

Vice-Chair
Flora, Heath

Members
Friedman, Laura
Garcia, Cristina
Mathis, Devon J.
McCarty, Kevin
Muratsuchi, Al
Seyarto, Kelly
Stone, Mark
Wood, Jim

California State Assembly

NATURAL RESOURCES



LUZ RIVAS
CHAIR

AGENDA

Monday, April 18, 2022
2:30 p.m. -- State Capitol, Room 447

Chief Consultant
Lawrence Lingbloom

Principal Consultant
Elizabeth MacMillan

Senior Consultant
Paige Brokaw

Committee Secretary
Martha Gutierrez

BILLS HEARD IN FILE ORDER

**** = Bills Proposed for Consent**

- | | | | |
|-----|--------------------|---------------------------|--|
| 1. | AB 2878 | Aguiar-Curry | Forest Biomass Waste Utilization Program. |
| 2. | AB 2566 | Calderon | Urban forestry: school greening projects. |
| 3. | AB 2445 | Gallagher | California Environmental Quality Act: affordable housing: judicial review: bonds. |
| 4. | AB 2144 | Eduardo Garcia | Greenhouse Gas Reduction Fund: community projects: funding. (Pulled by Author) |
| 5. | AB 2601 | Eduardo Garcia | Waste discharge permits: landfills: Mexico border. |
| 6. | AB 2350 | Grayson | Vehicular air pollution: Zero-Emission Aftermarket Conversion Project. |
| 7. | **AB 2722 | Grayson | Greenhouse gases: work-from-home option. |
| 8. | **AB 2779 | Irwin | Beverage containers: wine and distilled spirits. |
| 9. | AB 2447 | Quirk | Oil and gas wastewater: unlined ponds: prohibition. |
| 10. | AB 2613 | Robert Rivas | Farmers and ranchers: solid waste cleanup: grants. |
| 11. | AB 2910 | Santiago | Nonvehicular air pollution: civil penalties. |
| 12. | AB 1897 | Wicks | Nonvehicular air pollution control: refineries: penalties. |
| 13. | **AB 2101 | Flora | California Carbon Sequestration and Climate Resiliency Project Registry: whole orchard recycling projects. |
| 14. | **AB 2672 | Flora | Fire prevention: defensible space inspections: statewide defensible space and home hardening platform. |
| 15. | AB 2140 | Muratsuchi | Once-through cooling policy: powerplants. |
| 16. | AB 2377 | Muratsuchi | Department of Forestry and Fire Protection: Chief of Wildfire Prevention. |
| 17. | AB 2479 | Wood | Forest restoration and protection: wildfire prevention. |
| 18. | **AB 2965 | Natural Resources | California Environmental Quality Act: administrative and judicial procedures. |
| 19. | **AB 2966 | Natural Resources | Conservation easements: forest lands: California Conservation Corps. |

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 2878 (Aguiar-Curry) – As Amended March 24, 2022

SUBJECT: Forest Biomass Waste Utilization Program

SUMMARY: Increases the use of forest waste biomass for energy generation and wood products manufacturing.

EXISTING LAW:

- 1) Establishes in the California Natural Resources Agency (NRA) the Department of Forestry and Fire Protection (CAL FIRE), and requires CAL FIRE to be responsible for, among other things, fire protection and prevention, as provided.
- 2) Establishes the State Board of Forestry and Fire Protection in CAL FIRE to represent the state's interest in the acquisition and management of state forests and requires the board to maintain an adequate forest policy.
- 3) Establishes, pursuant to Executive Order No. B-52-18, a Forest Management Task Force, now known as the Wildfire and Forest Resilience Task Force, involving specified state agencies to create the action plan for wildfire and forest resilience. The executive order also established a Joint Institute for Wood Products Innovation.
- 4) Provides the Public Utilities Commission (CPUC) with regulatory authority over public utilities, including electrical corporations.
- 5) Requires the CPUC to establish a renewable portfolio standard (RPS) requiring all retail sellers, defined as including electrical corporations, community choice aggregators, and electric service providers, to procure a minimum quantity of electricity products from eligible renewable energy resources, as defined, so that the total kilowatt hours of those products sold to their retail end-use customers achieves 44% of retail sales by December 31, 2024, 52% by December 31, 2027, and 60% by December 31, 2030.
- 6) Designates, under the California Global Warming Solutions Act of 2006, the State Air Resources Board (ARB) as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases (GHGs). Requires the ARB to adopt a statewide GHG emissions limit and to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective GHG reductions.
- 7) Requires ARB, in consultation with CAL FIRE, to develop a report on or before December 31, 2020, and every 5 years thereafter, that assesses GHGs associated with wildfire and forest management activities. Requires ARB to prepare, adopt, and update an inventory of GHGs from all sources located in the state.
- 8) Establishes, pursuant to the Warren-Alquist State Energy Resources Conservation and Development Act, the State Energy Resources Conservation and Development Commission

(CEC). Requires the CEC, in consultation with specified state and federal agencies and at least every 2 years, to conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery and distribution, demand, and prices.

THIS BILL:

- 1) Requires, as part of the 2025 update to the report that assesses GHGs associated with wildfire and forest management activities, ARB to include both of the following:
 - a) An inventory of short-lived climate pollutants associated with wildfire, controlled burns, and pile and burn of forest biomass waste.
 - b) An assessment of anthropogenic black carbon emissions associated with wildfire, controlled burns, and pile and burn to further the goals.
- 2) Requires ARB to incorporate the recommendations from the most recent “California Forest Carbon Plan: Managing our Forest Landscapes in a Changing Climate” into the Scoping Plan.
- 3) Requires ARB to include the GHG and short-lived climate pollutants inventories in any updates to the inventory after January 1, 2023.
- 4) For purposes of this bill, defines the following terms:
 - a) “California Forest Carbon Plan” as the “California Forest Carbon Plan: Managing our Forest Landscapes in a Changing Climate” issued by the Forest Climate Action team in May 2018.
 - b) “Forest Biomass Waste Utilization Plan” as the “Joint Institute Recommendations to Expand Wood and Biomass Utilization in California” report issued by ARB’s Joint Institute for Wood Products Innovation in November 2020.
 - c) “Forest biomass waste” as forest biomass that is removed for wildfire mitigation, to reduce the risks to public safety or infrastructure from falling trees, creation of defensible space, or for forest restoration projects.
 - d) “Forest Climate Action Team” as the team established as part of the 2014 update to the Scoping Plan, pursuant to Section 38561 of the Health and Safety Code.
 - e) “Program” as the Forest Biomass Waste Utilization Program.
 - f) “Wildfire and Forest Resilience Action Plan” as the “California Wildfire and Forest Resilience Action Plan” issued by the Governor’s Forest Management Task Force in January 2021.
- 5) Establishes the Forest Biomass Waste Utilization Program in the ARB’s Joint Institute for Wood Products Innovation. Requires the program to do all of the following:
 - a) Develop an implementation plan, in coordination with the Wildfire and Forest Resilience Task Force, Office of Planning and Research, the Governor’s Office of Business and Economic Development, Department of Conservation, CEC, and the CPUC, to meet the goals and recommendations of the Forest Biomass Waste Utilization Plan and the comprehensive wood utilization strategy and market framework required by the Wildfire and Forest Resilience Action Plan. Requires the implementation plan to do both of the following:

- i) Identify funding needs, gaps in research and demonstration, necessary regulatory changes, and other needs; and,
 - ii) Include a state procurement plan for energy, wood products, biochar, and other uses of forest biomass waste.
 - b) Develop, in collaboration with governmental, nonprofit, and for-profit entities that have expertise in workforce development, including, but not limited to, the California Workforce Development Board, a workforce training program that will complement the workforce needs associated with implementation of the biomass utilization program.
- 6) Requires, beginning January 1, 2024, and on or before every January 1 thereafter, ARB in coordination with the Wildfire and Forest Resilience Task Force, to prepare and submit an annual report to the Legislature on the progress made on implementing the implementation plan. Requires the report to be submitted in compliance with Section 9795 of the Government Code.
- 7) Requires the NRA to do all of the following:
- a) Facilitate the inclusion of recommendations for forest biomass waste utilization in relevant state climate adaptation plans, including, but not limited to, recommendations for biomass energy to increase energy reliability and community resilience.
 - b) In coordination with the California Environmental Protection Agency, the Forest Climate Action Team, and the Wildfire and Forest Resilience Task Force, prepare and publish an update on or before July 1, 2024, and at least once every five years thereafter, of both of the following plans:
 - i) The California Forest Carbon Plan. The update to the California Forest Carbon Plan shall include an inventory of black carbon and other climate pollutants emitted by wildfires, controlled burns, and pile and burn of forest waste to further the goals of Section 39730.5 of the Health and Safety Code.
 - ii) The Wildfire and Forest Resilience Action Plan.
- 8) Requires the CEC to consider funding qualifying projects pursuant to the Clean Transportation Program that use forest biomass waste for advanced biofuel technology development including, but not limited to, projects that use noncombustion conversion technologies for electrical vehicle charging or hydrogen vehicle fueling.
- 9) Requires the CPUC to do all of the following:
- a) On or before an unspecified date, adopt measures to facilitate the use of forest biomass waste to support rural microgrids and provide other grid support;
 - b) On or before an unspecified date, develop and adopt a plan requiring substations and other power infrastructure to be upgraded in forested regions to reduce the risk of causing wildfires and to support integration of biomass power;

- c) In coordination with the ARB and Office of Environmental Health Hazard Assessment, on or before an unspecified date, adopt pipeline biogas standards for biomethane generated from the noncombustion thermal conversion of forest biomass waste, and periodically update those standards;
 - d) Provide incentives for electricity and pipeline interconnection for projects that use forest biomass waste removed for wildfire mitigation or forest restoration projects;
 - e) Extend the end date of the Bioenergy Market Adjusting Tariff (BioMAT) program; and,
 - f) In coordination with NRA, increase the megawatt requirement for distributed generation projects that use forest biomass waste in the BioMAT program.
- 10) Requires, as part of the 2023 edition of the integrated energy policy report, and as part of each integrated energy policy report adopted biennially thereafter, the CPUC to include an assessment of the potential for forest biomass waste energy to provide firm renewable power.
- 11) Provides that no reimbursement is required by this bill pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

FISCAL EFFECT: Unknown.

COMMENTS:

1) Author's statement.

California's forests cover nearly one-third of the state and provide enormous benefits for the climate, the environment, and the economy. Our forests are, however, increasingly vulnerable to wildfire, invasive species, drought, and other threats. AB 2878 will address the need to remove forest biomass waste to reduce wildfires and create healthier forests by prioritizing state agency use of and focus on the processing of biomass waste into bioenergy and other wood products.

- 2) **Biomass.** California covers about 100 million acres and approximately 40% of the state is forest. National Forest System lands, managed by the US Forest Service, cover in excess of 18 million acres (approximately 58% of the forestland). Forest operations such as logging, thinning, fuels reduction programs, and ecosystem restoration create a huge amount of woody biomass. Some of this is brought out of the forest for use, but as much as half of the biomass is left in the forest. When residues from mastication and slash from timber harvests are left scattered throughout the forest, they act as additional dry surface fuel and serve to increase intensity and severity if a wildfire burns through the area. Often woody biomass materials are piled and burned creating air pollution, such as black carbon, or left to decay, creating methane, which has a global warming potential 28 times more powerful than carbon dioxide over a 100-year time horizon.

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

SB 901 (Dodd, Chapter 626, Statutes of 2018) requires California to double forest fuel removal to reduce the risks of catastrophic wildfires. More recently, California entered an agreement with the United States Forest Service (USFS) to reduce forest fuels on 1 million acres per year. While some of that will be accomplished with prescribed fire, much of it will require mechanical thinning that will generate millions of tons of forest waste per year.

- 3) **Biomass markets.** Biomass piles reflect the severely underdeveloped forest biomass supply chain in California. One key obstacle to effectively using them is the cost of conversion, loading and transportation, since forested areas tend to be mountainous and remote. Additionally, a market for biomass can help pay for forest treatments or provide income for landowners. The main use of biomass today is as a fuel for California's existing biomass power plants. There are 23 operating biomass conversion facilities, which represent approximately 2.9% of the state's electrical generation capacity. These biomass plants use about five million BDT of biomass per year representing approximately 600 to 650 megawatts of capacity.

Wood products manufacturing and various biomass utilization pathways contribute to local and regional economies by creating jobs and generating revenue through forest management and restoration activities; commercial harvesting; product manufacturing and energy or fuels production and related support businesses; and, transportation and shipping.

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

The State of California is responsible for fire and resource protection on nearly 13.3 million acres of private and state-owned forested lands. The state owns about 1.1 million acres of these lands, and 12.2 million acres of lands are under private ownership. In the past several years, forest management has significantly expanded on these lands. CAL FIRE has increased its forest thinning and prescribed fire activities from about 30,000 acres in 2016 to more than 50,000 acres in 2020. Partners receiving state-funded grants treated more than 30,000 acres in 2020. Private landowners currently actively manage 250,000-300,000 acres through fuels reduction, mechanical thinning, and timber harvest projects.

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

- 5) **Air Resources Board.** Pursuant to the California Global Warming Solutions Act of 2006, ARB adopts and updates every 5 years a Scoping Plan for achieving the maximum technologically feasible and cost-effective reductions in covered GHGs. AB 2878 requires ARB to incorporate the recommendations from the most recent "California Forest Carbon

Plan: Managing our Forest Landscapes in a Changing Climate” into the Scoping Plan. The majority of the goals in the Forest Climate Plan have a target date of 2030 for full implementation, which is intended to align with 2030 interim targets that were established in the Scoping Plan. Those goals include significantly increasing the pace and scale of forest and watershed improvements on nonfederal forest lands through incentives and other mechanisms meaningful difference at a landscape scale; supporting federal goals and actions to improve forest and watershed health and resiliency; preventing forest land conversions through easements and acquisitions, as well as land use planning; innovative solutions for wood products and biomass utilization to support ongoing forest management activities; and, supporting and enhancing the carbon sequestration potential and related benefits of urban forests.

In its Short Lived Climate Pollutant Reduction Strategy, the ARB acknowledges that the only practical way to rapidly reduce the impacts of climate change is to immediately reduce emissions of short-lived climate pollutants, which include black carbon and methane among others. Short-lived climate pollutants have atmospheric lifetimes on the order of a few days to a few decades, and their relative climate forcing impacts, when measured in terms of how they heat the atmosphere, can be tens, hundreds, or even thousands of times greater than that of carbon. Black carbon is emitted from burning fuels such as biomass, as well as from various forms of non-fuel biomass combustion (destruction of excess woody wastes, wildfires, etc.). Black carbon contributes to climate change both directly by absorbing sunlight and indirectly by depositing on snow and by interacting with clouds and affecting cloud formation. AB 2878 requires ARB to include in its 2025 report update that assesses GHGs associated with wildfire and forest management activities an inventory of short-lived climate pollutants associated with wildfire, controlled burns, and pile and burn of forest biomass waste and an assessment of anthropogenic black carbon emissions associated with wildfire, controlled burns, and pile and burn.

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

On November 14, 2020, the Joint Institute for Wood Products Innovation and the Board of Forestry released a set of recommendations to promote biomass utilization in California. This bill establishes the Forest Biomass Waste Utilization Program under the administration of the Board of Forestry’s Joint Institute for Wood Products Innovation to meet the goals and recommendations of the Forest Biomass Waste Utilization Plan and the comprehensive wood utilization strategy and market framework required by the Wildfire and Forest Resilience Action Plan. More specifically, the bill would require this effort to identify funding needs, gaps in research and demonstration, necessary regulatory changes, and other needs; include a state procurement plan for energy, wood products, biochar, and other uses of forest biomass waste; and, develop a workforce training program that will complement the workforce needs associated with implementation of the biomass utilization program. AB 2878 codifies recommendations in the state’s Forest Biomass Utilization Plan to convert more of that forest waste to beneficial end uses such as bioenergy and finished wood products.

The bill requires, beginning January 1, 2024, and annually thereafter, ARB in coordination with the Wildfire and Forest Resilience Task Force, to prepare and submit an annual report to the Legislature on the progress made on implementing the implementation plan.

- 7) **Natural Resources Agency.** SB 859 (Committee on Budget and Fiscal Review, Chapter 368, Statutes of 2016) directed NRA to establish a working group on expanding wood product markets to utilize woody biomass, especially biomass removed from high hazard zones identified through the state's Tree Mortality Task Force. That task force issued a report that outlines actions, policies and pilot programs to increase demand for California forest products and expand knowledge and skills needed to develop and manufacture them. Since then, the task force has evolved into the Wildfire Prevention and Forest Resiliency Task Force, which has released a strategic plan to treat forests with prescribed burning, fuel load reduction, and other efforts to sustain healthy forest management and prevent fire.

AB 2878 requires the NRA to do all of the following facilitate the inclusion of recommendations for forest biomass waste utilization in relevant, state climate adaptation plans, including, but not limited to, recommendations for biomass energy to increase energy reliability and community resilience. It also requires NRA, in coordination with specified state entities, to prepare and publish an update on or before July 1, 2024, and at least once every five years thereafter, of the California Forest Carbon Plan, and the Wildfire and Forest Resilience Action Plan.

- 8) **Energy Commission.** This bill would require the CEC to consider funding qualifying projects pursuant to the Clean Transportation Program that use forest biomass waste for advanced biofuel technology development including, but not limited to, projects that use noncombustion conversion technologies for electrical vehicle charging or hydrogen vehicle fueling.

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

Combining biomethane and natural gas technology is an effective way of supporting the state's clean air and climate change goals. Use of biomethane to fuel natural gas trucks with certain emissions-reducing technologies can reduce criteria pollutant and GHGs to levels near those of zero-emission battery electric vehicles and hydrogen fuel cell electric vehicles.

According to the CEC, biomethane can reduce GHGs by 30-70%, on average, and up to 125% compared to petroleum-based fuels. Biomethane can be used in the rapidly expanding fleet of medium-duty and heavy-duty natural gas trucks, particularly in the sectors of refuse collection, public transit, and the transport of goods over short distances at the state's port.

- 9) **Public Utilities Commission.** AB 2878 requires the CPUC to adopt measures to facilitate the use of forest biomass waste to support rural microgrids and provide other grid support; develop and adopt a plan requiring substations and other power infrastructure to be upgraded in forested regions to reduce the risk of causing wildfires and to support integration of

biomass power; adopt pipeline biogas standards for biomethane generated; provide incentives for electricity and pipeline interconnection for projects that use forest biomass waste removed for wildfire mitigation or forest restoration projects; among other things.

SB 901 amended the CPUC's Bioenergy Renewable Auction Mechanism (BioRAM) program to add program flexibility and extend certain contracts by five years. In January 2019, the CPUC ordered the independently owned utilities (IOUs) to amend their BioRAM contracts to expand the eligible fuel stock that can be classified as High Hazard Zones (HHZ) fuel, offer BioRAM sellers a monthly opt-out and reporting option for annual fuel use requirements, and ordered the IOUs to seek to extend eligible BioRAM and other biomass contracts by five years.

In the CPUC's November 2020 RPS Annual Report, it reported that the issue of forest health and its impact on wildfire vulnerability intersects with the RPS programs of BioMAT and BioRAM. To ensure that these programs effectively address the state's policy goals, CPUC staff work with stakeholders and state agencies to address program costs and barriers to HHZ woody biomass procurement. The CPUC participates in regular, ongoing forums that address the State's emergency status due to high fire threat regions exacerbated by drought conditions since 2012. In 2020, the CPUC participated in a cross-agency effort to identify strategies that consider the role of bioenergy and align across agencies on woody biomass utilization in the context of state goals, including climate change, air quality, and affordability.

- 10) **Double referral.** If this bill is approved by the Assembly Natural Resources Committee, it will be referred to the Assembly Utilities and Energy Committee, which will further analyze the sections of this bill related to the CEC and CPUC as they are germane to that committee's jurisdiction.
- 11) **Committee amendments.** To address the gaps in the bill, the Committee may wish to amend the bill as follows:
 - a) Move Section 4140.3 from the Public Resources Code to Public Utilities Code;
 - b) Establish the timeframes in Section 4140.3;
 - c) Change the requirement to increase megawatts in the forest BioMAT program (section 4140.3(e)(2)) to a requirement to consider, in coordination with NRA, increasing the megawatt requirement;
 - d) Delete Sec. 4140(a)(1)(b) to require a procurement plan for biomass waste; and,
 - e) Other technical, cleanup changes.

REGISTERED SUPPORT / OPPOSITION:

Support

Bioenergy Association of California
California Biomass Energy Alliance

Earth Foundries, INC.
Ganrock
Golden State Natural Gas Systems
H Cycle LLC
Humboldt and Mendocino Redwood Company LLC
Marin Wildfire Prevention Authority
Microgrid Resources Coalition
Mote, INC.
Northstar Community Services District
Placer County Air Pollution Control District
Rural County Representatives of California (sponsor)
Sierra Business Council
The Watershed Research and Training Center
TSS Consultants
Wisewood Energy
Yosemite Clean Energy

Opposition

None on file.

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

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 2566 (Calderon) – As Amended April 4, 2022

SUBJECT: Urban forestry: school greening projects

SUMMARY: Requires the Secretary of the Natural Resources Agency (NRA) and the Department of Forestry and Fire Protection (CAL FIRE) to develop a grant program for eligible cities, counties, districts, and nonprofit organizations for school greening projects.

EXISTING LAW:

- 1) Establishes the California Urban Forestry Act of 1978 (Act) and states that the purpose the Act is, in part, to:
 - a) Promote the use of urban forests to increase integrated projects with multiple benefits in urban communities, including expanding urban forest canopy, increasing carbon sequestration, reducing energy use, reducing the urban heat island effect, improved local water capture and efficient use of water for urban forest maintenance, and climate adaptation;
 - b) Stop the decline of urban forest resources, facilitate tree planting in urban communities, and improve the quality of the environment in urban areas;
 - c) Facilitate the creation of permanent jobs in tree maintenance and related urban forestry activities in neighborhood, local, and regional areas to enable workforce training for young adults in disadvantaged communities; and,
 - d) Assist the Department of Food and Agriculture to prevent the introduction and spread of known and potentially damaging or devastating invasive pests and diseases.
- 2) Requires CAL FIRE to establish local or regional targets for urban tree canopy, with emphasis on disadvantaged communities that tend to be most vulnerable to the urban heat island effect.
- 3) Authorizes the director of CAL FIRE to provide grants to fund 25 to 90% of the costs for urban forestry projects.
- 4) Authorizes the Secretary to manage and award financial assistance for the preparation and implementation of green infrastructure projects that reduce greenhouse gas (GHG) emissions and provide multiple benefits to specified entities for projects that include multiple benefits.
- 5) Establishes the Instructional School Gardens Program, administered by the Department of Education, for the promotion, creation, and support of instructional school gardens through the allocation of grants, and through technical assistance provided, to school districts, charter schools, or county offices of education.
- 6) Requires the California Environmental Protection Agency to identify disadvantaged communities for investment opportunities. Requires these communities to be identified

based on geographic, socioeconomic, public health, and environmental hazard criteria, and may include, but are not limited to, either of the following:

- a) Areas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation.
 - b) Areas with concentrations of people that are of low income, high unemployment, low levels of homeownership, high rent burden, sensitive populations, or low levels of educational attainment.
- 7) Establishes the Administrative Procedure Act (APA), which establishes rulemaking procedures and standards for state agencies. APA requirements ensure that the public has a meaningful opportunity to participate in the adoption of state regulations and to ensure that regulations are clear, necessary, and legally valid.

THIS BILL:

- 1) Defines terms used in the bill, including:
 - a) “Eligible project” as any project or action eligible for funding under CAL FIRE’s urban forest grant program or the NRA’s green infrastructure financial assistance program that can feasibly be completed on the schoolsite of a public school.
 - b) “In-need education facility” as a public school located in an area within or outside a disadvantaged or low-income community in which not less than 70% of the student body is composed of students that either:
 - i) Reside in a disadvantaged or low-income community or a community of concern; or,
 - ii) Are eligible for free or reduced-price meals, foster youth, or pupils of limited English proficiency, as specified.
 - c) “School greening” as any eligible project located within the property boundaries of a public school that is located within or outside a disadvantaged or low-income community, or within an in-need education facility that reduces the ambient temperature by supporting the urban forest.
- 2) Requires that funds allocated to CAL FIRE for the explicit purposes of supporting school greening to be administered, in collaboration with the Secretary, to provide grants to eligible cities, counties, districts, and nonprofit organizations through a competitive grant process.
- 3) Requires, on or before July 1, 2023, the Secretary and CAL FIRE to develop the competitive grant process, including guidelines and selection criteria. Exempts the development from the APA.
- 4) Requires the Secretary and CAL FIRE to separately hold at least one public hearing to gather public input on the grant process development.
- 5) Establishes the School Greening and Resiliency Fund (Fund) and specifies that any moneys appropriated by the Legislature for the bill’s purposes shall be transferred to the Fund.

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's statement:

California continues to experience record-breaking temperatures, with escalating heat waves occurring more frequently. Extreme heat particularly impacts low-income communities and people of color who already suffer from a lack of tree canopy or park space and higher exposure to pollution. Children who attend schools in urban areas that are built with heat-retaining materials and without green space are at greater risk of suffering from skin cancer, asthma, and obesity. AB 2566 establishes school greening grants for K-12 public schools located in disadvantaged or low-income communities. This program will transform schools paved by asphalt into green landscapes, which will reduce heat-island effects and benefit overall student health.

- 2) Urban Forestry.** An urban forest is comprised of trees and other vegetation in and around our communities, including the trees in our yards and along residential streets, in parking lots and along commercial thoroughfares, on school grounds and in parks and open spaces. Trees provide energy conservation, reduce urban heat island effects, reduce storm-water runoff, improve local air quality, support public and mental health benefits, provide wildlife habitat, and increase property values. Trees are critical to the quality of life in our urban environments. Climate change, pollution, drought, arboreal disease, and other factors strain our urban forests. Extreme weather and emerging tree pests such as the Polyphagous Shot Hole Borer and Kuroshio Shot Hole Borer threaten the gains California has made in increasing the urban canopy. Investments in maintaining and protecting our current urban forests and developing new urban forests can help combat those threats and further the state's goals for urban forestry.
- 3) The California Urban Forestry Act of 1978.** CAL FIRE's urban forest grant program, pursuant to the California Urban Forestry Act, works to optimize the benefits of trees and related vegetation. CAL FIRE has seven Regional Urban Foresters throughout the state to provide expert urban forestry support to communities, non-profit groups, and municipal governments to create and maintain sustainable urban forests. These specialists also administer and provide technical support for grants that are offered for activities such as tree planting, municipal tree inventories and management plans, urban forest educational efforts, and innovative urban forestry projects. California currently has an estimated 1,256 square miles of urban forest canopy. Under the program, CAL FIRE also provides urban forestry grants to help communities to advance their urban forestry efforts. Eligible applicants for the urban forestry grants include cities, counties and qualifying districts, including school, park, recreation, water, and local taxing districts. Projects are prioritized if they are located within disadvantaged communities. The Governor's proposed budget includes \$20 million in Fiscal Year (FY) 2022/23 and \$10 million for FY 2023/24 for the program.
- 4) Extreme heat.** Average temperatures have increased since 1895, with the fastest relative increase beginning in the 1980s. Every decade since 1980 has been warmer than the previous decade. The seven warmest years on record have all occurred after 2015, and the top three are 2016, 2019, and 2020. Southern California, in particular, was hit with a series of heat waves in August and September 2020, breaking records. Emergency room visits climbed to

10 times their normal numbers.

The 2021 Climate Adaptation Strategy includes an Extreme Heat Action Plan (Plan), which includes “strategic and comprehensive” state actions that can be taken to address extreme heat, including:

- Cooling schools in heat-vulnerable communities and support climate smart planning;
- Accelerating heat readiness and protection of low-income households and expanding tree canopy in communities most impacted by extreme heat;
- Protecting vulnerable populations through increased heat risk-reduction strategies and codes, standards, and regulations;

The state adopted a \$15 billion climate package in 2021 to combat the climate crisis, including \$800 million over three years to address the impacts of extreme heat and \$300 million over two years to support the implementation of the Plan. Programs to address the impacts of extreme heat include urban greening, energy assistance for low-income families, community resilience centers, and low-income weatherization. The Governor’s proposed 2022-23 budget includes approximately \$175 million in second year of investments for extreme heat programs.

- 5) **Greener schools.** The majority of the state’s urban schools are covered in hard surfaces, particularly in neighborhoods that already suffering from park scarcity. Play spaces are covered in asphalt and concrete, which contribute to the urban heat island effect. Green space, such as grass, trees, and shrubs, which have been shown to cool is linked to improved child development outcomes. In addition to reducing heat, spending time in green spaces has been shown to improve student’s academic achievement, improve concentration, and reduce stress. Greenery near schools has also been shown to improve air quality.
- 6) **This bill.** This bill is intended to provide funding to support school greening projects that benefit public schools that are located “within or outside” a disadvantaged or low-income community or within an in-need education facility.
- 7) **Double referral.** This bill has also been referred to the Assembly Education Committee.
- 8) **Suggested amendments.** In order to comply with legislative timelines and to ensure that the Education Committee has time to hear the bill, the author has agreed to adopt amendments, including amendments proposed by this committee, in that committee. The amendments:
 - a) Clarify the definitions of “eligible project,” “in-need education facility,” “disadvantaged or low-income community,” local educational agency,” school greening,” and “student accessible area.”
 - b) Clarify that local educational agencies and special districts are eligible for grant funding.
 - c) Require that not less than 60% of the school greening projects funded by a grant be located in student-accessible areas.
 - d) Specify criteria for the guidelines adopted by CAL FIRE.

- e) Clarify that the guidelines, rather than the “development of the competitive grant process” are exempt from the APA.
- f) Make related technical and clarifying changes.

9) **Previous legislation.**

AB 1578 (L. Rivas, 2019) would have established the School Pavement to Parks Grant Program within the Department of Education to assist schools located in disadvantaged communities to convert existing pavement to green space. This bill was vetoed by the Governor, who stated “while I support an integrated and cohesive effort to make parks and greenspaces accessible to all throughout our State, and to that end signed Assembly Bill 209, I cannot support the creation of these stand-alone grant programs.”

AB 209 (Limón), Chapter 675, Statutes of 2019, established the Outdoor Equity Grants Program, which provides funding to allow underserved and at-risk populations to participate in outdoor environmental education experiences at state parks and other public lands.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 2445 (Gallagher) – As Amended April 5, 2022

SUBJECT: California Environmental Quality Act: affordable housing: judicial review: bonds

SUMMARY: Authorizes the court to require a person seeking judicial review of the decision of a lead agency made pursuant to the California Environmental Quality Act (CEQA) to carry out or approve an affordable housing project to post a bond to cover the costs and damages to the affordable housing project incurred by the respondent or real party in interest.

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 (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA guidelines, and many affordable housing projects are exempt from CEQA or not subject to CEQA by virtue of other statutes that make them approvable by right.).
- 2) Authorizes judicial review of CEQA actions taken by public agencies, following the agency's decision to carry out or approve the project. Challenges alleging improper determination that a project may have a significant effect on the environment, or alleging an EIR doesn't comply with CEQA, must be filed in the Superior Court within 30 days of filing of the notice of approval. The courts are required to give CEQA actions preference over all other civil actions.
- 3) Authorizes the defendant, in any litigation pending in any court of this state, to move the court for an order requiring the plaintiff to furnish security to cover reasonable expenses, including attorney's fees, or for an order dismissing the litigation. The motion for an order requiring the plaintiff to furnish security shall be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that he or she will prevail in the litigation against the moving defendant. (Code of Civil Procedure Section 391.1)
- 4) Authorizes the defendant, in a civil action, including an action brought pursuant to CEQA, brought by a plaintiff challenging a low- or moderate-income housing project, and which action has the effect of preventing or delaying the project, to apply to the court for an order requiring the plaintiff to furnish an undertaking as security for costs and damages that may be incurred by the defendant. (Code of Civil Procedure Section 529.2)

THIS BILL authorizes the court to require a person seeking judicial review of the decision of a lead agency made pursuant to CEQA to carry out or approve an affordable housing project to post a bond to cover the costs and damages to the affordable housing project incurred by the respondent or real party in interest.

FISCAL EFFECT: Non-fiscal

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. 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.

CEQA is enforced through judicial review. CEQA actions taken by public agencies can be challenged in Superior Court once the agency approves or determines to carry out the project. CEQA appeals are subject to unusually short statutes of limitations. Under current law, court challenges of CEQA decisions generally must be filed within 30 to 35 days, depending on the type of decision. The courts are required to give CEQA actions preference over all other civil actions. The petitioner must request a hearing within 90 days of filing the petition and, generally, briefing must be completed within 90 days of the request for hearing. There is no deadline specified for the court to render a decision.

- 2) **Author's statement:**

AB 2445 seeks a creative approach to address barriers to building housing in California. By requiring bond to be posted for a CEQA lawsuit, someone that uses the law simply to prevent housing from being built will now have to pay for the damages caused in delaying a project.

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

REGISTERED SUPPORT / OPPOSITION:**Support (prior version)**

Bay Area Council
California Apartment Association
California Building Industry Association
California Chamber of Commerce
California Hispanic Chamber of Commerce
Circulate San Diego
Habitat for Humanity California
Rural County Representatives of California
San Francisco Bay Area Planning and Research Association
Sand Hill Property Company
South Pasadena Residents for Responsible Growth

Southern California Rental Housing Association
Sv@home Action Fund
The Two Hundred

Opposition (prior version)

State Building & Construction Trades Council of California

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

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 2601 (Eduardo Garcia) – As Amended March 24, 2022

SUBJECT: Waste discharge permits: landfills: Mexico border

SUMMARY: Prohibits a Regional Water Quality Control Board (Regional Water Board) from issuing a waste discharge permit for a new landfill, or a lateral expansion of an existing landfill if the land is located within three miles of the United States' border with Mexico. Additionally, prohibits a Regional Water Board from granting a variance for a new landfill or lateral expansion of an existing landfill located within three miles of the United States' border with Mexico.

EXISTING LAW:

- 1) Establishes the Integrated Waste Management Act (IWMA), which:
 - a) Prohibits the disposal of solid waste except at a permitted solid waste facility. Establishes the process for obtaining a solid waste facilities permit, which must be approved by a solid waste local enforcement agency and the Department of Resources Recycling and Recovery (CalRecycle).
 - b) Requires a revised solid waste facilities permit for any changes in the design or operation of a solid waste facility.
 - c) Prohibits a Regional Water Board from issuing a waste discharge permit for a new landfill, or a lateral expansion of an existing landfill, that is used for the disposal of nonhazardous solid waste if the land has been primarily used at any time for the mining or excavation of gravel or sand.
- 2) Establishes the federal Clean Water Act (CWA) to regulate discharges of pollutants into the waters of the United States and to regulate quality standards for surface waters.
- 3) Establishes the National Pollutant Discharge Elimination System (NPDES) permit program requiring the State Water Resources Control Board (State Water Board) and the nine Regional Water Boards to prescribe waste discharge requirements which, among other things, regulate the discharge of pollutants in stormwater, including municipal stormwater systems.
- 4) Prohibits, pursuant to the Porter-Cologne Water Quality Control Act, the discharge of pollutants to surface waters unless the discharger obtains a permit from the State Water Board or a Regional Water Board. Delegates to Regional Water Boards the ability to adopt water quality standards within their jurisdiction. Establishes water quality assessment requirements for solid waste landfills.

FISCAL EFFECT: Unknown

COMMENTS:**1) Author's statement:**

AB 2601 is a necessary environmental justice bill to protect public health and border communities who already suffer from increased emissions from Mexico and other air quality impacts, as well as contaminated waterways. The bill will ensure that there will be no new, or lateral expansions of existing, landfills and this will ensure we are not [exacerbating] impacts to our constituents' health within already vulnerable communities.

- 2) Federal Clean Water Act.** The federal CWA regulates discharges of pollutants into the waters of the United States and quality standards for surface waters. Under the CWA, the United States Environmental Protection Agency (US EPA) has implemented pollution control programs, including setting wastewater standards for industrial facilities, as well as setting water quality standards for all contaminants in surface waters. The CWA prohibits discharges of any pollutant from a point source into navigable waters without a permit. Industrial, municipal, and other facilities must obtain a permit under the NPDES in order to discharge into surface water.

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

- 3) Border Affairs.** The California-Mexico border region has long-standing interconnection and interdependence. The California-Mexico Border Relations Council (Council) is the central organizing body that coordinates cross-border programs, initiatives, and partnerships. The Secretary for Environmental Protection is the chair of the Council; it also includes the Health and Human Services Agency, the Natural Resources Agency, the State Transportation Agency, the California Department of Food and Agriculture, the Governor's Office of Business and Economic Development, and the US EPA. The Border Regional Solid Waste Working Group operates under the Council and works to coordinate efforts to remediate waste tires, solid waste, and excessive sediment that threatens water quality and public health in the border region.

The Border Affairs Program (Program) within the California Environmental Protection Agency (CalEPA) is a collaborative effort to address environmental issues and coordinate efforts with other state agencies, Tribal Nations in the border region, and federal, state, and local governments in the US and Mexico. The Program works to improve air quality at the border and serves an advisory role to the Imperial County-Mexicali Air Quality Work Plan. The Program also works to address water quality issues that arise from transboundary flows of waste, sedimentation, and polluted water.

- 4) The East Otay Mesa Recycling Collection Center and Landfill.** In 2011, there was a proposal submitted for a class III (nonhazardous) solid waste landfill occupying

approximately 340 acres. The proposed project would have been located in the unincorporated area of south San Diego County, approximately two miles east of the Siempre Viva Road exit from Interstate 905, one-quarter mile from Loop Road/Paseo De La Fuente and east of planned State Route 11. The proposed project site would be located approximately one and one-half miles from the City of San Diego, two and one-half miles from the City of Chula Vista, and one-quarter mile from the United States/Mexico border. On June 8, 2010, a county-wide initiative, Proposition A, amended the county's general plan to allow for the construction and operation of this landfill on this site. According to the website of the County of San Diego Department of Health and Quality, there were two environmental documents submitted (an Initial Study and a Notice of Preparation) on September 12, 2011. However, there have been no additional environmental documents posted since 2011. This bill would prohibit the Regional Water Board from issuing a waste discharge permit for the proposed East Otay Mesa landfill or any other new or expanded solid waste disposal facility that might be proposed in this area in the future.

- 5) **Pollution burden.** In order to address the cumulative effects of pollution burden and socioeconomic factors, and to identify which communities might be in need of particular policy, investment, or programmatic interventions, the Office of Environmental Health Hazard Assessment (OEHHA) maintains the CalEnviroScreen tool on behalf of CalEPA. The tool applies a framework, developed by OEHHA in 2010, for assessing cumulative impacts. According to OEHHA cumulative impacts refer to exposures and public health or environmental effects from all sources of pollution in a geographic area. Cumulative impacts also take into account groups of people that are especially sensitive to the effects of pollution and socioeconomic factors. The CalEnviroScreen tool's framework is based in large part on input from a statewide working group on environmental justice that pointed out the unmet need to assess cumulative burdens and vulnerabilities affecting California communities. The tool uses thirteen pollution burden indicator and eight population characteristics in order to calculate a score. According to CalEnviroScreen 4.0, Otay Mesa has a score of 90-100%, which is the most polluted percentile. Citing a solid waste landfill in this area would increase the pollution burden on the community.
- 6) **Double referral.** This bill was passed by the Environmental Safety and Toxic Materials Committee with a vote of 6-2 on April 5th.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 2350 (Grayson) – As Amended March 21, 2022

SUBJECT: Vehicular air pollution: Zero-Emission Aftermarket Conversion Project

SUMMARY: Requires the Air Resources Board (ARB) to establish a rebate program, funded by up to \$2 million from the Clean Vehicle Rebate Project (CVRP), for conversion of a gasoline- or diesel-powered light-duty vehicle (motorcycles, cars and light-duty trucks) to a zero-emission vehicle (ZEV).

EXISTING LAW:

- 1) Establishes the California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007 [AB 118 (Nunez), Chapter 750, Statutes of 2007]. AB 118 is funded through temporary increases in vehicle registration fees (\$3), smog abatement fees (\$8), boat registration fees (\$10/20), and special identification plate fees (\$5). Collection of these fees is authorized until 2024 pursuant to AB 8 (Perea), Chapter 401, Statutes of 2013. The fees support the Air Quality Improvement Program (AQIP), administered by ARB in consultation with local air districts, to fund projects that reduce criteria air pollutants, improve air quality, and provide research for alternative fuels and vehicles, vessels, and equipment technologies. The two primary programs adopted by ARB pursuant to AQIP are the CVRP and the Hybrid and Zero Emissions Truck and Bus Voucher Incentive Program (HVIP).
- 2) Establishes the Greenhouse Gas Reduction Fund (GGRF) and requires all moneys, except for fines and penalties, collected by ARB from the auction or sale of allowances pursuant to a market-based compliance mechanism (i.e., the cap-and-trade program adopted by ARB under AB 32) to be deposited in the GGRF and available for appropriation by the Legislature. CVRP has been funded by appropriations from the GGRF.
- 3) Defines “zero-emission vehicle” as a vehicle that produces no emissions of criteria pollutants, toxic air contaminants, and GHGs when stationary or operating, as determined by ARB.
- 4) Defines “emissions-related motor vehicle part” as any direct replacement automotive part or any automotive part certified by ARB executive order that may affect emissions from a motor vehicle, including replacement parts, consolidated parts, rebuilt parts, remanufactured parts, add-on parts, modified parts, and specialty parts.

THIS BILL:

- 1) Requires ARB to establish the Zero-Emission Aftermarket Conversion Project (ZACP) and allocate up to \$2 million annually from the CVRP to provide an applicant with a rebate for the purchase of an eligible vehicle that has been converted into a ZEV or for the purchase and installation of emissions-related motor vehicle parts necessary to convert an eligible vehicle into a ZEV.

- 2) Requires ARB to shall develop guidelines for the program, define qualifying conversion-types for used vehicles, define eligible replacement motors, power systems, and parts, and establish minimum eligibility criteria for an applicant to be eligible for the rebate.
- 3) Permits a new vehicle frame to be installed on an eligible vehicle so long as it is installed to accommodate a ZEV conversion.
- 4) Limits rebates to one per vehicle and a value of up to \$2,000.
- 5) Requires at least 25% of the rebates issued to those eligible for the Clean Cars 4 All program.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Background.** Transitioning California's transportation system away from gasoline to ZEVs is a fundamental part of the state's efforts to reduce GHG emissions and help meet the state's goals to reduce GHG emissions 40% below 1990 levels by 2030. Governor Newsom's Executive Order (EO) N-79-20, dated September 23, 2020, establishes the goal that 100% of in-state sales of new passenger cars and trucks will be zero-emission by 2035. The EO further requires that 100% of medium- and heavy-duty vehicles be zero-emission by 2045 for all operations where feasible and by 2035 for drayage trucks.

One strategy the state has used to increase the sales of ZEVs is to provide consumer incentives such as rebates through CVRP, Clean Cars 4 All Program (CC4A), and HVIP. These incentives have mainly been funded from the GGRF. Roughly half of the passenger ZEVs sold in California have received incentives from these programs. Through January 2022, CVRP has provided rebates for over 450,000 vehicles totaling about \$1.04 billion since the project's launch in 2010. Since March 2016, over 30,000 increased rebates have been issued to low-income consumers totaling over \$128 million. About 65% of rebates issued went to battery electric vehicles (BEVs), 32% to plug-in hybrids (PHEVs), and about 2% to fuel cell electric vehicles (FCEVs) and zero-emission motorcycles (ZEMs).

According to Kelley Blue Book, the average cost of a new ZEV is \$56,437, approximately \$10,000 more than the cost of a new internal combustion engine (ICE) vehicle. Even with the monies available from the above mentioned incentive programs, this cost is prohibitive for many Californians. A number of large automotive manufacturers, including Ford and Chevrolet, have released electric crate motors, which when installed properly, can convert a conventional ICE vehicle into a ZEV. Ford's Eluminator Mach E Electric Motor costs approximately \$4,000. The engine, however, is not the only component that must be replaced to convert an ICE vehicle to a ZEV. The Ford Eluminator Mach Electric Motor specifies that it does not include a traction inverter, control system or battery. Of these additional components, the battery carries the largest financial investment.

- 2) **Author's statement:**

The transportation sector is responsible for nearly 40% of California's GHG emissions, more than any other single sector. Within this sector, light-duty vehicles are responsible for 70% of carbon emissions. Tackling passenger vehicle emissions is integral to meeting the state's ambitious GHG reduction goals.

However, many Californians still cite cost as a key barrier to obtaining a new ZEV. Additionally, the ZEV industry is relatively young, and there are few second-hand ZEVs available on the market for consumers in search of a more affordable option. To meet California consumers' demand for more affordable clean transportation options, the state needs new and creative ways to make ZEV ownership more accessible

Consumers and the car industry have developed increasing interest in the after-market conversion of gasoline-powered vehicles into hydrogen or electric ZEVs. AB 2350 will create the Zero-Emission Aftermarket Conversion Project (ZACP) to provide consumer rebates for the conversion of gasoline- and diesel-powered cars to ZEVs. This will help the state meet its ambitious climate goals by providing California consumers with one more pathway towards ownership of a climate-friendly vehicle.

- 3) **Bill should be clarified and aligned with CVRP eligibility to assure it targets more affordable cars that will produce clean air benefits in California.** *The author and the committee may wish to consider* adopting the following amendments:

- a) Require eligible ZEVs to be registered in California and have a range of at least 100 miles.
- b) Offer rebates only for finished ZEV conversions, not parts or kits.
- c) Require total vehicle costs (i.e., DMV valuation of original car, plus conversion cost) to be at or below the CVRP MSRP caps.
- d) Specify that the CVRP income caps apply.
- e) Require ARB, in setting rebate levels, to find that ZEV-conversion rebates are cost-effective compared to CVRP rebates for new ZEVs.

- 4) **Double referral.** This bill was approved by the Transportation Committee on March 28, 2022 by a vote of 14-0.

REGISTERED SUPPORT / OPPOSITION:

Support

Specialty Equipment Market Association (sponsor)
Electric GT

Opposition

None on file

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

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 2722 (Grayson) – As Amended April 6, 2022

SUBJECT: Greenhouse gases: work-from-home option

SUMMARY: Requires the Air Resources Board (ARB) to research and make recommendations relating to the greenhouse gas (GHG) emissions reductions associated with work-from-home (WFH) options offered by employers in the state.

EXISTING LAW:

- 1) Requires, pursuant to the California Global Warming Solutions Act [AB 32 (Núñez), Chapter 488, Statutes of 2006], ARB to adopt a statewide GHG emissions limit equivalent to 1990 levels by 2020 and to adopt rules and regulations to achieve maximum technologically feasible and cost-effective GHG emission reductions.
- 2) Requires ARB to ensure that statewide GHG emissions are reduced to at least 40% below the 1990 level by 2030.
- 3) Requires ARB to prepare and approve a scoping plan, on or before January 1, 2009, and at least once every five years thereafter, for achieving the maximum technologically feasible and cost-effective reductions in GHG emissions from sources or categories of sources of GHGs.

THIS BILL:

- 1) Requires ARB, upon appropriation by the Legislature and through a research contract, to assess the GHG emissions resulting from WFH options offered by employers in the state.
- 2) Requires that the research compare the emissions reductions from employees working from home to the reduction in the state's overall GHG emissions for the same year.
- 3) To quantify emissions associated with WFH options, requires the research to include:
 - a) Direct and indirect GHG emissions from all transportation;
 - b) The energy consumption of office buildings and home offices;
 - c) Internet and communication technologies used for WFH options; and,
 - d) Changes in long-term consumer choices on home or work location and vehicle purchases.
- 4) Requires the research to be disaggregated by sociodemographic characteristics, including income, gender, race, and ethnicity.
- 5) Requires ARB to make the following recommendations, based on the research:

- a) How employees and employers can estimate the GHG emissions impacts of WFH options;
 - b) A methodology to estimate emission impacts at the regional scale, including data sources and guidance for monitoring and tracking WFH implementation; and,
 - c) How the benefits of WFH options can be promoted equitably.
- 6) Prohibits the research and recommendations from containing projections or goals for GHG emissions reductions.
- 7) Requires ARB to post the research on its website no later than four years after an appropriation has been made for purposes of the bill.

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's statement:

California is a global leader in the clean energy transition, having met its 2020 economy-wide target of reducing [GHG] emissions below 1990 levels four years ahead of schedule. California's transportation sector accounts for about 50% of the state's greenhouse gas emissions. In order to effectively assess whether WFH will help California meet its ambitious emissions goals, AB 2722 will provide state and local policymakers with data that assists in the development of land use and incentive policies. Data that quantifies actual reduction in GHG emissions resulting from work-from-home options offered by employers of the state can create new pathways to further reduction in GHG emissions.

- 2) **Background.** In March 2020, millions of employees, including California state employees, abruptly transitioned to remote work due to the Covid-19 pandemic. While some employees have returned to the office, many employers have embraced WFH models, whether fully remote or a hybrid option. According to the Becker Friedman Institute for Economics at the University of Chicago, 37% of jobs in the US can be performed entirely at home. This transition to WFH resulted in immediate reductions in GHG emissions associated with commuting and office buildings. For example, Shopify reports that its emissions dropped 29% in 2020, when its nearly 6,000 employees were remote. The US Energy Information Administration reports that in 2020, energy-related GHG emissions fell 11% overall and transportation sector emissions dropped 15%. These emissions reductions seem to indicate that WFH is better for the climate than returning to the office. However, the reduced transportation emissions may be offset by the potential for increased emissions associated with increased residential energy use.
- 3) **This bill.** There is little information available regarding the climate impacts of WFH policies. This bill requires ARB to assess the GHG emissions impacts of WFH policies in the state, which can be used by California companies and public agencies make decisions about requiring employees to return to the office or continue to offer WFH options.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 2779 (Irwin) – As Introduced February 18, 2022

SUBJECT: Beverage containers: wine and distilled spirits

SUMMARY: Adds wine and distilled spirit coolers sold in aluminum beverage containers to the California Beverage Container Recycling and Litter Reduction Act (Bottle Bill).

EXISTING LAW establishes the Bottle Bill, which:

- 1) Requires beverage containers, as defined, sold in-state to have a California redemption value (CRV) of 5 cents for containers that hold fewer than 24 ounces and 10 cents for containers that hold 24 ounces or more. Requires beverage distributors to pay a redemption payment to the Department of Resources Recycling and Recovery (CalRecycle) for every beverage container sold in the state.
- 2) Provides that these funds are continuously appropriated to CalRecycle for, among other things, the payment of refund values and processing payments.
- 3) Requires CalRecycle to establish a processing payment for a beverage container covered under the Bottle Bill that has a scrap value less than the cost of recycling, to be determined as specified, that is at least equal to the difference between the scrap value of the material and the sum of the cost of recycling and a reasonable financial return.
- 4) Defines “beverage” as:
 - a) Beer and other malt beverages;
 - b) Wine and distilled spirit coolers;
 - c) Carbonated water;
 - d) Noncarbonated water;
 - e) Carbonated soft drinks;
 - f) Noncarbonated soft drinks and sports drinks;
 - g) Noncarbonated fruit juice drinks that contain any percentage of fruit juice;
 - h) Coffee and tea drinks;
 - i) Carbonated fruit drinks; and,
 - j) Vegetable juice in beverage containers of 16 ounces or less.
- 5) Specifies that “beverage” does not include:
 - a) Any product sold in a container that is not aluminum, glass, plastic, or bimetal, as specified;
 - b) Wine and wine from which the alcohol has been removed, in whole or in part;
 - c) Milk, medical food, and infant formula; and,
 - d) 100% fruit juice sold in containers that are 46 ounces or more in volume.

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

THIS BILL:

- 1) Adds wine and wine from which the alcohol has been removed, in whole or in part, whether or not sparkling or carbonated, and distilled spirits sold in an aluminum beverage container to the definition of “beverage.”
- 2) Specifies that “beverage” does not include wine and wine from which the alcohol has been removed, in whole or in part, whether or not sparkling or carbonated, and distilled spirits sold in a container that is not an aluminum beverage container.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author’s statement:**

Californians can find pre-mixed canned cocktails and canned wine in virtually every grocery store across our state on the same shelves as beer, soda, and hard seltzers. They look identical to these other CRV eligible products; yet do not require a deposit, creating consumer confusion and barriers to recycling. AB 2779 would add these products to California’s Bottle Bill, a sensible expansion to ensure all aluminum beverage cans are recycled in California.

- 2) **Bottle Bill.** The Bottle Bill was established in 1986 to be a self-funded program that encourages consumers to recycle beverage containers and to prevent littering. The program accomplishes this goal by requiring consumers to pay a deposit for each eligible container purchased. Then the program guarantees consumers repayment of that deposit, the CRV, for each eligible container returned to a certified recycler. Statute includes two main goals for the program: (1) reducing litter; and, (2) achieving a recycling rate of 80% for eligible containers. Containers recycled through the Bottle Bill’s certified recycling centers also provides a consistent, clean, uncontaminated, and valuable stream of recycled materials with minimal processing.
- 3) **Eligible beverage containers.** Only certain containers containing certain beverages are part of the CRV program. Most containers made from glass, plastic, aluminum, and bimetal (consisting of one or more metals) are included. Containers for wine, spirits, milk, fruit juices over 46 ounces, vegetable juice over 16 ounces, and soy drinks are not part of the program. Container types that are not included in the CRV program include cartons and pouches.
- 4) **Growth in aluminum.** There has been a significant increase in the packaging and sale of wine and spirits in aluminum cans in recent years. This is partially due to the rise of alcohol consumption at home and consumers’ desire to purchase ready-to-drink cocktails. The International Wines and Spirits Record (IWSR) found the premixed cocktail category grew by 50% in the United States in 2019 and 2020. Similarly, the NielsenIQ Beverage Alcohol

Practice states that canned wine sales increased from 0.7% of wine sales in March 2020 to 1.2% this past summer. The overall category of ready-to-drink alcoholic beverages, which includes cocktails, hard kombuchas, and flavored alcoholic beverages, documented an 80% growth rate between April 2019 and April 2020. Although these beverages take up a small percentage of total alcohol sales, their growth is expected to continue.

Currently, the Bottle Bill includes wine and spirit products with less than 7% alcohol, excluding many of the newer ready-to-drink cans even though they are indistinguishable from Bottle Bill containers. This creates confusion for consumers and recycling centers when processing redemptions, and creates additional barriers to reclaiming and recycling these containers. Other Bottle Bill states are beginning to address these challenges; earlier this year Oregon adopted a bill to include wine in cans in their Bottle Bill program.

- 5) **This bill.** AB 2779 adds wine and distilled spirits packaged in aluminum cans to the Bottle Bill. This modest expansion would alleviate consumer confusion, streamline current recycling of aluminum cans, and incentivize the recycling of a growing segment of aluminum beverage cans.

REGISTERED SUPPORT / OPPOSITION:

Support

Anheuser-Busch Companies
California Association of Local Conservation Corps
Californians Against Waste
Container Recycling Institute
RecycleSmart
Republic Services - Western Region

Opposition

None on file.

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

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 2447 (Quirk) – As Amended April 7, 2022

SUBJECT: Oil and gas wastewater: unlined ponds: prohibition

SUMMARY: Prohibits the disposal of produced wastewater into unlined ponds and the construction of new unlined ponds.

EXISTING LAW:

- 1) Establishes the Geologic Energy Management Division in the Department of Conservation under the direction of the State Oil and Gas Supervisor, who is required to supervise the drilling, operation, maintenance, and abandonment of oil and gas wells.
- 2) Requires the owner of any well to file a monthly statement with the supervisor that provides certain information relating to the well, including the source, volume, treatment, and disposition of water produced in oil and gas activities.
- 3) Pursuant to Governor Gavin Newsom's direction, requires the State Air Resources Board (ARB) to evaluate how to phase out oil extraction by 2045 through the Climate Change scoping plan, the state's comprehensive, multi-year regulatory and programmatic plan to achieve required reductions in greenhouse gas emissions.
- 4) Establishes the State Water Resources Control Board (State Water Board) and the California regional water quality control boards (regional water boards), pursuant to the Porter-Cologne Water Quality Control Act, as the principal state agencies with authority over matters relating to water quality, including prescribing waste discharge requirements for the discharge of waste that could affect the quality of the waters of the state.
- 5) Requires persons discharging waste to file a report of the discharge with the appropriate regional water board and the discharge is subject to waste discharge requirements prescribed by that regional board.
- 6) Establishes the Sustainable Groundwater Management Act to, among other things, require groundwater sustainability planning for each medium- or high-priority basin, and requires that plan to include control of saline water intrusion, wellhead protection areas and recharge areas, migration of contaminated groundwater, a well abandonment and well destruction program, and replenishment of groundwater extractions, among other things.

THIS BILL:

- 1) Defines the following terms:
 - a) "Produced wastewater" as water, or water and other fluids, from underground formations that is brought to the surface as a result of any phase of crude oil, condensate, or natural gas extraction, including following a well stimulation treatment or during oil and gas production.

- b) “Unlined pond” as any pond, open pit, sump, shallow well, or other soil excavation serving as an unlined percolation receptacle for collecting or storing, or both, water and fluids attendant to oil and gas field operations.
- 2) Prohibits, notwithstanding any law or regulation, beginning January 1, 2023, the disposal of produced wastewater into unlined ponds and the construction of new unlined ponds, except pursuant to a valid permit or other authorization lawfully issued before that date and in compliance with the requirements for that permit or authorization.
 - 3) Provides, notwithstanding any law or regulation, beginning January 1, 2023, a permit or other authorization for the disposal of produced wastewater into unlined ponds or for the construction of new unlined ponds shall not be issued, and a then-existing permit or other authorization for those purposes shall not be renewed. Voids any permit or other authorization issued to the operator of a well after January 1, 2023, for the disposal of produced wastewater into an unlined pond or for the construction of a new unlined pond. Exempts the discharge of produced water into unlined ponds from this bill if the following conditions are met:
 - a) The stored discharge does not exceed the water quality objectives by the water quality control plan of the regional water quality control board or the stored discharge is treated or blended so that it does not exceed those water quality standards;
 - b) The discharge is permitted by the State Water Board or a regional water board; and,
 - c) The produced wastewater is put to a beneficial use including, but not limited to, groundwater recharge. Provides that a beneficial use does not include use for extraction of oil and gas.
 - 4) Requires the prohibitions in this bill to be implemented, as appropriate, by the State Water Board, the Department of Toxic Substances Control (DTSC), ARB, local air districts and regional water boards, and any other public agency or entity having pertinent jurisdiction.
 - 5) Requires, on or before January 1, 2025, the public agencies or entities described above to adopt amendments, as needed, to their rules and regulations for consistency with this bill.
 - 6) Prohibits, starting January 1, 2025, all disposal of produced water into unlined ponds and the construction of new unlined ponds. produced wastewater into an unlined pond or for the construction of a new unlined pond. Exempts the discharge of produced water into unlined ponds from this bill if the following conditions are met:
 - a) The stored discharge does not exceed the water quality objectives by the water quality control plan of the regional water quality control board or the stored discharge is treated or blended so that it does not exceed those water quality standards;
 - b) The discharge is permitted by the State Water Board or a regional water board; and,
 - c) The produced wastewater is put to a beneficial use including, but not limited to, groundwater recharge. Provides that a beneficial use does not include use for extraction of oil and gas.
 - 7) Provides that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency

or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's statement.**

Each year, oil and gas operators in California discharge approximately two billion gallons of produced water (oil and gas wastewater) into unlined pits for disposal. Produced water can contain high levels of salts, boron, arsenic, and chemicals associated with oil and gas production. When produced water is disposed of in unlined pits, chemical contaminants are directly released into the environment. Known toxic air contaminants like BTEX (benzene, toluene, ethylbenzene, and xylene) compounds evaporate into the air while the salts and other chemicals percolate into the soil and, in some cases, into groundwater below. Studies have shown that disposing of produced water using unlined pits can negatively impact groundwater quality, which is critical for irrigation during droughts. There are alternative methods for disposal and California is the only major oil-producing state that still allows produced water disposal via unlined pits. AB 2447 bans the use of unlined pits for produced water disposal starting in 2025 to protect California's precious water resources and public health. This bill will not impact produced water that meets specified water quality standards and is permitted for most types of reuse.

- 2) **Oil production 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. Over the years, as California fields matured, operators have used water flooding, gas injection, thermal recovery, hydraulic fracturing, and other techniques to enhance oil and gas production. Most of the natural gas produced in the state is a co-product of oil production, which is known as "associated" gas production. Most of this production occurs in the San Joaquin Basin.

More than 70% of current annual oil production in California takes place in Kern County. Water is an important byproduct of oil extraction, and because California oil fields are mature and many contain heavy oil, they produce a greater proportion of water per barrel than most other U.S. producing regions (18 barrels of water for each barrel of oil in 2017 and increasing annually).

- 3) **Produced water.** Produced water is brought to the surface during oil and gas production activities, and it is composed of different constituents including oil and gas.

- 4) In 2017, the California oil and gas industry reportedly extracted more than 400,000 acre feet (AF) of water. This produced water is generally not suitable for direct domestic or agricultural use due to high levels of salt, boron, volatile organic compounds (VOC), and other constituents that are toxic to plants and exceed some drinking water standards. The salinity [reported as total dissolved solids (TDS)] is generally greater than 10,000 milligrams per liter (mg/L), or almost a third of the salt content of seawater. Therefore, operators must establish produced water disposal methods.

More than 96% of the produced water is generated in five of the State's ten geographically-defined oil basins, which are the San Joaquin, Los Angeles, Santa Barbara-Ventura, Santa Maria, and Monterey basins, and contain almost all active oil wells (about 135,000) in California.

- 5) **Produced water disposal options.** Produced water can be disposed of in either class II injection wells, produced water ponds, recycled and reused, or used for other beneficial purposes.

The most common disposal methods for produced water are subsurface injection, followed by produced water pond facilities. A produced water pond is used to store and/or dispose of produced water. Subsurface injection involves the pumping of produced water into U.S. EPA Class II injection wells for recycling in oil field operations, such as water flooding, or for disposal, where water is pumped into a designated saline aquifer.

Produced water can also be treated to certain standards for beneficial reuses, such as groundwater replenishment, injected back into the reservoir to maintain reservoir pressure or, if of low enough salinity, used in irrigation.

Of the volumes of produced water generated in an 18-month window over 2015-2017 in the five major sedimentary basins, approximately 82% was re-injected at the site where it was withdrawn, either for enhanced oil recovery or for disposal via permitted Class II disposal wells. The remainder was either reused or disposed of at an off-site location. One percent went to unlined ponds (more than 4,000 AF).

The energy costs associated with pumping for subsurface injection can be high, making disposal via produced water pond facilities more economic.

- 6) **Produced water ponds.** Produced water ponds can be lined or unlined. Lined ponds have a concrete or rubber tarp-like lining to inhibit percolation. Produced water ponds are permitted only when the regional water board determines that the discharge will not adversely impact water of current or potential future beneficial use.

Under current law (Water Code sec. 13374), regional water boards may issue waste discharge requirements (WDR) permits to regulate point discharge of fluids, including oil field production water ponds. All facilities covered by a WDR must meet water quality objectives set by the regional water board and are inspected regularly.

The State Water Board maintains an Oil and Gas Monitoring Program to assess potential impacts to groundwater associated with well stimulation (hydraulic fracturing) activities and activities associated with oilfield produced water which includes produced water ponds.

Under the program, the State Water Board is required to post a status report on the regulation of oil field produced water ponds within each region every 6 months.

For the most recent report (July –December 2018), there were 742 permitted ponds across the state and 487 unpermitted ponds, which had pending permits at the time of the report. Among those, 1,050 were unlined ponds, 1,037 of which were in the Central Valley.

- 7) **Unlined ponds.** Since the late 1900s, California law has allowed the oil and gas industry to dispose of produced water in unlined, earthen ponds and is one of the last states to allow this practice. These ponds are designed to dispose of water either through evaporation into the air or through percolation into the subsurface.

These produced water pond facilities can be a source of air pollutants, including greenhouse gases, VOCs, and toxic air contaminants. In October 2014, ARB funded a limited screening-level study at two facilities to gather information about the extent of emissions from produced water. Data from this study show that produced water pond facilities can be a significant source of BTEX emissions, especially in the San Joaquin Valley Air Basin. Over time, the produced water that doesn't evaporate percolates underground, raising the salinity of groundwater and contaminating local and regional groundwater resources.

Groundwater monitoring required by SB 4 (Pavley and Leno, Chapter 313, Statutes of 2014) and data on produced water required by SB 1281 (Pavley, Chapter 561, Statutes of 2014) have highlighted the impacts and potential impacts of using unlined pits for produced water disposal. Early reports focused on salinity (because it would indicate if produced water affected groundwater) found that produced water for unlined pits impacts water in aquifers that is suitable for beneficial use (e.g., irrigation). In some instances, the pits have plumes of produced water stretching over a mile from the site.

The researchers of an October 15, 2021 report, *Vulnerability of Groundwater Resources Underlying Unlined Produced Water Ponds*, found that the disposal of more than 16 billion barrels of oil and gas wastewater into unlined ponds over a 50-year period has introduced salts, carcinogens, and other toxins into regional aquifers. Groundwater monitoring at unlined produced water ponds is relatively sparse, but where monitoring has occurred, impacts to aquifers used for public land and agricultural water supply has been observed and has proven to be too expensive to remediate.

Approximately 99% of the state's ponds are located throughout the Tulare Basin. Of the 1,565 ponds (that includes active, inactive, and closed ponds) in the Tulare Basin used exclusively for produced water disposal, 484 are unlined and are still being used for the disposal of produced water. In some cases, underground plumes of contaminated water extend more than four kilometers from the ponds toward agricultural wells. The report concluded, "The San Joaquin Valley is one of the most agriculturally productive regions in the world and home to nearly 4 million residents. The disposal of produced water in unlined ponds endangers groundwater resources in a region that is already faced with historic drought and climate change."

The California Council on Science and Technology issued the independent report, *An Assessment of Oil and Gas Water Cycle Reporting in California*, and reported that about one billion gallons a year (3,100 AF) of wastewater from oil and gas extraction (a combination of

produced water and on-site wastewater generation) are discharged to 540 unlined produced water ponds located primarily in Kern County. Certain constituents in this water (TDS, soluble hydrocarbons) can reach groundwater in some cases. Therefore, this practice represents a direct discharge of produced water and other oilfield wastewaters to the surface and indirectly to groundwater that is in communication with the surface.

In some basins, unlined produced water ponds are located in areas with groundwater resources that are or could be used for municipal and agricultural use, and where contamination from produced water ponds may have occurred or has the potential to occur.

- 8) **State action to limit unlined ponds.** Under the existing regulatory framework, regional water boards have the authority to regulate discharges to unlined ponds and have been taking action to tighten restrictions on unlined ponds.

Regional water boards have to work site-by-site to assess impacts to water resources, issue cleanup and abatement orders, and cease and desist orders. With roughly 500 unlined pits actively accepting discharges and another 500 inactive (but not closed), these processes are labor intensive and slow. Further, these decisions are frequently prolonged by litigation. In the meantime, the discharges continue.

- 9) **This bill.** AB 2447 would phase out the use of unlined pits for produced water disposal. First, permitting of new WDRs would be halted effective January 1, 2023; then it would ban discharged produced water in unlined pits effective January 1, 2025.

CCST and the Lawrence Berkeley National Laboratory's 2015 report, *An Independent Scientific Assessment of Well Stimulation in California—Summary Report*, recommended to "Ensure safe disposal of produced water in percolation pits with appropriate testing and treatment or phase out this practice." In furtherance of that recommendation, the report stated, "If the presence of hazardous concentrations of chemicals cannot be ruled out, they should phase out the practice of discharging produced water into percolation pits."

Phasing out the use of unlined ponds will protect groundwater quality, prevent local air quality contamination, and save the State Water Board and regional water boards' staff time and resources used to regulate the impacts of these ponds.

- 10) **Arguments in support.** Clean Water action, amongst other public health and environmental organizations, state:

AB 2447 is needed now more than ever before. Given the current efforts to recharge our underwater basins, and with drought conditions becoming a fact of everyday life, the last thing our communities and our families need are toxic plumes from unlined wastewater ponds to contaminate the very water we are already struggling to sustain. Every day the wastewater ponds remain unlined is another day that fenceline communities remain under threat. We know that some of the pollutants in these ponds, such as BTEX and heavy metals, cause cancer and neurological disorders and continuing a practice that keeps adding to these threats is unacceptable.

Finally, the use of underground water resources that are of marginal quality will likely increase in the future due to long term drought conditions and community need -- rehabilitation of polluted groundwater will almost certainly increase in the future.

11) Arguments in opposition. The Western States Petroleum Association argues:

Presently, the Central Valley Regional Water Quality Control Board regulates discharge of produced water to unlined ponds and has established robust regulation for placement of produced water in surface ponds. The regulations include 3 levels – referred to as “Pond Orders” or “General Order 1, 2 and 3” – that reflect relative risk to groundwater from oilfield produced waters. They are evidence and circumstance-based regulations. Oil and gas producers have expended significant time and resources to comply with those orders. AB 2447 would effectively nullify that evidence-based regulatory construct over the 3-year phase in of the bill’s provisions with no evidence that those regulations are not or cannot work to protect groundwater ...

The economic harm potentially arising from AB 2447 is significant to California’s Central Valley due to the lack of viable management options for produced waters. In 2021, the existing use of unlined ponds resulted in the production of approximately 3 million barrels of oil. If unlined ponds were no longer an option for produced water management, a significant amount of that production could be lost, with the attendant loss of local wages and tax revenue. In places where produced water is used for irrigation, the loss of agricultural value also would be significant.

REGISTERED SUPPORT / OPPOSITION:

Support

350 Silicon Valley
Ascension Lutheran Church
California Coastkeeper Alliance
California Environmental Voters
California Nurses for Environmental Health and Justice
Central California Asthma Collaborative
Central California Environmental Justice Network
Clean Water Action
Climate Center
Community Water Center
Defenders of Wildlife
Dolores Huerta Foundation
Environment California
Environmental Working Group
Friends Committee on Legislation of California
Leadership Council for Justice and Accountability
Lutherans Restoring Creation
Martin Luther King Jr Freedom Center
Natural Resources Defense Council
Pueblo Unido CDC

Surfrider Foundation

Opposition

California Independent Petroleum Association

Western States Petroleum Association

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

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 2613 (Robert Rivas) – As Amended April 6, 2022

SUBJECT: Farmers and ranchers: solid waste cleanup: grants

SUMMARY: Establishes a pilot project within the Department of Resources Recycling and Recovery (CalRecycle) to provide grants to farmers and ranchers to clean up illegal solid waste disposal sites on farm and ranch property.

EXISTING LAW establishes the Farm and Ranch Solid Waste Cleanup and Abatement Grant Program (Program) within the Integrated Waste Management Act, which:

- 1) States legislative findings and declarations relating to the longstanding problem of the illegal disposal of solid waste and farm and ranch properties.
- 2) Requires CalRecycle to establish the Program to clean up and abate the effects of illegally disposed solid waste on farms and ranches.
- 3) Establishes the Farm and Ranch Solid Waste Cleanup and Abatement Account (Account) for purposes of the Program. Specifies that the Account be funded from the Integrated Waste Management Fund, the California Used Oil Recycling Fund, and the California Tire Recycling Management Fund. Limits the Account to \$1 million annually.
- 4) Specifies that grants up to \$200,000 per year be available to public entities and Native American tribes, but not to exceed \$50,000 for any single cleanup.
- 5) Requires a grant agreement between CalRecycle and the recipient to include:
 - a) Site-specific cleanup and removal of solid waste that is illegally disposed on farm or ranch property;
 - b) Comprehensive, ongoing enforcement programs for the cleanup and removal of solid waste that is illegally disposed of on farm or ranch property; and,
 - c) Waiver of tipping fees or other solid waste fees at permitted solid waste facilities for solid waste that is removed from the farm or ranch property.
- 6) Requires any fines or abatement orders issued against a farm or ranch owner by a local enforcement agency (LEA) or other local agency relating to the solid waste disposed on the farm or ranch property to be stayed upon the owner's written request, if the owner has submitted an application to a public agency or Native American tribe for a grant and the local agency decides that the property owner was not responsible for the illegal dumping or the owner has filed a written appeal to CalRecycle, as specified.
- 7) Prohibits a farm or ranch property from being eligible for the Program if the public entity or Native American tribe determines that the owner was responsible for the illegal disposal of solid waste.

- 8) Requires CalRecycle's annual report to include specified information regarding the Program.

THIS BILL:

- 1) Requires CalRecycle to establish a pilot program to provide grants to farmers and ranchers that:
 - a) Provides grants only to applicants who are farmers or ranchers; and,
 - b) Permits farmers and ranchers to apply directly for grants to cleanup and abate the effects of illegally disposed solid waste on farms and ranches.
- 2) Authorizes a grant recipient to use the funds to cleanup and abate a single sites or multiple projects on the same site. Authorizes a grant recipient to apply for funding to clean up and abate the same site in subsequent years if the applicant is using the funds to clean up and abate a new illegal dumping incident.
- 3) Requires a grant agreement between CalRecycle and the farmer or rancher to provide for:
 - a) A requirement for site-specific cleanup and removal of solid waste that is illegally disposed on farm or ranch property; and,
 - b) A total grant amount that covers the cost of any tipping fees or other solid waste fees at a permitted solid waste facility.
- 4) Specifies that moneys contributed to the grant program from the Integrated Waste Management Fund and the California Used Oil Fund shall not exceed \$1 million annually.
- 5) Specifies that any amount over \$1 million, as specified, be available for purposes of the pilot program, upon appropriation by the Legislature.
- 6) Authorizes CalRecycle to provide for the deposit of philanthropic and federal funding into the Account for purposes of the pilot program.
- 7) Sunsets the bill's provisions on January 1, 2028.

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's statement:

Illegal dumping of trash on farmlands, often called "rural dumping," is unfortunately a common occurrence in many rural communities across California. It poses a threat to food safety, farmers, ranchers, farmworkers, and public health at large. This can result in financial repercussions for farmers and ranchers due to the possibility of contamination and resultant crop loss and the possible loss of certification for organic farmers. Hardworking farmers, ranchers, and farmworkers provide critical services (especially during the pandemic) and require help from the state to address this issue.

AB 2613 will establish a pilot program within CalRecycle to aid farmers and ranchers by allowing them to apply directly for reimbursement from the state to clean-up illegally dumped solid waste on their property. Under current law, cleanup funding is routed through local governments, but AB 2613 will help determine the effectiveness of providing funding to farmers and ranchers directly.

- 2) **Farm and ranch grants.** The Program provides funding for the cleanup of illegal solid waste sites on farm or ranch property. Grants are limited to \$200,000 per year for each applicant, with a \$50,000 limit for each cleanup or abatement project. Farm or ranch property is property that is used for rangeland or agricultural activities such as, commercial livestock and crop production, horticulture, aquaculture, silviculture, floriculture, vermiculture, and viticulture. Farm or ranch property can be publicly or privately owned and does not need to be in active production, but must be zoned for agricultural activities. Grants are available to cities, counties, resource conservation districts, and federally recognized Native American tribes. Property owners seeking grant funding are required to work with an eligible public agency or Native American tribe to apply. The applying entity is responsible for ensuring that the illegal disposal was not caused by the property owner and implementing comprehensive and ongoing enforcement to prevent future dumping. CalRecycle provides contact information for eligible resource conservation districts and local agencies that are available to assist property owners who wish to apply for funding. Sites must meet the following criteria to be eligible for grant funding: unauthorized solid waste disposal has occurred on a farm or ranch property; the property is in need of cleanup to abate a nuisance or public health and safety threat and/or a threat to the environment; the owner is not responsible for the illegally disposed waste; and, the property is zoned or otherwise authorized for agricultural activities.
- 3) **This bill.** This bill creates a pilot program that allocates any funding above the \$1 million annually dedicated to the existing Program to grants directly to farmers and ranchers for the cleanup of illegal disposal sites on farm and ranch property. The sponsor of this bill, the California Farm Bureau, states that the current program is oversubscribed and that competition with public entities for limited funds leaves farmers and ranchers at a disadvantage. The sponsor also states that the \$50,000 cap per cleanup site is insufficient to cleanup many of the illegal dump piles that occur on farm and ranch property. This bill is intended to ensure that adequate funding is available for dedicated to actively managed farm and ranch property.
- 4) **Suggested amendments.** This bill would require CalRecycle to allocate grants directly to farmers and ranchers, rather than to a public agency (usually a resource conservation district). Under the existing program, the public agency is responsible for ensuring that the illegal disposal was not caused by the property owner and for implementing “comprehensive and ongoing” enforcement to prevent future dumping; however, this bill does not include these requirements. To ensure accountability, the *committee may wish to amend the bill* to require farmers and ranchers to apply through a local public agency or Native American tribe and comply with requirements comparable to the existing Program.

REGISTERED SUPPORT / OPPOSITION:

Support

Almond Alliance of California

Association of California Egg Farmers
CA Assn of Winegrape Growers
CA Cotton Ginners & Growers Association
California Association of Wheat Growers
California Bean Shippers Association
California Cattlemen's Association
California Farm Bureau Federation
California Fresh Fruit Association
California Grain & Feed Association
California Pear Growers
California Seed Association
California State Floral Association
Pacific Egg & Poultry Association
Western Agricultural Processors Association

Opposition

None on file.

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

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 2910 (Santiago) – As Amended March 24, 2022

SUBJECT: Nonvehicular air pollution: civil penalties

SUMMARY: Increases maximum civil penalties for air pollution violations, including tripling the lowest penalty caps for strict liability.

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.
- 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.
- 3) Authorizes the governing board or the hearing board of an air district, after notice and a hearing, to issue an order for abatement whenever it finds that any person is constructing or operating any article, machine, equipment, or other contrivance without a required permit, or is in violation of any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air.
- 4) 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.
- 5) 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.
 - b) Negligent: \$25,000 per day, or \$100,000 if the violation causes great bodily injury or death.
 - c) Knowing: \$40,000 per day, or \$250,000 if the violation causes great bodily injury or death.
 - d) Willful and intentional: \$75,000 per day.

- 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.
 - f) Intentional falsification of a required document: \$35,000.
- 6) Requires the maximum penalties in effect January 1, 2018 to increase annually based on the California Consumer Price Index.
 - 7) Specifies that the recovery of certain civil penalties precludes prosecution for the same offense.
 - 8) Requires that, in determining the amount of penalty assessed, that the extent of harm, nature and persistence of 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.

THIS BILL increases each of the existing maximum civil penalties as follows:

- 1) Strict liability: \$15,000 / 30,000 / 45,000 (200%).
- 2) Negligent: \$40,000 (60%) / 120,000 (20%).
- 3) Knowing: \$60,000 (50%) / 275,000 (10%).
- 4) Willful and intentional: \$95,000 (27%).
- 5) Willful, intentional, or reckless: \$140,000 (12%) / \$550,000 (10%) and \$275,000 (10%) / \$1,100,000 (10%).
- 6) Intentional falsification of a required document: \$50,000 (43%).

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.

2) **Author's statement:**

While some Californians wake up to the smell of fresh air or the ocean breeze, my constituents wake up to the harsh odors of flesh and carcass. For decades, many of my constituents and Southeast Los Angeles communities have had to deal with smells from rendering plants that are strong, rancid, and nauseating. These communities have voiced concerns of these harmful and bothersome odors from local rendering facilities and the South Coast Air Quality Management District (SCAQMD) has increased their efforts to address these issues from noncompliant rendering plants. Unfortunately, the current maximum civil penalties against facilities that violate air quality standards is only \$10,000 per day per violation, which is an inadequate deterrent. While significant to a small, family-run company, that sum has very little deterrent value to the prototypical large, well-funded corporate violator. Large facilities simply chalk it up as the cost of doing business and do not make meaningful changes. To ensure we do not further harm environmental justice communities and that we better enforce air pollution and air quality laws, AB 2910 will increase the maximum penalty amount for all facilities under SCAQMD's jurisdiction who violate air pollution laws.

3) **Not strictly about SCAQMD or strict liability.** Though the author and sponsor are focused on a subset of violations in SCAQMD that are typically prosecuted under the strict liability standard, this bill applies statewide and increases penalty caps for each classification, not just strict liability.

While it makes sense to maintain consistent penalty caps for all air districts, rather than create different standards for different districts, the modest increases to the non-strict liability penalty caps in this bill, in some cases only 10%, are probably not necessary in light of the inflation adjustment added by AB 617, the relatively high caps, and their limited use.

The author and the committee may wish to consider limiting this bill to the tripling of the strict liability penalty caps in Section 42402 of the Health and Safety Code. In addition, a conforming amendment to the inflation adjustment (Section 42111 of the Health and Safety Code) should be made to avoid confusion about the level of the penalty caps going forward.

4) **What are penalty funds used for?** Section 42405 of the Health and Safety Code 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 require penalty funds collected, above the costs of prosecution, be used to mitigate air pollution in the community or communities affected by the violation.

- 5) **Related legislation.** AB 1897 (Wicks), which is pending in this committee, increases the maximum civil penalty applicable to a refinery, as defined, for the initial date of an air pollution violation to \$30,000, or \$100,000 for a second violation within 12 months. AB1897 conflicts with AB 2910 because both bills amend Section 42402 of the Health and Safety Code, as well as subsequent penalty sections (42402.1, 42402.2 and 42402.3).
- 6) **Prior legislation.** AB 617 increased air district criminal and civil strict liability penalty limits from \$1,000 to \$5,000 per day, adjusting for inflation since the limits were enacted in 1975, and required both ARB and air district maximum penalties to be inflation-adjusted annually going forward.

SB 691 (Hancock, 2013) authorized a civil penalty of up to \$100,000 against a person who emits a discharge from a Title V source if the discharge results in a severe disruption to the community, the discharge contains one or more toxic air contaminants, and 100 or more people are exposed. SB 691 was held on the Assembly Floor without a vote.

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

REGISTERED SUPPORT / OPPOSITION:

Support

South Coast Air Quality Management District (sponsor)
Bay Area Air Quality Management District

Opposition

California Council for Environmental & Economic Balance (CCEEB)

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

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 1897 (Wicks) – As Amended April 7, 2022

SUBJECT: Nonvehicular air pollution control: refineries: penalties

SUMMARY: Increases the maximum civil penalty applicable to a refinery, as defined, for the initial date of an air pollution violation to \$30,000, or \$100,000 for a second violation within 12 months.

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.
- 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 (Section 41700 of the Health and Safety Code).
- 3) Authorizes the governing board or the hearing board of an air district, after notice and a hearing, to issue an order for abatement whenever it finds that any person is constructing or operating any article, machine, equipment, or other contrivance without a required permit, or is in violation of any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air.
- 4) 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.
- 5) 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.
 - b) Negligent: \$25,000 per day, or \$100,000 if the violation causes great bodily injury or death.
 - c) Knowing: \$40,000 per day, or \$250,000 if the violation causes great bodily injury or death.
 - d) Willful and intentional: \$75,000 per day.

- 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.
 - f) Intentional falsification of a required document: \$35,000.
- 6) Requires the maximum penalties in effect January 1, 2018 to increase annually based on the California Consumer Price Index.
 - 7) Specifies that the recovery of certain civil penalties precludes prosecution for the same offense.
 - 8) Requires that, in determining the amount of penalty assessed, that the extent of harm, nature and persistence of 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.
 - 9) 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 increases the maximum civil penalty applicable to a refinery for discharging air pollutants in violation of Section 41700, without regard to intent or injury, from \$10,000 per day to \$30,000 for the initial date of the violation, or \$100,000 for the initial date of a second violation within 12 months, subject to the following conditions:

- 1) The discharge is from a Title V source that is a refinery, defined 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.
- 2) The discharge results in a disruption to the community, including, but not limited to, residential displacement, shelter in place, evacuation, or destruction of property.
- 3) The discharge contains or includes one or more toxic air contaminants.
- 4) These higher civil penalties apply only to the initial date of a violation, unless the violation causes great bodily injury or death. Otherwise, any additional dates of violation are subject to existing civil penalties.
- 5) The higher civil penalties do not apply if the violation is caused by unforeseen and unforeseeable criminal acts, acts of war, acts of terrorism, or civil unrest.

- 6) Requires civil penalties collected pursuant to this bill to be expended in support of air quality programs, including, but not limited to, programs to research or mitigate the effects of air pollution in communities affected by the violation.

FISCAL EFFECT: Non-fiscal

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:**

Decline in overall compliance with air quality requirements and significant increases in flaring events have resulted in increased exposure in refinery communities to toxic air contaminants. AB 1897 raises the penalty ceiling for refineries for violations in which a discharge results in a severe disruption to the community. Penalties are a component in the regulatory framework to ensure that refinery facilities are deterred from taking

measures that delay or defer maintenance, and raising this penalty ceiling provides a disincentive for poor operation and overreliance on safety equipment.

- 3) **What are penalty funds used for?** Section 42405 of the Health and Safety Code 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.

This bill requires civil penalties collected pursuant to the bill to be expended in support of air quality programs, including, but not limited to, programs to research or mitigate the effects of air pollution in communities affected by the violation. This language is a nice gesture, but still gives a district broad discretion, as the use of funds is neither limited to mitigation nor the affected community.

The author and the committee may wish to consider amending the bill to require penalty funds collected, above the costs of prosecution, be used to mitigate air pollution in the community or communities affected by the violation.

- 4) **Related legislation.** AB 2910 (Santiago), which is pending in this committee, increases maximum civil penalties for air pollution violations, including tripling the lowest penalty caps for strict liability. AB 2910 conflicts with AB 1897 because both bills amend Section 42402 of the Health and Safety Code, as well as subsequent penalty sections (42402.1, 42402.2 and 42402.3).
- 5) **Prior legislation.** AB 617 increased air district criminal and civil strict liability penalty limits from \$1,000 to \$5,000 per day, adjusting for inflation since the limits were enacted in 1975, and required both ARB and air district maximum penalties to be inflation-adjusted annually going forward.

SB 691 (Hancock, 2013) authorized a civil penalty of up to \$100,000 against a person who emits a discharge from a Title V source if the discharge results in a severe disruption to the community, the discharge contains one or more toxic air contaminants, and 100 or more people are exposed. SB 691 was held on the Assembly Floor without a vote.

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

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Air Quality Management District (sponsor)
350 Bay Area Action
American Lung Association in California
Breathe California
Coalition for Clean Air
Contra Costa County
Environmental Justice League
South Coast Air Quality Management District

Opposition

California Council for Environmental & Economic Balance (CCEEB)
Western States Petroleum Association

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

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 2101 (Flora) – As Amended April 5, 2022

SUBJECT: California Carbon Sequestration and Climate Resiliency Project Registry: whole orchard recycling projects

SUMMARY: Adds “whole orchard recycling” (WOR), as defined, to the list of carbon sequestration projects that may be listed on the Carbon Sequestration and Climate Resilience Project Registry (Registry) established by SB 27 (Skinner), Chapter 237, Statutes of 2021.

EXISTING LAW, SB 27:

- 1) Requires the Natural Resources Agency, not later than July 1, 2023, to establish the Registry in order to maintain a list of eligible but unfunded projects, which then may be funded by public or private entities for voluntary mitigation of greenhouse gas (GHG) emissions.
- 2) Authorizes projects to include natural and working lands-based carbon sequestration projects and direct air capture projects.
- 3) Defines “natural and working lands-based carbon sequestration” as sustainable resource management practices, changes in land use, preservation of natural resources, fuel reduction or prescribed fire activities, and other practices that result in the long-term removal, capture, or sequestration of carbon dioxide from the atmosphere to slow or reverse atmospheric carbon dioxide pollution and to mitigate or reverse global warming.

THIS BILL:

- 1) Adds WOR to the list of carbon sequestration projects that may be listed on the Registry.
- 2) Defines WOR as the onsite grinding or chipping of whole trees during orchard removal, and incorporation of the ground or chipped biomass into the topsoil prior to replanting.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Background.** In the 2013 scoping plan update, ARB included sections on natural and working lands (NWLs) and agriculture and put forth recommended actions related to NWLs. The 2017 scoping plan update further emphasized the importance of NWLs, stating “California’s climate objective for NWLs is to maintain them as a carbon sink (i.e., net zero or negative GHG emissions) and, where appropriate, minimize the net GHG and black carbon emissions associated with management, biomass utilization, and wildfire events.” The plan also directed the state to quantify carbon impacts of climate intervention activities on NWLs and to identify potential regulatory mechanisms. It also proposed a GHG emission reduction goal of 15 million to 20 million metric tons by 2030. ARB has also produced an NWLs Inventory to quantify the existing state of ecosystem carbon stored in the state’s land base.

The 2017 scoping plan directed NRA, CDFA, CalEPA, and ARB to complete a NWLs Climate Change Implementation Plan to evaluate implementation scenarios and develop long-term sequestration goals. The plan aims to coordinate all NWLs programs under a united approach that will move the state toward the goal of maintaining resilient carbon sinks while improving air and water quality, wildlife habitat, recreation, and other benefits. Although the plan does not specifically set an emissions reduction or carbon sequestration goal for NWLs, it establishes a set of goals for the implementation of land activities that will lead to carbon benefits:

To realize a long-term objective of resilient land-based carbon, the state must more than double the pace and scale of state-supported land activities by 2030 and beyond. The state will, at the least, strive to increase fivefold the acres of cultivated lands and rangelands under state-funded soil conservation practices, double the rate of state-funded forest management or restoration efforts, triple the rate of state-funded oak woodland and riparian restoration, and double the rate of state-funded wetland and seagrass restoration through 2030.

The plan projects this effort will result in cumulative emissions reductions of -36.6 to -11.7 million metric tons of carbon by 2045. In the shorter term, some of the activities referenced in the plan will cause emissions (e.g., forest fuel reductions) but will have long-term climate benefits. The plan is meant to produce benefits for water quality and quantity, air quality, biodiversity and habitat and ecosystem health, food and fiber production, public health, and resilience to climate change. The plan states that relevant agencies will collaborate to begin implementation through existing conservation, management, and restoration programs and new efforts, as needed. Implementation will include the organization of existing, and initiation of additional, state-funded activities on both private and public lands.

ARB intends to fold the NWLs plan into the 2022 update to the scoping plan, which will focus on achieving carbon neutrality by 2045

- 2) **WOR, what is it good for?** WOR is a practice that includes the chipping of woody perennial crops at the end of their agronomic lifecycle and then using those wood chips in the soil of the fields where the trees previously stood, allowing for the prior trees to be recycled into future crops. Models have predicted a range of 4.24 metric tons of carbon dioxide (CO₂) sequestration per hectare for 14 tons of dry wood chips per acre in prune crops with a life cycle of 10-15 years, and 8.16 tons for 30 tons of wood chips from almond crops with an estimated life cycle of 25 years. This allows for crops to secure carbon dioxide from reentering into the atmosphere, which mitigates negative climate impacts.

3) **Author's statement:**

AB 2101 will pave the path for WOR projects to be eligible to receive the credits necessary to ensure it is a viable model for sequestering carbon while avoiding burdensome costs. Alongside the other projects, WOR projects will be eligible to receive the necessary funding to be a sustainable practice while helping California achieve its GHG reduction goals.

REGISTERED SUPPORT / OPPOSITION:

Support

Western Agricultural Processors Association

Opposition

None on file.

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

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 2672 (Flora) – As Introduced February 18, 2022

SUBJECT: Fire prevention: defensible space inspections: statewide defensible space and home hardening platform

SUMMARY: Require the Director of Forestry and Fire Protection (CAL FIRE), on or before July 1, 2023, to procure or establish a statewide defensible space and home hardening platform (platform) that would allow property owners to support and augment CAL FIRE in defensible space inspection requests, as provided.

EXISTING LAW:

- 1) Requires a person who owns, leases, controls, operates, or maintains a building or structure in, upon, or adjoining a mountainous area, forest-covered lands, shrub-covered lands, grass-covered lands, or land that is covered with flammable material, to at all times maintain a defensible space of 100 feet from each side and from the front and rear of the structure, as provided. (Public Resources Code (PRC) § 4291)
- 2) Requires CAL FIRE to develop and implement a training program to train individuals to support and augment CAL FIRE in its defensible space and home hardening assessment and public education efforts. (PRC § 4291.6)
- 3) Requires a seller of real property that is located in a high or very high fire hazard severity zone to provide the buyer documentation stating that the property is in compliance with that defensible space requirement. (Civil Code § 1102.19 (a))

THIS BILL:

- 1) Authorizes, on and after July 1, 2023, a seller of real property that is located in a high or very high fire hazard severity zone to use the defensible space and home hardening platform for purposes of providing the required documentation stating that the property is in compliance with state laws or local vegetation management ordinances.
- 2) Defines “defensible space and home hardening platform” or “platform” as a cloud-based online platform, which includes a collaborative portal that allows fire safety officials to digitally engage with property owners.
- 3) Requires, on or before July 1, 2023, the director of CAL FIRE to procure or establish a platform that would allow property owners to support and augment CAL FIRE in defensible space inspection requests and provide documentation of compliance. Requires the platform to do both of the following:
 - a) Enable property owners to submit inspection requests.
 - b) Provide for real-time or self-guided desk inspections by fire safety officials, for the fire safety official to review videos and photos remotely in order to minimize deploying onsite visits.

- 4) Authorizes any fire safety officials in California to use the platform in order to promote consistency of data collection standards and consistency of inspections for property owners.
- 5) Requires, at a minimum, the platform to have all of the following features:
 - a) Accept and deliver inspection requests to the property owner via text message and email.
 - b) Allow for secure online access via personal computer or mobile device, for property owners with internet access, without the need to install special software or applications to access the online platform by the property owner.
 - c) Support multiple languages, including, at a minimum, English and Spanish.
 - d) Provide for end user licensing agreements and customary or required legal notices, including privacy, related to the use of the online platform and associated information
 - e) Include functionality that allows for live video and audio interaction between the fire safety official and the property owner onsite.
 - f) Allow a fire safety official to remotely guide and direct the property owner to collect information, including videos and images, necessary for property inspection.
 - g) Allow for ordering aerial views of the property from a top-down perspective, including defensible space zones.
 - h) Produce automated image analytics that can assist the fire safety official in identifying home hardening needs.
 - i) Allow chat and messaging options so the fire safety official can communicate home hardening suggestions and request additional information from the property owner after the inspection.
 - j) Capture and store interactions, documents, imagery, and videos within a centralized location.
 - k) Include functionality that can support authentication of user-supplied images by authenticating images with date, time, and location-based data and original content checks.
 - l) Provide measurement capability to support determination of property exposure and risk level to wildfires.
- 6) Requires the director to establish any necessary quality control measures to ensure that the inspection information that is shared on the platform is accurate, reliable, and auditable.
- 7) Authorizes CALFIRE to require the platform to be used in conjunction with Section 4291.6.
- 8) States that any costs to establish or procure the platform shall come from the existing funds made available to CAL FIRE from the Greenhouse Gas Reduction Fund.

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's statement:

AB 2672 will help enhance property owners' experience with completing defensible space inspections and help support AB 38 and SB 63 by creating the

pathway for a digital tool that enables them to collaborate and engage with fire safety officials quickly and efficiently.

California must ensure that property owners and CAL FIRE are using the best practices in collecting documents and information needed for defensible space certification. AB 2672 and the technology deployed with defensible space inspections can increase efficiency, preserve resources, and better ensure the data collected is beneficial for both the property owner and department, and overall help to mitigate wildfires in high risk communities.

- 2) **Wildfires in California.** Wildfires have been growing in size, duration, and destructivity over the past 20 years. Growing wildfire risk is due to accumulating fuels, a warming climate, and expanding development in the wildland-urban interface. The 2020 fire season broke numerous records. Five of California's six largest fires in modern history burned at the same time, destroying thousands of buildings, forcing hundreds of thousands of people to flee their homes, and exposing millions of residents to dangerously unhealthy air. More than 4 million acres burned across the state, double the previous record.

New research from Stanford University (February 2022) on wildfire shows that vegetation in the West is drying out even faster due to climate change effects and increasing fire risk. The researchers found that a combination of plant and soil dehydration coupled with atmospheric dryness is creating what they've termed 'double-hazard zones.' The researchers identified 18 of these double-hazard zones across the Western U.S., including three in California. Their study further showed that the increased population growth in the wild-urban interface (WUI) is concerning as this landscape is often comprised of grasslands or chaparral, which is highly sensitive to drought, making it also highly vulnerable to extreme fire events. In California, more than 11 million of the state's 40 million residents live in the WUI, which encompasses not only densely forested areas like Paradise, but also parts of the wooded coastal foothills around Silicon Valley, the brush-and-grass covered hills around Santa Barbara and Los Angeles, and neighborhoods in the Oakland Hills.

- 3) **Defensible space.** Defensible space is the buffer created between a building on a property and the grass, trees, shrubs, or any wildland area that surrounds it. This space is needed to slow or stop the spread of wildfire and it helps protect structures from catching fire—either from embers, direct flame contact or radiant heat. Proper defensible space also provides firefighters a safe area to work in to defend property.

Current law requires defensible space of 100 feet from each side and from the front and rear of the structure, but not beyond the property line, with certain exceptions. The amount of fuel modification necessary considers the flammability of the structure as affected by building material, building standards, location, and type of vegetation. Fuels are required to be maintained in a condition so that a wildfire burning under average weather conditions would be unlikely to ignite the structure.

CAL FIRE requires the removal of all dead plants, grass, and weeds, and the removal of dry leaves and pine needles within 30 feet of a structure. In addition, tree branches must be 10 feet away from a chimney and other trees within the same 30 feet surrounding a structure. These existing requirements still permit most vegetation within five feet of the house or structure.

According to the University of California Division of Agriculture and Natural Resources, implementation of this non-combustible area could make a significant difference in a home's ability to survive a wildfire. AB 3074 (Friedman, Chapter 259, Statutes of 2020) established an ember-resistant zone within five feet of a structure as part of revised defensible space requirements for structures located in high fire hazard areas.

The following year, the Legislature approved SB 63 (Stern, Chapter 382, Statutes of 2021) to authorize CAL FIRE to fund residential vegetation management programs, including defensible space training, and public wildfire resistance education outreach to facilitate managing and monitoring vegetation on residential properties to help slow or stop an active wildfire from growing.

- 4) **California's Defensible Space Inspection Program.** On and after July 1, 2021, a seller of a property that is located in a high or very high fire hazard severity zone is required to provide documentation of a compliant Defensible Space Inspection. If that documentation cannot be provided by close of escrow, the law allows the buyer to enter into a written agreement that documentation of compliance will be made available within one year of the close of escrow.

CAL FIRE currently has a defensible space Collector App where defensible space inspectors can track each defensible space inspection with a high level of detail and the history of any citations on a property. The Collector App has been developed to help provide a consistent standard of data collection during defensible space inspections and is part of a central archival location for analysis, research, and regulation development to reduce fire loss. The simplified data collection system has added to the understanding of how defensible space and building construction may help in reducing wildfire impacts in the WUI. The Collector App uses GIS data to confirm the location of specified properties, and to track and catalog inspection data. The Collector App is designed for inspectors and assessors, not property owners themselves. CAL FIRE does not have an existing platform for homeowners to complete and report their own defensive space inspections or assessments.

This bill would require CAL FIRE, in addition to its Collector App, to procure or establish a statewide defensible space and home hardening cloud-based, online platform that would allow property owners to support and augment CAL FIRE's in defensible space inspection requests and provide documentation of compliance.

CAL FIRE wouldn't need to start from scratch. Software exists that uses satellite imagery to pinpoint heavy concentrations of highly flammable brush near homes and businesses, identifies the grade (slope), identifies whether a risk is located on a dead-end, winding or narrow road that fire trucks may have trouble negotiating, and generates detailed maps that are compatible with most Geographic Information Systems.

- 5) **CalMAPPER.** It was reported at the March 24, 2022, Wildfire Prevention and Forest Resiliency Taskforce meeting that CAL FIRE has developed a website – Management Activity Project Planning & Event Reporter (CalMAPPER) – that is a database to collect, store, and report on map-based data for fuel load and vegetation management projects that CAL FIRE implements or funds. The website is expected to be made available to the public for purposes of planning, accountability, management, and emergency response. The goal for the website is to become the authoritative source for reporting local fuel reduction projects in

which CAL FIRE is engaged. Timing for the public launch of the CalMAPPER is to be determined, but CAL FIRE expects it to be “soon.”

The author may wish to coordinate with CAL FIRE on the dynamics of that impending website to see if it will contain a platform like this bill is proposing, whether this bill’s proposal could augment CalMAPPER for defensible space users, and to ensure that this bill is not duplicative of those existing efforts.

- 6) **Funding.** This bill states that any costs to establish or procure the platform shall come from the existing funds made available to CAL FIRE from the Greenhouse Gas Reduction Fund. The Governor’s proposed 2022-23 budget provides a total of more than \$920 million (mostly from the General Fund) for various wildfire response-related proposals across a few departments. The author may wish to work with the Assembly Appropriations Committee and Budget Committees to ensure that reference to funding is appropriate.

7) **Related legislation**

AB 2377 (Muratsuchi) would establish a Chief of Wildfire Prevention to be responsible for, among other things, creating a central hub, accessible to the public, that displays and provides information on all forest and vegetation treatments in the state on private, state, and federal lands. This bill is scheduled to be heard in the Assembly Natural Resources Committee on April 18.

AB 2479 (Wood) would require CAL FIRE to report to the Legislature how it will increasingly use, develop, implement, facilitate, and support prescribed burn, cultural fire, and managed wildfire projects to burn an unspecified number of acres by January 1, 2030. This bill is scheduled to be heard in the Assembly Natural Resources Committee on April 18.

AB 9 (Wood, Chapter 225, Statutes of 2021) established the Deputy Director of Community Wildfire Preparedness and Mitigation to be responsible for fire preparedness and mitigation missions of CAL FIRE and is responsible for defensible space requirements, among other fire prevention responsibilities.

SB 63 (Stern, Chapter 382, Statutes of 2021) enhances fire prevention efforts by CAL FIRE, including, among other things, improved vegetation management and expanding the area where fire safety building standards apply.

AB 3074 (Friedman, Chapter 259, Statutes of 2020) establishes an ember-resistant zone within five feet of a structure as part of revised defensible space requirements for structures located in high fire hazard areas.

- 8) **Double Referral** This bill has also been referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 2140 (Muratsuchi) – As Amended March 24, 2022

SUBJECT: Once-through cooling policy: powerplants

SUMMARY: Prohibits the State Water Resources Control Board (State Water Board) from granting an operator of a powerplant any extension of time to comply with the once-through cooling policy if the city or county that has jurisdiction over the site of the powerplant formally adopts a resolution objecting to the extension.

EXISTING LAW:

- 1) Requires, pursuant to the federal Clean Water Act, that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.
- 2) Establishes the State Water Board within the California Environmental Protection Agency (CalEPA) with specified duties relating to, among other things, administering water rights, the Porter-Cologne Water Quality Control Act, and the California Safe Drinking Water Act.
- 3) Establishes the policy on the use of coastal and estuarine waters for power plant cooling under State Water Board Resolution No. 2010-0020. Establishes uniform, technology-based standards to implement federal Clean Water Act section 316 (b), which requires that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. (California Code of Regulations, Title 23, Division 3, Chapter 22, Sec. 2922)

THIS BILL:

- 1) Prohibits the State Water Board from granting an operator of a powerplant an extension of time to comply with the OTC policy if the city or county that has jurisdiction over the site of the powerplant formally adopts a resolution objecting to the extension.
- 2) Requires the Public Utilities Commission (PUC), the State Energy Resources Conservation and Development Commission (CEC), and the Independent System Operator (CAISO) to work together to identify and procure alternative energy sources to replace the powerplants that cease operations as a result of the enforcement of the OTC policy.
- 3) Defines “once-through cooling policy” as the policy described in Section 2922 of Chapter 22 of Division 3 of Title 23 of the California Code of Regulations.

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author’s statement.**

As Chair of the Joint Legislative Committee on Climate Change, I cannot overstate the importance of maintaining our commitment to retire our outdated natural gas power plants. The OTC compliance deadline has been in place for as many years, and the plants had been scheduled to shut down by the end of this past year. I remain concerned about this latest extended the deadline as it will increase the public health and environmental impacts associated with the operation of the largest stationary source of pollution in this densely populated part of the state. The plants' outdated and inefficient technology will continue to affect nearby residents who breathe in the fine particulates generated by the natural gas plant. Further, if California is going to meet its goals to get 60 percent of its electricity from renewable sources by 2030, and to achieve 100 percent carbon neutrality by 2045, we need to remain steadfast in our timeline and commitment to shut down these power plants.

AB 2140 ensures that the water board does not grant an operator of a power plant any further extension to comply with the OTC policy if the city the power plant is located in formally adopts a resolution objecting to any further extension. This bill also requires the Public Utilities Commission, the state energy resources development commission, and the California Independent Systems Operator to work together to identify and procure alternative energy sources to replace the power plants.

- 2) **Once-through cooling.** Once-through cooling (OTC) refers to technologies at steam turbine power plants that rely on open seawater intakes to pump seawater from an ocean, estuary, or bay and then discharge the water back to the ocean after only one cycle of cooling. This technology, which became widely used in the 1950's, has detrimental effects on marine life. Marine animals, seaweeds, and billions of eggs and larvae of fish and invertebrates are taken in with the seawater and killed as they are subjected to thermal, physical, and/or chemical stresses. Larger organisms may also be pinned against seawater intake screens, causing injury or death. These impacts contribute to the decline of fisheries and the degradation of marine habitats near power plants using once-through cooling.
- 3) **State policies on OTC.** California is phasing out the use of OTC technology at coastal power plants that use marine water for cooling.

The Clean Water Act requires the U.S. Environmental Protection Agency (US EPA) to ensure that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impacts. While states have enforced this requirement on a case-by-case basis since 1972, California developed a clearer, more prescriptive rule.

In March 2008, the State Water Board published a scoping document titled Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling to implement the US EPA's aforementioned policy, and subsequently adopted, in 2010, a regulatory policy to phase out the use of OTC. It included many grid reliability recommendations made by CAISO, as well as a joint implementation proposal developed by the CEC, CPUC, and CAISO. The OTC policy requires power plants that are not in compliance to make mitigation payments annually based on their annual intake volume of water until they come into compliance.

The OTC phase out regulation affected 19 California power plants that had the ability to withdraw more than 15 billion gallons per day from the state's coastal and estuarine waters using OTC systems. Of those, 16 power plants totaling about 18,000 megawatts (MW) were in the CAISO balancing authority area, and 3 (about 2,600 MW) were in the Los Angeles Department of Water & Power balancing area. The use of OTC has been phased out at 10 power plants representing 10,400 MW. The retirement of OTC power plants with 6,300 MW of capacity is expected by 2020, and the remaining 3,800 MW are expected to retire by 2029.

To ensure grid reliability, final compliance dates were negotiated with each of the operating plants. In September 2020, the State Water Board amended the OTC policy as a result of events that raised concern about system-wide grid reliability. The amendments included changes to the compliance dates for 4 powerplants that were scheduled to comply with the OTC policy by December 31, 2020, to address grid reliability concerns. This included a one-year extension for compliance for the Redondo Beach power plant to December 31, 2021, which is in the author's district.

On October 19, 2021, the State Water Board amended the OTC policy under Resolution No. 2021-0048 to extend the compliance date for Redondo Beach Generating Station Units 5, 6, and 8 to December 31, 2023, to further address statewide grid reliability concerns.

- 4) **This bill.** AB 2140 prohibits the State Water Board from granting an operator of a powerplant an extension of time to comply with the OTC policy if the city or county that has jurisdiction over the site of the powerplant formally adopts a resolution objecting to the extension.

The bill requires the PUC, CEC, and CAISO to work together to identify and procure alternative energy sources to replace the powerplants that cease operations as a result of the enforcement of the OTC policy.

- 5) **Managing the energy.** The State Water Board has twice delayed the deadline to phase out OTC at specified powerplants because of grid reliability and the energy from those powerplants is factored into the state's energy planning.

The CPUC has required a larger planning reserve margin and authorized the procurement of unprecedented amounts of new, renewable energy to meet the state's ever-growing renewable portfolio standard (RPS) goals. The CPUC's actions also take into consideration the planned retirement of thermal power plants, including the Diablo Canyon Nuclear Power Plant and the OTC generating stations covered under the OTC policy.

As the state has been investing in and planning to meet the 2045 RPS procurement mandates, it has been thrown some significant curveballs that have complicated management of the energy system. The intense wildfire season lead to massive power outages across the state; the COVID-19 pandemic resultant stay-at-home orders and workforce shortages stunted renewable energy deployment; and, the subsequent supply chain shortage created delays for materials and supplies, and ultimately impacted the timing of when planned renewable energy projects would come on line and produce energy. Furthermore, the CPUC is now planning for extreme heat events, which are occurring more frequently and at times of the year never before experienced, requiring the CPUC to adjust its modeling for energy forecasting and procurement. Because of those unexpected challenges, the CPUC needs to

consider the input of the MWs the power plants covered by the OTC policy produce before they can be decommissioned.

Expressing concern over California's energy reliability, the California State Association of Electrical Workers, IBEW Local 18 (LADWP), the Coalition of California Utility Employees, among others, writes that, "Dispatchable power is integral to system reliability because it can be ramped up in as little as 10 minutes and ramped down as peak load diminishes. The CEC 2022 stack analysis projected that "an additional 200 MW to 2,400 MW of contingency resources may be required to ensure electric system reliability for peak and net-peak hours during summer 2022 under extreme weather events." In October of 2018, the Saddleridge fire knocked out 23 transmission line relays feeding the Los Angeles Basin. The Los Angeles Department of Water and Power's post-event analysis found that the departments dual cycle gas plants were predominantly responsible for avoiding up to 7 days of power outages. The unions worry this bill puts the state in a position to have to jettison the dual cycle plants covered by the OTC policy that are only used when needed to meet demand.

However, the CPUC has authorized new electric resources under D.19-11-016 and D.21-06-035 to replace a portion of the OTC fleet's capacity subject to the OTC Policy. The CPUC continues to actively monitor procurement under these decisions, reporting that 2,650 MW of incremental capacity has come online as of January 2022. Additionally, the CPUC currently estimates that 12,700 MW of additional resources will be online by 2026.

The Statewide Advisory Committee on Cooling Water Intake Structures (SACCWIS), which includes the State Water Board, CEC, CPUC, CAISO, among others, advises on the OTC Policy to ensure that implementation plans and schedules established by the OTC Policy are realistic and will not cause disruption to the state's electrical power supply.

SACCWIS' March 2022 Report, *Statewide Advisory Committee on Cooling Water Intake Structures*, concludes that "Currently, the SACCWIS does not recommend any changes to the compliance schedules in the OTC Policy for associated generating facilities."

- 6) **Who's in charge?** This bill transfers state regulatory authority to a local jurisdiction, via a resolution, to cease powerplant operations, removing that authority from the State Water Board.

While the principle of subsidiarity is both important for governing and honored by this Legislature, giving legal authority to a city or county by way of local resolution usurps the state's regulatory authority over for powerplant permitting.

Therefore, the committee may wish to amend the bill as follows:

- Instead, require the State Water Board to consider a locally adopted resolution before extending a powerplant's deadline;
- Place subdivision (b) in its own section in the Public Utilities Code, which is germane to the CPUC's jurisdiction, and add reference to the State Water Board given its authority over the OCT policy; and,
- Make changes to the findings and declarations.

7) Related legislation.

AB 2071 (Muratsuchi, 2020) would have prohibited the State Water Board, on or after January 1, 2021, from granting to an operator of a powerplant additional time for complying with the OTC policy adopted by the state board if specified conditions were met. This bill was held due to the COVID-19 pandemic and limits on how many bills policy committee could hear.

AB 353 (Muratsuchi, 2019) would have prohibited the State Water Board from granting an operator of a powerplant additional time for complying with the OTC policy if the powerplant is situated on a site containing coastal wetlands, and a local agency, nonprofit organization, or nongovernmental land conservation organization has been awarded a grant on or before January 1, 2020, for the purposes of acquiring all or a portion of the site of the powerplant to develop parklands and restore wetlands. It was held in the Senate Environmental Quality Committee.

SB 42 (Corbett, 2009) would have prohibited a state agency, as defined, from authorizing, approving, or certifying a new powerplant or industrial facility, as defined, that uses once-through cooling. It was held in the Senate Energy, Utilities and Communications Committee.

- 8) **Double Referral** This bill has also been referred to the Assembly Utilities and Energy Committee.

REGISTERED SUPPORT / OPPOSITION:**Support**

None on file.

Opposition

California State Association of Electrical Workers
California State Pipe Trades Council
Coalition of California Utility Employees
International Brotherhood of Electrical Workers, Local 18
Western States Council Sheet Metal, Air, Rail and Transportation

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

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 2377 (Muratsuchi) – As Introduced February 17, 2022

SUBJECT: Department of Forestry and Fire Protection: Chief of Wildfire Prevention

SUMMARY: Establishes, within the Department of Forestry and Fire Protection (CAL FIRE), a Chief of Wildfire Prevention (Chief), to be appointed by the Governor.

EXISTING LAW:

- 1) Establishes in the Natural Resources Agency (NRA) the Department of Forestry and Fire Protection, which is under the control of an executive officer known as the Director of Forestry and Fire Protection.
- 2) Requires the director to be appointed by the Governor and to hold office at the pleasure of the Governor.
- 3) Requires the director to appoint a cultural burning liaison who is required to do certain things, including advising CAL FIRE on developing increased cultural burning activity.
- 4) Creates the position of Deputy Director of Community Wildfire Preparedness and Mitigation at CAL FIRE to be responsible for Fire Prevention Grants Program; defensible space requirements, the California wildfire mitigation financial assistance program; the establishment of fire hazard severity zones; implementation of minimum fire safety standards; and, other fire prevention responsibilities.

THIS BILL:

- 1) Establishes, within CAL FIRE, the Chief to be appointed by the Governor.
- 2) Requires the Chief to be responsible for all of the following:
 - a) Prioritizing acres for fire and fuels treatment and executing those treatments;
 - b) Creating a central hub, accessible to the public, that displays and provides information on all forest and vegetation treatments in the state on private, state, and federal lands;
 - c) Achieving the state's goal of treating 500,000 acres annually by 2025, independent of acres subject to other forest management activity, including timber harvesting plans;
 - d) Streamlining required regulatory approvals; and,
 - e) Timely and full reporting of progress and identification of obstacles to continued success.

FISCAL EFFECT: Unknown.

COMMENTS:**1) Author's statement.**

California's worsening wildfire crisis has shown no signs of slowing down. Between 1984 and 2020, annual forest fires in California increased by more than 1,100%, with 2020 considered as the worst wildfire season in California's history.

It is clear that combatting wildfires isn't enough. We need to add fire prevention to this equation, but not within Cal Fire. This task has to be within another agency to allow Cal Fire to do what they do best – fight fires. California must bring a leadership role in fire prevention to align and integrate these activities while coordinating resources to ensure we have accurate preventative wildfire measures.

2) Wildfires in California. Wildfires have been growing in size, duration, and destructivity over the past 20 years. Growing wildfire risk is due to accumulating fuels, a warming climate, and expanding development in the wildland-urban interface. The 2020 fire season broke numerous records. Five of California's six largest fires in modern history burned at the same time, destroying thousands of buildings, forcing hundreds of thousands of people to flee their homes, and exposing millions of residents to dangerously unhealthy air. More than 4 million acres burned across the state, double the previous record.

New research from Stanford University (February 2022) on wildfire shows that vegetation in the West is drying out even faster due to climate change effects, which is increasing fire risk. The researchers found that a combination of plant and soil dehydration coupled with atmospheric dryness is creating what they've termed 'double-hazard zones'. The researchers identified 18 of these double-hazard zones across the Western U.S., including three in California. Their study further showed that the increased population growth in the wild-urban interface (WUI) is concerning, as this landscape is often comprised of grasslands or chaparral which is highly sensitive to drought, making it also highly vulnerable to extreme fire events. In California, more than 11 million of the state's 40 million residents live in the WUI, which encompasses not only densely forested areas like Paradise, but also parts of the wooded coastal foothills around Silicon Valley, the brush-and-grass covered hills around Santa Barbara and Los Angeles, and neighborhoods in the Oakland Hills.

In a joint state-federal initiative agreement to improve stewardship of California's forests, the Newsom Administration and the U.S. Forest Service signed a Memorandum of Understanding to treat a combined million acres of forest land by the year 2025. This builds on the state's existing commitment under then-Governor Jerry Brown to treat 500,000 acres of state land while adding 500,000 acres of federal land to be managed.

3) CAL FIRE. CAL FIRE is the state's lead agency for fire protection and stewardship of more than 31 million acres of California's private and state-owned forested lands. CAL FIRE's Fire Prevention Program consists of multiple activities, including wildland pre-fire engineering, vegetation management, fire planning, education, and law enforcement. Typical fire prevention projects include brush clearance, prescribed fire, defensible space inspections, emergency evacuation planning, fire prevention education, fire hazard severity mapping, and fire-related law enforcement activities.

CAL FIRE manages eight Demonstration State Forests that provide for commercial timber production, public recreation, and research and demonstration of good forest management practices.

As part of the CAL FIRE team since 1995, the Office of the State Fire Marshal (OSFM) supports the CAL FIRE mission to protect life and property through fire prevention engineering programs, law and code enforcement, and education. The OSFM provides for fire prevention by enforcing fire-related laws in state-owned or operated buildings, investigating arson fires in California, licensing those who inspect and service fire protection systems, approving fireworks as safe and sane for use in California, regulating the use of chemical flame retardants, evaluating building materials against fire safety standards, regulating hazardous liquid pipelines, and tracking incident statistics for local and state government emergency response agencies.

- 4) **Chief of Wildfire Prevention.** Last year, the Legislature approved AB 9 (Wood, Chapter 225, Statutes of 2021) to establish the Deputy Director of Community Wildfire Preparedness and Mitigation Division (division) within OSFM to be responsible for fire preparedness and mitigation missions of CAL FIRE and defensible space requirements, among other fire prevention responsibilities.

Chief Daniel Berlant was hired as the Deputy Director and Chief of the division. He oversees the division's work with federal, state, and local agencies, Native American tribes, non-profit entities, and other stakeholders to prepare California communities against the devastating effects of wildfire. The various programs within the division allow CAL FIRE to continue to build local and regional capacity, as well as developing, prioritizing, and implementing strategies and projects that create wildfire prepared communities. The tasks involve working with stakeholders on wildfire planning to reduce or eliminate fire hazards and risks, modifying the environment by removing or reducing receptive fuels, conducting fire hazard compliance inspections, and providing education and grant opportunities for wildfire prevention efforts.

In addition to the Deputy Director, the Wildfire Prevention and Forest Resilience Taskforce, which was created to develop and implement an interagency framework establishing healthy and resilient forests and communities that can withstand and adapt to wildfire, drought, and a changing climate, includes cabinet level participants and staff from the Governor's Office.

According to the author, California is in need of a comprehensive, cabinet level office, to coordinate wildfire preparedness amongst state agencies and stakeholders involved with managing wildfire and climate change. The author may wish to work with both CAL FIRE and the Newsom Administration about the need for a Chief to avoid duplication with these existing state efforts and to ensure the state is investing in the most efficient use of state resources.

- 5) **Cutting the Green Tape.** The State of California has identified "Cutting Green Tape" as a signature initiative to increase the pace and scale of environmental restoration. California has a proud tradition of strong laws that protect our environment from the effects of development and resource extraction. Unfortunately, projects that are beneficial to the environment can be slowed by the same processes and procedures that are designed to protect it. Cutting Green Tape seeks to remedy this problem.

Complex and overlapping permitting processes can result in fewer and smaller actions being taken at a slower pace and a greater expense. In the November 2020 stakeholder-coordinated report issued by California Landscape Stewardship Network, *Cutting Green Tape: Regulatory Efficiencies for a Resilient Environment*, sometimes, fully one-third of public funding for a restoration project goes to planning and permitting, and a project that only takes weeks to implement can take years to permit. Much like the familiar term, “red tape,” “green tape” represents the extra time, money, and effort required to get environmentally beneficial work done because of inefficiencies in our current systems. Cutting Green Tape means improving regulatory processes and policies so that this work can occur more quickly, simply, and cost-effectively.

In line with that initiative, this would require the new Chief of Wildfire Prevention to be responsible for streamlining required regulatory approvals, including the synchronization of permits required by CAL FIRE, the Department of Fish and Wildlife, and regional water quality control boards, as those permits relate to forest management activities.

However, the author may wish to work directly with Chief Berlant about his role and responsibilities to ascertain if permit streamlining is already part of his purview. If not, the author may wish to consider amending existing statute governing the Chief Berlant’s duties to include permit streamlining, rather than creating a new position.

- 6) **New website.** This bill requires the new Chief to create a central hub, accessible to the public, that displays and provides information on all forest and vegetation treatments in the state on private, state, and federal lands.

It was reported at the March 24, 2022, Wildfire Prevention and Forest Resiliency Taskforce meeting that CAL FIRE has developed a website – Management Activity Project Planning & Event Reporter (CalMAPPER) – that is a database to collect, store, and report on map-based data for fuel load and vegetation management projects that CAL FIRE implements or funds. The website is expected to be made available to the public for purposes of planning, accountability, management, and emergency response. The goal is for the website to become the authoritative source for reporting fuel local reduction projects in which CAL FIRE is engaged. Timing for the public launch of the CalMAPPER is to be determined, but CAL FIRE expects it to be “soon.”

The author may wish to coordinate with CAL FIRE on the dynamics of that impending website to make sure this bill is not duplicative of those existing efforts.

- 7) **Arguments in support.** The Humboldt Redwood Company, Humboldt Sawmill Company, Mendocino Redwood Company, Mendocino Forest Products, and Allweather Wood state:

The state needs a person with authority and responsibility to oversee accomplishing the goal of 500,000 treated acres. State agencies have a hard time coming up with the number of acres currently treated as conservancies, fire safe councils, and state and federal agencies are all conducting fuel reduction projects. There is no central hub to bring all these projects together to show the number of acres treated and to identify priority areas for future fuel reduction activities. This bill will do that.

8) **Committee amendments.** To avoid redundancy, the Committee may wish to amend the bill to, instead of creating a new Chief, add the requirements of the bill, save the central hub, to Public Resources Code Sec. 4209.1 under the responsibilities of the Deputy Director of Wildfire Prevention.

9) **Related legislation.**

AB 2672 (Flora) would require CAL FIRE to procure or establish a statewide defensible space and home hardening online platform for use by property owners to support and augment CAL FIRE in defensible space inspection requests. This bill is scheduled to be heard in the Assembly Natural Resources Committee on April 18.

AB 2479 (Wood) would require CAL FIRE to report to the Legislature how it will increasingly use, develop, implement, facilitate, and support prescribed burn, cultural fire, and managed wildfire projects to burn an unspecified number of acres by January 1, 2030. This bill is scheduled to be heard in the Assembly Natural Resources Committee on April 18.

AB 9 (Wood, Chapter 225, Statutes of 2021) established the Deputy Director of Community Wildfire Preparedness and Mitigation to be responsible for fire preparedness and mitigation missions of CAL FIRE and is responsible for defensible space requirements, among other fire prevention responsibilities.

REGISTERED SUPPORT / OPPOSITION:

Support

Humboldt Redwood Company LLC
Midpeninsula Regional Open Space District

Opposition

None on file.

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

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 2479 (Wood) – As Introduced February 17, 2022

SUBJECT: Forest restoration and protection: wildfire prevention

SUMMARY: Requires all state agencies, when funding restoration efforts on natural and working lands, to prioritize restoration projects that have a permanent, enforceable mechanism to ensure that the project area will be managed in a manner that maintains the desired conditions and the value of the state's investment. Requires the Department of Forestry and Fire Protection (CAL FIRE) to report to the Legislature a report that details how the department will increasingly implement prescribed burn projects goals. Requires the Natural Resources Agency (NRA) to report to the Legislature on its plan for watershed restoration investments for the drainages that supply the Oroville, Shasta, and Trinity Reservoirs.

EXISTING LAW:

- 1) Declares the policy of the state that the protection and management of natural and working lands is an important strategy in meeting the state's greenhouse gas emissions reduction goals.
- 2) Requires all state agencies to consider this policy when revising, adopting, or establishing policies, regulations, expenditures, or grant criteria relating to the protection and management of natural and working lands.
- 3) Requires the Department of Forestry and Fire Protection (CAL FIRE) and the State Air Resources Board (ARB) to develop and fund a program to enhance air quality and smoke monitoring, and to provide a public awareness campaign regarding prescribed burns.
- 4) Authorizes CAL FIRE to purchase 3rd-party liability policy of insurance any requires, if CAL FIRE elects not to purchase insurance, CAL FIRE to agree to indemnify and hold harmless the person or public agency contracting with CAL FIRE with respect to liability arising out of performance of the contract. Authorizes CAL FIRE to provide a maximum of liability or provide for the proportionate share of liability between CAL FIRE and the person contracting with CAL FIRE.
- 5) Requires the Natural Resources Agency (NRA) and the California Environmental Protection Agency (CalEPA) to jointly develop and submit to the Legislature a plan for forest and watershed restoration investments for the drainages that supply the Oroville, Shasta, and Trinity Reservoirs, as specified.

THIS BILL:

- 1) Requires CAL FIRE, on or before April 1, 2023, to provide to the relevant policy and fiscal committees of the Legislature a report that details both of the following:
 - a) How the department will increasingly implement prescribed burn projects to burn at least 100,000 acres annually by January 1, 2025.

- b) How the state will increasingly use, develop, implement, facilitate, and support prescribed burn, cultural fire, and managed wildfire projects to burn an unspecified minimum amount of acres by January 1, 2030.
- 2) Sunsets this reporting requirement on January 1, 2028.
- 3) Requires all state agencies, when funding restoration efforts on natural and working lands, to prioritize restoration projects that have a permanent, enforceable mechanism to ensure that the project area will be managed in a manner that maintains the desired conditions and the value of the state's investment.
- 4) Requires, on or before April 1, 2023, NRA to submit to the relevant policy and fiscal committees of the Legislature a report that describes NRA's strategy for completing and implementing the plan for forest and watershed restoration investments for the drainages that supply the Oroville, Shasta, and Trinity Reservoirs.
- 5) Sunsets this reporting requirement on January 1, 2028.

FISCAL EFFECT: Unknown.

COMMENTS:

1) Author's statement.

Climate change is an existential threat to California. Less predictable precipitation – both bigger storms and longer dry spells – strain the operation of our water supply infrastructure and highlight the importance of well-functioning source watersheds that regulate the rate of runoff. Additionally, extreme fire behavior is degrading our key watersheds at an alarming rate. For many decades California's primary response to wildland fire has been suppression. However, California is a fire-dependent ecosystem and it is now clear that quickly putting out all fires is not only destined to fail but has actually been a major factor driving the increasingly damaging fire impacts. AB 2479 builds on past legislation and actions by the Newsom Administration to provide accountability and ensure that the state is taking smart action with long-term benefit.

- 2) **Wildfires in California.** Wildfires have been growing in size, duration, and destructivity over the past 20 years. Growing wildfire risk is due to accumulating fuels, a warming climate, and expanding development in the wildland-urban interface. The 2020 fire season broke numerous records. Five of California's six largest fires in modern history burned at the same time, destroying thousands of buildings, forcing hundreds of thousands of people to flee their homes, and exposing millions of residents to dangerously unhealthy air. More than 4 million acres burned across the state, double the previous record.

New research from Stanford University (February 2022) on wildfire showing that vegetation in the West is drying out even faster due to climate change effects and increasing fire risk. The researchers found that a combination of plant and soil dehydration coupled with atmospheric dryness is creating what they've termed 'double-hazard zones'. The researchers identified 18 of these double-hazard zones across the Western U.S., including three in California. Their study further showed that the increased population growth in the wild-urban

interface (WUI) is concerning as this landscape is often comprised of grasslands or chaparral which is highly sensitive to drought, making it also highly vulnerable to extreme fire events. In California, more than 11 million of the state's 40 million residents live in the WUI, which encompasses not only densely forested areas like Paradise, but also parts of the wooded coastal foothills around Silicon Valley, the brush-and-grass covered hills around Santa Barbara and Los Angeles, and neighborhoods in the Oakland Hills.

- 3) **Prescribed burning.** Prescribed burning is the controlled application of fire to the land to reduce wildfire hazards, clear downed trees, control plant diseases, improve rangeland and wildlife habitats, and restore natural ecosystems. Prescribed burning is an important tool to reduce fuels.

Current estimates indicate that between 10 and 30 million acres in California would benefit from some form of fuel reduction treatment. Fire activity at low to moderate severity is particularly needed, though higher severity patches can have ecologically beneficial outcomes as well.

Approximately 125,000 acres of wildlands are treated each year in California using prescribed burning, and the rate of treatment is expected to rise as this tool is used more frequently to reduce the risk of catastrophic wildfires. Due to climate change, drought and other factors, today about 25% of the state's population – more than 11 million people – live in high-fire risk areas, including what's known as the wildland-urban interface, or the area between urban communities and wildlands.

In August 2020, California and the US Forest Service agreed to scale up vegetation treatment and maintenance to one million acres of federal, state, and private forest and wildlands annually by 2025.

The State of California is responsible for fire and resource protection on nearly 13.3 million acres of private and state-owned forested lands. The state owns about 1.1 million acres of these lands, and 12.2 million acres of lands are under private ownership. In the past several years, forest management has significantly expanded on these lands. CAL FIRE has increased its forest thinning and prescribed fire activities from about 30,000 acres in 2016 to more than 50,000 acres in 2020. Partners receiving state-funded grants treated more than 30,000 acres in 2020. Private landowners currently actively manage 250,000-300,000 acres through fuels reduction, mechanical thinning, and timber harvest projects.

Under current law, CAL FIRE has discretion to purchase a third-party liability policy of insurance that provides coverage against loss resulting from a wildland fire sustained by any person or public agency, including the federal government. To support the use of prescribed burns to meet the acreage goals, SB 170 (the Budget Act of 2021) included \$20 million to CAL FIRE to establish a Prescribed Fire Liability Pilot Program (program), in consultation with the Department of Insurance and the Natural Resources Agency, that creates a prescribed fire claims fund to support coverage for losses from permitted prescribed fires by non-public entities, such as Native American tribes, private landowners, and nongovernmental entities. The Budget Act required CAL FIRE to propose any changes needed by the Legislature; trailer bill language is forthcoming in the May Revision to request the additional authorities needed to execute the program.

California and federal officials have committed to a combined goal of treating a million acres of forest land annually via various methods by 2025. Pursuant to the Wildfire and Forest Resilience Action Plan, CAL FIRE will expand its fuels reduction and prescribed fire programs to treat up to 100,000 acres by 2025, and the California Department of Parks and Recreation (State Parks) and other state agencies will also increase the use of prescribed fire on high-risk state lands.

This bill would require CAL FIRE, in its report, to inform the Legislature how it will increasingly use, develop, implement, facilitate, and support prescribed burn, cultural fire, and managed wildfire projects to burn an unspecified number of acres by January 1, 2030.

The Committee may wish to amend the bill to specify the prescribed burning goals as 50,000 acres by 2025, and, by 2030, to achieve the extent of beneficial fire outcomes consistent with historic fire frequencies and maintaining desirable fuel loads.

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

Keeping, or restoring these lands can sequester and store carbon emissions, limit future carbon emissions into the atmosphere, protect people and nature from the impacts of climate change, and build resilience to future climate risks.

In October 2020, Governor Newsom outlined a comprehensive and results-oriented nature-based solutions agenda for California in Executive Order (EO) N-82-20. The EO recognized that California's natural and working lands sustain our economy, support our unique biodiversity, contribute to the global food supply, support outdoor heritage and provide clean water and air, and it called on CNRA to enable enduring conservation measures on a broad range of landscapes, including natural areas and working lands, in partnership with land managers and natural resource user groups.

In response to the Governor's EO, the state released the draft *Natural and Working Lands Climate Smart Strategy* (Strategy) in 2021, which describes how these lands can deliver on our climate change goals and identifies options to track nature-based climate action and measure progress. The state is committed to "track nature-based climate solutions and their outcomes, as well as to improve our understanding and ability to measure outcomes of climate smart actions. To improve over time, our efforts will need to be flexible; successful climate smart land management requires adaptive approaches that are continually reassessed as ecosystems are affected by climate change and our understanding of the processes at work grows."

Increased and accessible public and private capital is required to scale nature-based solutions at the speed and scale necessary to deliver durable climate outcomes. Information to track collective investment and outcomes

The author states that every year the Governor and Legislature approve state budgets that include tens of millions of dollars intended to restore and preserve natural and working lands. Many of the grants issued to private entities with the intent to create a lasting change on California's landscape have no requirement, or even preference, for projects that ensure that public investment is a lasting one.

This bill would require all state agencies, when funding restoration efforts on natural and working lands, to prioritize restoration projects that have a permanent, enforceable mechanism to ensure that the project area will be managed in a manner that maintains the desired conditions and the value of the state's investment. This is in line with the EO that specifically requests "enduring" conservation measures on natural and working lands.

However, concerns have been raised that this prioritization could have the unintended effect of making projects on federal and Tribal lands less attractive because access to those lands after the completion of the project could be restricted, thereby limiting the ability to monitor, manage, and maintain the permanence of the project's benefits. While prioritization does not preclude any project, the author may wish to work with CAL FIRE and stakeholders to clarify the language for measuring long-term benefits of carbon storage.

- 5) **Forest and watershed restoration supporting Oroville, Shasta, and Trinity Reservoirs.** AB 2551 (Wood, Chapter 638, Statutes of 2018) authorizes, but does not require, NRA and CalEPA to jointly develop and submit to the Legislature a spatial analysis of the 7 million acre Shasta, Trinity, and Oroville watersheds to help identify ecological risks on the landscape and to help inform resilience projects for the region. The intent was to establish a comprehensive understanding of restoration needs and prioritize investment opportunities that will improve watershed function and resilience, water quality and supply reliability, forest carbon stores, wildlife habitat, and climate adaptation.

NRA reports that it working on both spatial planning and project execution for this and other high fire risk watersheds throughout California. Activities are ongoing in this region, while spatial data sets are being acquired, and a tool to translate those data sets into project design is being developed. Critical resilience projects in this region have already been identified and funded to ensure critical work continues while the more advanced planning is underway.

Near the end of 2020, NRA received funding from the Department of Conservation's Regional Forest and Fire Capacity Program and the US Forest Service is matching state resources to develop this joint watershed spatial planning tool. This is part of the Shared Stewardship Agreement is between California and the US Forest Service and the Wildfire and Forest Resilience Task Force Action Plan.

The Sierra Nevada Conservancy and the US Forest Service are continuing to jointly expand a forest restoration and forest health treatment project pipeline for the region, building on projects identified through local partners and funded through the Governor's wildfire resilience budget, which includes \$1.2 billion over two years

This bill, by the same author as AB 2551, requires NRA to submit to the relevant policy and fiscal committees of the Legislature, by April 1, 2023, a report that describes NRA's strategy for completing and implementing the plan for forest and watershed restoration investments for the drainages that supply the Oroville, Shasta, and Trinity Reservoirs.

REGISTERED SUPPORT / OPPOSITION:

Support

California Cattlemen's Association
California Native Plant Society
California Wilderness Coalition
Cultural Fire Management Council
Defenders of Wildlife
Greenbelt Alliance
Pacific Forest Trust
Sierra Forest Legacy

Opposition

Midpeninsula Regional Open Space District

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

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 2965 (Committee on Natural Resources) – As Introduced March 14, 2022

SUBJECT: California Environmental Quality Act: administrative and judicial procedures

SUMMARY: Repeals several obsolete sections from the California Environmental Quality Act (CEQA) and makes conforming and correction amendments.

EXISTING LAW: 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 (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA guidelines).

FISCAL EFFECT: Unknown

COMMENTS:

This is a CEQA committee bill, including several non-controversial provisions, such as repealing outdated and obsolete sections and correcting references within the CEQA statutes.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 2966 (Committee on Natural Resources) – As Introduced March 14, 2022

SUBJECT: Conservation easements: forest lands: California Conservation Corps.

SUMMARY: Makes changes the California Conservation Corps (CCC) authorizing statutes. Revises and recasts existing law relating to conservation easements on forest lands by limiting the above provisions to the purchase of conservation easements on or after January 1, 2019, to December 31, 2022.

EXISTING LAW:

- 1) Pursuant to the CCC authorizing statutes (Public Resources Code § 14000, et seq):
 - a) Establishes the CCC in the Natural Resources Agency (NRA) and requires the CCC to implement and administer the conservation corps program.
 - b) Requires a state agency that is considering the use of contracted labor to give priority to the CCC when the mission of the CCC and the nature of the state agency's project are substantially consistent. Authorizes the CCC to contract with any state agency.
 - c) Authorizes the Controller, upon appropriation by the Legislature and execution of a contract, to transfer money to the Collins-Dugan California Conservation Corps Reimbursement Account (Account) from other funds under the control of the contracting state agency, including, but not limited to, specified accounts, including the Solid Waste Disposal Site Cleanup and Maintenance Account in the General Fund.
 - d) Requires expenditures from the Account in amounts transferred from the specified funds and accounts to be consistent with the requirements of each fund or account contributing each amount to the Account.
 - e) Requires that implementation of the educational component of a nonresidential program be contingent on the corps receiving sufficient funding from any source, including the federal Jobs Training Partnership Act.
 - f) Authorizes employment and training services to be provided to corps members as a component of their work with the corps or upon their termination from the corps.
- 2) Pursuant to SB 901 (Dodd, Chapter 626, Statutes of 2018):
 - a) Establishes conservation easements as interests in real property that are voluntarily created and freely transferable and that are created to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition.
 - b) Requires for any conservation easement purchased with state funds on or after January 1, 2019, wherein land subject to the easement includes some forest lands, or consists completely of forest lands, to the extent not in conflict with federal law, the terms of any

applicable bond, or the requirements of any other funding source, that the landowner agree, as part of the easement management plan, to maintain and improve forest health through promotion of a more natural tree density, species composition, structure, and habitat function, to make improvements that increase the land's ability to provide resilient, long-term carbon sequestration and net carbon stores as well as watershed functions, to provide for the retention of larger trees and a natural range of age classes, and to ensure the growth and retention of the larger trees over time.

THIS BILL:

1) Related to the CCC:

- a) Includes California Native American tribes as part of the list of specified entities that can reimburse the corps for work.
- b) Deletes the reference to the Solid Waste Disposal Site Cleanup and Maintenance Account and would include, as part of the list of specified accounts, the Greenhouse Gas Reduction Fund, the California Cannabis Tax Fund, and the Good Neighborhood Authority Fund.
- c) Requires the CCC to cooperate with, and seek the cooperation of, state and local workforce investment boards and youth councils, designated pursuant to any federal workforce development or investment act, to secure employment and training services.
- d) Authorizes these employment and training services to include, among other things, any services provided under any federal workforce development or investment act.
- e) Requires implementation of the educational component of a nonresidential program be contingent on the corps receiving sufficient funding from any source, including any federal workforce development or investment act.

2) Related to conservation easements.

- a) Revises and recasts current law relating to conservation easements on forest lands by limiting specified provisions to the purchase of conservation easements between January 1, 2019, and December 31, 2022, inclusive.
- b) Requires, for any conservation easement contracted for purchase with state funds on or after January 1, 2023, wherein land subject to the easement is composed of existing forest lands, as defined, covering at least 40 acres, except as provided, to the extent not in conflict with federal law, that the landowner agree, as part of the easement management plan, to maintain and improve forest health through promotion of a more natural tree density, species composition, structure, and habitat function, among other things.

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **California Conservation Corps.** The CCC, established by Governor Jerry Brown during his first term in 1976, is the oldest and largest state conservation corps program in the country. It's modeled after the 1930s Civilian Conservation Corps. The CCC has provided more than 74 million hours of natural resource work, such as trail restoration, tree planting, habitat restoration, and more than 11.3 million hour of work on emergency response – fires, floods, and earthquakes — since 1976.

Although the CCC was originally conceived as a labor source for trail maintenance and restoration, it has since evolved to a workforce development program. Corps members now learn skills such as, forestry management, energy auditing and installation, emergency services management, and firefighting. Many corps members also receive their high school diplomas and industry certifications at the conclusion of their service. The CCC is designed as a one-year program, with the possibility of extension to up to three years pending performance of the member. More than 120,000 young men and women have participated in the CCC over the last 40 years. There are more than 1,623 corps member positions available at 26 centers statewide; nine of the centers are residential with 600 beds for the corps members assigned to them.

AB 2966 would require the CCC to work with state and local workforce investment boards and youth councils to secure employment and training services, and it would authorize those employment and training services to include any services provided under any federal workforce development or investment act. It would also authorize employment and training services to be provided to corps members as a component of their work with the corps or upon their separation from the corps.

- 2) **Forest conservation easements.** Conservation easements are interests in real property voluntarily created and freely transferable in whole or in part to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition by any lawful method for the transfer of interests in real property in this state. Only the following entities or organizations may acquire and hold conservation easements: qualified 501(c)(3) nonprofit organizations; the state or local government; and, federally recognized California Native American tribes or nonfederally recognized California Native American tribes.

SB 901, a broad wildfire bill enacted in 2018, includes language that requires any conservation easement that includes forestland, is purchased with state funds on or after January 1, 2019, and does not conflict with other specified laws to include an agreement to maintain and improve forest health through the promotion of a more natural tree density, species, composition, structure, and habitat function.

AB 2966 would move that provision of law from the Civil Code (815.11) to the Public Resources Code, because this policy impacts the management plans under a conservation easement rather than the easement itself. The bill also defines forested lands, as the current language could be broadly applied to any conservation easement that has "some forested lands" such as a property on the Central Coast where the easement is for agricultural conservation purposes but the property has riparian lands and the landowner could be required to actively manage the riparian lands. An exemption is provided for small properties of forested lands (less than 40 acres), as those properties have conservation value, but the

landowners often lack the resources to undertake forest management. Any land zoned as timberland production zone must follow the management practices required by the statute. This bill also includes technical changes to landowner requirements to maintain and improve forest health on their property.

REGISTERED SUPPORT / OPPOSITION:**Support**

None on file.

Opposition

None on file.

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