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California State Assembly

NATURAL RESOURCES



LUZ RIVAS
CHAIR

AGENDA

Monday, June 6, 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. | SB 396 | Dahle | Forestry: electrical transmission or distribution lines: clearances: notice and opportunity to be heard.(Urgency) |
| 2. | SB 867 | Laird | Sea level rise: planning and adaptation. |
| 3. | **SB 45 | Portantino | Short-lived climate pollutants: organic waste reduction goals: local jurisdiction assistance. |
| 4. | **SB 1497 | Natural Resources and Water | California Coastal Act of 1976. |

Date of Hearing: June 6, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

SB 396 (Dahle) – As Amended May 12, 2022

SENATE VOTE: 38-0

SUBJECT: Forestry: electrical transmission or distribution lines: clearances: notice and opportunity to be heard.

SUMMARY: Establishes a process for an electrical corporation that owns, controls, operates, or maintains an electrical transmission and distribution line to cut, fell, or trim trees where the electrical corporation does not have existing rights or express permission to do so.

EXISTING LAW:

- 1) Permits electric utilities with transmission or distribution lines in a High Fire-Threat District (HFTD) or the State Responsibility Area (SRA) to traverse land as necessary, regardless of land ownership or express permission from the landowner, after providing notice, to prune trees to maintain clearances and to remove any hazardous, dead, rotten, diseased, or structurally defective live trees.
- 2) Requires, except as specified, any electric utility in the SRA to maintain around and adjacent to any pole or tower that supports a switch, fuse, transformer, lightning arrester, line junction, or dead end or corner pole, a firebreak that consists of a clearing of not less than ten feet in each direction from the outer circumference of such pole or tower.
- 3) Requires electric utilities in the SRA to maintain clearances in all directions between all vegetation and all conductors of varying voltages, as specified.
- 4) Requires dead trees, old decedent or rotten trees, trees weakened by decay or disease, and trees or portions thereof that are leaning toward a line, may contact the line from the side, or may fall on the line to be felled, cut, or trimmed by the utility to remove the hazard.
- 5) Holds any entity liable for trespassing and three times the damages for removal of a hazard tree where it does not have legal authority to do so, whether on public or private property.

THIS BILL:

- 1) Authorizes, notwithstanding any other law, an electrical corporation to traverse lands in HFTDs and the SRA, regardless of property ownership and without property owner permission, to cut, fell or trim trees to maintain clearance around electrical transmission and distribution lines.
- 2) Requires an electrical corporation to provide notice to the land owner and an opportunity for the land owner to be heard before cutting, trimming, or felling trees.
- 3) Requires the electrical corporation's compliance with Public Resources Code Sec. 4293, which requires specified clearances in all directions between all vegetation and all conductors which are carrying electric current, and, if applicable, Rule 35 of the Public Utilities

Commission's (PUC) General Order 95, which specifies vegetation clearance requirements for overhead electrical supply and communication facilities.

- 4) Requires the wood resulting from the cut, trimmed, or felled trees to remain on the property unless the land owner requests the electrical corporation to treat the resultant wood via onsite chipping, or requests the electrical corporation to remove the wood from the property.
- 5) Requires an electrical corporation, in response to a timely request from the landowner, to, at no cost to the landowner, treat the wood, unless the wood is not safely accessible for treatment.
- 6) Requires the PUC, on or before January 1, 2025, to develop standardized content for a letter, door hanger, or other means of notification an electrical corporation can provide a property owner before cutting, trimming, or felling trees.
- 7) Requires an electrical corporation to make a good faith effort to communicate the process for cutting, trimming, or felling trees to the property owner.
- 8) Sunsets the provisions of this bill on January 1, 2026.
- 9) Establishes an urgency clause in order to establish clear forest management practices for the prevention of, and protection against, wildfires.

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's statement:**

In the last decade, California has seen some of the most destructive and unmanageable wildfires in history, many of which have been ignited due to hazard trees coming into contact with electrical infrastructure. California utilities have identified hundreds of hazard trees annually that cannot be abated because they are located on private or public property where the utility cannot utilize an easement or permission from the landowner. Currently, utilities face liability for trespassing and treble damages (triple the property value loss) for abating hazard trees where they do not have property rights to do so, but are otherwise required to address by state law and PUC authority in California's High Fire Threat Districts. This schism between utilities and landowners puts many communities at risk even though the imminent threat of wildfire is widely acknowledged.

SB 396 will assist in the timely removal of hazard trees that can ignite catastrophic wildfires, while protecting the interests of the landowner. With this bill, landowners will have more clarity about the advance-notice they will receive before the utility treats their trees, and the opportunity they will have to provide utilities and their contractors with preferences about how their trees will be treated, including a new right to request that the wood is either left on the property or removed. The PUC will now create standards for the content and type of notice that must be provided to landowners to access the process created by SB 396, rather than leaving the notice up to the utility to administer on their own.

- 2) **Vegetation management.** Electrical infrastructure is a common ignition point for wildfires. Other common sources of ignition include arson, campfires, equipment use, lightning, and vehicles. In 2019, 10% of wildfires and 65% of acres burned were caused by electrical equipment. In 2018, 9% of wildfires and 23% of acres burned were caused by electrical equipment. While high winds can blow vegetation into utility lines from far distances, removing vegetation in contact with utility lines has been found effective in reducing fire starts.

California's investor-owned utilities (IOUs) (i.e., private electrical corporations regulated by the PUC) are responsible and accountable for ensuring safe operations of their transmission and distribution infrastructure, which includes vegetation management around that electrical infrastructure. There are various Public Resources Code sections requiring utility line vegetation management in SRAs that specify distances for which vegetation must be cleared from power lines based on voltage. These requirements have been in place since 1976. PUC General Order 95 also places requirements on IOUs for vegetation management. As electric utilities have increased their efforts to reduce ignitions from their electric infrastructure, they have increased the removal of vegetation. In some instances, they have had trouble gaining access to properties to do the work. Electric utilities are allowed to disconnect service to customers and landowners who obstruct access to overhead lines in SRAs or HFTDs when there is a breach of minimum vegetation clearances, or when a dead, rotten, diseased, leaning, or overhanging tree poses an imminent or immediate risk for falling onto a line, where the utility has not been given an affirmative right to access its lines.

- 3) **Forest Practice Rules.** The California Forest Practice Act was enacted in 1973 to ensure that logging is done in a manner that will preserve and protect fish, wildlife, forests and streams. The State Board of Forestry and Fire Protection enacts and enforces additional rules to protect these resources, such as the California Forest Practice Rules (CFPR), under Title 14 of the California Code of Regulations. The CFPR provides detailed instructions for woody material management, among many other things, for fuel treatment standards that specify wood material management, treatment and removal within specified distances of various structures and roads.
- 4) **Current law for utility vegetation management.** AB 2911 (Friedman, Chapter 641, Statutes of 2018) provides the right to utilities to traverse land the utility does not own to complete required vegetation clearance work. AB 2911 added Public Resource Code Section 4295.5:
 - a) Notwithstanding any other law, including Section 4295, any person who owns, controls, operates, or maintains any electrical transmission or distribution line may traverse land as necessary, regardless of land ownership or express permission to traverse land from the landowner, after providing notice and an opportunity to be heard to the landowner, to prune trees to maintain clearances pursuant to Section 4293, and to abate, by pruning or removal, any hazardous, dead, rotten, diseased, or structurally defective live trees. The clearances obtained when the pruning is performed shall be at the full discretion of the person that owns, controls, operates, or maintains any electrical transmission or distribution line, but shall be no less than what is required in Section 4293. This section shall apply to both high fire threat districts, as determined by the California Public

Utilities Commission pursuant to its rulemaking authority, and to state responsibility areas.

- b) Nothing in subdivision (a) shall exempt any person who owns, controls, operates, or maintains any electrical transmission or distribution line from liability for damages for the removal of vegetation that is not covered by any easement granted to him or her for the electrical transmission or distribution line. (Public Resources Code § 4295.5)

Southern California Edison (SCE) states that this provision of law “allows an electrical corporation to traverse land as necessary, regardless of land ownership or express permission to traverse land from the landowner, after providing notice and an opportunity to be heard to the landowner, to conduct vegetation management as described, which seems permissive enough. However, existing law also sets up wide circumstances in which the electrical corporation may be subject to civil damages if it follows through with such vegetation management, putting the company in the troublesome position of choosing either to risk incurring civil damages if it trims, or risk leaving vegetation that might ignite a wildfire if it is not trimmed. By clarifying the liability exposure and requiring a utility to use a hazard tree assessment tool that aligns with international arboriculture standards, SB 396 would lower the cost risk for utility customers and help strengthen our safety measures, while ensuring that property owner concerns are addressed and trees are trimmed in accordance with an industry-approved assessment.”

Various stakeholders representing rural landowners, forest managers, and environmental advocacy groups have raised concerns with the current provision of law, citing the lack of accountability and oversight, the broad discretion provided a utility to prune trees, as well as other vague provisions that are open to interpretation with implementation. According to Pacific Gas & Electric (PG&E), there is not much clarity around how this is supposed to be implemented or what is required.

Furthermore, this provision exempts all other laws without qualification as to which laws are exempt, so there is no requirement that vegetation management under this specific authority be done in compliance with the CFPR or any other environmental protection law.

SB 396 is drafted to apply to IOUs, rather than publicly-owned utilities, and it is very similar to current law, which means the stakeholder concerns with current law are inextricably linked to this bill. While the author’s intent is to establish this new authority very narrowly, the bill is inevitably an invitation to discuss concerns that have arisen from implementation of the current law. Any changes made to SB 396 should be equally applied to PRC 4295.5 to ensure consistency.

- 5) **Overcoming past mistakes.** After the 2020 CZU Lightning Complex fires in the Santa Cruz Mountains were contained, PG&E cut thousands of trees, including second growth redwoods, madrones, and cypress, in Boulder Creek, Ben Lomond and Bonny Doon to clear the forests of dead and damaged trees near powerlines. However, more trees were removed than may have been necessary. The Santa Cruz County Board of Supervisors described PG&E logging as “egregious and reckless.” Though Santa Cruz is in the Coastal Zone, this was all done without a Coastal Development Permit because current law expressly exempts this activity from “any other law,” which includes the Coastal Act. Had current law required compliance

with CFPR and the Coastal Act, oversight and permitting would have been required, and much of the damage may have been avoided.

PG&E faces millions of dollars in fines from the Department of Forestry and Fire Protection (CAL FIRE) and the California Coastal Commission for over-cutting large trees. Resolution on PG&E's violations are outstanding.

The state Office of Energy Infrastructure Safety recently issued a Draft Action Statement on PG&E's 2021 Wildfire Mitigation Plan Update that raised concerns that PG&E's vegetation management and post-fire restoration activities created large amounts of biomass residue. On August 24, 2021, the PUC requested that PG&E:

- 1) Immediately and without delay establish a felled tree removal plan for the customers impacted by wildfires in 2020;
 - 2) Communicate the plan clearly to impacted county and local governments, tribes, customers, and landowners;
 - 3) Ensure close coordination with the California Governor's Office of Emergency Services' debris management program;
 - 4) Consider every possible commercial use for the felled tree once removed; and,
 - 5) Execute the plan safely, in keeping with local permits and rules, and with high priority.
- 6) **Who decides which trees to cut?** While current law specifies requirements for vegetation management around powerlines based on voltage, a utility has discretion to cut beyond those minimum specifications.

Concerns have been raised that, under this bill, a utility can come onto private property outside the power line easement and prune or fell trees as far as it wants.

The California Forestry Association (CalForests) writes that, historically, the utilities have always had to abide by the environmental protections provided by the Forest Practice Act and Rules through the use of Right of Way Exemptions. However, as currently contemplated by SB 396, these environmental protections are being set aside. While the reference to Rule 35 of the PUC's General Order appears to require utilities to comply with the requirements of sections 4292 and 4293 of the Public Utilities Code, the Order also includes guidance that utilities have interpreted as self-guided permission to remove many trees, or other vegetation, deemed necessary when conducting timber operations as a means of maintaining overhead distribution and transmission infrastructure. This guidance has resulted in utilities going beyond what is necessary to protect their overhead infrastructure, and unnecessarily removing healthy green trees from private property.

Current law authorizes *pruning*. SB 396 goes farther and authorizes *cutting, trimming, and felling*. Without the applicability of CFPR, or any oversight or accountability, and with *full discretion* of the utility, this expansion over current law is significant.

The September 3, 2021 version of the bill authorized the utility to “*leave slash and woody debris that have been chipped and has, at maximum, a post-harvest depth of 18 inches above*

the ground, except within 150 feet from an approved and legally permitted structure that complies with the California Building Standards Code,” but that language was removed from the bill.

Absent that level of specificity, clarifying that utility tree work under this bill is not exempt from the CFPR could assuage concerns about overcutting with this augmented authority to cut, trim and fell trees.

- 7) **Communication to landowners.** Increased utility vegetation management can cause conflict between property owners and a utility over the scope of the work and effects to the property.

In Santa Cruz, PG&E was accused of not providing notice to homeowners, removing trees, leaving debris on people's property and in sensitive waterways, and violating the CFPR.

According to PG&E, there's a large discrepancy under current law in how notice and opportunity to be heard is provided. More than 90% of the time, there is no dispute from the landowner about working being done.

In an attempt to rectify that, this bill would require the PUC, on or before January 1, 2025, to develop standardized content for a letter, door hanger, or other means of notification an electrical corporation can provide a property owner before cutting, trimming, or felling trees. It also requires an electrical corporation to make a good faith effort to communicate the process for cutting, trimming, or felling trees to the property owner.

The challenge with the proposed communication process in the bill is that it puts the onus on the landowners to reply if they want the utility to remove or treat the cut vegetation, and whether to treat and remove it at all. Some landowners may not be on their property for weeks at a time, or may miss a door hanger altogether. If the landowner doesn't reply (or misses the door hanger or a form letter), the utility will leave the fuels on the property. A further complication is that the verbiage in the bill (mirrored from current law) is vague. It requires the utility, before traversing private property, to “provide notice and an opportunity to be heard to the landowner” which leaves the timelines up to interpretation, and only requires the utility to treat and remove the felled trees if “the landowner makes a timely request.” This language provides no specificity on timing or due process for the landowner to express his/her/their rights to deny the access or request waste removal.

It would behoove both landowners and the utilities having to communicate with the landowners to have clearer, quantifiable communications requirements in the bill.

- 8) **Landowner costs.** As a policy, PG&E removes all leafy tree trimmings by chipping and hauling the wood material and treating it in accordance with applicable environmental laws and the requirements of the easement, if applicable. PG&E explains that it tries to work with a landowner about the landowner's preference, which depends on whether the material is part of a traditional vegetation management program or an Enhanced Vegetation Management program (which allows for the removal at the request of the property owner for all material). All of these costs are then subject to rate case proceedings as to cost recovery to make sure the utility's decisions are “reasonable.”

SB 396 would require, in response to a timely request from a landowner and at no cost to the landowner, the electrical corporation to treat the wood as requested, unless the wood is not

safely accessible by its vehicles and equipment or other regulations would otherwise prohibit the treatment.

Because the bill requires treatment at “no cost to the landowner,” when the utility submits an application for cost-recovery at the PUC to pass on the treatment costs to customers, the PUC will either allow the utility to pass these costs on in full or in part based on a “reasonableness review.” Whatever costs the utility cannot recover means that their investors/shareholders cover the costs, not the landowners and not their customers.

The Rural County Representatives of California (RCRC) write that PG&E’s recent post-fire vegetation management work related to the 2020 wildfires resulted in more than 100,000 felled trees being left on landowners’ properties. Unlike post-fire work done in previous years, the utility did not offer to remove felled trees and instead shifted those costs for transportation and disposal to the landowner, and they note that it is often extremely expensive, if not impossible, for the landowner to remove that material.

- 9) **Treated woody material removal.** This bill requires the wood resulting from the cut, trimmed, or felled trees to remain on the property unless the land owner requests the electrical corporation to treat the resultant wood via onsite chipping, or requests the electrical corporation to remove the wood from the property, unless the wood is not safely accessible for treatment or removal.

While vegetation management around power lines is critical for preventing the ignition of fires, managing woody material is just as important. When residues from mastication and slash 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 materials are piled and burned creating air pollution, such as black carbon, or left to decay, creating methane, a powerful greenhouse gas. Concerns have been raised about preventing “hack and stack” tree cutting, leaving woody material – and the resultant wildfire risks – on the private land.

An August 2021 legislative sign-on letter to the PUC from the Senators and Assemblymembers representing Sonoma and Napa counties stated, “PG&E’s system restoration [after the 2020 wildfires in Northern California] included cutting down between 150k-200k trees, leaving the majority of trees in place where they fell. This new volume of felled wood in the wildland urban interface, including the high and very high fire severity zones also created new safety hazards, prevented fire survivors from clearing their properties and beginning the process of rebuilding, imposed significant burdens on the impacted local governments, as well as imposed significant financial obligations on both individual residents and the communities in which they reside.”

The challenge, however, as one utility explains, is that some trees are cut under powerlines that are adjacent to embankments or bodies of water where it would not be possible to bring in trucks to remove the felled trees; too dangerous for workers to remove by hand; or, too damaging to the environment to drive in the equipment needed to remove the felled trees. For these reasons, the author is only requiring the wood to be treated if safely accessible.

RCRC further writes that PG&E noted in filings to the PUC that it has access to equipment that can chip whole trees up to 28” in diameter. Depending on the number of trees cut at an individual site, SB 396 could result in a significant increase in fuel load. Rather than simply

“treat” the felled trees, RCRC argues that utilities should be required to remove those trees upon request by the landowner.

Under the CFPR, wood materials are strictly regulated near homes and other critical infrastructure because the surface fuels create an enormous fire risk. Applicability of the CFPR and putting the onus on the utility to remove the material, unless otherwise instructed by the landowner, would prevent the unwanted cost burden to the landowner.

- 10) **Unlimited discretion.** Like current law, this bill affords a utility unlimited discretion without any oversight to cut trees along powerlines.

Sierra Club California and Center for Biological Diversity express concern that SB 396 gives this “full discretion” to any business entity that “owns, controls, operates, or maintains” an electrical transmission or distribution line, presumably defined extensively to include contractors who may have limited expertise in preserving tree health or minimizing damage to the property.

As current law is constructed, however, utilities are frequently issued lawsuits and challenges on properties “not covered by an easement” for trespass and damages for the removal of vegetation that are directly otherwise required activities by Public Resources Code and PUC authority, and utilities must treat to avoid being liable under inverse condemnation, which is the legal concept that entitles property owners to just compensation if their property is damaged by a public use.

PG&E argues that IOUs were provided full discretion under Public Resources Code 4295.5, added by AB 2911, because IOUs have full liability for any tree that strikes their infrastructure in a HFTD due to inverse condemnation.

The author notes that the express goal of SB 396 is to delete PRC 4295.5 (b) which states: “[PRC sec. 4295.5 (a)] does not exempt a person who owns, controls, operates, or maintains an electrical transmission or distribution line from liability for damages for the removal of vegetation **that is not covered by an easement** granted to the person for the electrical transmission or distribution line.” (See full statute citation above)

Again, applying the CFPR would provide oversight and accountability to the bill.

- 11) **Whose line is it anyway?** There are various types of utilities managing electrical infrastructure and providing energy to customers, including IOUs – the investor-owned utilities; publicly-owned utilities (POUs), which are owned and operated by local governments; and, electrical cooperatives, which are privately owned, smaller utilities operating in more rural areas of the state. While current law (Sec. 4295.5) applies to all utilities, and all vegetation management policies like those proposed in this bill should continue to apply to all utilities, the author’s intent is to narrowly apply SB 396 authority to IOUs. The bill was amended earlier in the Legislative session to narrow the scope to remove POUs, so the bill should be clear about the intent to narrow this to IOUs by clarifying the definition of electrical corporation.
- 12) **Coastal Zone.** The California Coastal Act provides long-term protection of California’s 1,250-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation of coastal resources and development within the

Coastal Zone. The Coastal Commission Special Treatment Area is an identifiable and geographically bounded forest area designated within the Coastal Zone that constitutes a significant wildlife and/or plant habitat area, area of special scenic significance, and any land where timber operations could adversely affect public recreation areas or the biological productivity of any wetland, estuary, or stream especially valuable because of its role in a coastal ecosystem.

The CCC oversees all development within the Coastal Zone required to be permitted by a coastal development permit if the development. Tree removal and related activities, as well as clearance, grading, road development, placement of cut logs and slash, and other activities all constitute “development,” and therefore should be subject to CCC oversight.

By “notwithstanding any other law,” like current law under PRC 4925.5, this bill exempts tree cutting and vegetation management within the Coastal Zone from the California Coastal Act.

- 13) **Natural Resources Committee hearing.** This committee heard SB 396 on July 7, 2021, where the bill was approved by a vote 11-0.

The bill, in a different version, was amended by this Committee to require cut wood to be left on the property, with any potential value preserved, unless the landowner requests removal within a week, in which case, utility must remove at no cost. It also required any slash or debris left on property must be chipped and scattered more than 150 feet away from structures.

- 14) **Committee amendments.** The Committee may wish to consider amending the bill again to make the following changes:

- Clarify exemptions to current law are only related to trespass laws;
- Clarify PUC requirements related to communication content development;
- Apply those aforementioned amendments to PRC Sec. 4295.5 for consistency;
- Clarify the authority exercised in the bill must comply with environmental laws related to forestry and the Coastal Act;
- Clarify the landowner may request how the materials should be treated on the landowner’s property;
- Codify specified distances for which materials shall be treated.

- 15) **Arguments in support.** PG&E supports SB 396... to grant utilities the ability to remove hazards posed by trees that are likely to fall on electric facilities that are located on properties where utilities do not otherwise have clear authority to access and perform the work. This work is critical because PG&E operates in heavily forested and vegetated areas. In order to facilitate timely completion of vegetation management activities, PG&E collaborates with local landowners and communities, local governments, state agencies, and federal agencies. However, our vegetation management activities still face numerous hurdles related to land and access rights and local permit requirements, creating dangerous barriers to the removal of

hazardous trees that could ignite catastrophic fires. (SB 396) will enable PG&E to address wildfire risk rapidly and effectively.

- 16) **Arguments in opposition.** Sierra Club California and Center for Biological Diversity state that SB 396 would negatively impact California's forest ecosystems and communities by allowing electrical corporations to cut far outside of utility easements around powerlines without adhering to the Forest Practice Rules which exist to minimize damage to natural resources. SB 396 gives electrical corporations and their contractors unprecedented authority to ignore environmental considerations, the rights of private landowners and homeowners, and the public interest, to minimize the electrical corporation's costs of operation, even when doing so increases the fire risk for landowners and communities.
- 17) **Related legislation.** AB 448 (Mayes), which was substantially similar to this bill, would have permitted a landowner (electric utility) of a transmission or distribution line to enter any property without the permission of the property landowner to fell, cut, or trim trees to prevent contact with those lines. This bill was held in the Assembly Natural Resources Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Professional Firefighters
Coalition of California Utility Employees
Pacific Gas and Electric Company and Its Affiliated Entities
Southern California Edison
Tree Care Industry Association

Opposition

350 Bay Area Action
350 South Bay LA
Big Sur Land Trust
California Council of Land Trusts
California Forestry Association
California Municipal Utilities Association
California Native Plant Society
California Wilderness Coalition
Center for Biological Diversity
Clean Water Action
Climate Reality Project, Los Angeles Chapter
Defenders of Wildlife
Elder Creek Oak Sanctuary
Endangered Habitats League
Environmental Protection Information Center
Friends of Harbors, Beaches and Parks
Golden State Power Cooperative
Indivisible Alta Pasadena
Indivisible CA 34 Women
Indivisible California Green Team
Indivisible Los Gatos

Indivisible Marin
Indivisible Media City Burbank
Indivisible Mendocino
Indivisible Normal Heights
Indivisible Ross Valley
Indivisible Sacramento
Indivisible San Jose
Indivisible Santa Cruz County
Indivisible Sonoma County
Indivisible Stanislaus
Indivisible Ventura
Los Padres Forest Watch
Midpeninsula Regional Open Space District
Northern California Power Agency
Pacific Forest Trust
Peninsula Open Space Trust
Planning and Conservation League
Progressive Democrats of America, California
Progressive Democrats of Santa Monica Mountains
Rooted in Resistance
Rural County Representatives of California
Rural County Representatives of California (RCRC)
Santa Cruz for Bernie
Save the Redwoods League
Sierra Club
Sierra Forest Legacy
Social 350
Sonoma Land Trust
Southern California Public Power Authority
The Climate Alliance of Santa Cruz County
The Fire Restoration Group
Utility Wildfire Task Force

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

Date of Hearing: June 6, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

SB 867 (Laird) – As Amended May 31, 2022

SENATE VOTE: 39-0

SUBJECT: Sea level rise: planning and adaptation

SUMMARY: Requires a local government within the coastal zone to address sea level rise planning and adaptation through either a local coastal program or a San Francisco Bay shoreline coastal resiliency plan by January 1, 2026, and to update that planning and adaptation every 5 years.

EXISTING LAW:

- 1) Creates within the Ocean Protection Council (OPC) the California Sea Level Rise State and Regional Support Collaborative to provide state and regional information to the public and support to local, regional, and other state agencies for the identification, assessment, planning, and, where feasible, the mitigation of the adverse environmental, social, and economic effects of sea level rise within the coastal zone, as provided.
- 2) Requires local governments in the coastal zone to have local coastal program approved by the California Coastal Commission (CCC) for the local government's land use plans.
- 3) Establishes the San Francisco Bay Conservation and Development Commission (BCDC) to regulate the San Francisco Bay and the first 100 feet inland from the shoreline around the Bay.

THIS BILL:

- 1) Requires a local government lying, in whole or in part, within the coastal zone or the jurisdiction of BCDC to address sea level rise planning and adaptation through either a local coastal program or a San Francisco Bay shoreline coastal resiliency plan, as applicable, by January 1, 2026.
- 2) Requires a local government to update the sea level rise planning and adaptation every five years, commencing January 1, 2031. Requires a local government that already meets the requirements as of January 1, 2023, to update the sea level rise planning and adaptation every five years, commencing January 1, 2028. Requires an update to incorporate best available science and adaptation strategies as provided in the most recent version of OPC "State of California Sea-Level Rise Guidance Document."
- 3) Requires sea level rise planning and adaptation required to include, at a minimum, all of the following:
 - a) Vulnerability assessments for infrastructure, natural areas, and parks. The vulnerability assessments shall build on existing information to the maximum extent possible.
 - b) Economic analyses of assets at risk and adaptation measures to protect those assets.

- c) Implementation approaches, including funding sources.
 - d) Efforts to ensure equity for at-risk communities.
 - e) Identification of lead planning and implementation agencies.
- 4) Requires, on or before December 31, 2023, CCC and BCDC, in close coordination with OPC and the California Sea Level Rise State and Regional Support Collaborative, to establish guidelines for the preparation of the sea level rise planning and adaptation.
 - 5) States that this division does not reduce, alter, or diminish the authority of a state agency.
 - 6) Provides that if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's statement.**

SB 867 will equip local governments with the best available science to plan for and mitigate the effects of sea level rise within the coastal zone and ensure local coastal programs are updated to reflect these developments.

Currently, local coastal programs are not required to address sea level rise, an often-overlooked aspect of climate change that has the potential to be one of the most damaging threats. A 2019 team of U.S. Geological Survey scientists found that even a small increase in sea level rise could be an overwhelming force when a storm hits.

SB 867 will prepare communities for the future and strengthen existing coastal programs by providing local leaders with planning guidelines established by the State Sea Level Rise Leadership team, consisting of 17 California state agencies who work collectively to achieve coastal resilience for the entire coast of California.

- 2) **Sea level rise.** In 2014, nearly 75% of California's population lived in coastal counties and along the State's iconic 1,100 miles of mainland coastline and the San Francisco Bay's additional 500-mile shoreline. As the nation's largest ocean economy valued at over \$44 billion/ year, California has a significant portion of its economy concentrated on the coast, with a great majority of it connected to coastal recreation and tourism, ports and shipping. Many of the facilities and infrastructure that support this ocean economy, as well as the State's many miles of public beaches, lie within a few feet of the present high tide line.

Sea-level rise, a consequence of a warming global climate, poses an immediate and real threat to coastal ecosystems, livelihoods and economies, public access to the coast, recreation, and the well-being and safety of coastal communities. Combined with episodic and extreme events such as storm surges and high tides, sea-level rise and land subsidence

directly affect Californians living in coastal and inland delta counties, increasing floods that disrupt services and infrastructure systems. The sea level along the state's coastline is currently predicted to rise by about 8 inches by 2050, and over 6 feet by 2150 relative to levels in 2020. Additionally, the Fourth Climate Assessment also finds that statewide, \$17.9 billion worth of residential and commercial buildings could be inundated with just 1.7 feet of sea level rise.

- 3) **OPC takes the lead on sea level rise.** OPC leads the State Coastal Leadership Group on Sea-Level Rise to create a near term plan to address sea level rise and its impacts in the state.

In February 2022, the OPC released the State Agency Sea-Level Rise Action Plan for California (Action Plan). This collaborative plan both implements the state's 2020 sea level rise principles and helps to "guide unified, effective action toward sea level rise resilience for California's coastal communities, ecosystems, and economies."

The Action Plan includes more than 80 actions of both regional and statewide scope. Key Action Plan themes include: the entire coast of the state should be prepared and planning for sea level rise; sea level rise adaptation plans should lead to project implementation; sea level rise adaption planning should include pathways to resiliency to 3.5 feet of rise by 2050 and 6 feet by 2100; all sea level rise adaptation planning and projects should integrate and prioritize equity and social justice; nature-based solutions should be pursued when possible; coastal habitats, including wetlands, beaches, and dunes should be protected and conserved; and, forward thinking efforts should be incorporated. Actions taken are designed to be tracked and are assigned to specific state entities for implementation. Target dates for completion and implementation of the actions and metrics to evaluate success are also provided.

Included is the critical action to launch the California Sea-level Rise State and Regional Support Collaborative (Collaborative), as required by SB 1 (Atkins, 2021), to support the identification, assessment, and planning necessary to avoid the environmental, social, and economic effects of sea level rise.

The Action Plan acknowledges that planning for sea level rise resiliency will need to be downscaled to the local level, based on local and regional conditions, needs, and past and current planning efforts. The Action Plan itemizes an action for OPC to utilize the California Sea-level rise State and Regional Support Collaborative to offer additional capacity in the form of technical assistance and support to tribal and local governments for sea level rise funding programs and grant applications, adaptation planning, emergency planning, and project development and implementation.

SB 867 would require a local government, partially or fully within the coastal zone or the jurisdiction of BCDC, to address sea level rise planning and adaptation through either a local coastal program or a San Francisco Bay shoreline coastal resiliency plan by January 1, 2026.

The local government's sea level rise planning would be required to incorporate best available science and adaptation strategies provided by the OPC.

- 4) **Equity.** Among the other requirements for the sea level rise planning, a local government would need to include efforts to ensure equity for at-risk communities.

The California Climate Change Assessment is required to provide an integrated suite of products that report the impacts and risks of climate change, including specific reports that can inform regional and local vulnerability assessments, adaptation planning, and community resilience efforts.

There is no definition for at-risk community, but it is meant to include communities that are threatened by the impacts of sea level rise – which are virtually all coastal communities. At-risk communities would be identified through vulnerability assessments and the intent is to ensure that OPC is prioritizing adaptation and resilience planning for communities that are historically or currently under-resourced and/or will be disproportionately impacted.

- 5) **Update timing.** SB 867 requires a local government to update its sea level rise planning every five years. Local governments need to be fully engaged in planning for the impacts of climate change and sea level rise. However, updates to an LCP can be a very time consuming and a very expensive process. Planning for sea level rise requires a lot of technical expertise and take into account many different factors. In concurrence, both BCDC and CCC suggest updates every 10 years as being more practicable. However, the impacts of climate are coming faster than predicted, and sea level rise modeling is an ever-changing science due to the exacerbating impacts on our oceans, glacial sea ice melt, oceanic weather conditions, etc. Therefore, the bill should be amended to require comprehensive updates every 10 years to accommodate local government resources and time constraints, but require technical updates every five years to allow adjustments for changes in sea level rise modeling.
- 6) **State funding for regional climate planning.** SB 1 requires, upon appropriation in the annual Budget Act, the Collaborative to expend no more than \$100 million annually from appropriate bond funds and other sources for the purpose of making grants to local and regional governments to update local and regional land use plans to take into account sea level rise and for directly related investments to implement those plans.

The 2021-22 Budget Act provided \$100 million over two years to OPC for building ocean and coastal resilience, which will include, when the budget is enacted, \$50 million for fiscal year 2022-23.

To ensure resources are available for the effective implementation of this bill, funding from the Governor's climate funding package, SB 1, existing bond resources, or other appropriate sources could be tied to the requirements in the bill.

- 7) **Committee amendments.** The Committee may wish to consider the following amendments:
 - a) Requiring updates to the sea level rise planning every 10 years with technical updates every 5 years.
 - b) State that enactment of this division is subject to appropriation by the Legislature for this purpose.
 - c) Related technical changes.

8) Related legislation.

SB 1078 (Allen) requires the OPC, in consultation with the State Coastal Conservancy, to develop the Sea Level Rise Revolving Loan Pilot Program for purposes of providing low-interest loans to local jurisdictions for the purchase of coastal properties in their jurisdictions identified as vulnerable coastal property located in specified communities, including low-income communities. This bill is in Assembly Rules awaiting referral.

SB 418 (Laird, Chapter 1, Statutes of 2021) would have extended the sunset date for the sea level rise database until January 1, 2024. The bill was amended with unrelated language and chaptered.

SB 1 (Atkins, Chapter 326, Statutes of 2021) establishes the California Sea Level Rise Mitigation and Adaptation Act of 2021 and creates the Collaborative at the OPC to help coordinate and fund state efforts to prepare for sea level rise associated with climate change, among other things.

SB 576 (Umberg, Chapter 374, Statutes of 2019) mandates that OPC develop and implement a coastal climate adaptation, infrastructure, and readiness program to improve the climate change resiliency of California's coast communities, infrastructure, and habitat. The bill also instructs the State Coastal Conservancy to administer the Climate Ready Program, which addresses the impacts and potential impacts of climate change on resources within the conservancy's jurisdiction.

REGISTERED SUPPORT / OPPOSITION:**Support**

None on file.

Opposition

None on file.

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

Date of Hearing: June 6, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

SB 45 (Portantino) – As Amended January 3, 2022

SENATE VOTE: 36-0

SUBJECT: Short-lived climate pollutants: organic waste reduction goals: local jurisdiction assistance

SUMMARY: Requires the California Department of Resources Recycling and Recovery (CalRecycle), in consultation with the Air Resources Board (ARB), to provide assistance to local jurisdictions, including any funding appropriated by the Legislature, for purposes of assisting local jurisdictions with complying with specified organic waste recycling programs.

EXISTING LAW, pursuant to SB 1383 (Lara), Chapter 395, Statutes of 2016:

- 1) Requires generators of organic waste (primarily food and yard waste) to arrange for recycling services for that material and requires local governments to implement organic waste recycling programs designed to divert organic waste from those businesses.
- 2) Requires generators, local governments, and other entities to comply with regulations adopted by CalRecycle, developed in consultation with ARB to reduce the landfill disposal of organic waste by 50% by 2020 and 75% by 2025 to reduce methane emissions from landfills.
- 3) Requires cities and counties to annually procure sufficient organic waste products to meet their annual procurement targets, as determined by CalRecycle based on population.

FISCAL EFFECT: According to the Senate Appropriations Committee:

- 1) CalRecycle estimates minimum costs of \$164,000 in the first year and ongoing costs of at least \$162,000 annually thereafter (Integrated Waste Management Account) to provide assistance as required by this bill. CalRecycle notes that calculating a precise cost estimate is difficult given the current scope of this bill and that the estimated costs may increase.
- 2) ARB estimates that any costs associated with this bill are minor and absorbable.

COMMENTS:

1) **Author statement:**

SB 45, as amended, formally directs the Cal Recycle (The Department of Resources Recovery and Recycling within CAL-EPA) to assist local agencies in implementing SB 1383 (Lara/Chapter 395 Statutes of 2016) which, inter alia, requires cities and counties to reduce and eventually eliminate organic wastes from their disposal facilities to reduce methane emissions.

The bill is complementary to action taken in the 2021-2022 Budget Act which made funding available to Cal Recycle for these purposes but did not include express direction to the department to expend the funds for these express purposes. SB 45 would provide that direction.

- 2) **Organic waste recycling.** An estimated 35 million tons of waste are disposed of in California's landfills annually. More than half of the materials landfilled are organics subject to SB 1383 requirements. CalRecycle's most recent waste characterization study, completed in 2018, found that 55.5% of disposed waste is organic waste. SB 1383 required the ARB to approve and implement the comprehensive short-lived climate pollutant strategy to achieve, from 2013 levels, a 40% reduction in methane, a 40% reduction in hydrofluorocarbon gases, and a 50% reduction in anthropogenic black carbon, by 2030. In order to accomplish these goals, the bill specified that the methane emission reduction goals include targets to reduce the landfill disposal of organic waste 50% by 2020 and 75% by 2025 from the 2014 level.

In order to achieve these goals, California's waste management infrastructure is going to have to recycle much higher quantities of organic materials, involving significant investments in additional processing infrastructure. Organic waste is primarily recycled by composting the material, which generates compost that can be used in gardening and agricultural as a soil amendment and engineering purposes for things like slope stabilization. Anaerobic digestion is also widely used to recycle organic wastes. This technology uses bacteria to break down the material in the absence of oxygen and produces biogas, which can be used as fuel, and digestate, which can also be used as a soil amendment. Tree trimmings and prunings can also be mulched.

- 3) **Budget action.** The 2021-22 Budget appropriated \$168 million for organic waste infrastructure and implementation, including \$60 million to CalRecycle for noncompetitive grants to local jurisdictions to assist with the implementation of SB 1383 regulations, including: capacity planning, collection, edible food recovery, education and outreach, enforcement and inspection, program evaluation/gap analysis, procurement requirements, and record keeping. This spring, CalRecycle approved 393 awards to jurisdictions for the first round of the local assistance grants. \$41.7 million dollars will go to cities and counties to help them reduce methane emissions from landfills. Funding will help pay for new curbside containers, education and outreach materials, record-keeping subscriptions, refrigerators for food rescue programs, side loaders for collection vehicles, as well as personnel and administrative costs. Additional jurisdictions will be eligible for funding in the second-round of awards this fall. The Governor's proposed 2022-23 Budget does not include funding for organic waste recycling or local assistance.

REGISTERED SUPPORT / OPPOSITION:

Support

350 Humboldt
350 Sacramento
350 Silicon Valley
Climate Reality Project, San Fernando Valley
Climate Reality San Fernando Valley, CA Chapter

County of Marin
San Gabriel Valley Council of Governments

Opposition

None on file.

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

Date of Hearing: June 6, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

SB 1497 (Committee on Natural Resources and Water) – As Introduced March 21, 2022

SENATE VOTE: 38-0

SUBJECT: California Coastal Act of 1976

SUMMARY: Makes various minor and technical changes to the California Coastal Act.

EXISTING LAW:

- 1) Establishes the California Coastal Commission (CCC) through the adoption of the California Coastal Act of 1976.
- 2) Requires the CCC to plan for and regulate the use of land and water in the coastal zone (which excludes the San Francisco Bay).
- 3) Encourages, pursuant to Assembly Concurrent Resolution 260 (Low, Chapter 190, Resolutions of 2018), the Legislature to engage in a coordinated effort to revise existing statutes to be more inclusive by reusing nouns to avoid the use of gendered pronouns, among other provisions.

THIS BILL:

- 1) Corrects the name of various state entities, such as changing the “Department of Fish and Game” to “Department of Fish and Wildlife” and changing the “Division of Oil and Gas” to “Geologic Energy Management Division of the Department of Conservation.”
- 2) Removes obsolete language, and update references to applicable code sections.
- 3) Revises gendered references to achieve gender neutrality.
- 4) Makes various technical and conforming changes.

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

COMMENTS:

1) **Author’s statement.**

The 2022 Senate Natural Resources and Water Committee omnibus bill includes non-controversial, minor technical and clarifying changes to statute that affects the California Coastal Commission. It removes and updates obsolete statutory language, and revises the Coastal Act to gender neutrality.

- 2) **Gender references.** SB 1497 makes changes throughout the Coastal Act to update gendered references to them, their, or other appropriate pronoun.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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