California State Assembly

NATURAL RESOURCES

LUZ RIVAS
CHAIR

AGENDA

Monday, April 17, 2023
2:30 p.m. -- State Capitol, Room 447

BILLS HEARD IN SIGN-IN ORDER

** = Bills Proposed for Consent

1.	****AB 389**	Ramos	Public resources: Native American Heritage Commission: human remains notifications: tribal contact list: public records: open meetings.
2.	AB 631	Hart	Oil and gas: enforcement: penalties.
3.	AB 785	Santiago	California Environmental Quality Act: exemption: City of Los Angeles: County of Los Angeles: affordable housing and transitional housing.
4.	AB 953	Connolly	Coastal resources: voluntary vessel speed reduction and sustainable shipping program.
5.	AB 1000	Reyes	Qualifying logistics use projects.
6.	AB 1290	Luz Rivas	Product safety: plastic packaging: substances.
7.	****AB 1318**	Luz Rivas	California Environmental Quality Act: exemption: residential projects.
8.	AB 1449	Alvarez	Affordable housing: California Environmental Quality Act: exemption.
9.	AB 1465	Wicks	Nonvehicular air pollution: civil penalties.
10.	AB 1548	Hart	Greenhouse Gas Reduction Fund: grant program: recycling infrastructure projects.
11.	AB 1590	Friedman	Major coastal resorts: coastal development permits: audits: waste.

Date of Hearing: April 17, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 389 (Ramos) – As Amended March 23, 2023

SUBJECT: Public resources: Native American Heritage Commission: human remains notifications: tribal contact list: public records: open meetings

SUMMARY: Exempts from the California Public Records Act (PRA) genealogical records of tribal members and cultural affiliation records under specified conditions. Exempts from the Bagley-Keene Open Meeting Act (Bagley-Keene) the Native American Heritage Commission (Commission) when considering matters related to the inclusion or removal of a Native American tribe, person, or entity on the tribal contact list maintained by the Commission, among other matters. Requires the Commission to make recommendations to a county sheriff or coroner on human remains notification and repatriation procedures.

EXISTING LAW:

1) Establishes the Commission and the powers and duties of the Commission. (Public Resources Code 5097.91)

2) Establishes the PRA requiring state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies. (Government Code (GC) 6250 et seq.)

3) Exempts disclosure of records of Native American graves, cemeteries, and sacred places, and records of Native American places, features, and objects that are maintained by, or in the possession of, the Commission, another state agency, or a local agency. (GC 7297.000)

4) Establishes, under Bagley-Keene, the policy of the state that actions of state agencies be taken openly and that their deliberation be conducted openly. (GC 11120)

5) Provides that nothing in Bagley-Keene shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing. (GC 11126 (a) (1))

THIS BILL:

1) Excludes from the PRA any genealogical records of tribal members and cultural affiliation records received during a consultation by the Commission relating to the inclusion or removal of a Native American tribe, person, or entity on the tribal contact list maintained by the Commission, consideration of the persons most likely descended from Native American human remains, or a claim or dispute under current law.

2) Provides that, under Bagley-Keene, the law does not prevent the Commission from holding closed sessions when considering matters related to the inclusion or removal of a Native American tribe, person, or entity on the tribal contact list maintained by the Commission,

consideration of the persons most likely descended from Native American human remains, or a claim or dispute. Requires action taken on agenda items considered in closed session to be taken in open session so as to inform the public of the evidence, findings, and basis of the Commission's decision, consistent with the PRA.

3) Allows the sheriff, in addition to a coroner of the county, to determine, in the event of discovery or recognition of any human remains in any location other than a dedicated cemetery that the remains are not subject to further investigation of the circumstances before there is further excavation or disturbance of the site.

4) Requires the sheriff to make the determination within two working days from the time the person responsible for the excavation, or an authorized representative, notifies the sheriff or coroner of the discovery or recognition of the human remains.

5) Adds to the Commission's powers and duties to make recommendations to a county sheriff or coroner on human remains notification and repatriation procedures.

6) Finds and declares that the amendments the bill makes to the PRA impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

    a) To protect the sovereignty of tribal nations, the internal workings and sensitive cultural and historical information of Native American tribes, and to protect sensitive and private information of Native American tribal membership of Native American tribes, it is necessary that this act limit the public's access to that information.

7) Finds and declares that the amendments made to Bagley-Keene impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

    a) To protect the sovereignty of tribal nations, the internal workings and sensitive cultural and historical information of Native American tribes, and to protect sensitive and private information of Native American tribal membership of Native American tribes, it is necessary that this act limit the public access to that information.

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement:**

The California Native American Heritage Commission deals with matters that require confidentiality and expediency. Oftentimes the consultations that are requested are sensitive and need the Heritage Commission's full attention to provide expediency. Additionally, this bill would also require the Heritage Commission to make recommendations to a county sheriff or coroner on human remains should they encounter them outside of their normal investigations.

2) **Native American Heritage Commission.** The Commission is a nine-member body whose members are appointed by the Governor to identify, catalog, and protect Native American cultural resources – ancient places of special religious or social significance to Native Americans and known ancient graves and cemeteries of Native Americans on private and public lands in California. The Commission is also charged with ensuring California Native American tribes' accessibility to ancient Native American cultural resources on public lands, overseeing the treatment and disposition of inadvertently discovered Native American human remains and burial items, and administering the California Native American Graves Protection and Repatriation Act, among many other powers and duties.

   Under current law, a county coroner is required to notify the Commission by telephone within 24 hours if the coroner determines that discovered human remains are those of a Native American. The Commission then notifies those persons it believes to be most likely descended from the deceased Native American. AB 389 would also require a county sheriff to notify the Commission when it has determined that discovered human are those of a Native American. Further, the bill would require the Commission to make recommendations to a county sheriff or coroner on human remains notification and repatriation procedures.

3) **Public records**. Since 1968, the PRA has granted the public a right to inspect the records and writings of state and local government, unless the records and writings are expressly exempted from disclosure. In 2016, the Legislature asked the California Law Revision Commission to study the PRA and recommend legislation that would make the PRA more user-friendly without making any substantive changes to its rights and exemptions. The Law Revision Commission published its recommended recodification and reorganization in 2019. AB 473 (Chau, Chapter 614, Statutes of 2021) enacted those recommendations, including disclosure exemption of records of Native American graves, cemeteries, and sacred places, and records of Native American places, features, and objects maintained by, or in the possession of, the Commission, another state agency, or a local agency.

   AB 389 would further shield Native American information and add to PRA exemptions any genealogical records of tribal members and cultural affiliation records received during a consultation by the Commission relating to the inclusion or removal of a Native American tribe, person, or entity on the tribal contact list maintained by the Commission, consideration of the persons most likely descended from Native American human remains, or a claim or dispute under current law.

4) **Bagley-Keene Open Meeting Act**. Bagley Keene generally requires state entities to publicly notice their meetings, prepare agendas, accept public testimony, and conduct their meetings in public unless specifically authorized to meet in closed session.

   AB 389 provides that Bagley-Keene does not prevent the Commission from holding closed sessions when considering matters related to the inclusion or removal of a Native American tribe, person, or entity on the tribal contact list maintained by the Commission, consideration

of the persons most likely descended from Native American human remains, or a claim or dispute. The bill would require action taken on agenda items considered in closed session to be taken in open session so as to inform the public of the evidence, findings, and basis of the Commission's decision, consistent with the PRA.

The bill finds and declares that the exemption from both the PRA and Bagley-Keene is to protect the sovereignty of tribal nations, the internal workings and sensitive cultural and historical information of Native American tribes, and to protect sensitive and private information of Native American tribal membership of Native American tribes.

5) **Double referral.** Should this committee approve the bill, it will be referred to the Assembly Governmental Organization Committee, which has jurisdiction over open meetings laws as they affect state government.

REGISTERED SUPPORT / OPPOSITION:

Support

Rincon San Luiseno Band of Indians

Opposition

None on file

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

Date of Hearing: April 17, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 631 (Hart) – As Amended April 6, 2023

SUBJECT: Oil and gas: enforcement: penalties.

SUMMARY: Increases civil and other penalties for violations of the state's governing oil and gas statutes and regulations, and strengthens the Geologic Energy Management Division's (CalGEM) authority to seek injunctive relief, cease and desist specified activities, and recoup administrative and enforcement costs.

EXISTING LAW:

1) Establishes the CalGEM in the Department of Conservation, under the direction of the State Oil and Gas Supervisor (supervisor), who is required to supervise the drilling, operation, maintenance, and abandonment of oil and gas wells, as provided. (Public Resources Code (PRC) 30002)

2) Establishes the Oil, Gas, and Geothermal Administrative Fund (Administrative Fund) in the State Treasury for specified purposes, subject to appropriation by the Legislature, except as provided. (PRC 3110)

3) Establishes and requires CalGEM to administer and manage the Oil and Gas Environmental Remediation Account in the Administrative Fund. (PRC 3261)

4) Requires the supervisor to order tests and remedial work that in the supervisor's judgment are necessary to prevent damage to life, health, property, and natural resources and for other specified reasons. (PRC 3224)

5) Makes it a crime for an owner or operator, or an employee thereof, to refuse to permit the supervisor or the district deputy, or that person's inspector, to inspect a well, or willfully hinder or delay the enforcement of the requirements relating to oil and gas. Makes every person who violates, fails, neglects, or refuses to comply with the provisions relating to oil and gas, or who fails or neglects or refuses to furnish any report or record which may be required pursuant to these provisions, or who willfully renders a false or fraudulent report, guilty of a misdemeanor, punishable by a fine of not less than $100, nor more than $1,000, or by imprisonment for not exceeding six months, or by both that fine and imprisonment, for each offense. (PRC 3236)

6) Authorizes the supervisor to impose specified civil penalties on a person who violates a legal requirement regarding the operation of an oil and gas well or production facility, which is in addition to any other penalty provided by law for the violation. (PRC 3236.5)

7) Requires an action for civil penalties or punitive damages authorized pursuant to specified environmental protection laws to be commenced within five years after discovery by the agency bringing the action, as provided. (Code of Civil Procedure 338.1)

THIS BILL:

1) Establishes a statute of limitations for a civil penalty for violation of any of the oil and gas statutes of five years after the discovery by the agency bringing the action.

2) Authorizes an order to undertake remedial work to include an order to cease and desist specified activities that threaten to damage life, health, property, or natural resources, including waters suitable for irrigation or domestic purposes, or that violate the oil and gas statutes or a regulation implementing those statutes.

3) Repeals current law related to refusal of a well owner or operator to permit the supervisor to inspect a well.

4) Authorizes the supervisor, after making a determination based upon a site inspection, that a well poses a risk to life, health, property, or natural resources, to order an operator, owner, or property owner to secure the site if both of the following conditions apply to that site:

    a) The well does not comply with the governing regulations; and,
    b) The well poses a risk to life, health, property, or natural resources.

5) Requires the order to secure the well to require the posting of the site with signs and that the well be enclosed with a fence. Specifies requirements for the fencing and signage.

6) Authorizes an order of the supervisor to secure the site to be appealed by the owner of the property except that in the case of an emergency, a stay of the supervisor's order shall not accompany the appeal.

7) Requires the owner or operator to complete the work ordered within specified time frames. Authorizes CalGEM, if the work is not completed by the owner or operator, to appoint agents to perform the work. Requires CalGEM, if it undertakes the work, to keep an accounting of all associated costs and provides that any amount expended constitutes a lien against the owner or operator's property.

8) Subjects an operator, owner, or property owner who commits any of the following acts to be guilty of a misdemeanor and punishable by a fine between $2,000 and $25,000 for each day of the violation. Specifies penalties for subsequent violations.

    a) Refuses to permit the supervisor or the district deputy, or the supervisor's or the district deputy's inspector, to inspect a well;
    b) Willfully hinders or delays the enforcement;
    c) Fails to comply with any order of the supervisor or the director;
    d) Makes any false statement or representation in any application, record, report, permit, notice to comply, or other document filed, maintained, or used for the purposes of compliance;
    e) Violates, fails, neglects, or refuses to comply;
    f) Willfully renders a false or fraudulent report;
    g) Destroys, alters, or conceals any record required to be maintained;

   h) Withholds information regarding a real and substantial danger to public health, natural resources, or safety when that information has been requested by the supervisor, and is required to carry out the responsibilities of the supervisor in response to a real and substantial danger; or,
   i) Fails, neglects, or refuses to furnish any report or record that may be required.

9) Requires, in addition to any other fine set forth for the aforementioned violations, a person convicted of a violation to pay a fine in an amount equal to the cost to plug and abandon any well associated with the violation. Requires the cost to plug and abandon any well associated with the violation to be determined by the supervisor using any reasonable method, including, but not limited to, consideration of the existing factors or cost estimation criteria. Requires, upon referral by the supervisor, a person who commits a violation to be subject to a civil penalty of not more than $50,000 for each violation. Provides that an act of God or a criminal act of vandalism beyond the reasonable control of the operator is not a violation.

10) Requires, upon referral by the supervisor, a person who violates this chapter or a regulation implementing this chapter to be subject to a civil penalty of not more than $50,000 for each separate violation or, for continuing violations, for each day that violation continues. Provides that an act of God or a criminal act of vandalism beyond the reasonable control of the operator is not a violation.

11) Requires, upon referral by the supervisor, a person subject to an order to secure a well that poses a risk who does not comply with that order to be subject to a civil penalty of not more than $25,000. Requires the court, in determining the amount of the civil penalty, to consider all relevant circumstances, including, but not limited to, the economic assets of the operator, owner, or property owner and whether the operator, owner, or property owner has acted in good faith.

12) Requires, upon referral by the supervisor, a person subject to an order issued pursuant to the state's laws on oil and gas well regulation who does not comply with that order to be subject to a civil penalty of not more than $50,000 for each day of noncompliance.

13) Requires, upon referral by the supervisor, a person who intentionally or negligently makes a false statement or representation in an application, record, report, permit, notice to comply, or other document filed, maintained, or used for purposes of compliance to be liable for a civil penalty up to $70,000 for each separate violation or, for continuing violations, for each day that violation continues.

14) Requires, except as provided in #10-13 above, a person who intentionally or negligently violates a provision of the state's laws on oil and gas well regulation or a permit, rule, regulation, standard, or requirement, to be liable for a civil penalty up to $70,000 for each violation of a separate provision or, for continuing violations, for each day that violation continues.

15) Provides that the civil penalty imposed for each separate violation is separate and in addition to any other civil penalty imposed for a separate violation pursuant to this bill or any other law.

16) Requires the court, in determining the amount of a civil penalty, to take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the persistence of the violation, the pervasiveness of the violation, the number of prior violations by the same violator, the degree of culpability of the violation, any economic benefit to the violator resulting from the violation, the violator's ability to pay the civil penalty amount, as determined based on information publicly available to the division, the prosecution costs associated with enforcement of this section, and any other matters the court determines justice may require.

17) Requires every civil action brought upon referral by the supervisor to the district attorney, city attorney, or Attorney General to be brought in the name of the people of the State of California. Authorizes any actions relating to the same violation to be joined or consolidated.

18) Requires 50% of any penalty collected under this section to be paid to the agency or office prosecuting the action and 50% of any penalty collected to be distributed to CalGEM for deposit in the Oil and Gas Environmental Remediation Account.

19) Provides that a person will not be subject to a civil penalty and to an administrative civil penalty for the same act or failure to act.

20) Authorizes the supervisor, when the supervisor determines that a person has engaged in, is engaged in, or is about to engage in any acts or practices that constitute or will constitute a violation, or any regulation, condition of approval, order, or other requirement issued, promulgated, or executed thereunder, to apply to a superior court for an order enjoining those acts or practices, or for an order directing compliance. Authorizes the court to grant a permanent or temporary injunction, restraining order, or other injunctive order appropriate to the circumstances.

21) Authorizes, at the request of the supervisor, an application for an injunctive order to be applied for by the district attorney of the county in which those acts or practices occur, occurred, or will occur; the city attorney of the city in which those acts or practices occur, occurred, or will occur; or, the Attorney General.

22) Provides that, in any civil action in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued; or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction, or permanent injunction shall issue without those allegations and without that proof.

23) Recasts the civil penalties under current law as an administrative civil penalties.

24) Authorizes the supervisor to establish regulations prescribing specific penalty amounts for specific violations.

25) Requires the regulations to include a determination of whether the violation in question is a minor violation, a major violation, or a well stimulation violation.

26) Prohibits the penalty amounts prescribed in the regulation from exceeding the maximum civil penalty amount for the type of violation and shall not be less than the minimum penalty amount for the type of violation.

27) Requires the supervisor, when prescribing an administrative civil penalty amount by regulation, to consider the potential harm caused by the violation, the potential benefit to the violator resulting from the violation, the supervisor's potential prosecution costs, and other relevant circumstances associated with enforcement of the requirement. When imposing an administrative civil penalty amount prescribed in regulation, the supervisor is not required to consider circumstances listed above.

28) Requires the supervisor to adjust the maximum penalties for inflation based on the California Consumer Price Index. Exempts the adjustment from the Administrative Procedure Act.

29) Authorizes the supervisor, or the supervisor's designee, to recover from the owner or operator all response, prosecution, and enforcement costs incurred by CalGEM arising from all administration and enforcement.

30) Authorizes the supervisor to request, and a district attorney, city attorney, or other prosecuting agency, as part of a prosecution or negotiation, to allege a claim for, these costs and expenditures and to deposit any recoveries into the Oil and Gas Environmental Remediation Account.

31) States that no reimbursement is required by this act pursuant to the California Constitution.

32) Makes technical changes to update statutory pronouns.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement:**

> AB 631 brings CalGEM enforcement authority into the 21st century, and will protect communities from oil companies that violate the law and endanger public health, safety, and the environment.
>
> CalGEM lacks some of the basic statutory enforcement authorities that most environmental regulatory agencies rely upon. AB 631 ensures CalGEM has the necessary authority to hold oil companies accountable for actions that harm communities.

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

A 2017 economic study released by The Los Angeles County Economic Development Corporation found that for 2015, the oil and gas industry was responsible for 368,100 jobs, or 1.6% of California's employment, with almost $66 billion in total value-added, contributing 2.7 percent of California's state gross domestic product. According to the Western States Petroleum Association, the petroleum industry paid $26 billion in wages and benefits in California to employees doing research, exploration, production and shipping, refining, delivery, sales, and company operations.

The benefits of in-state oil and gas generation, however, come with a heavy environmental and public health cost. While the oil and gas industry is heavily regulated in California for safety and environmental protection, the nature of the industry is inherently risky.

3) **Adjusting penalties for industry violations**. Spills, leaks, air pollution, and contaminated water sources are some of the environmental and public health problems posed by oil and gas operations.

CalGEM has jurisdiction over more than 242,000 wells, including nearly 101,300 defined as active or idle oil producers, and has the authority to require precautionary requirements that prevent pollution, and authority to penalize operators when those checks and balances aren't in place and there is a real or threatened risk of harm to the environment or public health. But, that authority is not always commensurate with the environmental or public health risk of a potential violation, and enforcement is not always applied or complied with.

In 2022, dozens of wells were found to be leaking toxic levels of methane gas in a local Bakersfield neighborhood. CalGEM ordered the operator to shut down and remediate numerous wells, but the oil company failed to comply. As a result, CalGEM had to hire contractors to start the work with no guarantee that the costs would be recovered. Furthermore, CalGEM could not seek injunctive relief from a Superior Court to compel the operator to correct the violations immediately, which caused worsening conditions that threatened public health, safety, and the environment.

A March 2021 ProPublica article reported that between 2018 and 2020, CalGEM issued 66 enforcement orders. Of those, only 11 have been complied with, while the vast majority remain outstanding. ProPublica found that CalGEM has imposed few fines greater than $5,000 and has yet to collect one greater than $35,000. In 2020, CalGEM said it issued $191,669 in civil penalties and collected zero.

For years, CalGEM could only fine a company $25,000 total, no matter how severe a violation. That changed in September 2016, after the Aliso Canyon methane gas leak in Porter Ranch. The Legislature reacted with enhanced authority to enable CalGEM to impose fines of up to $25,000 per day.

To put those fines into perspective, in the third quarter of 2022, from July to September, oil companies reported record high profits. According to Governor Newsom, Phillips 66 reported $5.4 billion in profits, a 1,243% increase over last year's $402 million; BP posted $8.2 billion in profits, its second-highest on record; Marathon Petroleum profits were reported at $4.48 billion, a 545% increase over last year's $694 million; Valero's $2.82 billion in profits that were 500% higher than the year before; PBF Energy's $1.06 billion that was 1700% higher than the year before; Shell reported a $9.45 billion haul that sent $4 billion to shareholders for stock buybacks; Exxon reported their highest-ever $19.7 billion in

profits; and, Chevron reported $11.2 billion in profits, their second-highest quarterly profit ever.

4) **Fines, civil, and administrative penalties**. Under current law, some penalty amounts have not been increased in decades. Current law pursuant to PRC 3236 – last adjusted in 1983 – sets the fine for violating or refusing to comply with the oil and gas regulations at a maximum of $1,000. AB 631 increases that fine to a maximum of $25,000.

   In 2001, AB 2581 (Maldonado, Chapter 737, Statutes of 2000) set the civil penalty for violations of the governing oil and gas well laws and regulations at $5,000. AB 1960 (Nava, Chapter 532, Statutes of 2008) increased the civil penalty up to $25,000. AB 2756 (Thurmond, Chapter 274, Statutes of 2016) tiered the civil penalty into three groups: 1) well stimulation violations (up to $25,000); 2) major violations (up to $25,000); and, 3) minor violations (up to $2,500).

   AB 631 proposes to recast the existing civil penalties as *administrative* civil penalties, and creates new civil penalties as follows:

   - Up to $50,000 for a violation of this chapter or a regulation implementing this chapter. Provides that an act of God or a criminal act of vandalism beyond the reasonable control of the operator is not a violation.

   - Up to $25,000 for a failure to secure a hazardous well site with fencing and signage.

   - Up to $50,000 for a violation of an order for remediation, or any other order issued by the supervisor.

   - Up to $70,000 for intentionally or negligently making a false statement or representation in an application, record, report, permit, notice to comply, or other document filed, maintained, or used for purposes of compliance.

   - Up to $70,000, except in the cases above, for intentionally or negligently violating a provision of this chapter or a permit, rule, regulation, standard, or requirement issued or promulgated pursuant to this chapter.

   The bill provides that a person cannot be subject to a civil penalty and an administrative civil penalty for the same act or failure to act.

5) **Injunctive relief**. While existing law authorizes CalGEM to issue emergency orders to require operators to correct violations, it has limited ability to compel compliance. Specifically, CalGEM cannot seek injunctive relief from a Superior Court to compel operators to correct violations that, if persistently neglected, can deteriorate into worsening conditions that could threaten public health, safety, and the environment.

   AB 631 would allow CalGEM to seek injunctive orders from a Superior Court for an order enjoining acts or practices that violate the oil and gas laws in order to quickly prevent further damage to communities. The language in the bill is modeled after the Department of Toxic Substances Control's injunctive relief statute to prevent violation of the state's hazardous waste control laws (HSC 25181).

6) **Coordinating enforcement actions.** Under current law, CalGEM has limited flexibility to determine appropriate enforcement referral options. This can lead to less effective prosecutions, potentially duplicative cases, and wasted resources.

   AB 631 would authorize CalGEM to refer enforcement to a city attorney, district attorney, or the Attorney General to bring civil action. This will allow CalGEM to refer more enforcement actions to partner agencies at the local level, and more evenly distribute the burdens of enforcement actions among State and local agencies. The lead agency would be able to recover 50% of the civil penalty in order to defray prosecution costs.

7) **Enhancing CalGEM's authority.** Current law gives the supervisor discretion to order tests or remedial work when necessary to prevent damage to life, health, property, and natural resources. That section of law was last updated in 1970. AB 631 will augment the supervisor's authority to order activities to cease and desist in conjunction with a remedial action order.

   In addition, AB 631 authorizes the supervisor to order an owner or operator to secure a well site when it poses an environmental or public health risk with appropriate fencing and signage. This will ensure community members do not inadvertently enter a dangerous site.

8) **Cost Recovery for Enforcement Actions.** Existing law fails to authorize the costs associated with responding to uncontrolled leaks at oil and gas facilities. When CalGEM is unable to recover costs from the industry, the state ultimately covers the cost.

   AB 631 would allow cost recovery for all CalGEM's response, prosecution, and enforcement costs incurred from its administration and enforcement, and in certain cases, would constitute the amount of the response as a lien against real or personal property of the operator, owner, or property owner who was ordered to do the work.

9) **What are we doing with the extra money?** Collected civil penalty moneys are used to plug and abandon orphan wells left by insolvent oil companies. AB 631 would require a person convicted of a violation to pay a fine in an amount equal to the cost to plug and abandon any well associated with the violation and requires the cost to be determined by the supervisor using any reasonable method, including, but not limited to, consideration of the factors established pursuant to AB 1057 (Limón, Chapter 771, Statutes of 2019) or cost estimation criteria pursuant to SB 551 (Jackson, Chapter 774, Statutes of 2019). AB 1057 requires an operator to provide an amount of security acceptable to CalGEM based on CalGEM's evaluation of the risk that the operator will desert its well or wells and the potential threats the operator's well or wells pose, and SB 551 authorizes CalGEM to develop criteria to be used by operators for estimating costs to plug and abandon wells and decommission attendant production facilities, including site remediation.

   According to CalGEM, there are more than 37,000 known idle wells in California, and idle wells can become orphan wells if they are deserted by insolvent operators. When this happens, there is the risk of shifting responsibilities and costs for decommissioning the wells to the state. There are currently more than 5,300 orphan wells with no responsible solvent operator to appropriately remediate the well and the associated production facilities.

The average cost to plug and abandon a well is $76,000, meaning the cost burden on taxpayers for those orphan wells is nearly half a billion dollars. Taxpayers have footed the bill to seal these wells for decades.

The increased civil penalties, if paid, spread the shared cost across the industry to plug and abandon orphan wells. Ideally, the penalties in this bill will never be used. The author hopes the increases in the penalties will motivate oil companies to comply with the law and regulations and avoid being penalized.

10) **Double referral and suggested amendments.** Should this committee approve the bill, it will be referred to the Assembly Judiciary Committee, where the author may wish to consider amending the bill as follows:

a) Amend Sec. 3224.5(a) to re-organize the requirements:

<u>The supervisor may order an operator, owner, or property owner to secure a site, based on a site inspection, if both of the following conditions apply to that site:</u>

(1) The well does not comply with the regulations implementing this chapter.

(2) The well poses a risk to life, health, property, or natural resources.

b) Amend Sec. 3224.5 (d) to clarify the term "work" refers to <u>work to secure a site pursuant to this section</u>.

c) Amend Sec. 3236 if needed to distinguish the difference between the civil penalties for fraudulent and false statements to the appropriate subdivisions.

REGISTERED SUPPORT / OPPOSITION:

Support

350 Conejo / San Fernando Valley
350 Sacramento
350 Ventura County Climate Hub
California Environmental Voters
Center on Race, Poverty & the Environment
Climate Action California
Environmental Working Group
Facts: Families Advocating for Chemical & Toxics Safety
Goleta; City of
Natural Resources Defense Council
Pink Panthers
Santa Cruz Climate Action Network

Opposition

Western States Petroleum Association

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

Date of Hearing: April 17, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 785 (Santiago) – As Amended April 11, 2023

SUBJECT: California Environmental Quality Act: exemption: City of Los Angeles: County of Los Angeles: affordable housing and transitional housing

SUMMARY: Adds a new exemption from the California Environmental Quality Act (CEQA) for affordable housing projects and transitional housing projects, as defined, located in the City of Los Angeles or unincorporated areas in the County of Los Angeles. Revises an existing exemption for homeless shelters and supportive housing projects in Los Angeles to extend its application to projects in unincorporated areas and eliminate the requirement these projects be located on an infill site or in zones permitting multifamily uses. Extends the sunset applicable to all exemptions by 10 years, from 2025 to 2035.

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, 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 (Wicks), Chapter 647, Statutes of 2022)

10) Exempts from CEQA, until January 1, 2025, specified emergency shelters and supportive housing projects approved or carried out by the City of Los Angeles. (PRC 21080.27)

THIS BILL:

1) Exempts from CEQA any activity approved by or carried out by the City of Los Angeles in the city, and the County of Los Angeles in the unincorporated areas of the county, in furtherance of providing affordable housing, emergency shelters, supportive housing, or transitional housing.

2) Exempts from CEQA any action taken by any of several specified Los Angeles public agencies to lease, convey, or encumber land owned by that agency, or any action taken by an agency in providing financial assistance, in furtherance of providing affordable housing, emergency shelters, supportive housing, or transitional housing in the city or the unincorporated areas of the county.

3) Defines "affordable housing" as a housing development project with 100% of all units in the development, exclusive of a manager's unit or units, sold or rented to lower income households, except that up to 20% of the units in the development may be for moderate-income households, and that is funded, in whole or in part, by any of several specified sources of housing-related funding.

4) Defines "transitional housing" as buildings configured as rental housing developments, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient, and that is funded, in whole or in part, by any of several specified sources of housing-related funding.

5) Eliminates the existing requirement that emergency shelters be located in either a mixed-use or nonresidential zone permitting multifamily uses or infill site.

6) Sunsets January 1, 2035.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**:

> It's taking way too long to build homeless and affordable housing. While the City and County of Los Angeles have declared state of emergencies on homelessness, it is imperative we speed up the construction of desperately needed housing. AB 785 responds to the homeless crisis in Los Angeles by removing barriers that slow the construction of homeless housing. Specifically, the bill provides CEQA exemptions for publicly funded homeless and affordable housing projects in Los Angeles.

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.

AB 1197 (Santiago), Chapter 340, Statutes of 2019, established a CEQA exemption for emergency shelters and supportive housing projects approved or carried out by the City of Los Angeles, which sunsets January 1, 2025.

3) **The affordable housing exemption is lacking familiar safeguards**. The affordable housing exemption in this bill is likely to apply to a significantly larger number of larger projects in a larger area than the existing exemptions for emergency shelters and supportive housing. However, this new exemption does not include conditions typical of recent CEQA exemption bills or by-right housing bills, such as SB 35 and AB 2011, either with regard to environmental or labor protections.

   The author and the committee may wish to consider amending the bill to add the following conditions to the affordable housing exemption:

   a) Project must be in an urbanized area or urban cluster, as designated by the United States Census Bureau.

   b) Require tribal consultation for vacant sites to ensure the site does not contain tribal cultural resources.

   c) Project may not be located on sites that are:

      i) Within a very high fire hazard severity zone, earthquake fault zone, or flood hazard area.

      ii) Included on the Cortese List due to hazardous waste.

      iii) Prime farmland, wetlands, conservation lands, or habitat for protected species.

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

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles Mayor Karen Bass (sponsor)
California Housing Partnership Corporation
Central City Association
Downtown Women's Center
John Burton Advocates for Youth
Los Angeles Unified School District
The People Concern

Opposition

None on file

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

Date of Hearing: April 17, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 953 (Connolly) – As Amended March 29, 2023

SUBJECT: Coastal resources: voluntary vessel speed reduction and sustainable shipping program

SUMMARY: Requires the Ocean Protection Council (OPC) to implement a statewide voluntary vessel speed reduction and sustainable shipping program for the California coast in order to reduce air pollution, the risk of fatal vessel strikes on whales, and harmful underwater acoustic impacts.

EXISTING LAW:

Under federal law:

1) Establishes protections, pursuant to the Endangered Species Act (ESA), for fish, wildlife, and plants that are listed as threatened or endangered. Lists blue, fin, and humpback whales as endangered species. (16 United States Code (U.S.C.) 1538 et seq.)

2) Establishes the Marine Mammal Protection Act (MMPA) to prevent marine mammal species and population stocks from declining beyond the point where they ceased to be significant functioning elements of the ecosystems of which they are a part. Prohibits the "take" of marine mammals—including harassment, hunting, capturing, collecting, or killing—in U.S. waters and by United States (U.S.) citizens on the high seas. (16 U.S.C. 1361, et seq)

3) Establishes the National Marine Sanctuaries Act and authorizes the Secretary of Commerce to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational or esthetic qualities as national marine sanctuaries. (16 U.S.C. 1431, et seq.)

Under state law:

4) 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 35615 (a)(1))

5) Establishes the California Air Resources Board (ARB) to regulate emissions from mobile sources. (Health & Safety Code 39500, et seq)

6) Requires, per ARB's At Berth Regulations, a certain percentage of fleet's vessels to plug into shore power while at berth to reduce emissions from ocean-going vessels to improve air quality at California ports. (Title 17 California Code of Regulations 93130-93130.22)

THIS BILL:

1) Requires the OPC, on or before May 1, 2025, to, in coordination with air pollution control districts and air quality management districts along the coast and in consultation with the federal Office of National Marine Sanctuaries, the federal Environmental Protection Agency (US EPA), the United States Navy, the United States Coast Guard (USCG), and ARB, implement a statewide voluntary vessel speed reduction and sustainable shipping program for the California coast in order to reduce air pollution, the risk of fatal vessel strikes on whales, and harmful underwater acoustic impacts.

2) Requires the program to expand the existing Protecting Blue Whales and Blue Skies Program, build upon other existing vessel speed reduction programs, and authorizes the program to include the following components:

    a) A marketing program to promote voluntary vessel speed reduction and sustainable shipping, and an acknowledgment of the program's participants;

    b) Data collection on ship speeds along the California coast in order to analyze the program for future refinement, expansion, or both;

    c) Data collection on underwater acoustic impacts and fatal vessel strikes on whales, to the extent data is available;

    d) Data collection and consideration of the regional air quality impacts on the coast and the local air quality and other environmental impacts to disadvantaged communities from oceangoing vehicle traffic;

    e) Financial incentives to program participants based on a percentage of distance traveled by a participating vessel at 10 knots or less, to the extent that local, state, or federal funding is made available pursuant to an appropriation by the Legislature; and,

    f) Development of vessel speed reduction zones along the coast that take into account protected marine mammal migration and breeding seasons, federal marine sanctuaries and state marine protected areas, shipping lanes, and any other relevant variables.

3) Authorizes the OPC to impose additional qualifying criteria on program participants in order to receive financial incentives under the program, including, but not limited to, individual transit speeds, such as maximum speed in transit or maximum transit average speed.

4) Requires the OPC to provide financial incentives pursuant to this section upon appropriation by the Legislature.

5) Requires, on or before December 31, 2026, OPC to submit a report to the Legislature regarding the implementation of the program. Sunsets the reporting requirement on December 31, 2030.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**.

> Efforts at the local level have done an incredible job protecting marine wildlife and improving air quality. The ongoing success of the *Protecting Blue Whales and Blue Skies* program has laid a solid foundation to build and expand upon at the statewide level. Air pollution, greenhouse gasses and whales aren't confined to isolated parts of our coast, and neither should this program be limited to the San Francisco Bay and Southern California. AB 953 will protect our vulnerable ecosystems up and down the state, and keep California at the forefront of good environmental policy.

2) **Vessel traffic on California coast**. California's seaports are North America's primary intermodal gateway to Asia and Transpacific trade. Nationwide, more than 2,000,000 jobs are linked to maritime industry business conducted at California's public seaports, contributing to California having the largest state economy in the U.S.

   Every year, the world's largest container ships and auto carriers make thousands of transits along the California coast, with an estimated 120 tons per day of nitrogen dioxides, an ozone precursor, being emitted within 100 nautical miles (Nm) of the coast. These emissions negatively affect the public health of coastal communities and cause some areas of the coast to be in nonattainment with the national ambient air quality standards for ozone and particulate matter.

   Ocean-going vessel speed reductions offer the possibility for significant reductions in emissions of oxides of nitrogen (NO_x), oxides of sulfur (SO_x), diesel particulate matter (PM) and carbon dioxide (CO_2). The reduction of 3-10 knots per ship eliminates an entire ton of smog-forming emissions each day.

3) **Marine mammal impacts**. Widespread hunting of whales during the nineteen and twentieth centuries left many whale populations severely depleted. In the U.S., marine mammals have legal protection under the MMPA, making the take of marine mammals illegal. Nonetheless, human-caused mortality of whales still occurs in U.S. waters, in some cases threatening the recovery of depleted populations. One of the most significant human effects on whales is collisions with vessels, which have been identified as a significant source of human-caused mortality for whale populations in the U.S. and around the world.

   Strikes of blue (*Balaenoptera musculus*), humpback (*Megaptera novaeangliae*), and fin (*Balaenoptera physalus*) whales are major causes of death for those species. Blue, humpback, and fin whales migrate seasonally along the West Coast of the U.S., where they overlap with significant shipping activity. Important feeding hotspots for blue and humpback whales occur in waters near the Ports of Los Angeles/Long Beach/ (POLA/POLB) and Oakland where they intersect with vessel traffic lanes. All three whales are listed as endangered under the ESA with associated legal protections.

   A 2017 study, *High mortality of blue, humpback and fin whales from modeling of vessel collisions on the U.S. West Coast suggests population impacts and insufficient protection* (R. Cotton Rockwood, et al), found the majority of strike mortality occurs in waters off

California, from near and south of Bodega Bay and tends to be concentrated in a band approximately 24 Nm offshore and in designated shipping lanes leading to and from major ports.

Marine animals are challenging for vessel operators to see, as they spend most or all of their time underwater and generally have a low profile when surfacing to breathe. Many marine animals may not be able to detect a vessel, or move out of the way of an approaching vessel.

Whales are not the only collateral damage. Sea turtles, and protected fish like sturgeon and giant manta rays, are some of the species struck by vessels and often injured or killed. Sea turtles are found throughout U.S. waters from very close to shore to open ocean. They are at risk of being struck by vessels as they surface to breathe or as they rest, bask, or feed near the surface or in shallow water. There are six species of sea turtles listed as endangered or threatened under the ESA.

According to the National Oceanic and Atmospheric Administration (NOAA), it is estimated that hundreds to thousands of sea turtles are struck by vessels in the U.S. every year, and many of them are killed. Vessel strikes are one of the most common causes of sea turtles stranding in the U.S.

Collisions involving larger marine animals and small or medium sized boats can damage vessels and cause serious, sometimes fatal, injuries to people, especially when the vessels are operating at high speeds.

4) **Vessel speed reduction for ocean-going vessels.** In May 2001, a Memorandum of Understanding (MOU) between the POLA/POLB, US EPA, ARB, the South Coast Air Quality Management District, the Pacific Merchants Shipping Association, and the Marine Exchange of Southern California was signed. The MOU specifically requested ocean-going vessels to voluntarily reduce their speed to 12 knots at a distance of 20 nautical miles from the POLA/POLB. Both ports continue to operate this voluntary program.

   POLA provides financial incentives to vessel operators who go 12 knots over the entire distance for which they wish to receive an incentive reimbursement. (The distance is determined by the Marine Exchange.)

   POLB's Green Flag Program rewards vessel operators for slowing down to 12 knots or less within 40 nautical miles of Point Fermin (near the entrance to the Harbor). More than 90% of vessels coming into POLB participate in the program. Participating vessel operators can earn dockage rate reductions.

   Furthermore, the Superintendent of the Monterey Bay National Marine Sanctuary announced in early March of this year that they will implement voluntary vessel speed reduction in that entire Sanctuary, making all four California national marine sanctuaries with a vessel speed reduction zone starting May 1.

5) **Protecting Blue Whales and Blue Skies Program**. Established in 2014, the goal of the Protecting Blue Whales and Blue Skies Program is to reduce the environmental impacts of shipping along California's coast line. It is a voluntary vessel speed reduction program off the Santa Barbara, Ventura, and Bay Area coast to encourage transit speeds of 10 knots or less to reduce air pollution, the risk of harmful whale strikes, and the level of ocean noise. The 10-knot target complements NOAA's and USCG's requests for all vessels (300 gross tons or larger) to reduce speeds during the months of peak endangered blue, humpback, and fin whale abundance to protect these whales from ship strikes.

   The program is a partnership between the Santa Barbara Air Pollution Control District, Ventura County Air Pollution Control District, and the Bay Area Air Quality Management District, with the federal Office of National Marine Sanctuaries, marine sanctuary foundations, and various nonprofits and federal agencies.

   The program partners monitor the speeds of hundreds of vessels that pass through the vessel speed reduction zones each year. Using a fleet-based approach, they assign a recognition level to each of their shipping company participants based on the percentage of their vessels that travel at a speed of 10 knots or less.

   The program runs each year from mid-May to mid-November to coincide with peak ozone and whale feeding and migration.

   The current program participation rate is about 60%.

   The aforementioned 2017 study on whale strike mortalities stated that while risk is highest in the shipping lanes off San Francisco and Long Beach, only a fraction of total estimated mortality occurs in these proportionally small areas, making any conservation efforts exclusively within these areas insufficient to address overall strike mortality.

   This bill will expand the vessel speed reduction zones across the whole coast of California, broadening the effort to reduce whale and other marine mammal collisions.

   Additionally, by expanding the current voluntary program statewide, AB 953 will ensure benefits of cleaner coastal air and noise reduction are equitably afforded to all coastal communities.

6) **State oversight**. This bill would require the OPC to, in coordination with air pollution control districts and air quality management districts along the coast and in consultation with the federal Office of National Marine Sanctuaries, US EPA, the United States Navy, the USCG, and ARB, implement a statewide voluntary vessel speed reduction and sustainable shipping program that expands the existing Protecting Blue Whales and Blue Skies Program.

   A prior attempt to codify the Blue Whales and Blue Skies Program in SB 69 (Weiner, 2019) would have directed ARB to develop a similar voluntary vessel speed reduction program in coordination with affected air districts and the national marine sanctuaries. The bill contained a multitude of other, unrelated proposed policies, and was held in the Assembly Appropriations Committee.

The OPC, in its Strategic Plan, identified the task to develop a statewide whale and sea turtle protection plan by 2022 with a target of zero mortality. To accomplish this goal, the OPC notes the following action:

> With ARB, coastal air districts, ports, and the National Marine Sanctuary Program, develop a permanent, statewide, Vessel Speed Reduction Program that incentivizes the shipping industry to prevent whale strikes, reduce coastal air pollution, and minimize marine noise pollution.

The OPC is mandated with coordinating 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. AB 953 would task the OPC with implementing this program, helping to move the needle on the OPC's Strategic Plan goal for zero marine mammal mortality.

7) **Vessel Speed Reduction Zones**. Under the Protecting Blue Whales and Blue Skies Program are agreed upon distances – VSR zones – that take into account shipping lanes, marine sanctuaries, migratory whales, and ozone. They include a recommended vessel speed in a defined area, which is managed seasonally or dynamically.

   NOAA's voluntary program in the Channel Islands is triggered by observed whale aggregations in the traffic separation scheme – an area in the sea where navigation of ships is highly regulated. Historically, the voluntary VSR zone usually starts in May and goes through mid-November. Additionally, air quality is most impacted by shipping from April to October, which is when emission reductions achieved by vessel speed reductions would have the greatest impact.

   The bill would require the new statewide program to be an expansion of the existing Blue Whales and Blue Skies Program; therefore, the development and design of VSR zones under the new program would mirror the current program.

8) **30x30.** The 30x30 initiative is a global movement; scientists say protecting at least 30% of the world's oceans and lands by 2030 (and 50% by 2050) is necessary to prevent mass extinctions and ecological collapse.

   President Biden issued Executive Order 14008 in January 2021 to address the domestic action on climate change; Section 216 of that order includes 30x30 goals by requiring the Secretary of the Interior to submit a report to achieve the goal of conserving at least 30% of our lands and waters by 2030.

   In October 2020, Governor Newsom signed his Nature Based Solutions Executive Order N-82-20, elevating the role of natural and working lands in the fight against climate change and advancing biodiversity conservation as an administration priority. As part of this Executive Order, California is committed to the goal of conserving 30% of our lands and coastal waters by 2030.

   A group of scientists recently published findings about whales storing such massive amounts of carbon that protecting them provides a significant assist in our global effort to sequester carbon. Twelve great whale species — including blue, humpback, and fin — hold an

estimated two million metric tons of carbon in their bodies. That's roughly equivalent to the amount of carbon released from burning 225 million gallons of gasoline. Another 62,000 metric tons of carbon — the equivalent of 7 million gallons of gas — is trapped every year in the form of whale falls, the bodies of dead whales that sink to the seafloor and support an ecosystem of scavengers.

Protecting whales (and other marine species) is consistent with our state 30x30 goals to protect biodiversity and meet our carbon neutrality goals.

The California Natural Resources Agency (NRA) report, *Pathways to 30x30: Accelerating Conservation of California's Nature*, prioritizes strengthening partnerships with federal resource managers and California Native American tribes to improve conservation within coastal waters. It states:

> Explore possible new measures and initiatives to address threats to biodiversity within National Marine Sanctuaries in partnership with California Native American tribes, scientists, federal resource managers, and key stakeholder groups, such as strengthening water quality and invasive species protections, exploring mandatory vessel speed reductions to protect whales, and enhancing the durability of existing restrictions on fishing gear and methods.

9) **Committee amendments.** *The Committee may wish to amend the bill* to:

   a) Adjust the effective date in the bill from May 1, 2025, to January 1, 2026, to give OPC more time to coordinate with all of the relevant federal, state, and local agencies to expand the program statewide.
   b) Include the maritime industry as a stakeholder in the bill.
   c) Explicitly clarify that the statewide program and all of its components shall be developed consistent with how the program components were developed pursuant to the Protect Blue Skies and Blue Whales Program.
   d) Require data on the regional air quality impacts on the coast and impacts to air quality in coastal disadvantaged communities from oceangoing vessel traffic to be provided by the regional air quality management and air pollution districts.
   e) Clarify that the new program shall not overlap or create duplication with existing vessel speed reduction programs, such as at the POLA/POLB.
   f) Remove references to state funding for incentives.
   g) Other technical, cleanup changes.

10) **Double referral.** This bill was heard in the Assembly Water, Parks, and Wildlife Committee on March 28 and approved by a vote 15-0.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Air Quality Management District
Defenders of Wildlife
Environmental Defense Center
Monterey Bay Air Resources District

Pacific Merchant Shipping Association (if amended)
Sacramento Clean Cities Coalition
Ventura County Air Pollution Control District

Opposition

None on file

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

Date of Hearing: April 17, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1000 (Reyes) – As Amended March 30, 2023

SUBJECT: Qualifying logistics use projects

SUMMARY: Prohibits local agency approval of a "qualifying logistics use" (e.g., a warehouse of 100,000 or more square feet) within 1,000 feet of a sensitive receptor, as defined, except that a local agency may approve a qualifying logistics use between 750 and 1,000 feet from a sensitive receptor if the local agency conducts specified air pollution analysis and imposes specified measures to reduce air pollution.

EXISTING LAW:

1) Allows a city or a county to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws" (Article XI, Section 7, of the California Constitution). It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public, including land use authority.

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

THIS BILL:

1) Prohibits a local agency from approving the development or expansion of any qualifying logistics use that is within 1,000 feet of a sensitive receptor except that local agency may approve such development or expansion that is greater than 750 feet from and within 1,000 feet of a sensitive receptor only if the local agency does all of the following:

    a) Conducts a cumulative analysis of the air quality impacts of the warehouse development project, as specified, and identifies actions and develops mitigation plans to address cumulative warehouse impacts.

    b) Requires all heavy-duty vehicles domiciled onsite to be model year 2014 or later from the start of operations and shall expedite a transition to zero emission vehicles (ZEV), with the fleet fully ZEV by December 31, 2025, or when commercially available, as specified, for the intended application, whichever date is later.

    c) Requires owners, operators, or tenants of the qualifying facilities to utilize a clean fleet of light- and medium-duty vehicles as part of business operations. Requires, for any light- or medium-duty vehicle domiciled onsite, 33% of the fleet to be ZEVs at the start of operations, 65% by 2024, 80% by 2026, and 100% by 2028.

d) Requires all onsite equipment used at the warehouse to be zero emission with the necessary charging or fueling stations provided.

e) Requires all off-road construction equipment used for the warehouse development project to be zero emission, where available, or hybrid electric-diesel and all diesel-fueled off-road construction equipment to be equipped with Air Resources Board (ARB) Tier 4 engines.

f) Requires zero-emission truck charging or fueling stations proportional to the number of dock doors at the project, running conduit to designated locations for future zero-emission truck charging stations.

g) Requires constructing electric plugs for electric transport refrigeration units at every dock door and requires truck operators with transport refrigeration units to use the electric plugs when at loading docks. An owner of a facility is exempt from the requirements of this subdivision if the owner records a covenant on the title of the underlying property that ensures the property shall not be used to provide refrigerated warehouse space.

h) Requires installation of solar photovoltaic systems and companion battery storage on the project site of a specified electrical generation capacity that is equal to or greater than the building's projected energy needs, including all electrical chargers and designing all project building roofs to accommodate the maximum future coverage of solar panels and installing the maximum solar power generation capacity feasible.

i) Prohibits trucks onsite from idling for more than three minutes and requires operators to turn off an engine when not in use.

j) Prohibits the idling of heavy construction equipment for more than five minutes.

2) For a project subject to the bill, requires a local agency to:

a) Post specified project details and provide specified notices in English and all "threshold" languages.

b) Conduct at least one scoping meeting, as specified, to describe the project and its potential environmental impacts, take public comments, and provide translation services upon request.

3) Authorizes an affected individual or the Attorney General to bring an action to enjoin a violation of the bill.

4) Defines terms for purposes of the bill, including:

a) "Qualifying logistics use" as any logistics use with 100,000 or more square feet of building space, including, but not limited to, warehouses.

b) "Sensitive receptors" as one or more of the following:

i) A residence.
ii) A school.

iii) A daycare.
iv) A health care facility.
v) A community center.
vi) An established community place of worship.
vii) An incarceration facility.
viii) A public playground, public recreation field, or public recreation center.

FISCAL EFFECT: Unknown

COMMENTS:

1) **According to the author**:

Local governments throughout the Inland Empire have been approving large industrial warehouse projects at a rapid rate over the past twenty years. This has been contributing to declining air quality as there are now 4,000 individual warehouses occupying about 1 billion square feet in the region that generate approximately 600,000 truck trips a day which is equivalent to 50 million pounds of carbon dioxide. While CEQA exists to ensure environmental issues are addressed through the planning process, we are seeing projects be approved that still cause environmental and public health issues to our community. In the community of Bloomington, 6 out of the 8 schools are located within 1,000 feet of a warehouse. This is not sustainable land use for the community.

The Attorney General has sued local governments for failing to meet CEQA and not incorporating mitigation issues when approving warehouse projects. Most recently the City of Fontana in 2021 and the City of Stockton in 2022. The Attorney General has also put out a guidance memo for warehouse development that lists out mitigation measures for developers to consider adopting to align their projects with CEQA. That same memo cites that e-commerce has led to growth in the logistics sector over the past few years and that the Central Valley will likely see a growth in warehouse development over the next few years because of the available land in that area. This is clearly an issue that will continue and requiring additional mitigation measures when these projects are approved is the best way to frontload benefits for communities. A setback is necessary as proximity to pollution is the biggest factor for communities who live near warehouses, mitigation measures ensures that they will be clean if they get sited closer than 1,000 feet.

AB 1000 establishes the Good Neighbor Policy by requiring local governments to have a 1,000 foot buffer zone when siting warehouses over 100,000 square feet next to schools, homes, healthcare facilities, and other sensitive receptors. It would allow warehouses to be sited 750 feet away from sensitive receptors if the project adopts zero-emission vehicles for all classes of vehicles, zero-emission energy to power the facility, zero-emission equipment, and restricts idling and queuing for vehicles & equipment.

We are seeing that warehouses are often sited next to vulnerable communities over the objection of local residents. We have had residents who have had warehouses sited as close as 60 feet away from their homes. There are quality of life issues with having a massive industrial facility that close to homes and schools. It contributes to asthma, heart disease, cancer and other public health issues. ARB and the California Attorney General have recommend 1,000 feet as a buffer zone because it reduces exposure to diesel

particulate matter by 80%. Warehouses & logistics are a pivotal part of the Inland Empire economy however industry needs to be good neighbors to the community that has to live next to these massive industrial facilities.

2) **South Coast Indirect Source Rule (ISR)**. In 2021, the South Coast Air Quality Management (SCAQMD) adopted the Warehouse ISR, which requires warehouses greater than 100,000 square feet to directly reduce nitrogen oxide (NOx) and diesel particulate matter (PM) emissions, or to otherwise reduce emissions and exposure of these pollutants in nearby communities.

   According to SCAQMD, warehouses are a key destination for heavy-duty trucks and have other sources of emissions like cargo handling equipment, all of which contribute to local pollution, including toxic emissions, to the communities that live near them. Emissions from sources associated with warehouses account for almost as much NOx emissions as all the refineries, power plants, and other stationary sources in the South Coast Air Basin combined. Those living within a half mile of warehouses are more likely to include communities of color, have higher rates of asthma and heart attacks, and a greater environmental burden.

   As part of the rule, warehouse operators will need to earn a specified number of points annually. These points can be earned by completing actions from a menu that includes acquiring and using natural gas near-zero and/or zero-emission on-road trucks, zero-emission cargo handling equipment, solar panels, or zero-emission charging and fueling infrastructure and more. As alternatives to the points system, warehouse operators can prepare and implement a custom plan specific to their site or choose to pay a mitigation fee. Funds from mitigation fees will be used to incentivize the purchase of cleaner trucks and charging/fueling infrastructure in communities near the warehouse that paid the mitigation fee.

3) **ARB clean truck rules**. In 2020, ARB adopted the Advanced Clean Truck (ACT) regulation to accelerate a large-scale transition to zero-emission medium-and heavy-duty vehicles from Class 2b to Class 8. One component of the regulation is a manufacturer sales requirement. Manufacturers who certify Class 2b-8 chassis or complete vehicles with combustion engines would be required to sell zero-emission trucks as an increasing percentage of their annual California sales from 2024 to 2035. By 2035, zero-emission truck/chassis sales would need to be 55% of Class 2b – 3 truck sales, 75% of Class 4 – 8 straight truck sales, and 40% of truck tractor sales.

   To further the transition to a zero-emission fleet, at the end of 2020, Governor Newsom issued Executive Order (EO) N-79-20, which requires 100% of medium- and heavy-duty vehicles in the state be zero-emission by 2045 for all operations where feasible and by 2035 for drayage trucks. EO N-79-20 charges ARB with developing and proposing medium- and heavy-duty vehicle regulations requiring increasing volumes of new zero-emission trucks and buses sold and operated in the state towards that goal. ARB is currently in the process of finalizing the Advanced Clean Fleet (ACF) regulation. ACF, as proposed, requires all Class 2b-8 vehicles sold into California must be ZEVs starting in 2036.

4) **Attorney General warehouse guidance, litigation, and settlements**. The Office of the Attorney General has adopted a guidance memo titled *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act*, last updated September 2022. The memo identifies best practices for avoiding and mitigating

impacts associated with warehouse development. According to the memo, examples of best practices when siting and designing warehouse facilities include "(p)er (ARB) guidance, siting warehouse facilities so that their property lines are at least 1,000 feet from the property lines of the nearest sensitive receptors." The underlying data the memo cites in support of this recommendation found an 80% drop off in the concentration of diesel particulate matter emissions from distribution centers at approximately 1,000 feet. ARB and SCAQMD analyses indicate that providing a separation of 1,000 feet would substantially reduce diesel PM concentrations and public exposure downwind of a distribution center.

The requirements this bill applies to warehouses sited from 750-1,000 feet of any sensitive receptor appear to be drawn largely from a pre-litigation settlement the Attorney General entered with the City of Stockton in December 2022. While the conditions themselves are similar, implementation differs. For example, the conditions in the Stockton settlement are not direct requirements on either the City or a developer for any particular project. Instead, the Stockton settlement requires City staff to "propose a warehouse ordinance to identify and apply all feasible mitigation measures to qualifying warehouse and distribution facility projects to minimize their potentially significant environmental impacts…In preparing and proposing the warehouse ordinance, City staff shall consider including at minimum the conditions included in Exhibit A." (i.e., conditions similar to those included in this bill). Regarding a minimum setback, the Stockton settlement says "(q)ualifying facilities and their associated loading docks must be located no closer than 300 feet from sensitive receptors, and the City staff should consider the public health and safety benefits of requiring a larger buffer, up to 1,000 feet."

5) **How does the bill relate to CEQA**? This bill requires processes, analyses, and measures that use CEQA-like terms and appear similar to CEQA. For example, the bill requires an analysis of air quality impacts and a scoping meeting that may otherwise be part of the lead agency's CEQA process. In addition, some of the measures required by the bill may overlap with measures that could be required to mitigate significant air pollution impacts via the project's CEQA review. It's not clear how implementation of these requirements will relate to the lead agency's CEQA process. Will they be implemented within CEQA, separate from CEQA, or instead of CEQA? If the bill's requirements are intended to apply separately, and not duplicate or supersede CEQA, the intent should be clarified.

6) **ZEV requirements seem aggressive, but may be ineffective at capturing warehouse-related diesel emissions**. While the bill proposes ZEV requirements for warehouse vehicles that are far more aggressive than existing and proposed ARB rules, these requirements apply only to vehicles "domiciled onsite." At the time the project is approved by the lead agency, prior to construction for a new warehouse, there may be no vehicles domiciled onsite. And regardless if the local agency is willing and able to enforce this requirement going forward, many of the trucks coming and going from the warehouse are likely to be domiciled elsewhere, either due to normal commercial practice in the freight industry or the warehouse operator's intent to evade the ZEV requirements by registering its fleet elsewhere.

7) **Why only warehouses**? While the growth in new warehouse development, and these projects' impacts on traffic and air quality, pose unique impacts on surrounding communities, it seems somewhat arbitrary to apply unique procedures and requirements only to warehouses, without regard to the actual impacts of a particular project. Warehouses are by no means the only land use that produces concentrations of vehicle emissions near residential

areas and other sensitive receptors. There are also many other land uses, such as industry with stationary sources, that may produce even higher intensity air pollution emissions and exposure.

8) **Related legislation**:

AB 1748 (Ramos), pending in the Assembly Local Government Committee, prohibits local agency approval of a warehouse of 400,000 or more square feet that is adjacent to a sensitive receptor, unless the local agency does either of the following:

a) Imposes a minimum setback of 300 feet from the building's loading docks measured from the property line of any sensitive receptor.

b) Follows an industrial guideline framework, good neighbor policy, or sustainability ordinance adopted by the local agency, which, in its discretion, adequately balances siting qualifying logistics uses next to sensitive receptors.

AB 2840 (Reyes, 2022) required cities and counties within the Counties of Riverside and San Bernardino to impose setbacks on warehouses of 1,000 feet from sensitive receptors or equivalently protective alternative measures, as specified. AB 2840 was held in the Senate Governance and Finance Committee without a vote.

AB 1547 (Reyes, 2021) prohibited public agencies from siting warehouse developments within 3,000 yards of a sensitive land use. AB 1547 was held in this committee without a hearing.

9) **Double referral**. This bill has been double-referred to the Assembly Local Government Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

350 Humboldt: Grass Roots Climate Action
American Academy of Pediatrics, California, Chapter 2
American Lung Association in California
Asian Pacific Environmental Network (APEN)
California Climate Action
California Environmental Justice Alliance (CEJA) Action
California Environmental Voters
California Nurses Association
California Nurses for Environmental Health and Justice
CalSTART
Center for Community Action & Environmental Justice
Center on Race, Poverty & the Environment
Central California Asthma Collaborative
Cleanearth4kids.org
Climate Action California
Climate Center

Coalition for Clean Air
Coalition for Humane Immigrant Rights (CHIRLA)
Democratic Club of Claremont
Earthjustice
Flo Services USA
Friends Committee on Legislation of California
Greenlining Institute
Grow Fontana
Inland Congregations United for Change
Just San Bernardino
League of United Latin American Citizens (LULAC) of Riverside Council 3190
Let's Green CA!
Loma Linda University for a Sustainable Future
Natural Resources Defense Council
Physicians for Social Responsibility - San Francisco Bay Area Chapter
Pink Panthers
R-now
Redford Conservancy for Southern California Sustainability at Pitzer College
Safe Routes Partnership
San Bernardino County Medical Society
Santa Cruz Climate Action Network
Sierra Club California
SistersWe Community Gardening Projects
Union of Concerned Scientists
United Food and Commercial Workers Local 1167
United Food and Commercial Workers, Western States Council
Voices for Progress
Western Center on Law & Poverty

Opposition

Anaheim Chamber of Commerce
Antelope Valley Chambers of Commerce
Associated General Contractors
Association of Western Employers
Bay Area Council
BNSF Railway
Brea Chamber of Commerce
Building Industry Association of Southern California
Building Owners and Managers Association of California
California Association for Local Economic Development
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Hotel & Lodging Association
California League of Food Producers
California Manufacturers & Technology Association
California Restaurant Association

California Retailers Association
California Short Line Railroad Association
California State Council of Laborers
California Taxpayers Association
California Trucking Association
Can Manufacturers Institute
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Coalition of California Chambers – Orange County
Corona Chamber of Commerce
District Council of Iron Workers of the State of California and Vicinity
Fontana Chamber of Commerce
Fremont Chamber of Commerce
Garden Grove Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
Industrial Environmental Association
Inland Empire Chamber Alliance
Inland Empire Economic Partnership
Institute of Real Estate Management
La Canada Flintridge Chamber of Commerce
La Verne Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Livermore Valley Chamber of Commerce
Los Angeles Area Chamber of Commerce
Los Angeles County Business Federation
Maersk
Murrieta Wildomar Chamber of Commerce
NAIOP of California
Oceanside Chamber of Commerce
Orange County Business Council
Otay Mesa Property Owners Association
Palm Desert Area Chamber of Commerce
Palos Verdes Peninsula Chamber of Commerce
Redondo Beach Chamber of Commerce
Rural County Representatives of California
Sacramento Metropolitan Chamber of Commerce
San Bernardino County
San Juan Capistrano Chamber of Commerce
San Manuel Band of Mission Indians
San Pedro Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santa Maria Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Southern California Leadership Council
Southwest California Legislative Council

State Building and Construction Trades Council of California
The Chamber Newport Beach
Tri County Chamber Alliance
Union Pacific Railroad
United Contractors
Vacaville Chamber of Commerce
Valley Industry and Commerce Association
West Ventura County Business Alliance
Western Growers Association
Western States Petroleum Association
Wine Institute
Yorba Linda Chamber of Commerce

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

Date of Hearing: April 17, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1290 (Luz Rivas) – As Amended March 21, 2023

SUBJECT: Product safety: plastic packaging: substances

SUMMARY: Bans specified toxic and nonrecyclable plastics and plastic additives on and after January 1, 2026.

EXISTING LAW:

1) Defines "packaging" as any separable and distinct material component used for the containment, protection, handling, delivery, or presentation of goods by a producer for the user or consumer, ranging from raw materials to processed goods. Explicitly includes, but does not limit this definition to, sales or primary packaging, grouped packaging, and transport packaging. (Public Resources Code (PRC) 42041)

2) Defines "perfluoroalkyl and polyfluoroalkyl substances" (PFAS) as a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom. (Health and Safety Code (HSC) 109000)

3) Defines "polyethylene terephthalate" (PET) as plastic derived from a reaction between terephthalic acid or dimethyl terephthalate and monoethylene glycol, as specified. (PRC 18013)

4) Defines "rigid plastic packaging containers" as any plastic package having a relatively inflexible finite shape or form, with a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, that is capable of maintaining its shape while holding other products, including, but not limited to, bottles, cartons, and other receptacles, for sale or distribution in the state. (PRC 42301)

5) Prohibits the sale or distribution of food packaging that contains regulated PFAS, as specified. (HSC 109000)

6) Prohibits the sale, distribution, and importation of products or packaging for which a deceptive or misleading environmental marketing claim is made about the recyclability of the product or package. Establishes standards for claims relating to recyclability and compostability. Establishes civil liability of up to $2,000 for violations. (PRC 42355-42358.5)

7) Prohibits unfair competition, which is defined as meaning and including any unlawful, unfair, or fraudulent business acts of practices, and unfair, deceptive, untrue, or misleading advertising. Establishes civil penalties up to $2,500 for each violation. Specifies that any person who engages in unfair competition may be enjoined in a court of competent jurisdiction and authorizes the court to make such orders of judgements necessary to prevent the use or employment of any practice that constitutes unfair competition, or to restore to any

person in interest any money or property that may have been acquired through unfair competition. (Business and Professions Code 17200 – 17210)

THIS BILL:

1) Beginning January 1, 2026, prohibits the manufacture, sale, offer for sale, or distribution of:
    a) Opaque or pigmented PET bottles.
    b) Plastic packaging that contains:
        i) Nondetectable pigments;
        ii) Oxo-degradable additives;
        iii) Regulated PFAS;
        iv) Polyvinyl chloride (PVC); and,
        v) Polyvinylidene chloride (PVCD).
    c) Rigid plastic packaging containers containing polyethylene terephthalate glycol (PETG).
2) Defines terms used in the bill, including:
    a) "Nondetectable pigments" as pigments added to plastic packaging to provide color to the plastic that are not detectable by technology used for recycling by mechanical means.
    b) "Opaque or pigmented PET bottles" as bottles made with PET, which have added pigments or other additives that provide color to the bottles other than transparent blue or green or that cause the bottles to be opaque.
    c) "Oxo-degradable additives" as additives that, through oxidation, lead to the fragmentation of plastic material into micro-fragments or to chemical decomposition, including oxo-biodegradable additives.
3) Exempts the following:
    a) Packaging used for:
        i) Medical products and products defined as medical devices or prescription drugs;
        ii) Drugs that are used for animal medicines, including, but not limited to, parasiticide products for animals; and,
        iii) Products that are intended for animals that are regulated as animal drugs, biologics, paraciticides, medical devices, or diagnostics used to treat, or be administered to, animals, as specified.
    b) Packaging used to contain products regulated by the Federal Insecticide, Fungicide, and Rodenticide Act.

4) Authorizes a city, county, or the state to impose civil liability in the amount of $500 for the first violation, $1,000 for the second violation, and $2,000 for any subsequent violations. Requires that any penalties collected be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever brought the action. Penalties collected by the Attorney General may be expended, upon appropriation, to enforce the bill's requirements. Specifies that remedies associated with this bill are not exclusive and are in addition to remedies available pursuant to unfair business practice law. Specifies that costs incurred by a state agency under this chapter are recoverable by the Attorney General, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**:

> The U.S. Plastics Pact, a group of over 100 industry stakeholders, including Target, The Coca-Cola Company, and Walmart identified numerous unnecessary plastic packaging materials and additives. They deemed these materials and additives could be avoided through elimination, reusables or replacement, and commonly do not enter the recycling and/or composting systems, or where they do, are detrimental to the recycling or composting system due to their format, composition, or size. Many of these materials and additives pose serious threats to human and environmental health. While SB 54 develops a long-term plan to address the plastic pollution crisis, California should take immediate action to align with the U.S. Plastic Pact's thoroughly researched goal to eliminate these problematic plastic materials and additives as quickly as possible. This will also make it easier for the state to meet its SB 54 goals. AB 1290 will prohibit the sale of the certain plastic packaging materials and additives by January 1, 2026 to protect public health and facilitate greater levels of effective and affordable recycling.

2) **Plastic pollution**. Plastic is everywhere. From the highest mountain on earth to the deepest parts of the sea, plastic pollutes. Production has continued to increase rapidly over the last several decades and far outpaces our capacity to manage it. In 1950, 2.3 million tons of plastic were generated. By 2015, that had ballooned to 448 million metric tons. Half of all plastic ever created was manufactured in the last 15 years. By 2050, production is expected to triple current production and account for one-fifth of global oil production. Between 1950 and 2015, approximately 9,500 million metric tons of plastic was generated.

   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

greenhouse gas (GHG) emissions in 2019. By 2060, GHG emissions from plastics are expected to reach 4.3 billion metric tons, given the ongoing exponential increase in production.

The chemicals used in plastic production pose risks to the environment and public health. Last month, a train derailed and caught fire in East Palestine, Ohio. According to news reports, eleven of the derailed train cars contained vinyl chloride and butyl acrylate, chemicals used in the production of plastics. The resulting spill and fire contaminated the surrounding air, water, and soil and drove thousands from their homes. When vinyl chloride is burned, the primary chemicals of concern are phosgene, which was used as a chemical weapon in World War I, and hydrogen chloride, which can turn into hydrochloric acid when inhaled. United States Environmental Protection Agency soil tests are showing dioxin levels that far exceed acceptable thresholds, which was likely created by the burning of vinyl chloride and dispersed throughout the area. Dioxin is highly persistent and can accumulate and remain in the environment long-term. It is linked to cancer, diabetes, heart disease, nervous system disorders, and other serious health issues.

Some plastics and plastic additives pose health risks during their use. For example, additives like bisphenols and PFAS in plastic can leach from packaging into food, drinks, and personal care products. Bisphenols, including BPA, BPS, and other forms like bisphenol F, are endocrine disrupters that are associated with possible cancer and reproductive risks. PFAS, also known as forever chemicals because they do not break down naturally, are widely used in food and product packaging (both plastic and fiber) to make the containers stain, oil, heat, and water resistant. According to the Centers for Disease Control (CDC), animal studies indicate that PFAS may affect reproduction, thyroid function, immune response, liver damage, and raise kidney and testicular cancer risks. Since 1999, the CDC has been testing for PFAS in blood samples and found PFAS in the samples of nearly all people tested.

Plastic accounts for around 12% of California's disposed waste stream -- more than 4.5 million tons. Recycling figures are harder to estimate, as California has only recently begun collecting data from recycling facilities, but it appears that less than 15% of the plastic generated in California is recycled.

An estimated eight 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 discarded 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. This fragmentation increases the surface area to volume ratio, which facilitates adherence and transport of harmful organisms and chemicals. As they are ingested by animals, they bioaccumulate in the food web.

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 make up a measurable component of household dust and, like dust, are inhaled. 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. A recent research review conducted by the California State Policy Evidence Consortium (CalSPEC) reports that microplastics have been found in human blood, breastmilk, liver, lung, and placenta samples. Based on the review of the limited animal studies available, the report concludes that "microplastics are suspected to promote deleterious human health impacts in the reproductive and digestive systems… CalSPEC concludes that respiratory harms from microplastics are also likely suspected."

Recycling plastic into new products is one way to reduce plastic pollution, as it keeps the recycled plastic out of the environment and reduces our dependence on virgin resin. Recycling is currently only feasible for some of the more common, and least toxic, forms of plastic. Many forms of plastic, like those included in this bill, contain toxic and nonrecyclable resins and additives that make them difficult or impossible to recycle. The abundance and variety of the types of plastic in our recycling system make it difficult to sort, and high contamination rates in bales of recycled plastic have caused many countries to stop accepting recycled plastic from the United States unless it meets stringent contamination rates.

3) **Problematic and unnecessary materials**. The U.S. Plastics Pact (Pact) is a consortium founded by The Recycling Partnership and World Wildlife Fund that is intended to connect public and private stakeholders to create a pathway to a circular economy for plastic in the United States by "eliminating plastics we don't need, innovating to ensure that the plastics we do need are reusable, recyclable, or compostable, and circulating all the plastic items we use to keep them in the economy and out of the environment." The Pact's advisory council includes representatives from environmental organizations, recyclers, local and state governments, and industry, and its "activators" (members) include an even broader range of more than 100 stakeholders with expertise and experience in the production and management of plastic.

The Pact identified 11 "problematic and unnecessary" plastic packaging items, resins, and additives that it works with its activators to eliminate by 2025. The Pact defines "problematic and unnecessary" as:

> Plastic packaging items, components, or materials where consumption could be avoided through elimination, reuse, or replacement, and items that, post-consumption, commonly do not enter the recycling and/or composting systems, or where they do, are detrimental to the recycling or composting system due to their format, composition, or size.

The list includes cutlery, intentionally added PFAS, non-detectable pigments such as carbon black, opaque or pigmented PET (any color other than transparent blue or green), oxo-degradable additives, PETG in rigid packaging, problematic label constructions, polystyrene (including expanded polystyrene), PVC (including PVCD), stirrers, and straws.

4) **SB 54**. SB 54 (Allen, Chapter 75, Statutes of 2022) establishes sweeping new minimum recycling requirements for single-use plastic packaging and food service ware (covered material), source reduction requirements for plastic covered material, and prohibits the sale or distribution of expanded polystyrene unless it meets accelerated recycling rates. SB 54 requires producers to comply with the bill's requirements through an expanded producer responsibility program. This bill additionally requires producers, through the producer responsibility organization, to pay $500 million per year for ten years (from 2027 to 2037) to be deposited into the California Plastic Pollution Mitigation Fund, which is established to fund various environmental and public health programs.

5) **This bill**. This bill phases out a subset of the materials identified by the Pact as problematic and unnecessary that are the most toxic or pose the greatest challenges to recycling systems, specifically: opaque or pigmented PET bottles, which are a contaminant in the recycling stream; nondetectable pigments in packaging, which are pigments that cannot be detected by sorting systems in recycling operations and contaminate the recycling stream; oxo-degradable additives in packaging, which contribute to the proliferation of microplastics and contaminate both compost and recycling streams; PFAS in packaging, which poses health and environmental risks and act as contaminants in compost and recycling streams; PVC and PVCD in packaging, which are made from vinyl chloride, a known carcinogen, and are generally not recycled; and, rigid plastic packaging containing PETG, which is a contaminant in recycling streams.

   Like SB 54, this bill applies to packaging materials, and the resins included in this bill are also subject to the requirements of that bill. Many of the materials included by this bill are the very materials that will hinder compliance with SB 54, and removing them from packaging should ease SB 54 compliance. Given the challenges that these materials pose to recycling systems, it is likely that most would be phased out under the SB 54 program eventually but the timeline for SB 54 implementation is lengthy. The recycling requirements phase in between 2028 and 2032, and the source reduction requirements do not begin to take effect until 2027. Additionally, SB 54, does not regulate the use of toxic components like PFAS and PVC. SB 54 is a groundbreaking law that creates a long-term plan to create a circular economy for packaging waste, but Californians should not have to wait a decade for toxic and problematic plastics to be removed from the packaging they use. This bill takes near-term action to address materials and additives that pose the greatest environmental and health impacts.

REGISTERED SUPPORT / OPPOSITION:

Support

350 Ventura County Climate Hub
5 Gyres Institute
A Voice for Choice Advocacy
Active San Gabriel Valley

Angelenos for Green Schools
Azul
Ban SUP
Bay Area Youth Lobbying Initiative
Breast Cancer Prevention Partners
Breathe Southern California
California Coastal Protection Network
California Communities Against Toxics
California Compost Coalition
California Environmental Voters
California Nurses for Environmental Health and Justice
California Product Stewardship Council
California Resource Recovery Association
Californians Against Waste
CALPIRG, California Public Interest Research Group
Center for Biological Diversity
Center for Environmental Health
Clean Production Action
Clean Seas Lobbying Coalition
Clean Water Action
Climate Reality Project, Los Angeles Chapter
Climate Reality Project, San Fernando Valley
Community 2.0
County of Santa Barbara
Courage California
Defenders of Wildlife
Dr. Bronner's
Ecology Center
Educate. Advocate.
Elders Climate Action, NorCal and SoCal Chapters
Environmental Lead, Indivisible Alta Pasadena
Environmental Working Group
Facts: Families Advocating for Chemical & Toxics Safety
Fractracker Alliance
Friends Committee on Legislation of California
Friends of The Earth
Glendale Environmental Coalition
Green America
Green Science Policy Institute
Greenpeace USA
Grove Collaborative
Heal the Bay
Indivisible CA: StateStrong
Irvine Ranch Water District
Last Plastic Straw
Los Angeles Alliance for A New Economy
National Stewardship Action Council
Natural Resources Defense Council
Northern California Recycling Association

Pacific Environment
Pacoima Beautiful
Plastic Free Future
Plastic Pollution Coalition
Republic Services - Western Region
Repurpose
Safer States
San Francisco Baykeeper
Save Our Shores
Sierra Club California
Silicon Valley Youth Climate Action
South Bayside Waste Management Authority
Surfrider Foundation
The Keep a Breast Foundation
The Story of Stuff Project
Upstream
Urban Ecology Project

Opposition

American Chemistry Council
American Cleaning Institute
American Institute for Packaging and Environment
American Supply Association
Association of Plastic Recyclers
Auto Care Association
Berry Global
California Automotive Wholesalers' Association
California Cattlemen's Association
California Chamber of Commerce
California Food Producers
California Manufacturers & Technology Association
California Poultry Federation
California Restaurant Association
Chemical Industry Council of California
Consumer Brands Association
Consumer Healthcare Products Association
Consumer Technology Association
Dairy Institute of California
Dart Container Corporation
Flexible Packaging Association
Foodservice Packaging Institute
Household and Commercial Products Association
Industrial Environmental Association
National Marine Manufacturers Association
Personal Care Products Council
Pet Food Institute
Plastics Industry Association
Sealed Air Corporation

The Toy Association
The Vinyl Institute
Transcontinental Packaging
Western Plastics Association
Western United Diaries

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

Date of Hearing: April 17, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1318 (Luz Rivas) – As Introduced February 16, 2023

SUBJECT: California Environmental Quality Act: exemption: residential projects

SUMMARY: Increases the site limit from four acres to five acres for purposes of an existing California Environmental Quality Act (CEQA) exemption for urban infill housing projects meeting specified criteria. Requires the lead agency to file a notice of exemption (NOE) with the Office of Planning and Research (OPR).

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 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)

THIS BILL increases the site limit for the urban infill exemption from four acres to five acres and requires the lead agency to file a notice of exemption with OPR.

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 there would not be 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 on the environment, 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.

SB 1925 (Sher), Chapter 1039, Statutes of 2002, exempts from CEQA certain residential projects providing affordable urban or agricultural housing, or located on an infill site within an urbanized area, and meeting specified unit and acreage criteria. The stated intent of the Legislature in enacting those provisions included "creating a streamlined procedure for agricultural employee housing, affordable housing, and urban infill housing projects that do not have an adverse effect on the environment."

The change made by this bill has been previously recommended by the American Planning Association and other CEQA practitioners to make the site limit for the urban infill exemption consistent with the five-acre limits that apply to the other SB 1925 exemptions. The same provision was included in a larger bill, AB 2323 (Friedman), which passed this committee in 2020.

2) **Author's statement**:

   AB 1318 provides a modest increase in the scope of an existing CEQA exemption for infill housing projects, making the acreage limit for this exemption the same as other existing CEQA exemptions for affordable and farmworker housing.

3) **Double referral**. This bill has been double-referred to the Assembly Local Government Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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

Date of Hearing: April 17, 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 17, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1465 (Wicks) – As Amended March 16, 2023

SUBJECT: Nonvehicular air pollution: civil penalties

SUMMARY: Triples existing air district penalties for a refinery discharging air contaminants that include one or more toxic air contaminants (TACs).

EXISTING LAW:

1) Requires air districts to adopt and enforce rules and regulations to achieve and maintain state and federal ambient air quality standards in all areas affected by non-vehicular emission sources under their jurisdiction. (Health and Safety Code (HSC) 40001)

2) Generally prohibits a person, except as specified, from discharging air contaminants or other material that cause injury, detriment, nuisance, or annoyance or endanger the comfort, repose, health or safety to any considerable number of persons, or to the public, or that cause, or have a tendency to cause, injury or damage to a business or property. (HSC 41700)

3) Deems any person who violates air pollution laws, rules, regulations, permits, or orders of the Air Resources Board (ARB) or of a district, including a district hearing board, as specified to be guilty of a misdemeanor and subject to specified fines, imprisonment in the county jail for not more than six months, or both. (HSC 42400)

4) Prescribes maximum civil penalty amounts for violations as follows:

    a) Strict liability: $5,000, $10,000 or $15,000 per day, depending on specified circumstances. Penalties in excess of $5,000 permit an affirmative defense that the violation was caused was not intentional or negligent. The $15,000 level applies when a violation causes actual injury to a considerable numbers of persons or the public. (HSC 42402)

    b) Negligent: $25,000 per day, or $100,000 if the violation causes great bodily injury or death. (HSC 42402.1)

    c) Knowing: $40,000 per day, or $250,000 if the violation causes great bodily injury or death. (HSC 42402.2)

    d) Willful and intentional: $75,000 per day. (HSC 42402.3)

    e) Willful, intentional, or reckless: $125,000 per day for a person, or $500,000 for a corporation, if the violation results in an unreasonable risk great bodily injury or death. $250,000 for a person, or $1,000,000 for a corporation, if the violation causes great bodily injury or death. (HSC 42402.3)

    f) Intentional falsification of a required document: $35,000. (HSC 42402.4)

5) Requires that, in determining the amount of penalty assessed, that the extent of harm, nature and persistence of the violation, length of time, frequency of past violations, the record of maintenance, the unproven nature of the control equipment, actions taken by the defendant to mitigate the violation, and the financial burden to the defendant be taken into consideration. (HSC 42403)

6) Requires the maximum penalties in effect January 1, 2018, to increase annually based on the California Consumer Price Index. (HSC 42411)

7) Defines a TAC as an air pollutant which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health, including a substance that is listed as a hazardous air pollutant pursuant to the federal Clean Air Act. (HSC 39655)

8) Defines, under Title V of the federal Clean Air Act, major stationary sources as those sources with a potential to emit that exceeds a specified threshold of air pollutants per year and creates an operating permits program for those sources, and specified other sources, to be implemented by state and local permitting authorities.

THIS BILL:

1) Requires air district civil penalties be tripled if the person violates HSC 41700 and both of the following occur:

   a) The discharge is from a Title V source that is a refinery.

   b) The discharge contains or includes one or more TACs.

2) Defines "refinery" as an establishment that is located on one or more contiguous or adjacent properties that produces gasoline, diesel fuel, aviation fuel, lubricating oil, asphalt, petrochemical feedstock, or other similar product through the processing of crude oil or alternative feedstock, redistillation of unfinished petroleum derivatives, cracking, or other processes.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Background**. California's non-vehicular air pollution statutes provide for civil penalties for violations of air pollution standards. Penalties are assessed based on the number of days of violation and the intent of the violator. In the absence of evidence to indicate negligence or worse (i.e., knowledge and failure to correct or willful and intentional behavior), civil penalties are assessed at penalty ceilings for the strict liability classification, where the violation is found to occur but districts need not establish knowledge, negligence, intent, or injury. No minimum penalty is required, leaving the amount prosecuted at the discretion of the air district. Offenses are most often prosecuted under the strict liability standard, which is generally capped at $10,000 per day. However, when districts seek more than $5,000 per day, an affirmative defense that the act was not intentional or negligent is allowed.

In 2017, AB 617 (Cristina Garcia), Chapter 136, Statutes of 2017, increased the basic strict liability penal cap from $1,000 per day to $5,000 per day (accounting for 42 years of inflation since the limits were established in 1975). AB 617 also added an inflation adjustment for all civil penalties, with the amounts in effect in 2018 as the baseline.

According to the Bay Area Air Quality Management District (BAAQMD), large facilities, by virtue of total permitted emissions of criteria and toxic pollutants, generally fall under the $10,000 penalty cap, except under certain circumstances, such as proven negligent or willful and intentional behavior. Penalties for violating air quality regulations and permits are supposed to act as a meaningful deterrent to encourage proper operation and reporting, which prevent unregulated releases of air pollutants.

For most facilities, whether they are larger Title V facilities or smaller non-Title V facilities, the $10,000 ceiling has provided credible deterrence. However, there is a small subset of violations occurring at the largest facilities, refineries, for which the $10,000 ceiling is inadequate based on the impacts that their violations can have on the surrounding community. These are events that result in "shelter in place" recommendations from local officials, public complaints of poor air quality, odors, and nuisance, cancellation of outdoor events, and upticks in visits to health care facilities by residents. In these situations, a facility can receive a $10,000 penalty, but this penalty bears no relation to the disruption caused by their activities in the nearby community. It also likely provides no real incentive to prevent similar future occurrences.

2) **Author's statement**:

   AB 1465 triples civil penalties for refineries who violate air quality standards.

   At oil refineries in recent years, there has been a precipitous decline in compliance with air quality requirements, coupled with increases in flaring events that release toxic air contaminants into neighboring communities. Refinery flaring can result in shelter-in-place notifications, school closures, and a surge of visits to heath care facilities for medical care.

   In the Bay Area, refineries are some of the largest sources of air pollutants. Specifically in my district, increased flaring events have led to incidents that have negatively impacted health of the community, including schools in the surrounding areas.

   Serious disruptions caused by flaring or similar pollution discharges at a refinery are occurring far too often. Refineries must be held more accountable when they pollute the air. The consequences for air quality violations must be severe enough to deter a discharge before it occurs, so refineries don't simply treat fines for causing community disruption as an acceptable cost of doing business.

3) **What are penalty funds used for**? HSC 42405 prescribes where penalty funds are deposited:

   a) When the Attorney General brings an action on behalf of a district, the penalty collected is split 50/50 between the district and the General Fund.

b) When the Attorney General brings an action on behalf of ARB, the entire penalty collected goes to the General Fund.

c) When the action is brought by the district itself, or by a district attorney, the entire penalty collected goes to the district.

Under current law, penalty funds secured by a district may be used for any lawful air district expenditure. This broad discretion over penalty funds may give rise to a concern that penalty funds will not be used to redress the harms suffered by the communities affected by a violation. *The author and the committee may wish to consider* amending the bill to add the following provision:

> (c) Civil penalties collected pursuant to this section above the costs of prosecution, if the remaining penalty exceeds $100,000, shall be expended to mitigate the effects of air pollution in the community or communities affected by the violation.

4) **Prior legislation**. AB 1897 (Wicks, 2022) increased the maximum civil penalty applicable to a refinery for the initial date of an air pollution violation to $30,000, or $100,000 for a second violation within 12 months. As passed by the Assembly, AB 1897 required civil penalties collected above the costs of prosecution to be expended to mitigate the effects of air pollution in communities affected by the violation. The bill was later gutted and amended to relate to solid waste.

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

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Air Quality Management District (sponsor)

Opposition

Western States Petroleum Association

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

Date of Hearing: April 17, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1548 (Hart) – As Amended March 16, 2023

SUBJECT: Greenhouse Gas Reduction Fund: grant program: recycling infrastructure projects

SUMMARY: Revises the grant program administered by the Department of Resources Recycling and Recovery (CalRecycle) that provides financial assistance to promote the development of in-state infrastructure, food waste prevention, or other waste reduction and recycling projects to include additional infrastructure and codify specific grants authorized under the grant program.

EXISTING LAW:

1) Pursuant to the Integrated Waste Management Act (Public Resources Code (PRC) 40000 et seq.):

    a) Requires that local governments divert at least 50% of solid waste from landfill disposal and establishes a statewide goal that 75% of solid waste be diverted from landfill disposal by 2020.

    b) Requires commercial waste generators, including multi-family dwellings, to arrange for recycling services and requires local governments to implement commercial solid waste recycling programs designed to divert solid waste from businesses.

2) Requires the Air Resources Board (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. (Health and Safety Code (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 the Waste Diversion and Greenhouse Gas Reduction Financial Assistance program (PRC 42995-42999), which includes:

    a) The CalRecycle Greenhouse Gas Reduction Revolving Loan Program to provide loans to reduce greenhouse gas (GHG) emissions by promoting in-state development of infrastructure or other projects to reduce organic waste or process organic and other recyclable materials into new value-added products, including organics composting, organics in-vessel digestion, recyclable material manufacturing, activities that expand and improve waste diversion and recycling.

    b) A grant program to provide financial assistance to promote in-state development of infrastructure, food waste prevention, or other projects to reduce organic waste or process organic and other recyclable materials into new, value-added products, including:

        i) Organics composting;

ii) Organics in-vessel digestion;

iii) Recyclable material manufacturing;

iv) Activities that expand and improve organic waste diversion and recycling, including, but not limited to, the recovery of food for human consumption and food waste prevention;

v) Preprocessing organic materials for composting or organics in-vessel digestion; and,

vi) Digestion at existing wastewater treatment plants.

Specifies that eligible infrastructure projects include:

i) Capital investments in new facilities and increased throughput at existing facilities;

ii) Designing and constructing organics in-vessel digestion facilities to produce products;

iii) Designing and constructing or expanding facilities for processing recyclable materials; and,

iv) Projects to improve the quality of recycled materials.

When awarding grants under this program, requires CalRecycle to consider the following:

i) The amount of reductions in GHG emissions;

ii) The amount of organic material that may be diverted from landfill;

iii) If and how the project may benefit disadvantaged communities;

iv) For a grant awarded for in-vessel digestion, if and how the project maximizes resource recovery;

v) Project readiness and permitting required; and,

vi) Air and water quality benefits.

b) The Zero-Waste Equity Grant Program to support targeted strategies and investments in communities transitioning to a zero-waste circular economy.

2) Defines "low-income communities" as census tracts with median household incomes at or below 80% of the statewide median income or with median household incomes at or below the threshold designated as low-income by the Department of Housing and Community Development's list of state income limits. (HSC 39713)

THIS BILL: Revises the grant program to provide financial assistance to promote in-state development of infrastructure, food waste prevention, or other projects to reduce organic waste or process organic and other recyclable materials into new, value-added products by:

1) Specifying that eligible financial assistance shall be provided for recyclable material *recovery, sorting, or baling*, in addition to manufacturing.

2) Including "increasing opportunities for reuse of materials diverted from landfill disposal" to the list of activities eligible for financial assistance.

3) Adding the following to the list of projects eligible for grant funding:

   a) Projects undertaken by a local government to improve the recovery, sorting, or baling of recyclable materials to get those materials into the marketplace, including related equipment purchasing and installation costs; and,

   b) Establishment of reuse programs for local jurisdictions to divert items from landfill disposal for reuse by members of the public.

4) Specifying that CalRecycle consider how funded projects benefit low-income communities, in addition to disadvantaged communities.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**:

   > AB 1548 expands CalRecycle's grant programs to help local communities purchase infrastructure equipment to increase recycling and expand edible food recovery operations. Local governments and nonprofits require additional support from the State to achieve California's recycling goals and reduce the impacts of landfill disposal on the environment. AB 1548 requires the department to consider disadvantaged and low-income communities.

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. 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.

3) **Short lived climate pollutants**. SLCPs are GHGs that linger in the atmosphere 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.

4) **Waste Diversion and Greenhouse Gas Reduction Financial Assistance**. SB 862 (Budget), Chapter 36, Statutes of 2014, created the programmatic structure for the expenditure of cap-and-trade funds (Greenhouse Gas Reduction Fund). SB 862 established the waste diversion and GHG reduction financial assistance grant and loan programs to provide funding for recycling and organic waste diversion activities that reduce GHG emissions. The program was expanded under SB 155 (Budget), Chapter 258, Statutes of 2021.

   Under the financial assistance program, CalRecycle established seven grant and loan programs to fund investments in infrastructure for aerobic composting, anaerobic digestion (identified as "in-vessel digestion" in SB 862), recycling, and manufacturing facilities that reduce GHG emissions. The programs prioritize environmental and economic benefits in disadvantaged and low-income communities, and a minimum of 35% of funds expended for these programs are made in those communities. The specific programs are:

   - Food Waste Prevention and Rescue Grant Program, which funds new or expanding food waste prevention projects, including edible food recovery and source reduction to reduce food waste disposal.

   - Organics Grant Program, which funds expanding existing capacity or establishing new facilities to reduce the amount of California-generated organic materials being sent to landfills.

   - Recycled Fiber, Plastic, and Glass Grant Program, which funds expanding existing capacity or establishing new facilities that use California-generated postconsumer recycled fiber (old corrugated cardboard, paperboard, or textiles), plastic, or glass to manufacture products.

   - Greenhouse Gas Reduction Loan Program, which provides funding to assist recycling manufacturers with financing machinery, equipment, and ancillary costs to site and expand recycling facilities in California.

   - Reuse Grant Program, which is a new pilot program to fund reuse projects in the state.

- Community Composting Grant Program, which is intended to increase the number of community groups operating small-scale composting programs in green spaces in disadvantaged and low-income communities.

- Co-digestion Grant Program, which funds new and expanded food waste co-digestion projects at existing wastewater treatment plants.

5) **This bill**. This bill would clarify that CalRecycle's financial assistance program can be used to fund recovery, sorting, and baling equipment for recyclable materials. According to the bill's sponsor, the Rural County Representatives of California (RCRC), many local governments that own and operate their own solid waste collection and recycling programs struggle to fund infrastructure projects to increase the number or volume of materials that can be sorted, baled, and returned to the marketplace as recycled material. This bill is intended to require CalRecycle to fund these types of equipment. Additionally, this bill codifies the reuse grant program administered by CalRecycle, but limits eligibility to local jurisdictions. This bill also codifies a grant program to construct and purchase equipment for facilities to help local governments and nonprofit organizations develop, implement, and expand edible food waste recovery operations. Finally, this bill requires CalRecycle to consider the benefits to low-income communities, in addition to disadvantaged communities.

   As noted above, CalRecycle currently has the authority under the grant program to fund the types of projects identified by the bill, including the authority to fund equipment like sorters and balers. The current program, however, does not currently provide funding for that equipment. Because this bill is targeted toward funding for facilities owned and operated by local governments, and the greatest need for this assistance lies with local government facilities, *the committee may wish to amend the bill to limit eligibility* for this provision to those facilities. The provisions of this bill that establish grant programs for edible food recovery and reuse programs appear to be intended to codify existing grant programs, but limit grant eligibility to nonprofits and local jurisdictions (for food recovery) and just local jurisdictions (for reuse programs). As these grants already exist and are not currently limited to those entities, *the committee may wish to amend the bill* to make the new statutory provisions consistent with the current grant programs.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Goleta
County of Santa Barbara
Rural County Representatives of California (sponsor)

Opposition

None on file

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

Date of Hearing: April 17, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1590 (Friedman) – As Amended April 10, 2023

SUBJECT: Major coastal resorts: coastal development permits: audits: waste

SUMMARY: Establishes environmental standards and auditing for environmental compliance and waste reduction and recycling requirements for major coastal resorts (resorts).

EXISTING LAW:

1) Establishes the California Coastal Commission (Commission) to protect regional, state, and national interests in assuring the maintenance of the long-term productivity and economic vitality of coastal resources necessary for the well-being of the people of the state, and to avoid long-term costs to the public and a diminished quality of life resulting from the misuse of coastal resources, to coordinate and integrate the activities of the many agencies whose activities impact the coastal zone, and to supplement their activities in matters not properly within the jurisdiction of any existing agency. (Public Resources Code (PRC) 30004)

2) Requires any person wishing to perform or undertake any development in the coastal zone, in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, to obtain a coastal development permit. (PRC 30600)

3) Pursuant to the California Environmental Quality Act (CEQA), requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report for the action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines). (PRC 21000, et seq.)

4) Authorizes the state's pesticide regulatory program and mandates the Department of Pesticide Regulation (DPR) to, among other things, provide for the proper, safe, and efficient use of pesticides essential for the production of food and fiber, for the protection of public health and safety, for the protection of the environment from environmentally harmful pesticides, and to assure agricultural and pest control workers safe working conditions where pesticides are present by prohibiting, regulating, or otherwise ensuring proper stewardship of those pesticides. (Food and Agriculture Code 11401 et seq.)

5) Prohibits lodging establishments with more than 50 rooms from providing small plastic bottles containing personal care products to guests. Expands this prohibition to apply to lodging establishment with 50 or fewer rooms beginning January 1, 2024. (PRC 42372)

6) Requires Air Resources Board (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. (Health and Safety Code 39730-39730.5)

7) 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)

8) Requires businesses that generate more than four cubic yards of waste per week (approximately one dumpster) to arrange for recycling services. Requires the business to source separate recyclable materials from solid waste and subscribe to a basic level of recycling service that includes collection, self-hauling, or other arrangements to pick up the materials, or subscribe to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation. (PRC 42649.2)

9) Requires businesses that generate more than four cubic yards of waste per week, as specified, to arrange for recycling services for organic waste. Requires the business to take one of the following actions:

    a) Source separate organic waste from other waste and subscribe to a basic level of organic waste recycling service that includes collection and recycling of organic waste;

    b) Recycle its organic waste or self-haul its own organic waste for recycling;

    c) Subscribe to an organic waste recycling service that may include mixed waste processing that specifically recycles organic waste; or

    d) Make other arrangements that meet specified requirements. (PRC 42649.81)

THIS BILL establishes the Major Coastal Resorts Environmental Accountability Act, which:

1) States legislative findings relating to the environmental impacts of resorts and the need for additional state monitoring and oversight.

2) Defines terms used in the bill:

    a) "Major coastal resort" as a resort or hotel that:

        i) Is composed of more than 250 guest rooms or suites;

        ii) Includes or operates a golf course on the premises;

        iii) Is located in whole or in part in the coastal zone; and,

        iv) Is located within 100 meters of the mean high tide line of the sea or that includes is adjacent to, or is within 400 meters of any part of an environmentally sensitive area, a sensitive coastal resource area, an area otherwise protected or preserved, or the habitat of a protected species.

    b) "Pesticide" as a conventional pesticide with all active ingredients other than biological pesticides and antimicrobial pesticides, with conventional active ingredients generally produced synthetically, including synthetic chemicals that prevent, mitigate, destroy, or repel any pest or that act as a plant growth regulator, desiccant, defoliant, or nitrogen stabilizer, and includes insecticides, rodenticides, herbicides, fungicides, and growth regulators.

c) "Organic waste" as food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed with food waste.

3) Every two years, requires the Commission, with the assistance of a qualified consultant, as specified, to prepare an audit of each resort's compliance with the following:

   a) The resort's coastal development permit;

   b) Any applicable local government permit conditions that implement a certified local coastal program;

   c) Any applicable mitigation measures and reporting or monitoring program under CEQA relating to coastal zone resources; and,

   d) The recycling requirements established by this bill.

4) Requires the Commission to compile and keep updated a list of consultants qualified to assist with auditing major coastal resorts' compliance, as specified.

5) Requires the Commission to provide notice to the public and invite public comment at the time it commences an audit.

6) Requires the Commission to document the audit's investigation and findings regarding a resort's compliance in a public report posted to the Commission's website. Requires the report to include a summary of the implementation of the resort's turf, landscape, and pest management plan, if any, and disclosure of the types, quantity, and frequency of pesticides used.

7) Requires the Commission to decide whether to pursue enforcement under the Coastal Act of any violations identified in the audit.

8) Amends the Coastal Act to require that any coastal development permit pertaining to a resort approved after January 1, 2024, to include the following:

   a) A plan for complying with any coastal development permit conditions or mitigation measures regarding biological resources and for continued monitoring of relevant biological resources to ensure that the conditions and mitigation measures are satisfactorily protecting those resources, as specified.

   b) Ongoing monitoring and reporting of the resort's stormwater discharges in the coastal zone, if any, sufficient to evaluate the contents of the discharges for pollutants or waste and ensure the quality of waters of the state is not being degraded. Requires this monitoring and reporting be in coordination with the State Water Resources Control Board.

   c) Verification from the resort that either:

      i) The resort has been issued, or is in the process of being issued, a waste discharge permit or a waiver under the Porter-Cologne Water Quality Control Act or a national pollutant discharge elimination system permit under the federal Clean Water Act; or,

ii) Waste discharge requirements or a national pollutant discharge elimination system permit are not required for the resort's stormwater discharges in the coastal zone under federal or state law.

d) A turf, landscape, and pest management plan that follows state-of-the-art environmental methods.

9) Requires any coastal development permit for a resort in existence as of January 1, 2024, to be amended when the permit is renewed or updated to include the requirements for coastal development permits established by the bill.

10) Specifies that legitimate local government costs associated with the amending or updating a coastal development permit pursuant to the bill are eligible for reimbursement by the Commission, as specified.

11) Prohibits the use of any nonorganic pesticide at, or on any part of, any resort.

12) Prohibits a resort, or any person acting on a resort's behalf, from discriminating or retaliating against any employee or applicant for employment for:

a) Participating in an audit, investigation, or report pursuant to the bill; or,

b) Disclosing information, or because the resort believes an employee disclosed or may disclose information, to the Commission, a consultant, another government or law enforcement agency, a person with authority over the employee, a person with specified authority, the media, a nonprofit organization, or a state or local government, if the employee or applicant for employment has reasonable cause to believe that the information discloses a violation or noncompliance.

13) Establishes that violations of the protections against retaliation are punishable pursuant to Labor Code 1102.5 (up to $10,000 for each violation). Additionally, establishes administrative civil penalties for violations of the protections against retaliation up to $500 per day for each violation.

14) Prohibits resorts from providing single-use plastic bottled beverages, nonrecyclable single-use coffee pods, plastic straws, single-use plastic retail bags, and expanded polystyrene (EPS) products to guests.

15) Requires resorts to:

a) Provide at least one recycling bin or container in each guest room, and in each individual unit of other lodging. Requires the bin or container to be in the same area as trash receptacles, be visible and easily accessible, and be clearly marked;

b) Source separate recyclable materials, organic waste, and other solid waste;

c) Subscribe to a recycling service that includes collection and recycling of the recyclable materials, and subscribe to either an organic recycling service or recycle the organic waste on site; and,

d) Maintain records of its operations to comply with the waste handling requirements for three years.

16) Establishes penalties for violations of the waste management requirements of civil penalties up to $500 for each day a violation occurs. Authorizes the Attorney General, district attorney, county counsel, or city attorney to bring an action under this provision.

17) Specifies that if the bill contains costs mandated by the state, reimbursement shall be made pursuant to Part 7 of Title 2 of the Government Code.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**:

> Major coastal resorts—each of which, as defined in AB 1590, hosts tens of thousands of guests a year and has a substantial land use footprint, including a golf course—can have significant environmental impacts on our sensitive coasts, including potential impacts to wildlife, ecosystems, and water quality.
>
> There are concerns that, to the extent major coastal resorts discharge stormwater to the ocean or beach, they lack sufficient ongoing monitoring to ensure nearby water quality is not being degraded. Major coastal resorts are likely to employ large volumes of pesticides and fertilizers, but such usage generally is not publicly disclosed, and there are concerns that some resorts lack requirements to apply up-to-date pest management strategies. There are also concerns that some major coastal resorts engage in high-volume use of single-use plastics and other unsustainable materials, which may not always be properly recycled, and that the fugitive release of these plastic materials can impact proximate coastal resources.

2) **California Coastal Commission**. California Coastal Commission was established in 1972 by Proposition 20 to make land use decisions in the coastal zone, while additional planning occurred. In 1976, the Legislature passed the Coastal Act (Act), which codified the Commission and granted it with broad authority to regulate coastal development. The Act guides how the land along the coast of California is developed, or protected from development. The Act emphasizes the importance public access the coast, and the preservation of sensitive coastal and marine habitat and biodiversity. Development is limited to preserve open space and coastal agricultural lands. The Act calls for orderly, balanced development, consistent with state coastal priorities and taking into account the rights of property owners.

   The coastal zone extends three miles seaward, including offshore islands. The inland boundary varies depending on land uses and habitat values, but generally extends inland 1,000 yards from the mean high tide line of the sea, but is wider in areas with significant estuarine, habitat, and recreational values, and narrower in developed urban areas.

   The Commission's enforcement authority was expanded by SB 433 (Allen), Chapter 643, Statutes of 2021, to authorize the Commission to issue administrative civil penalties for all violations of the Act. Penalties for violations range from $500 per day to $15,000 per day,

depending on the type and severity of the violation. While the Commission has expanded enforcement authority, it is facing a significant backlog of violations. As of last September, the backlog was around 3,000 cases. The 2022-23 Budget included $5 million to help the Commission address the backlog, and additional enforcement actions are taking place.

3) **Pesticides**. Pesticide use in California is controlled by federal, state, and local governmental entities. The United States Environmental Protection Agency sets minimum pesticide use standards and delegates pesticide enforcement regulatory authority to the states. State law designates DPR as the agency responsible for delivering an effective statewide pesticide regulatory program in California. The Legislature has also delegated local pesticide use enforcement to County Agricultural Commissioners (CACs). DPR works in partnership with the CACs by planning and developing adequate county programs; evaluating the effectiveness of the local programs; and, ensuring that corrective actions are taken in areas needing improvement. CACs enforce state pesticide laws and regulations in agricultural, structural, and nonagricultural use settings in all 58 counties.

4) **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.

   AB 1162 (Kalra), Chapter 687, Statutes of 2019, prohibits lodging establishments from distributing personal care products to guests in small plastic bottles. The bill's requirements are phasing in, applying to lodging establishments with more than 50 rooms on January 1 of this year, and expanding to include smaller lodging establishments beginning January 1, 2024.

5) **This bill**. This bill establishes a broad range of environmental requirements and review for resorts. The author states that this bill applies to six resorts in California: the Terranea Resort in Rancho Palos Verdes, the Paradise Point Resort and Spa in San Diego, the Park Hyatt Aviara Resort, Golf Club and Spa, the Hyatt Regency Newport Beach, the Ritz Carlton Bacara in Santa Barbara, and the Waldorf Astoria Monarch Beach in Dana Point. According to the sponsor, Unite Here Local 11, there are environmental conditions and mitigation

measures for resorts in their coastal development permits and CEQA documents, but there is a need for coordinated and focused oversight to ensure compliance with those requirements.

This bill requires a biannual audit, conducted by a contract auditor selected from a list of approved auditors developed by the Commission, of whether or not the resorts are complying with coastal development permits, certified local coastal program permit conditions, mitigation measures and reporting or monitoring programs required by CEQA, and specified waste reduction and recycling requirements. Additionally, this bill establishes new requirements for new and renewed coastal development permits, including a plan for complying with conditions or mitigation measures regarding biological resources, monitoring of stormwater discharges, permit verifications, and turf, landscape, and pest management plans. This bill also establishes whistleblower protections for resort employees who participate in enforcement actions or disclose information regarding a potential violation or noncompliance by the resort.

Additionally, this bill prohibits resorts from distributing beverages in plastic bottles, coffee pods, plastic straws, plastic bags, and EPS products to guests and requires recycling receptacles to be located in guest rooms. The bill requires resorts to source separate and recycle recyclable materials and organic waste.

The sponsors indicate that this bill is intended to address environmental violations like those described in the report, *How Green is Terranea? Examining Terranea Resort's Record on the Environment*. According to the report, Terranea's operations have resulted in negative impacts to wildlife; significant pesticide use, including those that are toxic to aquatic life; the disposal of recyclable materials with solid waste; and, impacts to water quality, including high fecal coliform levels. This bill is intended to identify issues such as those listed above so enforcement actions can be taken and prevent future violations.

6) **Suggested amendments**. The committee may wish to amend the bill to:

   a) Clarify that the prohibition on pesticides applies to those defined by the bill and nonorganic fertilizers.

   b) Allow pesticides, except rodenticides, to be used for incidental and limited use for building maintenance purposes if there are no reasonable alternatives.

   c) Clarify that the recycling and organic waste service requirements are consistent with the existing requirements established by AB 1826 and AB 341.

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

REGISTERED SUPPORT / OPPOSITION:

Support

Unite Here Local 11

Opposition

American Chemistry Council
California Hotel & Lodging Association
California Manufacturers & Technology Association
CropLife America
Household and Commercial Products Association
Plastics Industry Association
Responsible Industry for A Sound Environment - Rise
Western Plant Health Association

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