine is that it is an affirmative duty of the state to protect the people's common heritage in navigable waters for their common use. The traditional uses allowed under the Public Trust Doctrine were described as water-related commerce, navigation, and fisheries. As a common law doctrine, the courts have significantly shaped the Public Trust Doctrine in a number of important ways. Courts have found that the public uses to which sovereign lands are subject are sufficiently flexible to encompass changing public needs. Courts have also made clear that sovereign lands subject to the Public Trust Doctrine cannot be sold into private ownership.

   For more than 100 years, the Legislature has granted public trust lands to local governments so the lands can be managed locally for the benefit of the people of California. There are more than 80 trustees in the state, including the ports of Los Angeles, Long Beach, San Diego, San Francisco, Oakland, Richmond, Benicia, and Eureka. While these trust lands are managed locally, SLC has oversight authority to ensure those local trustees are complying with the Public Trust Doctrine and the applicable granting statutes.

3) **Alameda.** The City of Alameda was granted sovereign tide and submerged lands in trust in 1913 for the establishment, improvement and conduct of a harbor and for the construction of wharves, docks, piers, slips, quays, and other utilities, structures, and appliances necessary or convenient for the promotion and accommodation of commerce and navigation. In 1917, the grant was amended to allow the City to convey some or all of the granted lands to the United States for certain public purposes. Beginning in 1930, the City approved several transfers of portions of the granted lands to the United States Navy for purposes of constructing what came to be known as the Naval Air Station Alameda (NAS Alameda). NAS Alameda was closed in 1997 and, in 2000, the grant was amended to authorize a land exchange involving the NAS Alameda property. This amendment also re-granted the sovereign salt marsh, tide and submerged lands within the updated city limits for the establishment, improvement and conduct of a harbor, and for other uses that promote, benefit, and accommodate public trust purposes.

   Today, the City is trustee of more than 7,700 acres of legislatively granted Public Trust lands on the Oakland-Alameda Estuary pursuant to Chapter 348, Statues of 1913 (as amended).

4) **Encinal Terminals.** Encinal Terminals was built in 1925 on the City's northern waterfront. In the 1950s, Encinal Terminals was a major port for various goods and in 1959, the first high-speed container-handling gantry crane in the United States was installed there. By the 1980s, the larger container ports such as Oakland and Long Beach had taken the lead and Encinal Terminals could not compete as a shipping terminal. The gantry cranes were

disassembled later that decade and the Encinal Terminals ceased port operations. The City used the site for container storage until about 2010. Portions of the land have been vacant since then. The area now consists of a few vacant warehouses and shed buildings amid asphalt and concrete paving. The waterfront wharves are in disrepair and require seismic upgrading and/or demolition. There is no public access to the site.

5) **Proposed project.** Over the last century and a half, the Alameda shoreline has been altered numerous times by artificial dredging and filling activity. As a result of these modifications, certain lands along the city's shoreline and underlying adjacent waters are privately owned and are claimed to be free of the trust, while certain granted trust lands have been filled and are cut off from the water and not useful for trust purposes. In addition, the precise boundaries between the granted lands and adjacent private lands is often uncertain. This has led to the inability to develop private lands for housing and other uses, made portions of the City's waterfront inaccessible to the public, and caused certain of the City's granted trust lands to remain vacant and unused for their intended public purposes.

   One of the largest areas of unused granted lands in the city is the Encinal Terminals site, comprising approximately 32 acres. In 2022, the City approved a number of agreements with the developer-owner of the private lands at the Encinal Terminals site, including the Encinal exchange agreement between the City, SLC, and developer which authorizes a land exchange to be implemented in four phases over the next 5 to 15 years.

   Under the Encinal land exchange agreement, private lands along the waterfront and adjacent submerged lands will be exchanged into the trust, and certain city lands cut off from the water and no longer useful for the trust will be exchanged out of the trust. The agreements permit development of 589 units of housing on the lands removed from the trust, including 80 affordable units, which are critical for the City to meet its regional housing needs. The agreements require the developer to construct a waterfront park and other infrastructure improvements at developer's sole cost, and condition each phase of the exchange on the completion of designated public improvements. Lands will not transfer to the developer until it has completed site-wide stabilization, constructed a temporary Bay Trail, and provided vehicle access to the City's existing trust property, and each phase of the exchange is further conditioned on the developer's completion of public improvements for that phase, including wharf removal, waterfront park improvements, and public access.

   If the Encinal Terminals project does not commence, no transfers will occur. The agreements contemplate that the City will ultimately hold title to and manage the waterfront park and other Encinal trust lands following the exchange

6) **Affordable housing.** California state law requires each community's fair share of housing to be determined through a mandated regional housing needs allocation. In 1969, the state mandated that all California cities, towns and counties must plan for the housing needs of our residents, regardless of income.

   The California Department of Housing and Community Development (HCD) required the Bay Area to plan for and revise local zoning to accommodate 441,176 additional housing units during the 2023-31 period. The approved final Regional Housing Needs Assessment (RHNA) plan distributes this requirement among the region's nine counties and 101 cities and towns. Under the RHNA plan, the City of Alamenda is required to have 1,421 housing

units for very low-income, and 818 low-income housing units. The Encinal Terminals Project will help to meet that quota.

7) **This bill**. The purpose of AB 1706, according to the findings and declarations, is to facilitate the productive reuse of former tidelands within the City for much needed affordable housing and other economic uses while improving the configuration of trust lands to ensure public access to and enjoyment of the waterfront and the San Francisco Bay.

   AB 1706 authorizes the state to convey to the City lands that are exchanged into the trust pursuant to an exchange agreement, including the Encinal exchange agreement, and grants those lands to the City subject to the trust and the terms and conditions of the City's statutory trust grant. The bill also provides a procedure for confirming the validity of exchange agreements, which will provide certainty about title and boundary matters and facilitate financing for the development contemplated by those agreements.

8) **Related legislation.**

   SB 860 (Senate Committee on Natural Resources & Water, Chapter 429, Statutes of 2011) established that the requirements to complete all necessary hazardous materials remediation pursuant to the Naval Air Station Alameda Public Trust Exchange Act are satisfied if specified conditions occur.

   SB 2049 (Perata, Chapter 734, Statutes of 2000) enacted the Naval Air Station Alameda Public Trust Exchange Act.

REGISTERED SUPPORT / OPPOSITION:

Support

State Lands Commission

Opposition

None on file

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