California State Assembly

NATURAL RESOURCES

LUZ RIVAS
CHAIR

AGENDA

Monday, June 26, 2023
2:30 p.m. -- State Capitol, Room 447

BILLS HEARD IN SIGN-IN ORDER

** = Bills Proposed for Consent

1.	SB 273	Wiener	Tidelands and submerged lands: City and County of San Francisco: Piers 30-32: mixed-use development.
2.	SB 286	McGuire	Offshore wind energy projects.
3.	****SB 301**	Portantino	Vehicular air pollution: Zero-Emission Aftermarket Conversion Project.
4.	SB 303	Allen	Solid waste: Plastic Pollution Prevention and Packaging Producer Responsibility Act.
5.	SB 310	Dodd	Prescribed fire: civil liability: cultural burns.
6.	****SB 367**	Seyarto	Farm, ranch, and public lands cleanup and abatement: grant program.
7.	SB 422	Portantino	California Environmental Quality Act: expedited environmental review: climate change regulations.
8.	SB 438	Caballero	Carbon sequestration: Carbon Capture, Removal, Utilization, and Storage Program: incidental and unintentional residual oil production.
9.	****SB 539**	Stern	Sepulveda Basin: planning process: nature-based climate solutions.
10.	SB 583	Padilla	Salton Sea Conservancy.
11.	****SB 613**	Seyarto	Organic waste: reduction goals: local jurisdictions: low-population exemption.
12.	SB 674	Gonzalez	Air pollution: refineries: community air monitoring systems: fence-line monitoring systems.
13.	SB 781	Stern	Methane emissions: natural gas producing low methane emissions.

Date of Hearing: June 26, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
SB 273 (Wiener) – As Amended June 5, 2023

SENATE VOTE: 38-0

SUBJECT: Tidelands and submerged lands: City and County of San Francisco: Piers 30-32: mixed-use development.

SUMMARY: Revises current statute to authorize the development of Pier 30-32 in San Francisco and authorizes the State Lands Commission (SLC) to approve a mixed-use development that includes general office use if certain conditions are met, among other things.

EXISTING LAW:

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

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

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

4) Establishes the San Francisco Bay Conservation and Development Commission (BCDC) to regulate fill and development within a specified area in San Francisco Bay and regulate the first 100 feet inland from the shoreline around the Bay. (Government Code 66620)

THIS BILL:

1) Establishes the Pier 30-32 Reconstruction Act.

2) Revises various definitions in the existing legislative grant, including those related to BCDC, and the public trust.

3) Revises existing legislative findings and declarations relevant to the San Francisco waterfront. These include:

a) Incorporating recent history, including related to the Special Area Plan for the San Francisco waterfront; and,

b) Adding a description of the significant earthquake and flood risks faced by the Port – including due to sea level rise.

4) Revises existing legislative findings and declarations specific to Pier 30-32 development. These include, among others:

a) Describing the benefit of maintaining the deep water berth for large vessels;

b) Estimating the cost of Pier 30-32 removal and needed rehabilitation at $55 million, and over $200 million, respectively;

c) Incorporating recent history, including related to the Waterfront Plan, Special Area Plan, and Port commitments and actions to further the public trust related to a major "reuse" of Pier 30-32; and,

d) Describing the proposed mixed-use development at Pier 30-32 and its benefits, including to expand public use and enjoyment of the waterfront, planned equity-based programs for underserved communities, and, in coordination with adjacent projects, providing seismic, flood, and sea level rise protection for one mile of the waterfront.

5) Retains existing legislative findings and declarations specific to Pier 30-32 development including that it has unique circumstances, and that no precedent is set by this legislation.

6) Authorizes SLC to approve a mixed-use development at Pier 30-32 that includes general office use, if SLC finds that all of the following conditions are met at a properly noticed public meeting:

a) The development is designed:

i) To attract the statewide public to the waterfront, increase public enjoyment of the San Francisco Bay, encourage public trust activities and enhance public use of trust assets;

ii) To integrate with and enhance waterfront public access, as provided; and,

iii) To enhance views of the Bay Bridge and San Francisco Bay, as provided.

b) The development provides:

i) Free public access to various spaces including a public pathway around the Pier 30-32, a roof terrace, the aquatic facility, kayak launch site, open space, and is open to the public year round; and,

ii) Maritime facilities, as specified;

c) The development includes general office space, as specified, within a single structure;

d) The development is within the existing Pier 30-32 footprint, and creates a net total of at least 5-1/2 acres of new open water, as provided;

e) The development provides all of the following public accommodations:

i) An aquatic facility, including at least one swimming pool;

ii) Public access to open water swimming;

iii) Restrooms, lockers, showers, and other facilities ancillary to the swimming pool for the public, as provided;

iv) A public-serving retail facility, including public restrooms and trust retail uses, as provided;

v) Additional public retail spaces located on the ground floor and accessible from the perimeter public pathway; and,

vi) Dining areas.

f) The development is consistent with a plan to address anticipated sea level rise through the year 2100;

g) The development includes repair and seismic strengthening of the seawall, and the building of new or reconstruction of existing piles to support a new pier deck, and stormwater management, as provided;

h) San Francisco has complied with the California Environmental Quality Act, and the Board of Supervisors and the Port have provided the development all necessary local approvals;

i) The development will not substantially interfere with the purposes or objectives of the public trust of the Burton Act;

j) The development is in the best interests of the state; and,

k) The mixed-use development does not contain residential use.

7) Requires the Port to notify SLC of any changes to Pier 30-32 development if those changes may affect the findings made by SLC, as provided. Require the resubmittal of the Pier 30-32 development to SLC for approval if SLC determines the changes are material to SLC's findings, as provided.

8) Makes legislative findings and declarations that water-oriented use criterion and no alternative upland location criterion provisions of the McAteer-Petris Act do not apply to the mixed-use project on Pier 30-32 that SLC finds consistent with the requirements of (6) regardless of whether any existing pier structure or surface improvements are retained, reconstructed, or replaced, as provided.

9) Provides that nothing in this act limits the authority or discretion of BCDC to approve or deny permits for those aspects of a mixed-use development on Pier 30-32 in a manner otherwise consistent with the McAteer-Petris Act, the Bay Plan, and the Special Area Plan, including the authority and discretion of BCDC to impose terms and conditions on permits for the project.

10) Provides that the findings of SLC shall not be conclusive on BCDC in the exercise of its discretion to determine whether the project is consistent with the McAteer Petris Act, the policies of the Bay Plan, and the Special Area Plan, and to make findings and impose conditions regarding the project, which findings and conditions shall be made independently from the findings made by SLC.

11) Requires that any legislative or regulatory requirement for findings of consistency with the public trust doctrine or Burton Act trust, including the Bay Plan and Special Area Plan, is satisfied if SLC has found the Pier 30-32 mixed use development is consistent with the requirements of (6).

12) Requires the Port to provide SLC with a detailed narrative statement regarding both of the following:

    a) Uses of the public accommodations for the aquatic facility, restrooms, rental, and retail facilities, including a list of tenants and subtenants; and,

    b) A demonstration that the Port has made efforts to provide a range of equity-based programs for underserved communities throughout the bay area, including, among other things, learn-to-swim programs, water sports education and training, and programs providing direct access to the Bay.

13) Requires the Port to provide the statement to SLC on or before January 15 of each of the first five years following the issuance of the first certificate of occupancy for the mixed-use development on Pier 30-32, and thereafter at a frequency to be determined by agreement between the Port and SLC of no more than annually and no less than once every five years for the duration of the term of the lease.

14) Requires the Port of San Francisco to pay for SLC's reasonable costs of any study or investigation necessary to the development of Pier 30-32, as provided.

15) Requires SLC and BCDC, subject to the availability of funding and in consultation with the Natural Resources Agency, to develop guiding principles, including responsible funding

strategies, to address impacts of sea level rise on public trust lands, assets, and resources within the San Francisco Bay. Requires the guiding principles to build on and be consistent with current San Francisco Bay adaptation and management documents and principles, including the Bay Plan, the program Adapting to Rising Tides of BCDC, and BCDC's Bay Adapt initiative.

16) Removes various provisions, including those specific to previously-proposed Pier 30- 32 development.

17) Makes legislative findings and declarations that the unique circumstances of Pier 30- 32 justify a special law.

18) Makes additional, minor technical changes.

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

COMMENTS:

1) **Author's statement:**

> The project that SB 273 would authorize [SLC] to approve presents a different approach from previous proposals while helping the City meet key climate resiliency, housing, and equity-oriented goals. It would greatly reduce the footprint of the piers, returning [more than] 6 acres to open water and removing bay fill. The project will provide important public access, maritime use, aquatic facilities, and low-cost or free swim lessons, in addition to helping address our state's crippling housing shortage. The project will help finance crucial seawall seismic resilience improvements to help protect the San Francisco waterfront from climate change and sea level rise. Through this project, we can help create more public amenities and opportunities for recreation and tourism in an important commercial corridor while the City is attempting to recover from the impacts of COVID-19. The state should provide authority for such a project to help San Francisco and the state meet twin climate and housing goals, while improving public access to the Bay.

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

   For more than 100 years, the Legislature has granted public trust lands to local governments so the lands can be managed locally for the benefit of the people of California. There are more than 80 trustees in the state, including the ports of Los Angeles, Long Beach, San

Diego, San Francisco, Oakland, Richmond, Benicia, and Eureka. While these trust lands are managed locally, SLC has oversight authority to ensure those local trustees are complying with the Public Trust Doctrine and the applicable granting statutes.

A definition of the Public Trust attributed to the SLC is useful in framing how a public trust determination may be evaluated:

> Uses of trust lands, whether granted to a local agency or administered by the State directed, are generally limited to those that are water dependent or related, and include commerce, fisheries and navigation, environmental preservation and recreation. Public trust uses include, among others, ports, marinas, docks and wharves, buoys, hunting, commercial and sport fishing, bathing, swimming, and boating. Public trust lands may also be kept in their natural state for habitat, wildlife refuges, scientific study, or open space. Ancillary or incidental uses, that is, uses that directly promote trust uses, are directly supportive and necessary for trust uses, or that accommodate the public's enjoyment of trust lands, are also permitted.

3) **San Francisco's trusted lands.** In 1851, the Legislature enacted the San Francisco Beach and Water Lots Act that granted the tide and submerged lands to San Francisco and directed their filling and sale into private ownership. Much of what is now downtown San Francisco passed into private ownership in this fashion. In 1863, the state, through the Board of State Harbor Commissioners, and later the San Francisco Port Authority, managed San Francisco's working waterfront. In 1968, the City and County of San Francisco, through the San Francisco Port Commission, was granted the land that had previously been under the jurisdiction of the San Francisco Port Authority, including all of the sovereign tide and submerged land. That 1968 legislation is referred to as the Burton Act. Since the enactment of the Burton Act, the Legislature has amended the Port's statutory trust grant through more than 20 statutes. Many of these amendments were enacted to facilitate the improvement of the infrastructure and historic structures on trust lands along the San Francisco waterfront.

4) **Pier 30-32**. Pier 30-32, owned by the Port of San Francisco, is a 13-acre pier complex located just south of the Bay Bridge and built on waterfront lands granted in trust to the City and County of San Francisco. The pier is one of the only naturally self-scouring deep water berths – meaning that it does not require expensive and environmentally harmful dredging to berth large vessels.

   As one of the few piers that can be used for emergency response in the event of a major earthquake or other disaster, the piers are a critical asset for the region and city's disaster response plans. Unfortunately, the poor structural condition of Pier 30-32 has limited its use to parking, limited events, and occasional, temporary use as a tertiary berth for cruise ships and other deep draft vessels. The pier structure is estimated to only have roughly 10 years of remaining useful life. It has also substantially deteriorated, resulting in significant weight restrictions on the structure. Portions of the piers have been "red-tagged" and are fenced off from use. The pier is thus in serious need of a rebuild, which would cost around $200 million. The Port estimates that the cost of removing the pier alone would exceed $55 million.

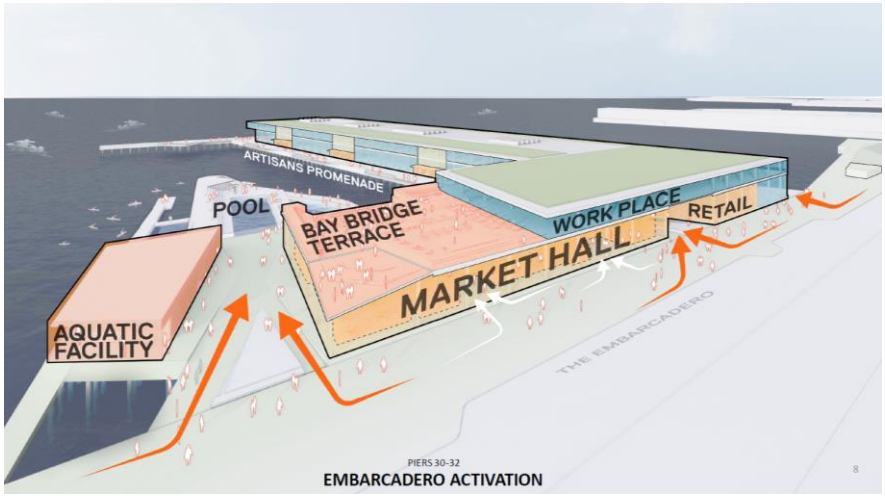
AB 1389 (Shelley), Chapter 489, Statutes of 2001, granted authority to the Port to approve a cruise ship terminal development on the San Francisco waterfront at Pier 30-32, which would included general office and retail use. The Port's selected developer abandoned the project after determining that the necessary improvements to the pier substructure were cost prohibitive. No other developer would accept assignment of development rights for the project. The Port has since identified Pier 27 as the location for its cruise ship terminal in San Francisco.

In 2011, the America's Cup event authority proposed to improve Pier 30-32 to host racing teams and hospitality facilities during the 2013 America's Cup and to acquire long-term development rights to Pier 30-32. Those facilities were relocated to other piers due primarily to the cost of rehabilitating the Pier 30-32 substructure.

AB 1273 (Ting), Chapter 381, Statutes of 2013, revised the statute to authorize SLC to approve a mixed-use development at Pier 30-32 that authorized a Golden State Warriors Event Center. The developer abandoned the project due in part to prohibitive development costs and the availability of a less costly parcel.

5) **Proposed project at Pier 30-32.** The Port's proposed Waterfront Plan for Pier 30-32 would include mixed-use development that is intended to further public use, access, and enjoyment of the tidelands and surrounding water at this location through all of the following improvements:

- Replacement of the existing pier substructure and surface improvements with one or more smaller piers, creating more open water than currently exists.
- New public access, open space, and amenities for water recreation, including access to the bay for swimming, a small craft boat launch, and a floating swimming pool.
- Aquatic habitat enhancements.
- Retail uses fronting on the Embarcadero.
- Improvements to the east berth to support significant maritime facilities, including a berthing area for large vessels.
- New structures on scale with the Embarcadero's historic pier sheds that contain revenue-generating, nontrust commercial office space.
- Resiliency improvements, including a seismically enhanced sea wall, and a sea level flood line of defense to protect the harbor and city beyond 2100.
- Bay restoration via the removal and return to open water of approximately six acres of Bay fill.



As part of the project, the Port and its selected developer propose to offer a range of equity-based programs for underserved communities throughout the Bay Area, including, among other things, learn-to-swim programs, water sports education and training, and programs providing direct access to the Bay.

SB 273 amends the previously enacted sections of statute that authorized the previous project proposals at Pier 30-32 and creates new authorization for the proposed Waterfront Plan.

6) **San Francisco Bay Conservation and Development Commission**. The McAteer–Petris Act grants BCDC regulatory authority over further filling in San Francisco Bay through exercise of its Bay jurisdiction.

   During the four decades since passage of the Burton Act, issues have arisen concerning the application of BCDC's authority to the piers along the San Francisco waterfront. To address those issues, BCDC and the Port undertook two intensive and careful planning processes, which lasted more than nine years. A major objective of the joint effort was the establishment of a new criterion in the San Francisco Bay Plan that would permit fill on the San Francisco waterfront in an area where a Special Area Plan has been adopted by BCDC for uses that are consistent with the public trust and the Burton Act trust.

   The bill provides that SLC must make certain findings provided in the legislation, including, among other things, providing the deep-water berth, upgrading the sea wall, and providing public benefits that bring the public to the shore.

   SB 273 also includes amendments agreed to with BCDC that direct the SLC and BCDC to develop guiding principles, including responsible funding strategies, to address sea level rise impacts of San Francisco Bay lands, prohibit residential uses on the Pier 30-32 site, and clarify BCDC's authority with respect to approval of the project.

7) **Sea level rise**. In 2014, nearly 75% of California's population lived in coastal counties and along the state's 1,100 miles of mainland coastline and the San Francisco Bay's additional 500-mile shoreline. As the nation's largest ocean economy valued greater than $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 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 eight inches by 2050, and more than six 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.

Today, the Embarcadero floods intermittently, requiring sidewalk and lane closures. According to the Port of San Francisco, a 100-year flood event would send the Bay over the Embarcadero Seawall and into the BART and Muni tunnels, disrupting transit and the regional economy. The San Francisco Bay could rise up to six feet by 2100, which would result in daily flooding downtown.

As part of its Seawall Program, the Port is developing an inundation analysis that combines a 500-year flood event with up to six feet of sea level rise to better understand flood risks along the Embarcadero Seawall.

SB 273 declares as a unique circumstance that the seismic and sea level rise enhancements of the proposed mixed-use Waterfront Plan are intended to combine with the Port's near-term resilience project to stabilize the waterfront from Pier $24^1/_2$ through Pier $28^1/_2$ and an adjacent public-private partnership to rehabilitate Piers 38 and 40, which are collectively designed to provide coordinated protection for approximately one mile of the San Francisco waterfront from seismic, flood, and sea level rise risks through the year 2100.

The bill would also require SLC to approve, as consistent with the public trust, the proposed project *if* SLC finds, among other findings, that the development of the site is required to be consistent with a plan to address anticipated sea level rise through the year 2100, which shall include enforceable strategies incorporating an adaptive management approach to sea level rise for the duration of the ground lease term.

8) **Is office space a public trust use?** The proposed project includes 375,000 square feet of office space. Office buildings are generally not considered an appropriate use for piers that are reserved for primarily maritime and other uses that serve the public trust.

BCDC's policies have reserved the Bay for Bay-oriented uses that are public trust consistent, such as for ports, marinas, and public recreation. In that time, BCDC has not approved such a major project on the Bay with general offices unless that general office space is ancillary to the project itself because these uses are not consistent with the public trust and can be built on upland areas. Absent this legislation, therefore, neither the SLC nor BCDC could find the proposed project consistent with the public trust and issue approvals.

The San Francisco Waterfront Special Area Plan also guides agencies' consideration of appropriate uses. However, that plan notes that commercial and industrial uses presently occupy several piers and seawall lots. Office use is included in buildings on some seawall

lots, in historic rehabilitation projects such as the Ferry Building, and as short-term interim uses. The Port states that commercial and industrial uses support a workplace that, in addition to maritime employment, offers a diverse mix of non-maritime jobs.

There's also the question as to whether more office space is needed. In San Francisco is currently dealing with a rash of vacant office spaces coming out of COVID19 pandemic. Currently, there are about 18.4 million square feet of vacant office space in San Francisco, according to the San Francisco Chronicle. There are 150,000 square feet of ground floor vacancies in the downtown district alone.

The Downtown San Francisco Partnership is optimistic and has suggested new development in downtown can attract people back, portending the vacancies are reversible and downtown can be revitalized. While the Partnership's comments were not specific to the proposed project for Pier 30-32, perhaps it could be applicable.

The author's office notes that the proposed office space is included in the plan to help generate revenue to support the cost of demolishing and redeveloping Pier 30-32.

9) **The Legislature is not a one-stop shop**. While SB 273 authorizes SLC to approve the proposed project, the development proposal must still go through the local approval process and undergo appropriate environmental review. The project requires various permits or approvals from the U.S. Army Corp of Engineers, BCDC, the San Francisco Board of Supervisors, and the California State Water Resources Control Board.

REGISTERED SUPPORT / OPPOSITION:

Support

California Conference of Carpenters
Carpet, Linoleum & Soft Tile Workers Local Union 12 District Council 16
Dogpatch Paddle LLC
Elevator Constructors Local 8
International Union of Operating Engineers Local 3
Mayor of City & County of San Francisco London Breed
Nor Cal Carpenters Union
Pacific Swimming
Plumbing and Pipe Fitting Local 38
Red's Java House
San Francisco Fire Fighters Local 798
San Francisco Travel Association
San Francisco Tsunami Water Polo
Sf Tsunami Swim & Synchro
Sign Display & Allied Crafts Local 510
Sprinkler Fitters & Apprentices Local 483
State Building and Construction Trades Council of Ca
State Building and Construction Trades Council, AFL-CIO
Teamsters Local 665
Teamsters Local 856
The East Cut Community Benefit District
Water World Swim

Opposition

Save the Bay
Sierra Club California

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

Date of Hearing: June 26, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
SB 286 (McGuire) – As Amended June 5, 2023

SENATE VOTE: 32-5

SUBJECT: Offshore wind energy projects.

SUMMARY: Establishes the California Offshore Wind Energy Fisheries Working Group (Working Group) to address offshore wind energy project impacts to certain fisheries and other interests, including providing for compensation to those affected, and requires the California Coastal Commission to process a consolidated coastal development permit for new development associated with offshore wind energy projects and related transmission facilities.

EXISTING LAW:

1) Pursuant to the California Coastal Act of 1976 (Coastal Act), requires any person wishing to perform or undertake any development in the coastal zone, in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, to obtain a coastal development permit (CDP). (Public Resources Code (PRC) 30600)

2) Authorizes the Coastal Commission to process and act upon a consolidated CDP application if a proposed project requires a CDP from both a local government with a certified local coastal program (LCP) and the Coastal Commission, and the applicant, the appropriate local government, and the Coastal Commission consent to consolidate the permit action, provided that public participation is not substantially impaired by that review consolidation. (PRC 30601.3)

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

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

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

THIS BILL:

1) Creates the Offshore Wind Energy Resiliency Fund (Fund) in the State Treasury and requires SLC to deposit revenue generated from an offshore wind energy project lease. Moneys in the fund shall be available, upon appropriation by the Legislature.

2) Requires the Coastal Commission or a local trustee of granted public trust lands, when issuing a lease for purposes of an offshore wind energy project, to consider including within the lease compensatory mitigation for unavoidable impacts to fishing and tribal interests. Requires the Coastal Commission or a local trustee of granted public trust lands to consider the recommendations for compensatory mitigation made by the Working Group, including the Working Group's recommendations for a payment structure to compensate commercial, tribal, and recreational fisheries and impacted commercial fish processors for unavoidable impacts associated with offshore wind energy projects.

3) Requires the Coastal Commission to process a consolidated CDP for any new development that requires a CDP and that is associated with, appurtenant to, or necessary for the construction and operation of offshore wind energy projects and transmission facilities needed for those projects.

4) Requires the SLC to be the lead agency for purposes of the California Environmental Quality Act (CEQA) for offshore wind energy projects to prepare, or cause to be prepared, all environmental documents required by law.

5) Requires the Coastal Commission and SLC to coordinate with relevant federal agencies to encourage and facilitate the preparation of joint environmental documents pursuant to CEQA and the federal National Environmental Policy Act for proposed offshore wind projects.

6) Establishes the Working Group to be composed of the Coastal Commission, representatives of the Department of Fish and Wildlife (DFW), SLC, the Ocean Protection Council (OPC), representatives of the commercial fishing industry, representatives of the offshore wind energy industry, representatives of labor organizations for the construction workforce, representatives of relevant federal agencies, representatives of California Native American tribes, and other stakeholders as appropriate, as determined by the Coastal Commission.

7) Requires, on or before January 1, 2025, the Coastal Commission, in coordination with the DFW, to convene the Working Group to develop a statewide strategy for ensuring that offshore wind energy projects avoid and minimize impacts to ocean fisheries to the maximum extent possible, fully mitigate unavoidable impacts, and fairly compensate persons engaged in commercial fishing and tribal interests for economic impacts to ocean fisheries resulting from offshore wind energy projects.

8) Requires the statewide strategy to include best practices for addressing impacts to commercial and recreational fisheries, tribal interests, and environmental resources associated with offshore wind energy projects, including, but not limited to, the following:

    a) Protocols for communication among impacted parties;

b) A methodology for a comprehensive project-level socioeconomic analysis of direct and indirect impacts to commercial fishing and tribal interests;

c) Best practices for offshore surveys and data collection to assess impacts;

d) Best practices for avoidance and minimization of impacts, including the use of evidence-informed adaptive management;

e) A template for a fishing agreement that includes all relevant elements of the statewide strategy;

f) A template for an agreement addressing tribal interests that includes all relevant elements of the statewide strategy; and,

g) A framework for compensatory mitigation for unavoidable impacts to fishing and tribal interests;

h) A recognition and incorporation of locally negotiated agreements between the fishing industry and the offshore wind energy industry. Requires the framework to include a payment structure to compensate commercial, tribal, and recreational fisheries and impacted commercial fish processors for unavoidable impacts associated with offshore wind energy projects. Requires the payment structure to include all of the following:

   i) Support for one-time investments for fishers to strengthen the existing fleet to make it more resilient as offshore wind energy projects begin operation;
   ii) Compensation for commercial fishers for personal property losses caused by offshore wind energy projects. The working group shall ensure that payments for purposes of this clause provide sufficient funds for the entire lifetime of the offshore wind energy project to compensate commercial fishers for all lost personal property;
   iii) Compensation for commercial fishers for lost economic activity due to reduced fishing grounds;
   iv) Funding for robust monitoring and evaluation of offshore wind turbines and their impact on fisheries and the surrounding environment;
   v) Financial assistance for coastal cities and counties for the purpose of designing, constructing, and improving climate-resilient critical infrastructure needed to facilitate offshore wind energy generation and deployment;
   vi) Financial assistance for tribal communities impacted by offshore wind energy generation and deployment;
   vii) Support for career and workforce training and retraining for individuals whose livelihoods are disrupted by the development of offshore wind energy resources; and,
   viii) A proportionate amount from each lessee that is sufficient to cover state costs pursuant to this section, including, but not limited to, the costs of the Working Group's activities and other administrative expenses.
   ix) A recognition and incorporation of locally negotiated agreements between the fishing industry and the offshore wind energy industry.

9) Requires the Working Group to complete the statewide strategy, including the framework for compensatory mitigation for unavoidable impacts, on or before January 1, 2026.

10) Requires the Coastal Commission to review for consistency with the coastal resource planning under the Coastal Act and adopt the statewide strategy, including the framework for compensatory mitigation for unavoidable impacts, on or before May 1, 2026.

11) Requires an applicant seeking approval or concurrence from a state agency for an offshore wind energy project to comply with the terms, recommendations, and best practices established in the statewide strategy.

12) Requires the Coastal Commission to ensure that the terms, recommendations, and best practices established in the statewide strategy are implemented.

13) Requires the Coastal Commission to review the statewide strategy not less than every three years to determine if any changes are necessary. At a regularly noticed public hearing, the Coastal Commission shall present the outcome of any review pursuant to this paragraph and may, by resolution, authorize the reconvening of the Working Group.

14) Requires a representative of the commercial fishing industry and a California Native American tribe who participates in the Working Group to be compensated for expenses reasonably incurred for approved working group activities, including attendance at meetings, at a rate of $50 per hour, up to no more than $500 per day. A representative of the commercial fishing industry and a California Native American tribe may also receive reimbursement for reasonable travel expenses.

15) Requires funds used to compensate representatives of the commercial fishing industry to be derived from the payments made of commercial fishing industry to be derived from the payments made pursuant to a provision of the bill that has been removed. (This is a drafting error – see "Committee amendments" section below.)

16) Provides that the provisions of the bill are severable.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**:

> Offshore wind is an essential tool in California's fight against climate change, but we cannot ignore the potential impacts its development may have on our coastal communities and fishermen. SB 286 will expedite the offshore wind permitting process while ensuring environmental safeguards remain. SB 286 will create a collaborative framework with offshore wind and fishing stakeholders to ensure both groups thrive in the Golden State.

2) **Clean energy goals.** The 100 Percent Clean Energy Act of 2018 (SB 100, De León, Chapter 321, Statutes of 2018) increased California's RPS goal to 60% by 2030 and requires RPS-eligible resources and zero-carbon resources to supply 100% of California's electricity retail sales and electricity procured to serve state agencies by 2045.

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

3) **California's ocean is a special place to protect.** California boasts the largest ocean-based economy in the United States. Valued at $45 billion annually, the ocean employs more than half a million people and supports a vast diversity of marine life, as well as fishing communities that depend on fish, shellfish, and seaweeds for their livelihoods. California's aquaculture industry has a $200 million annual impact on the state economy, fisheries support 19,750 recreational fishing jobs, with the commercial fishing and seafood industry generating 155,258 jobs and $28.8 billion in sales in 2017. Coastal tourism and recreation industries in California are valued at approximately $27 billion annually. Professional surfers brought in $140 billion in surf tourism in California in 2018 alone. California's marine wildlife – including whales, dolphins, and the threatened southern sea otter – attract millions of visitors a year to our coastline. California's coastline counties are home to 68% of the state, and millions of people visit California coastal state parks every year.

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

4) **Offshore wind**. The advantage of offshore wind is that it is consistent, reliable, and energetic, with little of the topographic and small-scale variability typically seen with onshore wind. CEC offshore wind planning goals (pursuant to AB 525 (Chiu), Chapter 231, Statutes of 2021), are to achieve 2,000-5,000 megawatts (MW) of offshore wind by 2030 and 25,000 MW by 2045. The scale of the infrastructure needed to meet these goals will be significant and have impacts on coastal and cultural resources, fisheries, tourism and recreation, and coastal economies that remain to be understood.

5) **Streamlined permitting.** The Coastal Commission implements the Coastal Zone Management Act, which provides the Coastal Commission with the ability to review federal activities or permits outside the coastal zone, including offshore wind projects that could influence California's coastal resources.

   This bill would require the Coastal Commission to process a consolidated CDP for any new development that requires a CDP and that is associated with, appurtenant to, or necessary for the construction and operation of offshore wind energy projects and transmission facilities needed for those projects.

   When a project straddles the jurisdictions of the Coastal Commission and a local government (with a certified LCP), the Coastal Act authorizes the Coastal Commission to process a consolidated permit if all parties agree. This would eliminate the need for separate CDPs using different standards of review and instead result in a single CDP where the standard of

review is the Coastal Act, with the LCP providing guidance. In addition to simplifying the application review and hearing process, it would also eliminate a potential appeal process associated with a local CDP and could avoid the need to process an LCP amendment if there is a conflict with LCP policies. The consolidated permit process is currently being implemented to reduce regulatory timelines in the Coastal Zone for the statewide Broadband Middle Mile Network project.

6) **Working group**. The Coastal Commission, in its Consistency Determination for a federal Bureau of Ocean Energy Management (BOEM) lease sale off the coast of San Luis Obispo County for offshore wind development (CD-0004-22), recommended the development of a working group consisting of fishing organizations and representatives to "develop a statewide strategy for avoidance, minimization and mitigation of impacts to fishing and fisheries" and "a methodology for comprehensive socioeconomic analysis of direct and indirect impacts to fishing, a framework for compensatory mitigation for unavoidable impacts." The Coastal Commission is building the Working Group now. OPC is providing funds to cover the cost of compensating the fishermen who are participating in the Working Group, and for hiring a facilitator to lead the meetings, and the Coastal Commission is providing the primary staff for the Working Group.

   SB 286 would codify an iteration of that recommendation by establishing the Working Group at the Coastal Commission to develop a statewide strategy for ensuring that offshore wind energy projects avoid and minimize impacts to ocean fisheries to the maximum extent possible, fully mitigate unavoidable impacts, and fairly compensate persons engaged in commercial fishing and tribal interests for economic impacts to ocean fisheries resulting from offshore wind energy projects.

   SB 286 expands the makeup and the charge of what the Coastal Commission recommended by broadening the Working Group to Native American tribes and labor (who have seats at the Working Group) and local governments. Since the Working Group would provide compensation to coastal local governments, representatives from local governments should arguably have a seat at the Working Group's table as well, but that would only further deviate the bill from the Coastal Commission's working group for fisheries and dilute the intent of codifying the recommendation made in the consistency determination. Straying from what the Coastal Commission is already working on can complicate that effort.

   Further, laborers may not have the background to advise on the unavoidable impacts to fisheries or unavoidable impacts to Tribal resources. The unique needs of California's workforce can be better suited elsewhere in the offshore wind development process.

   To maintain the focus on fisheries, the Working Group should be tailored to address the unavoidable impacts to commercial and recreational fishing industries and Native American Tribal fisheries.

7) **California's commercial fishing industry**. Commercial fishing is a valuable industry to the state economy, as noted above, and a vulnerable industry in which to make a living given the variability of weather conditions, delicate fish stocks, and the average income is around $49,467 (where California is one of the most expensive state in which to live).

   For 2023, DFW issued 11,940 commercial fishing licenses and permits, just about 6,500 fewer than were issued in 2018. With restaurants and supply chains disrupted due to the

global COVID-19 pandemic, two-fifths of commercial fishermen surveyed from Maine through North Carolina did not go fishing in 2022, according to a Rutgers study. As is seen by the decline in fishing permits, California's commercial fishing industry has also taken hits. Offshore wind development could exacerbate the challenges to the commercial fishing industry. Supporting that industry with compensation for the likely impacts of offshore wind may be necessary to preserve the survival of the industry.

However, it will be some time before fisheries see any impacts from offshore wind. To deploy offshore wind is going to take considerable planning, development of our ports, workforce development, assembly of the turbine components, infrastructure for grid connectivity, and likely more state and local policies to facilitate all of those complex parts to make offshore wind come to fruition. California is likely 10 years from seeing a robust offshore wind economy. (BOEM's energy approval process timeline could take up to 10 years to complete — beginning with initiation of the leasing process and ending with an operating wind energy project.) By then, the needs of the state's fisheries could be different than what they are today.

Warming ocean waters, ocean acidification, and hypoxia (low oxygen levels) from climate change could have unpredictable impacts on both fish species and fish stocks, changing the face of today's commercial fishing economy. These disturbances can ripple through ocean food webs, affecting animals and ecosystems in ways scientists are just beginning to decipher. (Some scientists believe roughly 25% of fish species will go extinct under the conditions associated with climate change; 25% of species will thrive; and it remains unknown for the other 50%.)

Fish populations have plummeted nearly 70% off California's coast over the last four decades, according to scientists who say the likely culprit is climate change. According to the Monterey Bay Aquarium, 90% of fish populations are currently fished at, or beyond, their sustainable limits. This year, Chinook salmon fishing was banned along California coast due to low population levels, a result of extremely dry conditions and low river flows. Commercial Dungeness crab fishing season was delayed because of migratory humpback whales; the increase in whale population seems to be related to a marine heat wave, the same that caused a spike in the anchovy population last summer.

Creating the Working Group now allows time for careful and strategic forethought, and the bill requires the Coastal Commission to review the statewide strategy for compensation at least every three years to determine if any changes are necessary, thus allowing flexibility to adapt the strategy.

8) **Using lease revenues for compensatory mitigation.** Rent and royalties for offshore wind energy leases are not established in statute. This means that SLC will likely need to go through the rulemaking process to establish rent and royalties for these projects. For infrastructure associated with wind energy projects in federal waters, such as pipelines and cables, rent will be charged for surface occupation under their regulations (California Code of Regulations, Title 2, Section 2003).

This bill requires SLC or a local trustee of granted public trust lands, when issuing a lease for purposes of an offshore wind energy project, to consider including within the lease compensatory mitigation for unavoidable impacts to fishing and tribal interests, and requires

all SLC-collected lease revenue from offshore wind projects to go into the Fund for compensation to various entities.

9) **Workforce development**. The bill includes one provision in the framework requiring support for career and workforce training and retraining for individuals whose livelihoods are disrupted by the development of offshore wind energy resources.

   It is unclear who would administer the workforce development/retraining, in what fields the fishing industry would get retrained, and what role the Workforce Development Board would play, if any, among other issues that would need to be sorted out.

   BOEM, as part of the official offshore wind leases off California's coast, requires leases to invest funds into a community benefit agreement, which will provide support to those who are directly or indirectly impacted by the floating offshore wind energy development. The community benefit agreement can assist fishing and related industries (including tribal fisheries) by supporting their resilience and ability to adapt to gear changes or any potential gear loss or damage; provide money for infrastructure to alleviate impacts from the projects; provide increased support to facilitate engagement as the projects are developed; and for mitigating potential impacts to cultural viewsheds or potential impacts on marine and land species. Additional contributions for workforce training and/or domestic supply chain development can be made in support of existing programs, or for the establishment of new programs or incentives associated with the planning, design, construction, operation, maintenance or decommissioning of U.S. floating offshore wind energy projects, or the manufacturing or assembling of their components in the United States.

   The bill could be reorganized to instead require the Coastal Commission, when reviewing a workforce development plan submitted to BOEM consistent with the Coastal Commission's Consistency Determinations conditions, to consult with representatives of labor organizations for the construction trades and maritime and longshore workforce, in furtherance of providing for career and workforce training and retraining for individuals whose livelihoods are disrupted by the development of offshore wind energy resources.

   The State Building and Construction Trades Council of California, AFL-CIO, in partnership with local Building Trades Councils, advocated for the public policy and then the entitlements to support the utility-scale solar and onshore wind generation that made California a global leader in renewable power generation. SB 286, as proposed to be amended, will fold the skilled construction workers into the processes for offshore wind permitting between the state and federal governments.

10) **Double referral.** This bill is double referred to the Assembly Utilities & Energy Committee.

11) **Committee amendments**. *The Committee may wish to consider the following amendments*:

    a) Amend the Coastal Commission's consolidated CDP provision to require the Coastal Commission to:

       i) Forward the application to local governmental agencies having land use and related jurisdiction in the area in which the project would occur to review and provide comments.

ii) Coordinate with affected local governmental agencies to incorporate or otherwise address their recommendations in the final consolidated coastal development permit.

iii) Engage with federally recognized and non-federally recognized California Native American Tribes with fisheries.

b) Recognize ports with lead CEQA status.

c) Require the Coastal Commission and the SLC to coordinate with local and state agencies in addition to federal agencies.

d) To make it clearer that the Fund will be used to provide compensation, not to support the Working Group's development of the framework, amend Sec. 30616 (c)(7) as follows:

> (A) Dispensation of ~~A framework for~~ compensatory mitigation for unavoidable impacts to fishing and tribal interests per the framework.

e) Offshore wind will have irreparable impacts to marine habitats, fish stocks, whale migration, waves, etc. in addition to fisheries, but fully mitigating the impacts is improbable, so the bill should appropriately recognize those impacts:

> (b) On or before January 1, 2025, the commission, in coordination with the Department of Fish and Wildlife, shall convene the working group for the purpose of developing a statewide strategy for ensuring that offshore wind energy projects avoid and minimize impacts to ocean fisheries to the maximum extent possible, ~~fully~~ avoid, minimize, and mitigate impacts to fishing and fisheries that prioritizes fisheries productivity, viability, and long-term resilience ~~unavoidable impacts~~, and fairly compensate persons engaged in commercial fishing and tribal interests for economic impacts to ocean fisheries resulting from offshore wind energy projects.

f) Uniformly reference commercial and recreational fishing industries and tribal fisheries throughout the bill for consistency.

g) Maintain the focus of the Working Group's compensation strategy for fisheries by striking Sec. 30616 (c)(7)(B)(v), (vi), and (vii).

h) The bill states in Sec. 30616 (e) that compensation to commercial fishing industry and Native American Tribes shall be paid from payments made pursuant to Sec. 30616.5, but Sec. 30616.5 was struck from the bill per the June 5 amendments. Therefore, that subdivision should be revised as follows:

> (e) A representative of the commercial fishing industry and a California Native American tribe who participates in the working group shall be compensated for expenses reasonably incurred for approved working group activities, including attendance at meetings, at a rate of fifty dollars ($50) per hour, up to no more than five hundred dollars ($500) per day. A representative of the commercial fishing industry and a California Native American tribe may also receive reimbursement for reasonable travel expenses. Funds used to compensate representatives of the commercial fishing industry or a California Native American tribe pursuant to this subdivision shall be paid from the Offshore Wind Energy Resiliency Fund to the

extent funds are available pursuant to subdivision (b) of section 7100. ~~derived from the payments made pursuant to paragraph (3) of subdivision (c) of Section 30616.5, and funds used to compensate representatives of a California Native American tribe pursuant to this subdivision shall be derived from the payments made pursuant to paragraph (6) of subdivision (c) of Section 30616.5~~.

i) Add a new section requiring the Coastal Commission to consult with labor organizations in regards to career and workforce training.

SEC. 4.

As part of the Commission's federal consistency certification process, when reviewing a workforce development plan submitted to the federal Bureau of Ocean Energy Management consistent with conditions 5 and 6 of the Commission's Consistency Determinations CD-0001-22 and CD-0004-22 and existing statutory requirements, the Commission shall consult with representatives of labor organizations for the construction trades and maritime and longshore workforce, in furtherance of providing for career and workforce training and retraining for individuals whose livelihoods are disrupted by the development of offshore wind energy resources.

j) In an effort to appropriately update terminology, the bill refers to "commercial fisher" (as opposed to the colloquial "fishermen." However, a fisher is a small, carnivorous mammal in the weasel family native to North America. To remain gender-neutral without stealing the fishers' identify, the term used throughout Sec.30616 (c)(7)(B) bill should be revised to be the commercial fishing industry.

REGISTERED SUPPORT / OPPOSITION:

Support

Bodega Bay Fishermen's Marketing Association
California Fishermen's Resiliency Association
California Wetfish Producers Association
Commercial Fishermen of Santa Barbara
Fishermen's Marketing Association
Humboldt Fishermen's Marketing Association
Pacific Coast Federation of Fishermen's Associations

Opposition

None on file

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

Date of Hearing: June 26, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
SB 301 (Portantino) – As Amended May 18, 2023

SENATE VOTE: 40-0

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

SUMMARY: Requires the California Air Resources Board (ARB) to establish the Zero-Emission Aftermarket Conversion Project (ZACP) by allocating up to $2 million annually from the Clean Vehicle Rebate Project or other sources to provide an applicant who is a California resident with a rebate for an eligible vehicle that has been converted into a zero-emission vehicle (ZEV).

EXISTING LAW:

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

2) Establishes the Charge Ahead California Initiative that, among other things, includes the goal of placing at least one million ZEV and near-zero emission vehicles (NZEV) into service by January 1, 2023, and increasing access to these vehicles for disadvantaged, low-income, and moderate income communities and consumers. (HSC 22458)

3) Establishes the enhanced fleet modernization program *as* a voluntary vehicle scrap program that promotes advanced technology for California residents who have low incomes. (HSC 44124-44127)

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

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

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

vehicle financing and leasing options that can help lower expenditures on transportation and prequalification or point-of-sale rebates or other methods to increase participation rates among low- and moderate-income consumers. (HSC 44274.9(e)(1)(2))

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

8) Defines "motor vehicle" as a vehicle that is self-propelled (Vehicle Code 415)

THIS BILL:

1) Defines terms used in the bill, including "eligible vehicle" to mean a light-duty motor vehicle, as defined in Section 415 of the Vehicle Code, originally propelled by a gasoline- or diesel-powered engine, that is registered, or will be registered upon completion of the conversion, with the Department of Motor Vehicles (DMV).

2) Requires ARB to establish the ZACP and allocate no less than a total of $2 million annually from the CVRP or any other clean vehicle rebate program established as part of the AQIP, or from any other state or federal funding source, to provide an applicant who is a California resident with a rebate for an eligible vehicle that has been converted into a ZEV.

3) Authorizes, if any moneys allocated from the AQIP in a fiscal year for purposes of this bill are not expended by the end of the subsequent fiscal year, those moneys to be retained for the ZACP, repaid to the program they were transferred from, or made available for other ZEV rebate programs.

4) Requires ARB to develop guidelines for ZACP that define qualifying conversion-types for used vehicles, define eligible replacement motors, power systems, and parts, establish warranty requirements, and establish minimum eligibility criteria for an applicant to be eligible for the rebate. Require the guidelines to require a visual safety inspection, developed in conjunction with the Bureau of Automotive Repair, for rebate eligibility.

5) Require the guidelines to include the following requirements:

   a) An eligible ZEV shall have a range of at least 100 miles;

   b) The equivalent of any manufacturer suggested retail price limit established for the CVRP for a comparable vehicle category shall apply, based on total ZEV cost, including the value of the donor vehicle at the time of the conversion, the cost of the conversion, and the cost of any new vehicle frame that is installed to accommodate a vehicle conversion; and,

   c) Any income limits established for the CVRP shall apply.

6) Limits a rebate issued pursuant to the ZACP to one per vehicle and have a value of up to $4,000.

7) Requires ARB to ensure that the rebate issued for a converted ZEV provides cost-effective benefits to the state in reducing air pollution and GHGs that are equivalent to the benefits to the state in reducing air pollution and GHGs with respect to the issuance of rebates for new ZEVs.

8) Requires a minimum of 25% of the rebates issued pursuant to the ZACP to be issued to individuals with household incomes at or below 400% of the federal poverty level.

9) Requires ARB to coordinate the ZACP with the enhanced fleet modernization program and the CC4A, the Charge Ahead California Initiative, and the Zero-Emission Assurance Project and the CVRP.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement:**

> SB 301 will bring California one-step closer to accomplishing the goal of reducing greenhouse gas emissions to a level that is sustainable. With a large portion of greenhouse gas emissions coming from the transportation sector in California, it is necessary that we implement a program that encourages people to convert their vehicles to ZEVs to reduce the issues associated with Climate Change.

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

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

   ARB's interim goal is to increase ZEV sales to 35% of all new car purchases by the 2026 model year. Meeting that target would roughly triple ZEV sales from 2021, when they represented 12% of all new cars sold in California.

3) **ZEV rebate programs**. The CVRP offers rebates up to $7,500 on a first-come, first-served basis to offset the cost of ZEVs. Rebates are available to California residents that meet income requirements and purchase or lease an eligible vehicle. To-date, more than 30,000 low-income consumers have been assisted under CVRP. The income eligibility is higher for this program; eligible applicants can earn up to $135,000 for single filers; $175,000 for head-of-household; and, $200,000 for joint filers.

According to ARB's CC4A annual report for FY 2020/2021, "even with the past [years'] global economic and health crisis, demand for all air quality management district car incentives remained strong. This indicates a continued high level of interest and demand for these incentives among the priority populations."

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

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

4) **This bill**. SB 301 would require ARB to provide an applicant who is a California resident that meets the income eligibility criteria under CVRP with a rebate up to $4,000 for a vehicle that has been converted into a ZEV that has a range of at least 100 miles.

   According to the United States Department of Energy, although currently uncommon, a vehicle with an internal combustion engine can be converted to an all-electric vehicle by completely removing the engine and adding a battery pack, one or more electric motors, high-voltage cables, and instrumentation.

   Converting to a ZEV costs about $6,000 in parts and roughly $1,000 to $3,000 for batteries and installation. A more expensive retrofit cost $20,000 or more.

   Neither the United States Environmental Protection Agency nor ARB require that ZEV conversions be certified, as long as the conversion does not add a device that produces fuel combustion emissions.

   According to ARB, any vehicle registered in California may be converted to a 100% electric drive, as long as all power is supplied by on-board batteries. All combustion and fuel system components must be removed prior to inspection by a California Bureau of Automotive Repairs Referee station. The vehicle must arrive at the inspection site under its own power, and the referee will also visually inspect to ensure that the vehicle has adequate battery storage capacity for 100% electric operation. Once the inspection is complete, the referee will sign a DMV "statement of Facts" form so that the vehicle can be registered as an EV and removed from the periodic smog inspection program. (Individually converted vehicles do not qualify for any incentive programs for Certified ZEVs.)

5) **Benefits of conversion.** The pro's of conversion include a decreased demand on resources to build new cars, the avoided manufacturing and associated energy demand for building a new car, affordability for consumers compared to purchasing new ZEVs, and converting traditional gas-powered vehicles to ZEVs can facilitate meeting the state's ambitious ZEV goals.

6) **Funding**. The 2022-23 Budget Act included $6.1 billion for new zero-emission transportation investments over four years. Of these investments, $4.2 billion was

appropriated to ARB and the California Energy Commission for heavy duty zero-emission technology advancement and to expand investments in passenger vehicle incentives and infrastructure.

This year, the state is facing a $22.5 billion budget deficit and the Governor's budget is proposing significant cuts across the board for the state's climate investments and environmental programs, including $6 billion in cuts to last year's 5-year climate spending plan. However, the Governor overall proposes maintaining $8.9 billion, or 89 percent, of intended funding for ZEV programs across the five years.

SB 301 would require ARB to allocate up to $2 million from CVRP, or any other state or federal funding source, to support incentives for vehicles converted into ZEVs, and any money unused would revert back to CVRP.

7) **Related legislation**. AB 2350 (Wilson-Grayson, 2022) was identical to this bill, except the rebate amount was capped at $2,000 per converted ZEV. That bill was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

CalChamber
Climate Reality Project, Silicon Valley
Specialty Equipment Market Association

Opposition

None on file

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

Date of Hearing: June 26, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
SB 303 (Allen) – As Amended April 27, 2023

SENATE VOTE: 40-0

SUBJECT: Solid waste: Plastic Pollution Prevention and Packaging Producer Responsibility Act

SUMMARY: Revises and makes technical and clarifying amendments to the Plastic Pollution Prevention and Packaging Producer Responsibility Act (Act), including revising the definition of "responsible end markets" and establishing an arbitration process for disputes between entities subject to the Act.

EXISTING LAW:

1) Establishes the Act (Public Resources Code (PRC) 42040 *et seq*.), which:

   a) Requires, by January 1, 2024, producers of covered material to form and join a producer responsibility organization (PRO), subject to specified requirements and Department of Resources Recycling and Recovery (CalRecycle) approval, to carry out the requirements of the Act. Prohibits a producer of covered material from selling, offering for sale, importing, or distributing covered materials in the state unless the producer is approved to participate in the PRO.

   b) Requires that all covered material offered for sale, distributed, or imported into the state on and after January 1, 2032, is recyclable in the state or eligible to be labeled "compostable," as specified.

   c) Requires that all plastic covered material offered for sale, distributed, or imported into the state to meet the following recycling rates:
      i) Not less than 30% of covered material on and after January 1, 2028;
      ii) Not less than 40% of covered material on and after January 1, 2030; and,
      iii) Not less than 65% of covered material on and after January 1, 2032.

   d) By January 1, 2032, requires the PRO to develop and implement a plan to achieve 25% reduction by weight and 25% reduction by plastic component for covered material sold, offered for sale, or distributed in the state, as prescribed, including interim targets of 10% by January 1, 2027, and 20% by January 1, 2030.

   e) Establishes a producer responsibility advisory board for the purpose of identifying barriers and solutions to creating a circular economy consistent with the Act and advising CalRecycle, producers, and the PRO in the implementation of the Act. Requires the advisory board to evaluate claims that actions taken pursuant to the Act are "disrupting or otherwise adversely affecting the sustained operation or commercial viability of solid waste collection programs, solid waste recycling facilities, or composting facilities providing services in accordance with local solid waste handling requirements" and, as

specified, submit the claim to CalRecycle for potential recommendations to resolve the dispute.

f) Requires the producer responsibility plans to include, in part:

i) How the plan is supplemental to, and not in conflict with, disruptive of, or adversely affecting the performance of the solid waste network providing services in accordance with local solid waste handling requirements and the intent described in PRC 40004, and how the PRO will leverage and use existing collection programs and recycling, composting, sorting, and processing infrastructure and how, except as specified, the plan will be implemented using existing solid waste collection programs and facilities as the designated system for the curbside collection and processing of covered material; and,

ii) In accordance with PRC 40059 how the plan and activities undertaken pursuant to the plan will be implemented in compliance with state and local laws, rules, and regulations applicable to solid waste handling and in a manner that does not violate existing franchise agreements.

g) Prohibits the PRO budget from proposing investing in activities that violate PRC 40004 or an agreement entered into pursuant to PRC 40059. Requires the budget to include a mechanism to disburse funds for identified activities.

2) Pursuant to AB 341 (Chesbro), Chapter 476, Statutes of 2011:

a) States that it is the intent of the Legislature that the development of the additional solid waste processing and composting capacity that is needed to meet state objectives for decreasing solid waste disposal by identifying incentives for local governments to locate and approve new or expanded facilities that meet and exceed their capacity needs, and to recognize local agencies that make significant contributions to the state's overall solid waste reduction and recycling objectives through the siting of facilities for the processing and composting of materials diverted from the solid waste stream.

b) States that by establishing commercial recycling requirements, the Legislature does not intend to limit a right afforded to local governments pursuant to PRC 40059, or to modify or abrogate in any manner the rights of a local government or solid waste enterprise with regard to a solid waste handling franchise or contract. (PRC 40004)

3) States that each county, city, district attorney, or other local governmental agency may determine the following:

a) Aspects of solid waste handling which are of local concern, including frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services;

b) Whether the services are to be provided by means of nonexclusive franchise, contract, license, permit, or otherwise with or without competitive bidding, or if the public health, safety, and well-being so require, by partially exclusive or wholly exclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding. The

authority to provide solid waste handling services may be granted under the terms and conditions prescribed by the governing body of the local government agency by resolution or ordinance. (PRC 40059)

4) States that nothing in the Integrated Waste Management Act modifies or abrogates any franchise previously granted or extended by any county or other local government agency or any contract, license, or permit to collect solid waste previously granted or extended by a city, county, or a city and county. (PRC 40059)

THIS BILL:

1) Revises definitions with in the Act:

   a) Revises the definition of "processing" to mean to sort, segregate, break or flake, and clean material to prepare it for use by a responsible end market in which the recovery of materials and the disposal of contaminants is conducted in a way that prioritizes benefits to the environment and minimizes risks to public health and worker health and safety;

   b) Revises the definition of "recycle" or "recycling" to specify that CalRecycle's regulations to define guidelines and verification requirements apply to the PRO and any producers complying with the Act, as specified.

   c) Revises the definition of "responsible end market" to mean an entity that uses recycled cover material for the manufacturing of products when the manufacturing, including the disposal of contaminants, is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety; and,

   d) Makes technical and clarifying changes to other definitions.

2) Authorizes CalRecycle to adopt regulations to establish standards for the PRO regarding responsible end markets for covered material and to establish criteria that prioritizes benefits to the environment and minimizes risks to public health and worker health and safety.

3) Specifies that if an affected entity asserts that specific actions taken by the PRO, producer, or an entity under contract with the PRO are not consistent with the plan components regarding adverse effects on solid waste networks or the requirement that the budget not propose investing in activities in violation of the Legislature's intent pursuant to PRC sections 40004 and 40051.1 that specified actions are not intended to limit solid waste franchises or contracts, the entity may bring the concern to the advisory board for discussion and requires the advisory board to offer a recommendation for resolution within 90 days of submission.

4) After the advisory board offers its recommendation, authorizes either party to initiate nonbinding arbitration by a neutral arbitrator, as specified, to determine whether specific actions taken by the PRO, a producer, or an entity under contract with the PRO that are not consistent with the plan components regarding adverse effects on solid waste networks or the requirement that the budget not propose investing in activities in violation of the Legislature's intent pursuant to PRC sections 40004 and 40051.1 that specified actions are not intended to limit solid waste franchises or contracts and are disrupting or otherwise adversely affecting the sustained operation or commercial viability of solid waste collection programs, solid waste recycling facilities, or composting facilities providing services in

accordance with local solid waste handling requirements. Requires the arbiter to consider the information presented to the advisory board and any other information provided by the parties.

5) If the arbiter determines that specified actions taken by the PRO, producer, or an entity under contract with the PRO are not consistent with the plan components regarding adverse effects on solid waste networks or the requirement that the budget not propose investing in activities in violation of the Legislature's intent pursuant to PRC sections 40004 and 40051.1 that specified actions are not intended to limit solid waste franchises or contracts and are disrupting or otherwise adversely affecting the sustained operation or commercial viability of solid waste collection programs, solid waste recycling facilities, or composting facilities providing services in accordance with local solid waste handling requirements

FISCAL EFFECT: According to the Senate Appropriations Committee, CalRecycle estimates ongoing costs of $286,000 annually [California Circular Economy Fund (CCEF)] starting in Fiscal Year 2023-24 for staffing costs to implement provisions of this bill. In addition, CalRecycle notes that SB 303 would delay its ability to develop regulations related to the Act in time to meet its January 1, 2025 deadline, which would result in potentially substantial one-time costs of at least $150,000 (CCEF) to reopen the regulations.

COMMENTS:

1) **Author's statement**:

> In June 2022, the Legislature and Governor approved SB 54 (Allen), the Plastic Pollution Prevention and Packaging Producer Responsibility Act, which placed California at the forefront of tackling the environmental, health, and monetary costs associated with plastics. SB 303 improves the new law to ensure implementation aligns with legislative intent. Ambiguity in the definitions of "recycling" and "responsible end markets," as well as ambiguity in the dispute resolution process, require crucial clarifications to ensure the program is properly implemented. SB 303 makes three minor revisions including: a minor edit to the definition of "recycling" to clarify the PRO and producers are responsible for ensuring material meets CalRecycle criteria not local governments or waste haulers; clarification of the definition of "responsible end markets" to better articulate that the end market is where the material is actually reclaimed and reconstituted into new material, not the entire collection and recycling process (which starts with consumers placing the material into a recycling bin and continues with it being sorted at recovery facilities); more detail around the dispute resolution function to make clear that the advisory board, and not CalRecycle, will recommend solutions to any dispute that may arise between the PRO and local governments.

2) **The Act**. The Act was established by SB 54 (Allen, Chapter 75, Statutes of 2022), and created sweeping new minimum recycling requirements for single-use plastic packaging and food service ware (covered material), source reduction requirements for plastic covered material, and prohibits the sale or distribution of expanded polystyrene unless it meets accelerated recycling rates. SB 54 requires producers to comply with the bill's requirements through an expanded producer responsibility program. This bill additionally requires producers, through the producer responsibility organization, to pay $500 million per year for

ten years (from 2027 to 2037) to be deposited into the California Plastic Pollution Mitigation Fund, which is established to fund various environmental and public health programs.

3) **This bill**. This bill is intended to revise and cleanup provisions of SB 54. SB 303 includes some pure cleanup, such as correcting "food service ware" to "food serviceware" and clarifying the definitions of "materials recovery facility" and "processing." The bill also makes substantive changes, including revising the definition of "responsible end market" to specify that any associated regulations apply to the PRO and not to other entities in the waste collection and processing chain and moving a provision that establishes CalRecycle regulatory authority to the appropriate code section. The bill also establishes an arbitration process that is intended to resolve conflicts between the PRO or producers and other parties.

4) **Limiting applicability**. Under the existing definition of responsible end market in the Act, CalRecycle has the ability to regulate entities along the recycling supply chain to ensure that the process of handling recyclables is consistent with the requirements of the Act. This bill limits CalRecycle's regulatory authority to the PRO and individual producers. According to the author and certain stakeholders, this revision reflects the legislative intent of SB 54 and mirrors other EPR programs, which place the responsibility for compliance on the PRO. According to CalRecycle, this change will also limit CalRecycle's ability to collect information necessary to track materials subject to the bill through the collection and recycling chain, which will make it difficult, if not impossible, for CalRecycle to effectively determine whether or not the material is managed in accordance with the requirements of the Act.

5) **Arbitration authority**. This bill establishes an arbitration process for disputes that are not settled by the bringing the matter to the advisory board for resolution. The arbitration process is intended to resolve financial disputes between parties implementing that Act, as well as specific requirements of a plan that may create adverse effects on solid waste networks and actions that conflict with the requirement that the PRO's budget not propose investing in activities that are inconsistent with prior legislative intent that specified actions are not intended to limit solid waste franchises or contracts. Some actions ordered by an arbiter, such as resolving financial disputes, may not impact the implementation of the Act. However, the bill also authorizes an arbiter to order actions that conflict with an approved PRO plan, require revisions to an approved plan without CalRecycle review or approval and that may impede achieving the goals of the Act. The bill allows "a party" (i.e., a participant in the arbitration process) to request CalRecycle to conduct a de novo adjudicative proceeding within 30 days of the arbiter's decision; however, any entity that is not a party in the arbitration, including CalRecycle or affected stakeholders, has no option to request a review of the decision. This exceptionally broad authority granted to the arbiter undermines the state's oversight of the program and may impede the state's and PRO's ability to meet the goals and requirements of the Act.

6) **Meeting deadlines**. This bill makes revisions to provisions in the Act for which CalRecycle has already begun the process of promulgating regulations. For example, CalRecycle has made significant progress working on the definition of "responsible end market" in its informal rulemaking process. CalRecycle hosted a workshop that discussed the definition on May 31st, and has collected written feedback from the public that was due on June 14th in preparation for further workshops on June 28th and 29th. The revisions to the definition included in this bill would go into effect on January 1, 2024, which would require

CalRecycle to revise and reopen discussions about the term after that date, potentially delaying the rulemaking process necessary to implement the Act. The aggressive timelines and expansive nature of the Act require that changes to its provisions be kept to a minimum to ensure that delays in implementation are minimal.

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

   a) Clarify that the definition of "responsible end market" references the definition of recycling to ensure that it does not include processes that are prohibited under the PRC 42041(aa)(2).

   b) Require the PRO certify that contracts with recyclers, processors, and responsible end markets meet the standards established by the Act.

   c) Revise the arbitration provision to:

      i) Require that the final decision by the arbitrator is submitted to CalRecycle for review when it is submitted to the advisory board;

      ii) Require CalRecycle to review the arbitrator's decision and determine if it is consistent with the requirements of the Act. If the decision includes revisions to a producer responsibility plan, establish public notice requirements and require CalRecycle to approve or disapprove the revision, based on the revision's consistency with the requirements of the Act;

      iii) Allow stakeholders that are not a party to the arbitration to request a de novo adjudicative proceeding, and extend the timeline for requesting a proceeding from 30 days to 60 days; and,

      iv) Specify that if no action is taken by CalRecycle or any other party within 60 days of the arbitrator's decision being submitted to the advisory committee and CalRecycle, the decision becomes binding.

8) **Related legislation**. AB 1526 (Natural Resources Committee) is an omnibus code cleanup bill that includes numerous technical, correction, and clarifying amendments to SB 54. This bill has been referred to the Senate Environmental Quality Committee.

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

REGISTERED SUPPORT / OPPOSITION:

Support

Athens Services
California Waste & Recycling Association
California Waste Haulers Council
Climate Action California
Climate Reality Project, Los Angeles Chapter
Climate Reality Project, San Fernando Valley
Recology

Republic Services, Western Region
Waste Management

Opposition

None on file

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

Date of Hearing: June 26, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
SB 310(Dodd) – As Amended April 12, 2023

SENATE VOTE: 40-0

SUBJECT: Prescribed fire: civil liability: cultural burns.

SUMMARY: Authorizes, until January 1, 2029, the Secretary of the Natural Resources Agency (NRA) to enter into agreements with federally recognized California Native American tribes in support of tribal sovereignty with respect to cultural burning. Requires the Secretary of NRA to convene a cultural burn working group consisting of state agencies, California Native American tribes, and local governments, with the goal of determining a framework to enable conditions conducive to cultural burning.

EXISTING LAW:

1) Provides that any person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by the person to escape onto any public or private property is liable for the fire suppression costs incurred in fighting the fire and for the cost of providing rescue or emergency medical services, and those costs shall be a charge against that person. (Health and Safety Code 13009)

2) Provides that no person shall be liable for any fire suppression or other costs otherwise recoverable resulting from a prescribed burn if the burn is for wildland fire hazard reduction, ecological maintenance and restoration; a burn boss approved the burn; the burner has a landowner's written permission or the approval of the governing body of a Native American Tribe to burn; and, the burn is conducted in compliance with any air quality permit. (Civil Code (CC) 3333.8 (b))

3) Defines "cultural burn" as the intentional application of fire to land by Native American tribes, tribal organizations, or cultural fire practitioners to achieve cultural goals or objectives, including subsistence, ceremonial activities, biodiversity, or other benefits. (CC 3333.8 (e))

4) Authorizes burners to benefit from a presumption of due diligence by obtaining and complying with a CAL FIRE burn permit. (Public Resources Code (PRC) 4494(b))

5) Establishes the Prescribed Fire Claims Fund to support coverage for losses from prescribed fires and cultural burning by nonpublic entities, such as cultural fire practitioners, private landowners, and nongovernmental entities. Sets the maximum amount the fund can pay for losses arising from any one prescribed fire or cultural burn event at $2 million. For purposes of this paragraph, "losses arising from any one prescribed fire or cultural burn event" means all activities conducted pursuant to any one burn plan and, if required, burn permit. (PRC 4500 (c)(1)(A))

THIS BILL:

1) Finds and declares that federally recognized California Native American tribes retain sovereignty with respect to cultural burning within their ancestral territories.

2) Authorizes, until January 1, 2029, the Secretary of NRA to enter into agreements with federally recognized California Native American tribes in support of tribal sovereignty with respect to cultural burning. Authorizes the Secretary to agree, with regard to cultural burning, that compliance with the state permitting or regulatory requirements are not required.

3) Authorizes the Secretary to enter into an agreement with a federally recognized California Native American tribe only with the concurrence of the Secretary of the California Environmental Protection Agency (CalEPA).

4) States that nothing in this bill provides authorization to enter or burn property without the permission of the landowner.

5) Requires the secretary of NRA, in order to support the agreement, to convene a cultural burn working group consisting of, but not limited to, the Secretary of NRA, the Secretary of CalEPA, the State Air Resources Board (ARB), the State Water Resources Control Board (SWRCB), the Department of Fish and Wildlife (DFW), the Department of Forestry and Fire Protection (CAL FIRE), the Department of Parks and Recreation (State Parks), the California Coastal Commission, California Native American tribes, and local governments, with the goal of determining a framework to enable conditions conducive to cultural burning.

6) Requires, on or before January 1, 2025, the cultural burn working group to report to the Legislature on the findings of the workgroup, in compliance with Section 9795 of the Government Code.

7) Defines "ancestral territory" as the area over which a California Native American tribe exercises jurisdiction pursuant to its constitution.

8) Makes technical changes.

FISCAL EFFECT: According to the Senate Appropriations Committee, this bill would result in ongoing costs of about $2.3 million annually (Air Pollution Control Fund) for ARB to provide training, coordinate with cultural burners and local air districts, plan other prescribed burns around cultural burning, increase air quality monitoring, assess potential air quality impacts, and review agreements and consult with federally recognized tribes, among other things; ongoing costs of at least $1 million annually (General Fund) for NRA for the working group as well as contract costs for the facilitation and writing of the report; and, unknown, potentially significant costs (General Fund) for CAL FIRE to implement the provisions of this bill.

COMMENTS:

1) **Author's statement.**

> California Native American Tribes and Tribal people have used fire since time immemorial. Cultural burning enables growth of plants used for food, fiber and medicine, creates habitat for animal species relied on for sustenance, promotes biodiversity, and

results in resilient ecosystems. While cultural burning shares some limited similarities with prescribed fire, it is a wholly separate practice governed by Tribal and natural laws. It is an integral part of the cultural practices of Tribes across California. SB 310 would acknowledge that federally recognized California Native American Tribes may regulate cultural burning pursuant to Tribal law, while requiring an agreement with the California Natural Resources Agency to coordinate such activities.

2) **Wildfires.** Wildfires in California are continuing to increase in frequency and intensity, resulting in loss of life and damage to public health, property, infrastructure, and ecosystems.

   Fire has always been present in California landscapes either occurring by lightning strikes or used by Native American tribes to preserve certain useful plants and prevent larger fires. Low-intensity fires have clear ecological benefits, such as creating habitat and assisting in the regeneration of certain species of plants and trees. Low-intensity fire also reduces surface fuel, which decreases future wildfire intensity.

   A century of suppressing low-intensity fires, logging of older growth and more fire-resistant trees, and a significant five-year drought has increased the size and severity of California's fires. Climate change has also contributed to wildfire risk by reducing humidity and precipitation and increasing temperatures.

3) **Prescribed burning**. California's landscapes are among the most naturally fire-dependent on Earth. One study suggests that prior to 1800, approximately 4.5 million acres of the state burned annually. Native Americans were likely responsible for a significant portion of this acreage. With colonization, many of these practices were significantly reduced or eliminated, fundamentally altering fire scope and intensity across the state.

   Science strongly points to the need to re-establish more frequent fire across a significant part of the state. In significant parts of California, reintroduction of fire in controlled circumstances can limit the scope of catastrophic wildfire and improve ecosystem resilience. In many ecosystems, beneficial fire may be the only restoration tool available.

   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 fires are typically conducted in compliance with a written prescribed fire plan that outlines the conditions necessary for the burn to be "within prescription."

   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. Current estimates indicate that between 10 and 30 million acres in California would benefit from some form of fuel reduction treatment.

   In August 2020, California and the US Forest Service (USFS) agreed to scale up vegetation treatment and maintenance to one million acres of federal, state, and private forest and wildlands annually 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 on its 13.3 million acre jurisdiction by 2025, and State Parks and other state agencies will also increase the use of prescribed fire on high-risk state lands.

Various studies and assessments have identified barriers to expanding beneficial fire activities, including insufficient human and other resources, regulatory hurdles, lack of public buy-in, fear of liability and lack of insurance, and for tribes, a lack of access to ancestral territories.

4) **Liability coverage**. 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.

   SB 332 (Dodd), Chapter 600, Statutes of 2021, modified the liability standards so that no person would be liable for any fire suppression or other costs otherwise recoverable for a prescribed burn if specified conditions are met, including, among others, that the burn be for the purpose of wildland fire hazard reduction, ecological maintenance and restoration, cultural burning, silviculture, or agriculture, and that, when required, a certified burn boss review and approve a written prescription for the burn. The law is intended to assist private prescribed fire practitioners overcome a barrier to conducting prescribed fire, which is the associated liability. Federal and state prescribed fires do not have the same concerns because they are able to self-insure.

   Data on the amount of prescribed fire that occurs in California has gaps, because CAL FIRE only requires a burn permit during fire season and not all local air districts track the prescribed fire they permit or report it to the Prescribed Fire Incident Reporting System. Many private entities, such as cultural fire practitioners and nonprofits, have stated that it is impossible to get insurance to cover any damages that could arise if the prescribed fire went out of prescription. Many private entities are unwilling to conduct public purpose burning without insurance or some liability protection.

   To support the use of prescribed burns to meet the state's treated acreage goals, SB 170, Budget Act of 2021, included $20 million (Item 3540-102-0001) to CAL FIRE to establish a Prescribed Fire Liability Pilot Program (program), in consultation with the Department of Insurance and NRA 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.

   SB 926 (Dodd), Chapter 606, Statutes of 2022, set parameters to operationalize the $20 million budget appropriation by establishing the Prescribed Fire Liability Claims Fund (Claims Fund) to support coverage for losses from permitted prescribed fires by individuals and specified entities. The Claims Fund will provide up to $2 million in coverage for prescribed fire projects led by a qualified burn boss or cultural practitioner. The Claims Fund is meant to demonstrate that prescribed fire, when carefully planned, resourced, and implemented, is a low-risk land management tool that mitigates the larger, more damaging risks of high-severity wildfires. According to CAL FIRE, the fund will also advance cultural burning, helping Indigenous Californians restore their connection to fire.

5) **Cultural burning.** Cultural burning is the intentional application of fire to land by Native American tribes, tribal organizations, or cultural fire practitioners to achieve cultural goals or objectives, including sustenance, ceremonial activities, maintenance of travel corridors, wildlife habitat improvement, attracting wildlife to a place, water stewardship, pest control, stewardship of cultural plants, conservation/protection, and spiritual reasons.

Cultural burners may consider ecological indicators such as signals from local plant and animal species, as well as astronomical factors, like the position of stars and the moon, when determining whether to burn. These ecological considerations may overlap with those of western land management, but they are, in fact, distinct and based on different concepts of knowledge. While western practices (i.e., through regulatory permits) typically treat knowledge as universal and secular, traditional ecological knowledge is thought to be spiritual and associated with particular people, place, and time.

Many California Native American tribes have long recognized the interdependence between fire and the environment and used cultural burning to maintain and restore environmental health and to promote the growth of resources important to their communities. Whether through natural ignition or cultural burning, fire in our forests encourages fire-resilient species to thrive, reduces the risk of catastrophic fires by decreasing the amount of vegetation that could catch and spread fire, supports diverse ecosystems, and shapes forests that were predominantly open with very large and resilient trees.

In the early 1900s, state and federal policies prohibiting the use of prescribed fire and cultural burning interrupted this tradition of land stewardship with the passage of the 1911 Weeks Act, making cultural burning all but illegal. In 1935, after the federal government created the Civilian Conservation Corps, which put thousands of men to work building fire breaks and fighting fires, among other things, the U.S. Forest Service infamously had the "10 a.m. policy" to put out all forest fires by 10 a.m. the next day. Without regular fires to clear out underbrush, forests quickly became overgrown, creating the conditions for more extreme fires.

The combination of a century of fire exclusion practices that have generated far greater fuel loads, historic timber harvesting methods that removed many of the largest, most fire-resilient trees, and climate change impacts have culminated in far more large, catastrophic wildfires.

Federal and state governments are trying to make up for lost time treating forested lands with fire, but state bureaucracy doesn't always align with cultural burning.

Tribal leaders and government officials are forging new partnerships. State and federal land managers have hundreds of thousands of acres that need careful burning to reduce the risk of extreme wildfires. Tribes are eager to gain access to those ancestral lands to restore traditional burning.

NRA's April 2022 *Natural and Working Lands Climate Smart Strategy* prioritizes cultural burning to reduce wildfire risk, increase resilience to future drought, increase carbon sequestration rates, and stabilize carbon storage, and suggests increasing voluntary cultural easements for cultural burns and to ensure Native American tribes have access to natural cultural resources and cultural landscapes.

In Northern California, the Karuk and Yurok tribes have partnered with the USFS to manage land for traditional values and wildfire management. Studies have shown that the two goals work hand in hand. Local resources are stepping up to help, too. The Cultural Fire Management Council (CFMC) facilitates the practice of cultural burning on the Yurok Reservation and ancestral land by working with individual families and property owners to

prepare their land for burning, vegetation management and manual fuels reduction, and demonstration burns for training in burn practices and control management.

Pursuant to the California Wildfire & Forest Resilience Task Force's *Reiliency Action Plan,* CAL FIRE established a Tribal Wildfire Resilience grants program to provide direct funding for tribal governments to support cultural burning and other traditional forest health practices. The first round of grants are expected to be announcements sometime in July.

Under current law, Native American tribes are not required to obtain permits when practicing cultural burns on federally recognized trust lands as defined in 25 United States Code 2201, and pursuant to SB 332, cultural burning is afforded the same liability protections as prescribed burning, and eligibility for those protections is exempt from having burn boss approval and from having written prescription.

This bill authorizes Secretary of NRA to enter into agreements with federal-recognized Native American Tribes with regard to cultural burning on a Tribe's Ancestral lands without required compliance with state permitting or regulatory requirements. In other words, the bill is not limited to the land a tribe holds in trust from the federal government, but to ancestral lands, which are defined as the lands the tribes inhabited before the state was settled.

The land comprising present-day California was controlled by many independent tribal nations prior to colonization, each of which retained complete sovereignty over its affairs. Federal treaties have recognized some of this land as reservation or trust land, but very little of the ancestral tribal lands in California have been formally recognized.

SB 310 would provide cultural burners the liability protections offered in SB 332 but only where they have reached an agreement with the Secretary of NRA for burning on ancestral lands.

Further, the bill only applies to federally-recognized Tribes. There are approximately 110 federally recognized Indian tribes, including several tribes with lands that cross state boundaries. There are also about 81 tribes seeking federal recognition.

6) **Air quality concerns.** While Native American Tribes have well-established ecological knowledge and long-rooted experience with fire, California has changed much since European settlers enforced bans on cultural burning. The state is developed with infrastructure across every county, and has a population greater than 40 million people. Simply put, there are more public health and safety risks with burning today than there were in the 1800s, when the state had far fewer than one million residents (shy of 380,000 in 1860), and not all tribes may have maintained the cultural practice of burning over the years.

   The California Air Pollution Control Officers Association (CAPCOA), which represents the 35 local air pollution agencies across the state, have concerns about lack of public notification and smoke modeling requirements to help inform potentially affected areas, among other things that an air quality permit would address. According to CAPCOA, during the period from 2019 – 2021, air districts approved 99% of requested prescribed burns. CAPCOA also writes that through their coordination with CAL FIRE, federal land managers, and Tribes, they are taking steps to streamline the permitting process through outreach and training.

The bill contains a five-year sunset, plus a report to the Legislature from the cultural burn working group, so the Legislature can assess any problems and potential risks resulting from this authority that could be addressed should the sunset be extended.

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

8) **Committee amendments.** The Committee may wish to consider amending the bill to specifically include the local air quality management districts in the cultural burn working group as follows:

> (d) In order to support the agreements described in subdivision (b), the Secretary of the Natural Resources Agency shall convene a cultural burn working group consisting of, but not limited to, the Secretary of the Natural Resources Agency, the Secretary of the California Environmental Protection Agency, the State Air Resources Board, the State Water Resources Control Board, the Department of Fish and Wildlife, the Department of Forestry and Fire Protection, the Department of Parks and Recreation, the California Coastal Commission, California Native American tribes, <u>local air pollution control districts,</u> and local governments, with the goal of determining a framework to enable conditions conducive to cultural burning<u>, including consideration of the role of local air pollution control district in supporting the effort of cultural burning.</u> On or before January 1, 2025, the cultural burn working group shall report to the Legislature on the findings of the workgroup, in compliance with Section 9795 of the Government Code.

REGISTERED SUPPORT / OPPOSITION:

Support

Audubon California
California Climate & Agriculture Network
California Farm Bureau Federation
California Native Plant Society
Central Sierra Environmental Resource Center
Community Alliance With Family Farmers
Defenders of Wildlife
Equal Rights Advocates
Midpeninsula Regional Open Space District
Pacific Forest Trust
Salmon River Restoration Council
Sierra Forest Legacy
The Nature Conservancy
The Trust for Public Land
The Watershed Research and Training Center

Opposition

California Air Pollution Control Officers Association

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

Date of Hearing: June 26, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
SB 367 (Seyarto) – As Amended March 16, 2023

SENATE VOTE: 40-0

SUBJECT: Farm, ranch, and public lands cleanup and abatement: grant program

SUMMARY: Expands the Farm and Ranch Solid Waste Cleanup and Abatement Grant Program (Grant Program) administered by the Department of Resources Recycling and Recovery (CalRecycle) to include state and federal public lands that are not used for farm or ranch purposes.

EXISTING LAW establishes the Grant Program to support the cleanup of illegally disposed solid waste on farm and ranch properties (Public Resources Code 48100 *et seq*.):

1) Establishes the Farm and Ranch Solid Waste Cleanup and Abatement Account (Farm and Ranch Account) in the General Fund, and specifies the Farm and Ranch Account may be expended by CalRecycle, upon appropriation, for the Grant Program.

    a) Specifies that up to 7% of funds may be expended for the costs of implementing the Grant Program.

    b) Limits the total amount transferred to the Farm and Ranch Account annually to $1 million.

    c) Specifies that the Farm and Ranch Account shall be funded from the Integrated Waste Management Fund (IWMF), the California Tire Recycling Management Fund, and the California Used Oil Recycling Fund.

2) Specifies that the Grant Program shall fund grants up to $200,000 per year for any single public entity or Native American tribe, and not to exceed $50,000 for any single cleanup or abatement project. Limits grant recipient administrative costs to 7%.

3) Requires CalRecycle to give priority to public entities and Native American tribes that have established innovative and cost-effective programs designed to discourage the illegal disposal of solid waste and to encourage the proper disposal of solid waste.

4) Specifies that a grant agreement may provide for, but is not limited to:

    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 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 was illegally disposed on farm or ranch property.

5) Specifies that farm and ranch property is ineligible for a grant if it is determined by the public entity or Native American tribe that the owner was responsible for the illegal disposal.

6) Requires CalRecycle to adopt regulations to implement the Grant Program, including:

    a) Criteria for grant eligibility;

    b) Requiring that the applicant certify that:

        i) The applicant is the only applicant for funding for any particular farm or ranch property;

        ii) That the owner of the property is not responsible for the illegal disposal; and,

        iii) That the applicant has in place a program that is sufficient to prevent future incidents of illegal disposal.

7) Requires CalRecycle to notify an applicant in writing if an application is denied and the reason for the denial.

8) Requires CalRecycle to include specified information about the Grant Program in its annual report.

9) Requires that solid waste collected as part of a cleanup or abatement under the Grant Program be recycled or reused to the maximum extent feasible and that cleanup and abatement activities be conducted in compliance with existing laws governing the handling of solid wastes, hazardous wastes, liquid wastes, or medical wastes, as appropriate.

10) Specifies that nothing in the Grant Program is intended to relieve any party who is responsible for the generation or illegal deposition of solid waste from liability for removal costs if the party can be identified. Specifies that farm and ranch property owners whose property is the subject of solid waste cleanup or abatement under the Grant Program and who are not responsible for the generation or deposition of the solid waste shall not be subject to any cost recovery action for cleanup or abatement costs borne by public entities, Native American tribes, or CalRecycle.

THIS BILL:

1) Expands the Grant Program to include public lands owned by the state or federal government.

2) Establishes the Public Lands Solid Waste Cleanup and Abatement Account (Account) within the General Fund.

    a) Authorizes funds in the Account to be used, upon appropriation, to:

        i) To make payments for grants authorized under the Grant Program for the cleanup and abatement of solid waste illegally disposed of on public lands owned by the state or federal government; and,

ii) To pay CalRecycle's costs of implementing the portion of the Grant Program dedicated to the cleanup of illegally disposed solid waste on state and federal lands.

b) Specifies that "public lands owned by the state or federal government" does not include farm or ranch property owned by the state or federal government.

FISCAL EFFECT: According to the Senate Appropriations Committee, CalRecycle estimates ongoing costs of $135,000 annually (Public Lands Solid Waste Cleanup and Abatement Account) to process and administer additional grants due to the expansion of the program, alongside other unknown cost pressures.

COMMENTS:

1) **Illegal dumping**. Illegal dumping refers to the disposal of solid waste at any site that is not a permitted solid waste facility. Illegally disposed waste has significant environmental, social, and economic impacts. Improperly disposed waste can lead to soil and water contamination, as plastic, heavy metals, and other waste materials can leach into the ground or enter waterways and contribute to plastic pollution. The financial costs of illegal dumping are high. Local governments spent tens of millions of dollars statewide to remove illegally dumped waste.

2) **CalRecycle illegal disposal cleanup grants**. CalRecycle offers two grant programs dedicated to the cleanup of illegal disposal sites. The Grant Program provides up to $1 million annually in grants for the cleanup of illegal solid waste on farm and ranch properties. Sites may be eligible if they are zoned for agricultural use, the disposal was unauthorized, and are in need of cleanup in order to abate a nuisance, public health and safety threat, or a threat to the environment.

   The Solid Waste Disposal and Codisposal Site Cleanup Program provides funds to cleanup solid waste at solid waste disposal sites and codisposal (i.e., sites where solid waste and hazardous waste are both present) where the responsible party either cannot be identified or is unwilling or unable to pay for timely remediation and where cleanup is needed to protect public health and safety and/or the environment.

3) **This bill**. This bill bifurcates the Grant Program into two distinct grant programs. It is intended to preserve the existing program that funds the cleanup of farm and ranch properties and adds a new grant to fund the cleanup of illegally disposed solid waste on state and federal public lands. Under the bill, entities wishing to receive a grant for cleanup activities on state or federal public lands would work with the appropriate local public entity or Native American tribe to apply for funding through the program. This process ensures coordination between state, federal, tribal, and local agencies. Funding for state and federal lands would be subject to the appropriation of funds in the annual Budget Act.

4) **Author's statement**:

   > Almost half of California's land is owned and maintained by the Federal or State Governments. With the rise of illegal dumping on these public lands, California must remove barriers for individuals seeking to help clean and remove the waste that is accumulating on public lands. The state has created pathways for cleaning up our cities and towns, it is now time to explore options to clean the more remote

public lands in the state. This bill would provide grants, subject to the appropriation of funds, for the cleanup of illegal disposal sites on state and federal public lands.

5) **Amendments**. The *committee may wish to amend the bill* to move the language that establishes the existing Farm and Ranch Account into a separate code section to be consistent with the new code section that creates the Account for state and federal lands, and to clarify that the Farm and Ranch Account cannot be used for the cleanup of state and federal public lands.

REGISTERED SUPPORT / OPPOSITION:

Support

Rural County Representatives of California

Opposition

None on file

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

Date of Hearing: June 26, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
SB 422 (Portantino) – As Amended March 20, 2023

SENATE VOTE: 38-0

SUBJECT: California Environmental Quality Act: expedited environmental review: climate change regulations

SUMMARY: Expands expedited California Environmental Quality Act (CEQA) review provisions, which currently apply to regulations requiring the installation of pollution control equipment or a performance standard, to apply to regulations requiring the reduction in emissions of greenhouse gases, criteria air pollutants, or toxic air contaminants, and requires all eligible projects to comply with specified construction labor requirements.

EXISTING LAW:

1) Requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration (ND), mitigated negative declaration (NMD), or environmental impact report (EIR) for this action, unless the project is exempt from CEQA.

2) Authorizes use of a "focused" EIR (an EIR that evaluates potential impacts on a limited number of environmental issue areas because a prior EIR has evaluated the full range of impacts) for projects that consist solely of the installation of pollution control equipment required by specified agencies [i.e., Air Resources Board (ARB), local air districts, state and regional water boards, Department of Toxic Substances Control, the Department of Resources Recycling and Recovery (CalRecycle), the California Energy Commission (CEC), and the Public Utilities Commission (PUC)].

3) Requires the specified public agencies to perform an environmental analysis of the reasonably foreseeable methods of compliance when adopting a rule or regulation requiring installation of pollution control equipment, or a performance standard or treatment requirement. The environmental analysis must include an analysis of: (a) reasonably foreseeable environmental impacts of the methods of compliance, (b) reasonably foreseeable feasible mitigation measures, (c) reasonably foreseeable alternative means of compliance with the rule or regulation, and (d) reasonably foreseeable greenhouse gas emission impacts of compliance with a rule or regulation that requires the installation of pollution control equipment adopted pursuant to the California Global Warming Solutions Act of 2006 (AB 32, (Nuñez), Chapter 488, Statutes of 2006).

4) Authorizes a focused EIR to be used for a project consisting solely of installing pollution control equipment required by a rule of regulation of the specified public entities or pollution control equipment that reduces greenhouse gases required by a rule or regulation of the specified public entities pursuant to AB 32 (environmentally mandated projects) if certain conditions are met.

5) Requires the lead agency of an environmentally mandated project, to the greatest extent feasible, use the environmental analysis in the preparation of an ND, MND, or EIR on the project or in otherwise complying with CEQA.

6) Requires, if an EIR is required for an environmentally mandated project, the lead agency to prepare an EIR which addresses only the project-specific issues related to the project or other issues not discussed in sufficient detail in the environmental analysis.

7) Applies, when preparing an EIR or focused EIR under these provisions, certain expedited deadlines.

THIS BILL:

1) Expands the application of existing expedited environmental review procedures for environmentally mandated projects to also apply to regulations requiring the reduction in emissions of greenhouse gases, criteria air pollutants, or toxic air contaminants.

2) Requires specified public agencies to perform an environmental analysis of the reasonably foreseeable methods of compliance.

3) Requires environmentally mandated projects to meet certain labor requirements to utilize the expedited review processes established for environmentally mandated projects, including payment of prevailing wage and use of a "skilled and trained" workforce, as defined.

FISCAL EFFECT: According to the Senate Appropriations Committee:

- ARB estimates ongoing costs of about $2.1 million annually (Greenhouse Gas Reduction Fund [GGRF]) to execute approximately 11 additional environmental analyses for regulations each year, contract for CEQA expertise, and ensure the bill's legal requirements are met, among other things.
- CalRecycle estimates one-time contract costs of roughly $500,000 (special fund) for each new rulemaking related to the reduction of GHG emissions, criteria air pollutants, or toxic air contaminants. CalRecycle notes that this amount is subject to increase with inflation. CalRecycle also notes it would need additional staff to manage these contracts and associated workload, but the number of contracts and staff needed would depend on the number of statutes and associated rulemakings in subsequent years. CalRecycle does not have an estimate for how frequently this cost will apply, as it would be dependent on the statutes the legislature passes in the future. This cost would be part of the fiscal estimate of those future bills.
- Unknown but likely minor costs (various funds) for other state departments to implement the provisions of this bill.
- Unknown but potentially significant costs (Legal Services Revolving Fund, General Fund) for the Department of Justice (DOJ) due to a potential increase in CEQA litigation as well as potential referrals from client agencies as a result of this bill. Actual costs would depend on the number of CEQA cases and client referrals to DOJ.

- Unknown but potentially significant cost pressure (General Fund) to the state-funded court system to process and hear challenges to projects eligible for expedited judicial review as a result of this bill.

COMMENTS:

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

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

   In 1993, as part of a package of CEQA reforms in AB 1888 (Allen), Chapter 1130, the Legislature authorized the use of a "focused" EIR for specified projects, including installation of pollution control equipment pursuant to air, water, toxics, and waste regulations. A focused EIR expedites the review process by limiting the analysis to project-specific significant effects that were not discussed in the analysis of the underlying regulation. In 2010, AB 1846 (V. Manuel Pérez), Chapter 195, expanded the focused EIR to include a pollution control project that reduces GHG emissions to comply with AB 32.

2) **Author's statement**:

   SB 422 aims to expedite the CEQA review process for projects that reduce GHG emissions, incorporate pollution control equipment, and meet energy efficiency standards while providing for a skilled and trained workforce. California is a leader in addressing climate change policy, innovation, and technology. To implement the state's ambitious climate goals and achieve the target reductions in emissions, significant modifications must be made to existing facilities and infrastructure. To ensure that the state can meet its climate goals and minimize duplication of work and expenses, SB 422 will eliminate unnecessary layers of environmental review for certain projects, without compromising necessary environmental review. These policies will help facilitate the building of climate-oriented projects by providing certainty in designing, financing, permitting and provide for a skilled workforce.

3) **Prior legislation**. This bill is substantially similar to SB 1136 (Portantino), which passed this committee and the Legislature in 2022, but was vetoed by the Governor:

   I am returning Senate Bill 1136 without my signature.

   This bill expands the environmental review process for California Air Resources Board

(CARB) regulations that require the reduction in emissions of greenhouse gases, criteria air pollutants, or toxic air contaminants.

I share the author's goal in seeking ways to streamline and accelerate critical projects to reduce greenhouse gas emissions. However, this bill restricts CARB from using standard California Environmental Quality Act streamlining tools for environmentally beneficial regulations.

In addition, this bill would create significant delays in the promulgation of environmentally beneficial regulations. This bill also exposes state and local public agencies to new litigation risks and results in millions of dollars in costs not accounted for in the budget.

With our state facing lower-than-expected revenues over the first few months of this fiscal year, it is important to remain disciplined when it comes to spending, particularly spending that is ongoing. We must prioritize existing obligations and priorities, including education, health care, public safety and safety-net programs.

The Legislature sent measures with potential costs of well over $20 billion in one-time spending commitments and more than $10 billion in ongoing commitments not accounted for in the state budget.

For these reasons, I cannot sign this bill.

4) **Double referral**. This bill has been double referred to the Labor and Employment Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Carbon Solutions Coalition
California Council for Environmental & Economic Balance
State Building and Construction Trades Council of California

Opposition

None on file

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

Date of Hearing: June 26, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
SB 438 (Caballero) – As Amended June 6, 2023

SENATE VOTE: 38-0

SUBJECT: Carbon sequestration: Carbon Capture, Removal, Utilization, and Storage Program: incidental and unintentional residual oil production

SUMMARY: Establishes an exception from the ban on enhanced oil recovery from a carbon dioxide (CO_2) capture, removal, or sequestration project by providing that the incidental and unintentional production of residual oil from a geologic sequestration (i.e., "Class VI") well does not violate the ban.

EXISTING LAW:

1) Requires the Air Resources Board (ARB), on or before January 1, 2025, to adopt regulations for a unified permit application for the construction and operation of CO_2 capture, removal, or sequestration projects to expedite the issuance of permits or other authorizations for the construction and operation of those projects. (Health and Safety Code (HSC) 39741.2)

2) Requires a state agency to use the unified permit application when issuing a permit or other authorization for the construction and operation of a CO_2 capture, removal, or sequestration project, as specified.

3) Prohibits a well operator from injecting a concentrated CO_2 fluid produced by a CO_2 capture, removal, or sequestration project into a Class II injection well for purposes of enhanced oil recovery, as provided. (Public Resources Code (PRC) 3132)

4) Defines a "Class II well" be referencing the definition in Section 144.6 of Title 40 of the Code of Federal Regulations. (PRC 3130)

THIS BILL:

1) Provides that any incidental and unintentional residual oil produced at the surface from a Class VI well resulting from the injection of a concentrated CO_2 fluid into a Class VI well during the execution of a CO_2 capture, removal, or sequestration project is not considered enhanced oil recovery.

2) Prohibits the sale, barter, exchange, or trade of any incidental and unintentional residual oil produced at the surface by the CO_2 capture, removal, or sequestration project.

3) Requires any oil produced from a Class VI well to be reported to ARB and the United States Environmental Protection Agency (USEPA), Region 9, within 60 days of its production.

4) Defines "Class VI well" by referencing the definition in Section 144.6(f) of Title 40 of the Code of Federal Regulations.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

1) **Background**. To address climate change, the state has established ambitious greenhouse gas (GHG) emissions reductions goals, among other policies promoting or requiring decarbonization. The California Climate Crisis Act declares state policy to achieve net zero GHG emissions no later than 2045, and to achieve and maintain net negative GHG emissions thereafter [AB 1279, (Muratsuchi), Chapter 337, Statutes of 2022]. Current planning scenarios by ARB (i.e., the 2022 Scoping Plan Update) identify the need to utilize carbon capture, utilization, and sequestration (CCUS) projects to remove and sequester 20 million metric tons of CO_2 by 2030 and 100 million metric tons of CO_2 by 2045 to achieve the state's carbon neutrality goals.

   Among the best known types of CCUS projects are those that provide for the injection of concentrated CO_2 fluids into deep underground geologic reservoirs for permanent/quasi-permanent sequestration. Scientific experts estimate that there are many possible locations statewide where underground geologic reservoirs are suitable for carbon sequestration. The wells used to inject into these reservoirs are Class VI Underground Injection Control (UIC) program wells, which are permitted by the USEPA in California. There are seven project applications for approximately 30 Class VI permits pending before US EPA Region 9.

   AB 1279 was one of seven bills adopted by Governor Newsom as part of a "climate package" near the end of the 2021/2022 Legislative session to further advance the state's decarbonization efforts. Six of the seven bills passed the Legislature and were signed into law.

   Another of the climate package bills was SB 905 (Caballero/Skinner), Chapter 359, Statutes of 2022, which sought to promote the use of carbon capture, removal, utilization, and storage (CCRUS) technologies by requiring ARB to establish a CCRUS program, and to adopt regulations by January 1, 2025 for a model unified permit program for the construction and operation of CCRUS projects.

   SB 905 included numerous other provisions including a prohibition on the use of concentrated CO_2 from CO_2 capture, removal, or sequestration project for enhanced oil recovery (EOR), among others.

   EOR is the application of heat or pressure to an oil reservoir to facilitate the recovery of oil. In general, a fluid, such as water or steam, is injected into the oil reservoir using an injection well and then the oil/water mix is produced using the same well or another one. Injection wells used for oil and gas production are a different class of UIC well than those used to inject concentrated CO_2 fluids for permanent geologic storage. Oil and gas production-related injection wells are Class II UIC wells. As noted above, SB 905, as well as SB 1314 (Limón), Chapter 336, Statutes of 2022, another climate package bill, prohibit the use of CCUS for EOR.

After SB 905 passed the concurrence vote in the Senate, Senator Caballero submitted a Letter to the Journal noting, among other things, the possibility that residual subsurface oil may be unintentionally expelled when a concentrated carbon stream is injected into a geologic reservoir for sequestration and that SB 905 did not intend to capture incidental and unintentional residual oil expulsion in its definition of EOR.

2) **Author's statement**:

> On September 16th, 2022, Governor Newsom signed into law SB 905, as part of the historic climate package, establishing breakthrough policy for CCRUS application. Since then, there have been several provisions brought to my attention that require clarification in order to avoid hindrance of current projects, and unintentional penalties. Senate Bill 438 builds upon SB 905 in an effort to clarify intent and ensure proper implementation. Specifically, the bill clarifies that residual oil expressed without oil production equipment is not penalized, and includes reporting requirements when incidents do occur. SB 438 is consistent with last year's efforts and will allow California to continue its work on carbon emission reduction as intended.

3) **What bill are we talking about**? The two support letters on this bill make no mention of what the bill actually does, and instead make vague reference to "establishing a positive regulatory framework" (SoCalGas) and "ensur(ing) that critically needed…technologies can be expeditiously deployed" (Carbon Solutions Coalition).

   Meanwhile, a coalition of environmental justice advocates primarily focus their objections on provisions that are not in the bill. These groups contend that the language in the bill is non-substantive and unnecessary, and further argue:

> While apparently modest in scope, we object to this bill's apparent intent, namely to speed investment into a climate dead end: carbon capture, use, and storage. Further, we expect the bill to be amended to undo one of the most important community protections that the environmental justice movement secured during last year's climate negotiations: the moratorium on carbon pipelines until the federal rulemaking concludes.

REGISTERED SUPPORT / OPPOSITION:

Support

California Carbon Solutions Coalition
Southern California Gas Company

Opposition

350 Bay Area Action
Asian Pacific Environmental Network
Center for Biological Diversity
Center on Race, Poverty & the Environment
Central California Asthma Collaborative

Central California Environmental Justice Network
Central Valley Air Quality Coalition
Indigenous Environmental Network
Leadership Counsel for Justice and Accountability
Little Manila Rising
Physicians for Social Responsibility - Los Angeles
Physicians for Social Responsibility - San Francisco Bay Area Chapter
Sunflower Alliance
Valley Improvement Projects

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

Date of Hearing: June 26, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
SB 539 (Stern) – As Amended June 14, 2023

SENATE VOTE: 40-0

SUBJECT: Sepulveda Basin: planning process: nature-based climate solutions.

SUMMARY: Requires the Department of Water Resources (DWR) and the Santa Monica Mountains Conservancy (SMMC) to provide assistance to the City of Los Angeles (LA) and the United States Army Corps of Engineers, to the extent requested, in order to integrate nature-based solutions into the planning process for the Sepulveda Basin.

EXISTING LAW:

1) Establishes DWR as the state entity vested with all of the powers, duties, purposes, responsibilities, and jurisdiction in matters pertaining to water or dams. (Water Code 120)

2) Establishes SMMC to be responsible for carrying out projects identified in certified local coastal programs for jurisdictions within the coastal zone portion of the Santa Monica Mountains Zone, and to undertake projects within the coastal zone portion of the Santa Monica Mountains Zone that implement the park, recreation, conservation, and open-space provisions. (Public Resources Code (PRC) 33201)

3) Authorizes SMMC to award grants or make interest-free loans to cities, counties, resource conservation districts, and recreation and park districts for the purpose of restoring areas which, because of scattered ownerships, poor lot layout, inadequate lot size, inadequate park and open space, incompatible land uses, or other conditions, are adversely affecting the Santa Monica Mountains environment or are impeding orderly development. (PRC 33204 (a))

4) Requires, on or before January 1, 2024, the Natural Resources Agency (NRA), the Department of Food and Agriculture (CDFA), the expert advisory committee, and other relevant state agencies, to determine an ambitious range of targets for natural carbon sequestration and for nature-based climate solutions that reduce greenhouse gas (GHG) emissions for 2030, 2038, and 2045 to support state goals to achieve carbon neutrality and foster climate adaptation and resilience. Requires these targets to be integrated into the Scoping Plan. (Health and Safety Code 38561.5 (b)(1))

THIS BILL:

1) Requires DWR and SMMC to provide assistance to the City of LA and the United States Army Corps of Engineers (Corps), to the extent requested, in order to integrate nature-based solutions into the planning process for the Sepulveda Basin.

2) Defines the following terms:

a) "Nature-based solutions" as activities, such as restoration, conservation, and land management actions, that provide protection from climate impacts and increase net carbon sequestration or reduce greenhouse gas emissions in natural and working lands.

b) "Sepulveda Basin" means the approximately 2,000 acres of land owned and operated by the federal government as a flood management facility, north of Highway 101, west of Route 405, south of Victory Boulevard, and east of White Oak Avenue.

3) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the location of the Sepulveda Basin near the City of LA and its critical wildlife habitat for many native plants and animals.

FISCAL EFFECT: According to the Senate Appropriations Committee, enactment of this bill would result costs up to of up $160,000 (General Fund, special funds, or bond funds) for DWR and SMMC to assist with the design of nature-based solutions. It is possible that neither LA nor the US ACE would request assistance, in which case this bill would have no associated state costs. If assistance were to be requested, actual costs would depend upon the scope and expected outcomes of such assistance, among other things.

COMMENTS:

1) **Author's statement:**

> The Sepulveda Basin represents an untapped resource at the center of one of the most heavily urban areas in the region. At a time when the critical nature of outdoor space is at the forefront for its benefits not only to physical and mental health but also cognitive wellbeing and social benefits, the Sepulveda Basin can provide open space in a largely urban area … With the worsening effects of climate change arise new land management challenges that require the preservation and protection of existing open space. The Sepulveda Basin can serve all these purposes, ameliorating some of the harmful effects of climate change and empowering local communities.

2) **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.

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

   California's natural and working lands and the critical ecosystem services they provide, including their ability to sequester carbon from the atmosphere, are at risk. Actions to protect, restore, and sustainably manage the health and resiliency of these lands can greatly accelerate our progress to mitigate climate change and our ability to reduce worsening

climate change impacts. Recent research has shown that California's working lands have the ability to sequester up to 100 million metric tons of carbon dioxide per year.

AB 1757 (C. Garcia), R. Rivas, Chapter 341, Statutes of 2022, requires the Air Resources Board, by January 1, 2024, to determine an ambitious range of targets for natural carbon sequestration that reduce GHGs for 2030, 2038, and 2045 to support state goals to achieve carbon neutrality and foster climate adaptation and resilience. Investments in nature-based solutions are critical to meeting the goals established by AB 1757.

3) **Nature-based solutions**. NRA defines nature-based solutions as those that describe actions that work with and enhance nature to help address societal challenges. This term is an umbrella concept being used across the world to describe a range of approaches that protect, sustainably manage, and restore nature to deliver multiple outcomes, including addressing climate change, improving public health, increasing equity, and protecting biodiversity.

   Investing in nature-based solutions is not new to the state; increasing statutory climate emission reduction mandates and the Governor's 30x30 initiative have pushed all agencies to consider their policies through the lens of environmental sustainability, which includes using, protecting, and enhancing our natural resources across every sector to build climate resilience.

4) **The Corps' Engineering with Nature initiative and DWR**. The Corps formally started this initiative in 2010, which seeks to align natural and engineering processes to efficiently and sustainably deliver economic, environmental, and social benefits. In the 2020 Water Resources Development Act, Congress provided funding for a special program to accelerate the work and directed the Corps to consider nature-based systems on equal footing with traditional infrastructure. The initiative seeks to use natural processes to maximum benefit to reduce demands on limited resources, minimize the environmental footprint of projects, and enhance the quality of project benefits.

   The Corps recently published International Guidelines on Natural and Nature-Based Features for Flood Risk Management, a 1,000-page guide on how to use nature-based features, such as islands, reefs, forests, beaches, and dunes, alone or in combination with conventional infrastructure, to provide flood risk management.

   On May 18, 2021, DWR signed a memorandum of understanding (MOU) with the Corps to collaborate on engineering with nature, and to facilitate planning and implementation of natural and nature-based infrastructure projects in California in accordance with the state's Water Resilience Portfolio and DWR's environmental stewardship policy.

   The Sepulveda Basin Restoration Feasibility Report, produced by the River Project, recommends an approach "led by the State of California, most likely DWR, for the river restoration efforts. DWR's affiliation with the Corps' program Engineering With Nature initiative provide a basis for leadership on the project."

   DWR does not have any nature-based projects, or any other types of projects, ever implemented or planned in the Sepulveda Basin, nor does DWR, under its MOU with the Corps, have any projects going or planned for the Basin. (The MOU initially intended for the Central Valley, but does reference applicability "statewide.")

It appears the reason DWR is included in the bill to advise the City of LA is the nexus to the Corps through the MOU.

5) **Santa Monica Mountains Conservancy**. The Los Angeles River transverses the Sepulveda Basin. SMMC has been the main state planning agency working towards the revitalization of the Upper Los Angeles River and its tributaries and the Upper Los Angeles River Watershed since the 1990's. The Water Security, clean Drinking Water, Coastal and Beach Protection Act of 2002 gave the SMMC authority to expend funds "for the protection of the Los Angeles River Watershed upstream of the northernmost boundary of the City of Vernon."

   Since 2011, SMMC, with its Joint Powers Partner, the Mountains Recreation and Conservation Authority (MRCA) has operated the Los Angeles River Recreation Zone in the Sepulveda Basin on the portion of the LA River that has not been channelized. It is an important community connection to the extensive natural area in the Sepulveda Basin, which is chock full of wildlife.

   More recently, in September 2017, the Legislature enacted AB 466 (Bocanegra), Chapter 341, Statutes of 2017, establishing within the Santa Monica Mountains Conservancy Working Group to develop the Upper Los Angeles River and Tributaries (ULART) Revitalization Plan to be administered by SMMC. The Sepulveda Basin was one of the main LA River restoration areas discussed in the resultant 2020 ULART Plan.

   As it relates to SMMCs broader nature-based solution experience, it has been working with NRA to implement the state's 30x30 goal at the local level and has helped protect more than 75,000 acres of public open space in Southern California, and with its Joint Powers partners, participates in land acquisition projects in an area of approximately 7,000 square miles, spanning five major watersheds within four counties.

   Further, the 2021-22 state budget included $10 million for SMMC for projects that improve the climate resiliency or the protection of the LA River watershed or are a part of the revitalization plan developed by the Upper LA River and Tributaries Working Group and $20 million split evenly across three Southern California conservancies in 2022-23 for the same purposes.

6) **Sepulveda Basin**. The Sepulveda Basin is a federally-owned flood management facility encompassing more than 2,000 acres managed by the Corps, and is home to a protected wildlife area, water reclamation facility, and includes parks and recreational facilities managed primarily by the LA City Department of Recreation and Parks.

   Historically, the LA River and its watershed have provided critical wildlife habitat for many native plants and animals in the basin. The Sepulveda Basin provides refuge for several threatened and endangered species, and species of special concern, and supports more than 200 species of birds.

   The exponentially worsening effects of climate change pose new land management challenges that require the preservation and protection of existing open space, and the rehabilitation of lands that have been developed, through policies that promote natural geomorphic processes and ecosystem functions. Nature-based solutions and rewilding can build climate resilience and reduce overall climate change impacts.

The Sepulveda Basin is the largest public open space in the San Fernando Valley, but surrounding neighborhoods are significantly lacking green open spaces with only 0.2 acres of park per 1000 people in Van Nuys and Sherman Oaks – significantly below the LA County goal of 4 acres/1000 people. While the Sepulveda Basin does provide recreational opportunities for the San Fernando Valley, it can be difficult to access and navigate, areas are underutilized and could be enhanced to provide better natural habitat, recreation, and cultural spaces.

The City of LA's *Sepulveda Basin Vision Plan* that sets out to establish a long-term strategic plan for the future of the Basin, which will include, among other things, increasing ecosystem function within the Basin using nature based solutions.

The Vision Plan will study existing land uses, landscape features, habitats, patterns of use, and user groups within the Sepulveda Basin and identify areas that can be enhanced and outline a decision-making framework between the different government agencies with purview over the Basin, including the Army Corps, the County, and City of LA.

The author believes it is in the state's interest to ensure that actions and resources support restoration of the Sepulveda Basin in a manner consistent with state policies and priorities. SB 539 would require DWR and SMMC to provide assistance to the City of LA and the Corps, to the extent requested, in order to integrate nature-based solutions into the planning process for the Sepulveda Basin.

It is worth noting that in its current form, the bill leaves it up to the Corps and LA to request assistance from DWR and SMMC. If neither requests assistance, nothing will happen. Further, it is unclear what the scope of assistance would be or the expected outcomes of that assistance. It could be as minimal as a phone call or a much more extensive process formalized via an interagency agreement among the agencies. Should the bill move forward, the author may wish to consider a stronger mandate for the technical assistance and to clarify what exactly is desired from this assistance.

REGISTERED SUPPORT / OPPOSITION:

Support

Center for Biological Diversity
Climate Action California
Climate Reality Project, California Coalition
Sierra Club California

Opposition

None on file

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

Date of Hearing: June 26, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
SB 583 (Padilla) – As Amended June 8, 2023

SENATE VOTE: 39-0

SUBJECT: Salton Sea Conservancy.

SUMMARY: Establishes the Salton Sea Conservancy to support implementation of the Salton Sea Management Program Phase I: 10-Year Plan (10-Year Plan) and the Long-Range Plan (LRP) prepared by the state's Salton Sea Management Program (SSMP).

EXISTING LAW:

1) Establishes the Salton Sea Restoration Act, including the state's comprehensive management plan for the Salton Sea, known as the John J. Benoit Salton Sea Restoration Plan. (Fish and Game Code (FGC) 2930)

2) Establishes the intent of the Legislature the State of California undertake the restoration of the Salton Sea ecosystem and the permanent protection of the wildlife dependent on that ecosystem. Defines the Sea ecosystem as including, but limited to, the Salton Sea, the agricultural lands surrounding the Salton Sea, and the tributaries and drains within the Imperial and Coachella Valleys that deliver water to the Salton Sea. (FGC 2931)

3) Requires the Natural Resources Agency (NRA) to act as the lead agency and work cooperatively with designated staff from the Department of Water Resources (DWR), the State Air Resources Board, the State Water Resources Control Board (SWRCB), and the Department of Fish and Wildlife (DFW). Requires NRA to remain the lead agency for implementation, in partnership with one or more of its departments, unless and until legislation is enacted on or after January 1, 2009, establishing a new governance structure for restoration of the Salton Sea. (FGC 2932.3)

4) Defines the SSMP as the10-Year Plan published in August 2018, or revised thereafter. (FGC 2950)

5) Establishes the Salton Sea Authority as the joint powers authority comprised of the County of Imperial, the County of Riverside, the Imperial Irrigation District, the Coachella Valley Water District, and the Torres Martinez Desert Cahuilla Indian Tribe. (FGC 2941 (d))

6) Requires the NRA, in consultation and coordination with the Salton Sea Authority, to lead the Salton Sea restoration efforts. Provides that the Secretary of NRA and the Legislature maintain full authority and responsibility for any state obligation under the Quantification Settlement Agreement (QSA). (The QSA is an agreement signed in 2003 that defined the rights to Colorado River water). (FGC 2942)

THIS BILL:

1) Establishes the Salton Sea Conservancy Act.

2) Defines terms used throughout the bill, including:

   a) "Long-Range Plan" as the plan prepared by the SSMP to comply with State Water Resources Control Board Order (revised) WR 2017-01342002-0013. The plan must be consistent with the requirements of the order and the Salton Sea Restoration Act.

   b) "Salton Sea region" means the geographic boundaries of the Salton Sea ecosystem, including the Salton Sea, the agricultural lands surrounding the Salton Sea, and the tributaries and drains within the Imperial and Coachella Valleys that deliver water to the Salton Sea.

   c) "Salton Sea Management Program Phase I: 10-Year Plan" as the plan for action over the 10-year period from 2018 to 2028 to improve conditions around the Salton Sea by constructing projects that create habitat and reduce dust from exposed lakebed on 30,000 acres.

3) Establishes the Salton Sea Conservancy as a state agency within NRA to support implementation of the Salton Sea Management Program Phase I: 10-Year Plan and the Long-Range Plan.

4) Designates the Conservancy's jurisdiction as the Salton Sea region.

5) Requires the Conservancy to carry out programs, projects, and activities to further the Conservancy's purposes. Authorizes this to include any, any combination, or all of the following:

   a) Expending funds and awarding grants and loans to develop and implement programs and projects that are designed to further the Conservancy's purposes;
   b) Engaging community members and stakeholders through education, outreach, opportunities to provide input, and volunteering on programs and projects;
   c) Coordinating, collaborating, and partnering with federal, tribal, state, regional, and local jurisdictions and stakeholders to develop and implement programs and projects; and,
   d) Identifying and working to resolve any barriers or impediments to progress, including capacity or organizational deficiencies.

6) Requires the Conservancy to be governed by a board of directors, which shall include:

   a) Eight voting members to each serve a four-year term, appointed as follows:
      i) One public member appointed by the Governor subject to confirmation by the Senate, who is not an elected official and who resides within the conservancy's territory;
      ii) One public member appointed by the Speaker of the Assembly, who is not an elected official and who resides within the conservancy's territory;
      iii) One public member appointed by the Senate Committee on Rules, who is not an elected official and who resides within the conservancy's territory; and,
      iv) Five members appointed from local governments surrounding the Salton Sea, area tribes, local environmental justice organizations, and others.

b) Five ex officio, nonvoting members to each serve a four-year term and designated as follows:
   i) The Director of Finance, or the director's designee;
   ii) The Secretary of NRA, or the secretary's designee;
   iii) The Director of the DFW, or the director's designee;
   iv) The Director of DWR, or the director's designee; and,
   v) One representative of the United States Bureau of Land Management, designated by the United States Secretary of the Interior.

7) Requires the voting members of the board to annually elect a chairperson, vice chairperson, and other officers from among the voting members, as necessary. If the office of the chairperson or vice chairperson becomes vacant, a new chairperson or vice chairperson shall be elected by the voting members of the board to serve for the remainder of the term.

8) Provides that a majority of the voting members shall constitute a quorum for the transaction of the business of the Conservancy. Prohibits the board from transacting the business of the Conservancy if a quorum is not present at the time a vote is taken. Requires a decision of the board to have an affirmative vote of five of the voting membership, and the vote is binding with respect to all matters acted on by the Conservancy.

9) Requires the board to rules and procedures for the conduct of business by the Conservancy.

10) Authorizes the board to establish advisory boards or committees, hold community meetings, and engage in public outreach.

11) Requires the board to maintain a headquarters office within the Salton Sea region. Authorizes the Conservancy to rent or own real and personal property and equipment pursuant to applicable statutes and regulations.

12) Requires the board to determine the qualifications of, and appoint, an executive officer of the Conservancy, who shall be exempt from civil service. Requires the board to employ other staff as necessary to execute the powers and functions.

13) Authorizes the board to enter into contracts with private entities and public agencies to procure consulting and other services necessary to achieve the purposes of this bill.

14) Authorizes the Conservancy's expenses for support and administration to be paid from the Conservancy's operating budget and any other funding sources available to the Conservancy.

15) Requires the board to conduct business in accordance with the Bagley-Keene Open Meeting Act.

16) Requires the board to hold its regular meetings within the Salton Sea region.

17) Establishes the Salton Sea Conservancy Fund (Fund) in the State Treasury. Requires moneys in the Fund to be available, upon appropriation by the Legislature, only for the purposes of the Conservancy.

18) Authorizes the Conservancy to engage in partnerships with nonprofit organizations, local public agencies, and landowners.

19) Requires the Conservancy to cooperate and consult with the city or county in which a grant is proposed to be expended or an interest in real property is proposed to be acquired, and shall, as necessary or appropriate, coordinate its efforts with other state agencies, in cooperation with the Secretary of NRA.

20) Authorizes the Conservancy to require a grantee to enter into an agreement with the Conservancy on terms and conditions specified by the Conservancy.

21) Authorizes the Conservancy to require a cost-share or local funding requirement for a grant. Authorizes the Conservancy to make that cost-share or local funding requirement contingent upon the total amount of funding available, the fiscal resources of the applicant, or the urgency of the project. Authorizes the Conservancy to waive cost-share requirements.

22) Authorizes the Conservancy to fund or award grants for plans and feasibility studies consistent with its plans.

23) Authorizes the Conservancy to seek repayment or reimbursement of funds granted on terms and conditions it deems appropriate. Requires the proceeds of repayment to be deposited in the Fund.

24) Authorizes the Conservancy to require any funds that exceed the costs of eligible or approved projects or of acquisition to be returned to the Conservancy, to be available for expenditure when appropriated by the Legislature.

25) Authorizes the Conservancy to provide grants and loans to state agencies, local public agencies, tribes, and nonprofit organizations to further the purposes of this bill.

26) Requires an entity applying for a grant from the Conservancy to acquire an interest in real property to specify all of the following in the grant application:

    a) The intended use of the property;
    b) The manner in which the land will be managed; and,
    c) How the cost of ongoing operations, maintenance, and management will be provided, including an analysis of the maintaining entity's financial capacity to support those ongoing costs.

27) States that the Conservancy may sue and be sued.

28) Authorizes the Conservancy to acquire from willing sellers or transferors interests in real property and improve, lease, or transfer interests in real property, in order to carry out the purposes of this bill.

29) Authorizes the Conservancy to enter into an agreement with a public agency, nonprofit organization, or private entity for the construction, management, or maintenance of facilities authorized by the Conservancy.

30) Prohibits the Conservancy from exercising the power of eminent domain.

31) Authorizes the Conservancy to pursue and accept funds from various sources, including, but not limited to, federal, state, and local funds or grants, gifts, donations, bequests, devises, subventions, grants, rents, royalties, or other assistance and funds from public and private sources.

32) Authorizes the Conservancy to accept fees levied by others.

33) Authorizes the Conservancy to create and manage endowments.

34) Requires all funds received by the Conservancy to be deposited in the Fund for expenditure for the purposes of this bill

35) Requires on or before January 1, 2025, and annually thereafter, the Conservancy to prepare and submit a report to the Governor and the Legislature on its implementation of the 10-Year Plan and the LRP that includes all of the following:

    a) A schedule of projects undertaken by the Conservancy and a schedule of grants and loans made by the Conservancy;
    b) The program or goal specified by the 10-Year Plan or the LRP under which each project, grant, or loan was carried out and the manner and extent to which the goals of the project, grant, or loan, and the goals of this bill, were achieved and the actual cost thereof, including an accounting;
    c) A schedule of grants awarded to the Conservancy and the disposition of the funds granted;
    d) The disposition of the funds appropriated to the Conservancy in the fiscal year preceding the year in which the report is made;
    e) A review of local, state, and federal government actions taken to implement the 10-Year Plan or the LRP;
    f) A detailed workplan for the upcoming year that identifies projects for delivery, objectives, major tasks, and expected completion dates; and,
    g) An identification of additional funding, legislation, or other resources required that would more effectively enable the Conservancy or local governments to carry out the purposes of this bill.

36) Authorizes the Conservancy to expend funds and award grants and loans to develop projects and programs that are designed to further the purposes of this bill.

37) Authorizes the Conservancy to provide and make available technical information, expertise, and other nonfinancial assistance to public agencies, nonprofit organizations, and tribal organizations, to support program and project development and implementation.

FISCAL EFFECT: According to the Senate Appropriations Committee, this bill would result in unknown ongoing costs, likely in the hundreds of thousands of dollars annually (General Fund or Salton Sea Conservancy Fund) to establish and administer the new Salton Sea Conservancy and its programs, and unknown, likely significant ongoing cost pressure, possibly in the tens or even hundreds of millions of dollars (General Fund, special funds, or bond funds) to provide funding for Salton Sea Conservancy projects and programs.

COMMENTS:

1) **Author's statement.**

> The Salton Sea is a burgeoning environmental catastrophe that threatens not only the immediate communities surrounding that inland sea, but the entire Southland. Located in a historically underserved community, residents are experiencing nosebleeds, bronchitis, and asthma due to the evaporating sea exposing the lakebed containing toxic elements. The Salton Sea Conservancy is a critical step to expediting the construction of new habitat and dust suppression projects for the local communities and wildlife. The conservancy will help unite all of the efforts and get them working together to address this exploding health threat.

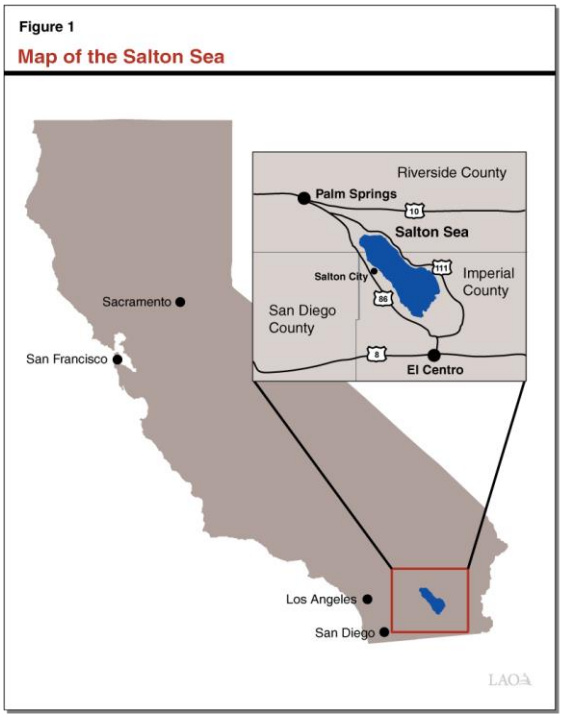
2) **State conservancies**. There are currently 10 independent conservancies under NRA that are charged with the protection and preservation of the lands within their statutorily specified jurisdictions. The conservancies also work to provide recreational opportunities, facilitate climate adaptation, connect people to the regional landscapes, and bring state investments to the region for the aforementioned purposes. The current conservancies include:

   - Coastal Conservancy – established in 1976
   - Santa Monica Mountains Conservancy – established in 1980
   - Tahoe Conservancy – established in 1985
   - Coachella Valley Mountains Conservancy – established in 1991
   - San Joaquin River Conservancy – established in 1992
   - San Diego River Conservancy – established in 2003
   - Sacramento-San Joaquin Delta Conservancy – established in 2010
   - San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy – established in 1999
   - Baldwin Hills and Urban Watersheds Conservancy – established in 2000
   - Sierra Nevada Conservancy – established in 2004

   All conservancies have a governing board, mission statement, geographic territory, and stipulated powers, duties, and limitations.

   Existing law also establishes the Wildlife Conservation Board (WCB) in the Department of Fish and Wildlife (DFW) to provide a single and coordinated program for the acquisition of lands and facilities suitable for recreational purposes, and adaptable for conservation, propagation, and utilization of the fish and game resources of the state. The state's 10 conservancies collaborate with the WCB to provide conservation and restoration programs and funding for the entire state.

3) **Salton Sea**. The Salton Sea is a shallow, landlocked, highly saline body of water in Riverside and Imperial counties at the southern end of California. Thirty-five miles long and 15 miles wide, the lake extends from the Coachella Valley into the Imperial Valley and contains approximately 7.5 million acre feet of water. The current lake was formed from an inflow of water from the Colorado River in 1905.



The land under the Salton Sea is owned almost entirely by three entities. The largest is the Federal Government. The Bureau of Reclamation and the Bureau of Land Management under the Department of the Interior (DOI) own the lion's share (exact amount unknown). Additionally a large amount of land under the Salton Sea is owned by the Imperial Irrigation District. In the north, there are approximately 11,000 acres of tribal lands owned by the Torres Martinez Desert Cahuilla Indians. The Coachella Valley Water District also has a small amount of acreage.

In 1930, a wildlife refuge was established on some wetlands along the edge of the lake that had attracted migratory birds, and it is now home of North America's largest population of migratory waterfowl outside of the Everglades. In the 1970s, scientists issued warnings about the changes to the lake; gravity carries agricultural runoff downhill through the New and Alamo rivers to the lake, resulting in toxic levels of salts, selenium, and fertilizers. Because of its location in an area of high evaporation, the Salton Sea has been accumulating soluble salts and insoluble constituents in its bottom sediment for more than 100 years.

The Sea is shallow, which causes large areas of lake bed (playa) to quickly be exposed as the water recedes. It has been shrinking since 2004, and began shrinking at a greater rate as a result of terms of the QSA. The QSA provided a transition period for the state to reduce its consumption of Colorado River water to its 4.4 million acre feet entitlement. Under the terms of the agreement, the Imperial Irrigation District agreed to transfer large quantities of irrigation water to the San Diego County Water Authority to service a growing population while providing a pathway for the state of California to restore the Salton Sea. On January 1, 2018, 40% less water began flowing into the Salton Sea as the 15-year mitigation period ended per the 2003 water transfer agreement. As the shore recedes, at least 75 square miles of playa will be exposed by 2045, with additional dust becoming windblown as the exposed playa dries out.

Fugitive dust emissions from the exposed lakebed have impacted the air quality conditions at the Salton Sea and surrounding communities. Some of this dust contains toxic elements that were transported through agricultural runoff, such as arsenic and selenium. Due to high winds and arid climate around the Sea, this fine dust can become airborne, thereby increasing the amount of particulate matter in the air in the Imperial and Coachella Valleys.

The declining inflows have also resulted in higher salinity, affecting many of the approximately 400 species of birds that use the Sea. Continued loss of water in future years will result in the continued degradation of the Salton Sea ecosystem due to increasing salinity and other water quality issues, including temperature extremes, eutrophication (increased nutrient loads), related anoxia (oxygen deficiency), and algal productivity.

Over the last 40 years, numerous ideas and plans had been proposed by various entities to restore the Salton Sea. Those proposals have had limited success largely because they have not been funded. The question around Salton Sea restoration has not been one of, what is necessary; it has been one of, what is feasible mitigation given the funds available. To some extent, this has prevented first attainable steps from being taken because it has not been clear that necessary subsequent steps would follow.

In 2010 the Legislature enacted SB 51 (Ducheny), Chapter 303, Statutes of 2010, which, among other things, established the Salton Sea Restoration Council to serve as the state agency responsible for overseeing restoration of the Salton Sea. SB 51 required the Council to evaluate Salton Sea restoration plans, including the $9 billion 2007 preferred alternative, and to report to the Governor and the Legislature by June 30, 2013, with a recommended restoration plan. The Governor's 2012 Reorganization Plan eliminated the Council, effective December 31, 2012, before the Council ever actually met.

4) **Salton Sea Restoration Act**. In 2003, the Legislature enacted a package of QSA implementation bills, including the original Salton Sea Restoration Act and findings and statements of legislative intent that the state undertake the restoration of the Salton Sea ecosystem and the permanent protection of the wildlife dependent on that ecosystem, and that restoration be based on the preferred alternative developed as a result of a restoration study and alternative selection process.

   The Salton Sea Restoration Act was enacted to maintain the agricultural, environmental, and recreational values and facilitates the following objectives:

   - Restoration of long-term stable aquatic and shoreline habitat for the diversity of fish and wildlife that depend on the Salton Sea.
   - Elimination of air quality impacts from the restoration projects.
   - Protection of water quality.
   - Protection of fish and wildlife dependent on the sea.
   - Implementation of conservation measures necessary to protect the fish and wildlife species dependent on the Salton Sea, including adaptive management measurements. These conservation measures are limited to the Salton Sea and lower Colorado River ecosystems, including the Colorado River Delta.

5) **Salton Sea Management Plan**. In 2017, the Legislature enacted SB 615 (Hueso), Chapter 859, Statutes of 2017, to require NRA to develop a 10-year plan to implement a memorandum of understanding (MOU) between NRA and the DOI. The purpose of that MOU was to ensure that long-term coordination between the federal and state governments be a priority and laid out a number of objectives including acknowledgement that a mid-term

goal on restoration projects is critical and a common target to reasonably work toward. In furtherance of the objectives in the MOU, the DOI agreed to, among other things, pursue $30 million of funding in support of the SSMP.

The Secretary of NRA and the directors of DWR and DFW – together, the SSMP team—are responsible for implementing the SSMP's 10-Year Plan to improve conditions by constructing 30,000 acres of habitat and dust suppression projects around the Sea. At least 50% of the acres will be created as habitat for fish and wildlife dependent on the Salton Sea ecosystem and the remainder will be projects to suppress dust. The 10-year Plan must be consistent with the requirements of the Salton Sea Restoration Act.

The SSMP team released its 10-Year Plan in 2017 and updated it in 2018 to guide the State's projects at the Salton Sea over the next decade (2018-2028). The 10-Year Plan identifies projects to be implemented on areas of lakebed that have been, or will be, exposed at the Salton Sea by 2028.

As a second phase to the 10-year Plan projects, the SSMP prepared the draft LRP to comply with SWRCB's Revised Order WR 2002-0013 (Order) and is considered the long-term pathway for the Salton Sea beyond the next decade. It includes work to evaluate the feasibility of water importation as a strategy for restoration of the Salton Sea. Condition 26 of the Order specifically requires NRA to issue a long-term plan that:

- Protects or improves air quality to reduce public health consequences.
- Protects or improves water quality to provide opportunities for beneficial uses and reduce environmental consequences.
- Restores long-term stable aquatic and shoreline habitat to historic levels and diversity of fish and wildlife that depend on the Salton Sea.

A total of $730 million has been authorized for restoration activities from state, federal, and local sources. Of that, $280 was dedicated to implement the 10-year plan.

The SSMP team acknowledges that close collaboration with local governments, including Imperial County, Riverside County, Imperial Irrigation District, Imperial County Air Pollution Control District, and the Salton Sea Authority has proven essential to implementing recent projects.

6) **Salton Sea Authority.** Created in 1993, the Salton Sea Authority is a Joint Powers Authority (JPA) responsible for working in consultation and cooperation with the state to oversee the comprehensive restoration of the Salton Sea.

The Salton Sea Authority is directed by board-adopted policy to assert a leadership role to ensure local priorities are recognized. In 2012, the Authority requested the Legislature to empower the Authority to develop an updated vision for a revitalized Sea, and to also develop a strategy to pay for the revitalization in cooperation with the state, as prescribed by law.

In 2013, the Legislature enacted AB 71 (M. Perez), Chapter 402, Statutes of 2013, to require the Secretary of NRA to coordinate with the Authority to lead Salton Sea restoration efforts.

AB 71 addressed the void created by the elimination of the Salton Sea Restoration Council, a state appointed body that never held a single meeting. The state partnership with the Authority authorized by SB 71 has been instrumental in creating significant momentum behind the strategy of integration.

Creation of a new state conservancy could confuse leadership on current and future project plans and implementation. Explicit inclusion of the SSMP team and Salton Sea Authority on the Conservancy's board would maintain that coordination and could facilitate a smooth transition to Conservancy leadership.

7) **Growing economic demand in the Salton Sea.** Salton Sea known geothermal resources area is believed to have the highest concentration of lithium contained in geothermal brines in the world. The California Energy Commission estimates the sea might produce 600,000 metric tons of lithium carbonate per year. This is relevant because the state has lofty goals to phase out combustion engine cars and exclusively sell electric vehicles by 2035, which need lithium for their vehicular batteries. The environmental impacts of this could be highly consequential for the Salton Sea as it will increase demand for water. The LRP acknowledges that, "Given the lack of design detail in site specific locations, it's difficult to predict how specific concepts will need to be altered to accommodate for future lithium work."

8) **Salton Sea Conservancy**. This bill would establish the Conservancy to support implementation of the 10-Year Plan and the LRP.

The Legislature has long recognized, and invested in, the need for greater support for the Salton Sea, and has found and declared, "in cooperation with local governments, nonprofit organizations, private businesses, and the public, the State of California can help protect wildlife habitats and endangered species, improve water and air quality, and enhance recreational opportunities in the region." (FGC 2940 (d))

The NRA is statutorily required to be the lead agency to implement all Salton Sea restoration projects (FGC 2932.3) and the Salton Sea Authority is statutorily required to coordinate with Resources on restoration projects (FGC 2942).

However, FGC 2932.3 also says "The Resources Agency shall remain the lead agency for implementation, in partnership with one or more of its departments, unless and until legislation is enacted on or after January 1, 2009, establishing a new governance structure for restoration of the Salton Sea."

The creation of a Salton Sea Conservancy could fulfill that declaration and provide full focus and attention to the region's environmental preservation, restoration needs, and impacts of growing economic development.

The bill should be amended, though, to clarify the role of the Conservancy to prevent obfuscation over who is the lead on current and future projects. Further, the bill presents an opportunity to assign responsibility for ongoing maintenance and operations (O&M), for which there currently is no designated responsible party.

In addition to the Conservancy's operational role, the bill could require the Conservancy to support implementation of the Imperial Streams Salton Sea and Tributaries Feasibility Study, and any future restoration plans.

9) **Governing board**. The bill requires the Conservancy to be governed by a board of directors, including eight appointees and five ex officio, nonvoting members.

   Numerous agencies at all levels of government are involved in responding to conditions at the Salton Sea, all of which should have a seat at the table of the Conservancy's governing board.

   The makeup of the governing board could integrate the Conservancy into the existing framework of restoration activity leads by establishing the Secretary of NRA as the chairperson of the board, and the president of the Salton Sea Authority as the vice chairperson of the board. Further, the local agencies party to the QSA and associated with the Salton Sea Authority should be included, such as Riverside County, Imperial County, the Coachella Valley Water District, and the Imperial Irrigation District. The Torres-Martinez Band of Desert Cahuilla Indians as a land owner should also be included.

10) **Funding.** The bill established the Salton Sea Conservancy Fund to finance the Conservancy, upon appropriation of the Legislature. The Conservancy would be authorized to pursue and accept funds from various sources, including federal, state, and local funds or grants, gifts, donations, bequests, devises, subventions, grants, rents, royalties, or other assistance and funds from public and private sources.

    President Biden's Inflation Reduction Act is providing $250 million to restore the Salton Sea. This funding will complement the $583 million in state funding committed to date to Salton Sea restoration.

11) **Committee amendments.** *The Committee may wish to consider* the following amendments:

    a) Expand on the Conservancy's role to:

       i) Support implementation of restoration projects in consultation with the SSA and oversee all O&M;

       ii) Support and promote projects that benefit the surrounding communities and complement the restoration projects; and,

       iii) Coordinate with all levels of government responsible for mitigation the QSA and other Salton Sea mitigation efforts.

    b) Restructure the board with 13 voting member and 7 ex-officio members;

       i) Requires Secretary of NRA and President of the Salton Sea Authority to be the Chair and Vice Chair of the governing board, respectively.

    c) Reinstate the requirement for a strategic plan;

    d) Provide that nothing in the bill will alter or limit commitments under the SSMP, LPR, QSA, or State Water Board order; and,

e) Revise and add definitions.

REGISTERED SUPPORT / OPPOSITION:

Support

Alianza Coachella Valley
Audubon California
City of Calexico
City of El Centro
Kounkuey Design Initiative INC.
Leadership Counsel for Justice and Accountability
Pacific Institute
Sierra Club California

Opposition

Cabazon Band of Cahuilla Indians
Coachella Valley Conservation Commission
Coachella Valley Water District
Riverside County Supervisor Perez
Salton Sea Authority (oppose unless amended)

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

Date of Hearing: June 26, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
SB 613 (Seyarto) – As Amended April 11, 2023

SENATE VOTE: 40-0

SUBJECT: Organic waste: reduction goals: local jurisdictions: low-population exemption

SUMMARY: Exempts certain local jurisdictions from the short lived climate pollutant (SLCP) reduction requirements established by SB 1383 (Lara), Chapter 395, Statutes of 2016, until December 1, 2028.

EXISTING LAW:

1) Requires the California Air Resources Board (ARB) to complete, approve, and implement a comprehensive strategy to reduce emissions of SLCPs in the state to achieve, among other things, a reduction in the statewide emissions of methane by 40%. (Health and Safety Code (HSC) 39730 *et seq*.)

2) Requires that methane emissions reduction goals include specified targets to reduce the landfill disposal of organic waste by 50% relative to its 2014 level by 2020, and achieve a 75% reduction relative to 2014 by 2025. (HSC 39730.6)

3) Pursuant to SB 1383, requires the Department of Resources Recycling and Recovery (CalRecycle), in consultation with ARB, to adopt regulations to achieve those targets for reducing organic waste in landfills. These regulations include:

    a) Requirements for local jurisdictions to impose requirements on generators and authorize local jurisdictions to impose penalties for noncompliance with those requirements;

    b) Different levels of requirements and phased timelines for local jurisdictions based on different categorizations for those local jurisdictions; and,

    c) A process for local jurisdictions facing penalties for violations to obtain relief by submitting a notice of intent to comply that includes an explanation of why they were unable to comply and a description of the proposed actions to come into compliance in a timely manner. (Public Resources Code (PRC) 42652.5)

4) Provides waivers from the requirements for rural, high elevation, and low population jurisdictions. (14 California Code of Regulations 18984.12)

5) Exempts local jurisdictions in possession of a specified rural exemption from the recovered organic waste product procurement targets until December 31, 2026. Beginning January 1, 2027, authorizes CalRecycle to provide these exempted rural jurisdictions with an extended recovered organic waste product procurement target schedule. (PRC 42652.5)

THIS BILL:

1) Specifies that, notwithstanding any other law or regulation, a local jurisdiction is exempt from the requriements of SB 1383 and its implmenting regulations until December 1, 2028, if the local jurisdiction disposes of fewer than 5,000 tons of solid waste per year and has fewer than 7,500 people, subject to specified requirements.

2) Specifies that a local jurisdiction that is in possession of a low population waiver, as specified, may qualify for an exemption until December 1, 2028.

3) Requires local jurisdictions seeking a low population exemption to apply to CalRecycle, and requires the application to include:

   a) Information that establishes that the local jurisdiction meets the specified criteria; and,

   b) The number of tons of solid waste that the local jurisdiction disposed in 2014 if the local jurisdiction has not submitted 2014 disposal data directly through CalRecycle's disposal reporting system.

4) Authorizes CalRecycle, beginning January 1, 2027, to provide cities and counties that meet specified criteria with an extended recovered organic waste product target schedule. Exempts the extended schedule from the Administrative Procedure Act.

5) Defines "local jurisdiction" for purposes of the bill to mean a city, county, city and county, or a special district.

FISCAL EFFECT: According to the Senate Appropriations Committee, CalRecycle estimates one-time costs of at least $150,000 [Integrated Waste Management Account (IWMA)] to re-open the SB 1383 Low Population regulations, as well as ongoing costs of $171,000 annually (IWMA) and one position beginning in 2024-25 to implement the provisions of this bill.

COMMENTS:

1) **Organic waste management**. Organic material accounts for more than a third of California's disposed waste stream. As this material decomposes in the state's landfills, it generates significant quantities of methane. Methane is a powerful SLCP that is 84 times more potent than carbon dioxide over a 20-year timescale. According to CalRecycle, landfills emit approximately 20% of the state's total methane emissions.

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

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

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

In order to close the loop on recycling organics, markets need to be developed for the finished compost, digestate, and mulch. CalRecycle included organic materials procurement targets in its SB 1383 regulations, which require local jurisdictions to procure specified quantities of organic waste products to be used in public works projects.

2) **Waivers**. CalRecycle's SB 1383 regulations included accommodations for certain jurisdictions that have barriers to meeting the new organic waste standards. The regulations allow for waivers for local jurisdictions that are rural (as defined), high-elevation (above 4,500 feet elevation), or low-population (produced less than 5,000 tons of solid waste in 2014 and a population below 7,500 or have a population density below 75 per square mile). Rural and low-population jurisdictions generally produce low quantities of organic waste, and in rural areas, most organic material is managed at home. High-elevation areas face unique challenges to compliance, including severe weather conditions in winter months that make collection systems infeasible. CalRecycle notes that it would be "exceedingly expensive for [these jurisdictions] to comply with the collection service requirements." Waivers also exist for disaster and emergency situations.

3) **This bill**. This bill is intended to clarify that the De Luz Community Service District, located in Riverside County, is eligible for an SB 1383 waiver. The district has a population of approximately 2,000 and disposed less than 1,350 tons of solid waste in 2014. While the district meets the general requirements for a waiver, CalRecycle denied a waiver because the district did not report its disposal tonnages to CalRecycle's electronic Disposal Reporting System (DRS) in 2014. As a special district, it is not required to report directly to the DRS and reported instead to Riverside County, which reports countywide information. SB 1383 was enacted in 2016, and the regulations were adopted four years later, in 2020, six years after the baseline year of 2014.

   This bill revises the SB 1383 regulatory definition of "low-population" by removing the requirement that the 2014 baseline tonnage had to be reported to DRS at that time, thereby removing the barrier to CalRecycle's approval of waiver. This bill also affirmatively states that jurisdictions that meet the low-population criteria are exempt from the SB 1383 requirements until December 1, 2028, if they provide an application that demonstrates that they meet the criteria for the exemption.

4) **Suggested amendments**. The *committee may wish to amend the bill* to: 1) streamline and consolidate the language; and, 2) clarify that the waivers, and waiver renewals, granted to qualified districts are consistent with and governed by the appropriate regulations.

5) **Author's statement**:

   SB 613 renews the spirit of the law in requiring that regulations for organic waste recycling be cost effective and technologically feasible for organic waste recycling. Regulatory waivers should exempt special districts like would suffer

disproportionately without significantly impacting the state's actual goals for waste recovery.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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

Date of Hearing: June 26, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
SB 674 (Gonzalez) – As Amended June 19, 2023

SENATE VOTE: 31-6

SUBJECT: Air pollution: refineries: community air monitoring systems: fence-line monitoring systems

SUMMARY: This bill makes several changes to the fence line monitoring system program for communities and petroleum refineries, including expanding the program to include monitoring for biofuel refineries and additional chemicals, apply to auxiliary facilities, increasing the standards for data quality, and providing enhanced processes for notifying affected communities.

EXISTING LAW:

1) Establishes the Air Resources Board (ARB) to regulate motor vehicle emissions, coordinate activities of air districts for the purposes of the federal Clean Air Act, and implement the California Global Warming Solutions Act (AB 32). (Health and Safety Code (HSC) 39000 et seq.)

2) Subject to the powers of the ARB, requires air districts to adopt and enforce rules and regulations to achieve and maintain the state and federal ambient air quality standards in all areas affected by non-vehicular emission sources under their jurisdiction. (HSC 40001)

3) Authorizes ARB and each air district to adopt rules and regulations to require the owner or the operator of any air pollution emission source to take such action as ARB or the district may determine to be reasonable for the determination of the amount of such emission from such source.

4) Authorizes an air pollution control officer to require from an applicant for, or the holder of, any permit provided for by the regulations of the district board, such information, analyses, plans, or specifications which will disclose the nature, extent, quantity, or degree of air contaminants which are, or may be, discharged by the source for which the permit was issued or applied.

5) Requires, under AB 1647 (Muratsuchi), Chapter 589, Statutes of 2017, the owner or operator of all petroleum refineries in California to, on or before January 1, 2020, install, operate, and maintain a fence-line monitoring system in accordance with guidance provided by the appropriate air district, as specified. (HSC 42705.6)

6) Defines, under AB 617 (Cristina Garcia), Chapter 136, Statutes of 2018, "sensitive receptors" to include hospitals, schools and day care centers, and such other locations as the air district or ARB may determine. (HSC 42705.5)

THIS BILL:

1) Expands the existing fence-line monitoring system program to also include biofuel refineries and facilities that receive or provide more than 50% of the input or production to a refinery; and requires the fence-line monitoring system to cover the entire perimeter of the refinery, unless it is infeasible based on substantial evidence.

2) Expands the requirements for the data generation capabilities of the refinery-related community air monitoring system.

3) Requires that the air monitoring systems monitor pollutants identified by the Office of Environmental Health Hazzard Assessment (OEHHA), including, but not limited to, eighteen specific recommended chemicals or classes of chemicals.

    a) Expands the requirements for the data generation capabilities of the fence-line monitoring system, including, but not limited to, covering the entire perimeter of the refinery and enabling real-time access to data;

    b) Provides that an air district may exclude a pollutant for monitoring at a refinery-related community air monitoring system and refinery fence-line monitoring system if substantial evidence supports that real-time monitoring of the pollutant is technologically infeasible or the pollutant would not be released by refining processes during routine and non-routine operations at the refinery; and,

    c) Requires an air district to, on a five-year basis, review the list of pollutants being measured and may revise the list of pollutants after considering advances in monitoring technology, reported refinery emissions, ambient air data collected by the refinery fence-line and refinery-related community monitoring systems, and any other relevant emissions information.

4) Requires an owner or operator of a refinery to conduct third-party audits, using an auditor approved by the district, of its fence-line monitoring system to ensure the system is providing accurate data, including conducting quality control checks, system calibration, and evaluation of quality control and assurance plans, as specified.

5) Provides for more enhanced notice to communities, including that data generated by these systems is to be provided to the public within 24 hours in a publicly accessible and machine-readable format. Requires monitoring data to be archived and made available to the public online for download.

6) Requires an owner or operator of a refinery, within 24 hours of a fence-line system detecting an exceedance of a historical one-hour average concentration of any measured pollutant, to initiate a root cause analysis to locate the cause of the exceedance and to determine appropriate corrective action. Requires the owner or operator of the refinery to prepare and submit a report to the district and post online within five days of the exceedance explaining the root cause analysis findings and corrective action performed by the refinery.

7) Provides that a fence-line monitoring system approved by the district presumptively yields credible evidence that may be used to establish whether a refinery has violated or is in violation of any plan, order, permit, rule, regulation, or law.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

1) **Background**. There are approximately 19 petroleum refineries in California. The largest refineries producing transportation fuels are clustered in the Los Angeles County cities of Carson, El Segundo, Torrance, and Wilmington; Richmond, Martinez, and Rodeo in Contra Costa County; and Benicia in Solano County. There are also smaller refineries in Los Angeles County and near Bakersfield. The large refineries are among the largest stationary sources of criteria pollutants, toxic air contaminants, and greenhouse gases in the state. In recent years, outages, fires, and other accidents have heightened community concerns surrounding the refineries.

   On August 6, 2012, a substantial fire occurred due to a hydrocarbon leak at a crude oil processing unit at the Chevron Refinery in Richmond. The fire resulted in a large plume of black smoke and visible emissions from a refinery flare. The Contra Costa County Health Department issued a community warning and ordered a shelter-in-place for approximately five hours in Richmond and San Pablo. Thousands of residents sought medical treatment, with most suffering respiratory and/or eye discomfort. The incident prompted the Bay Area Air Quality Management District (BAAQMD) to identify a series of follow-up actions to enhance the district's ability to respond to similar incidents, including convening a panel of air monitoring experts and ultimately developing air monitoring guidelines for refineries, which were adopted in 2016.

   On February 18, 2015, a major explosion occurred at the Torrance oil refinery, injuring four workers and shutting down the refinery for more than a year. The explosion also caused an 80,000-pound refinery component to land just a few feet away from a tank filled with hydrofluoric acid (HF), a highly toxic chemical used as an alkylation catalyst by only two refineries in the State of California. Since the 2015 explosion, there has been growing public concern not only over HF, but also a series of fires, accidents, and unplanned and extensive flaring that has occurred at the Torrance refinery.

   Refineries in the state are clustered in three regions, each of which is regulated by a different air district. The South Coast Air Quality Management District (SCAQMD) regulates the 10 refineries in the greater Los Angeles region, the BAAQMD regulates the five refineries in the San Francisco Bay area, and the San Joaquin Valley Air Pollution Control District (SJVAPCD) regulates the four refineries in the Central Valley. Each of these three air districts has established a rule implementing the requirements of AB 1647, though the rules and processes differ between all three.

   In their 2022 report, *Crossing the Fenceline*, Earthjustice (a co-sponsor of this bill) raises concerns with the implementation of AB 1647 in all three air districts. Briefly, the number of pollutants required to be measured ranges from 5 to 20 between districts; only BAAQMD specifically includes biorefineries in its rule; only SJVAPCD requires a root cause analysis or corrective action; and all three programs have at various times exempted certain facilities, despite no such exemptions being provided for in AB 1647.

The Earthjustice report states, "Without meaningful statewide oversight, each air district has created deeply flawed fenceline monitoring programs with massive loopholes that benefit oil companies and negate many of the community protections that the legislation envisioned." Generally speaking, the requirements imposed in SB 674 either use or build upon the most health-protective of the three implementing rules for each feature of the program. In this way, the bill seeks to use solutions developed by some air districts to shore up the weaknesses in the programs developed by others.

2) **Author's statement**:

> Refining is an inherently dangerous process and a significant source of air pollution. Incidents at these refineries- including explosions, fires, and flaring events- threaten nearby community members, first responders, and refinery workers. These communities, which are often low-income, communities of color, are already at a higher risk for asthma, cancer, birth defects, and neurological and cardiovascular damage among other conditions, and these risks are amplified the closer a person lives to a refinery. Assembly Bill 1647, which created the Refinery Fence-line and Community Air Monitoring Program, sought to create statewide standards and practices to detect air pollution at refinery fence-lines, notify community members when there were dangerous levels of pollution, and aggregate the fence-line air monitoring data online for public access. It has been six years since the passage of AB 1647, and there are serious deficiencies in the implementation of the program. These flaws include an inconsistent implementation by air quality management districts, a failure to include a mechanism to ensure refineries notify the public of detected emission exceedances and follow up to locate and mitigate sources of toxic emission, and numerous other shortcomings in public notification. Senate Bill 674 will address these flaws and fortify the statewide standard for the refinery fence-line air monitoring program to ensure that adequate noxious pollutants are measured, and that best practices and technologies are deployed in order to protect the health and wellbeing of refinery fence-line communities.

3) **The refineries' perspective**. According to the Western States Petroleum Association, "Refineries are unique, critical infrastructure, and should only be responsible for monitoring emissions from the refining process under the ownership and control of a company. The appropriate perimeter coverage should be a site-specific determination made by the district with input from the local community, as it currently is today…

   "Fence-line monitoring systems should not presumptively be credible evidence to establish a violation because fence-line monitoring systems cannot distinguish refinery emissions from non-refinery emissions, and violations can only be determined based on applying prescriptive measurement methods at specific locations on an emissions source.

   "The bill also improperly focuses on administration requirements rather than corrective action. The detailed information required in the bill does not provide actionable information and should be summarized in quarterly reports that is consistent with current requirements."

4) **Casting the net too wide**? In addition to enhancing monitoring requirements on the petroleum refineries already covered by AB 1647, this bill expands monitoring requirements to biofuel refineries, as well as "auxiliary facilities," which includes a wide range of facilities that may be outside the boundaries of the refinery. This includes storage tanks, hydrogen

plants, sulfuric acid plants, port terminals, and electrical generation plants. The bill was recently amended to specifically exclude gas stations. The bill also includes handling and blending of refined products in the definition of refinery processes, even though these are activities that may be undertaken by persons with no association with the refinery and take place far away from the refinery itself.

The broad scope of these definitions appears to include facilities and activities where fenceline monitoring may be impractical or unnecessary.

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

REGISTERED SUPPORT / OPPOSITION:

Support

Earthjustice (co-sponsor)
East Yard Communities for Environmental Justice (co-sponsor)
350 Bay Area Action
350 Conejo / San Fernando Valley
350 Humboldt: Grass Roots Climate Action
Action Now
Active San Gabriel Valley
Air Watch Bay Area
Asian Pacific Environmental Network (APEN)
Azul
Bay Area Air Quality Management District
Bay Area-System Change Not Climate Change
Biofuel Watch
Breast Cancer Prevention Partners
California Communities Against Toxics
California Environmental Justice Alliance
California Environmental Voters
California Interfaith Power & Light
Center for Biological Diversity
Center for Climate Change and Health
Center on Race, Poverty and The Environment
Central California Environmental Justice Network
Central Valley Air Quality Coalition
Clean Seas Lobbying Coalition
Clean Water Action
Cleanearth4kids.org
Climate Action California
Climate Reality Project, Los Angeles Chapter
Climate Reality Project, San Fernando Valley
Coalition for Clean Air
Comite Pro Uno
Communities for A Better Environment
Del Amo Action Committee
Democrats of Rossmoor

Drexel University College of Arts and Sciences
Ella Baker Center for Human Rights
Environmental Defense Fund
Environmental Working Group
Good Neighbor Steering Committee
Health Officers Association of California
Indivisible California Statestrong
Interfaith Climate Action Network of Contra Costa County
Mono Lake Committee
Natural Resources Defense Council
Northern California Recycling Association
Open Environmental Data Project
Physicians for Social Responsibility - Los Angeles
Regional Asthma Management and Prevention (RAMP)
Richmond - North Richmond - San Pablo AB 617 Steering Committee
Sacramento Area Congregations Together
San Francisco Baykeeper
Sierra Club California
Silicon Valley Youth Climate Action
Solano County Democratic Central Committee
Sunflower Alliance
Sustainable Rossmoor
Torrance Refinery Action Alliance
Union of Concerned Scientists
West Berkeley Alliance for Clean Air and Safe Jobs

Opposition (unless amended)

Air Products and Chemicals
State Building and Construction Trades Council of California
Western Independent Refiners Association
Western States Petroleum Association

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

Date of Hearing: June 26, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
SB 781 (Stern) – As Amended June 19, 2023

SENATE VOTE: 29-5

SUBJECT: Methane emissions: natural gas producing low methane emissions

SUMMARY: Requires the Air Resources Board (ARB) to establish a certification for low-methane emissions and encourage natural gas procurement on behalf of the state to shift to certified natural gas producing low methane emissions. Requires ARB to collect specified information about limiting emissions from the natural gas supply chain and incorporate that data into existing analyses of greenhouse gas (GHG) emissions from the natural gas supply system.

EXISTING LAW:

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

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

3) Requires ARB to adopt regulations, known as the Mandatory Reporting Rule (MRR), that require the reporting and verification of statewide GHG emissions, as specified. (HSC 38530)

4) Requires ARB to use the best available science to quantify and annually report on its website the amount of GHG emissions resulting from the loss or release of natural gas during all processes associated with the production, processing, and transport of natural gas imported into the state from out-of-state sources. (HSC 39607)

5) Requires ARB to, among other things, consult with specified entities to gather information for purposes of carrying out life-cycle GHG emissions analyses of natural gas imports. (HSC 39731)

6) Requires the California Public Utilities Commission (CPUC) to, in consultation with ARB, minimize natural gas leaks from CPUC-regulated gas pipeline facilities, and provide for the development of metrics to quantify the volume of emissions from leaking gas pipeline facilities, and to evaluate and track leaks geographically and over time. (Public Utilities Code 975 *et seq.*)

THIS BILL:

1) Requires state agencies to prioritize strategies to reduce methane emissions, including emissions from imported natural gas, where feasible and cost effective.

2) Requires ARB, CPUC, and other relevant agencies to timely consider programs, or changes to existing programs, to reduce methane emissions, including emissions from imported natural gas procured by utilities and other large gas users.

3) Requires ARB, no later than December 31, 2024, to establish a certification standard for natural gas producing low methane emissions. In developing the certification standard, requires ARB to consider existing third-party natural gas certification standards that may be considered as natural gas with low methane.

4) Requires ARB to encourage natural gas procurement on behalf of the state to shift to certified natural gas producing low methane emissions, where feasible, cost effective, and in the best interests of ratepayers as determined by CPUC, as specified.

5) Specifies that the requirements above shall not be construed to require new or additional natural gas utility procurement or to promote the expanded use of natural gas from fossil resources and is not intended to interfere with state efforts to reduce the use of natural gas or increase the production and use of renewable gas.

6) Revises the provision that specifies that nothing in the Act relieves any person, entity, or public agency of compliance with other applicable federal, state, or local laws or regulations, including state air and water quality requirements, and other requirements for protecting public health or the environment to instead specify that only the revisions made by this bill to HSC 38592 relieve any person, entity, or public agency of compliance with specified federal, state, or local laws or regulations.

7) Requires ARB, as part of their annual GHG inventory, to request and incorporate information from utilities and other large gas users regarding their procurement and use of natural gas certified to have at least 80% lower methane emissions than average at the point of production or the use of other best practices to minimize emissions of methane and GHGs from natural gas supplying California.

8) Requires ARB, commencing January 1, 2025, to annually quantify and publish an estimate of potential GHG emissions reductions associated with the use of natural gas certified to have at least 80% lower methane emissions than average at the point of production or the use of other best practices applied to natural gas supplies in California.

9) States legislative findings and declarations related to the role of methane as an SLCP, methane in the context of the state's climate goals, and the importance of reducing methane emissions from natural gas supplies.

FISCAL EFFECT: According to the Senate Appropriations Committee:

1) ARB estimates ongoing costs of $9.8 million in 2023-24 and about $7.7 million annually thereafter (Cost of Implementation Account, Air Pollution Control Fund , and Greenhouse Gas Reduction Fund) to develop the low-methane emissions certification program, track

methane emissions, and develop a verification program, among other things.

2) The CPUC estimates ongoing costs of $624,000 annually (ratepayer funds) to coordinate with ARB to encourage natural gas procurement on behalf of the state to shift to certified natural gas producing low methane emissions where feasible, cost effective, and in the best interests of ratepayers.

COMMENTS:

1) **Methane**. Methane is the principal component of natural gas. It is also produced biologically under anaerobic conditions in ruminant animals and solid waste facilities. Methane is termed a Short-Lived Climate Pollutant (SLCP) because it has a much shorter lifetime in the atmosphere than carbon dioxide, but has a much higher global warming potential. According to the United Nations Environment Programme, methane is more than 80 times more effective than carbon dioxide in trapping heat in the atmosphere over a 20-year period. SLCPs, including methane, are responsible for 30-40% of global warming to date.

   Atmospheric methane concentrations have been increasing as a result of human activities related to agriculture, fossil fuel extraction and distribution, and waste generation and processing. Methane gas from oil and gas production and distribution is a growing source of emissions in many countries, including the United States, due to increased exploration and use of natural gas for energy.

2) **Natural gas**. Natural gas is primarily methane. It can be burned for energy or used as a chemical feedstock. Nearly 45% of the natural gas burned in California was used for electricity generation, and much of the remainder was consumed in the residential (21%), industrial (25%), and commercial (9%) sectors. California continues to depend on out-of-state imports for nearly 90% of its natural gas supply, underscoring the importance of monitoring and evaluating ongoing market trends and outlook.

   On April 23, 2021, Governor Newsom directed ARB to evaluate the phase-out of oil and gas extraction in the state no later than 2045, as part of the Scoping Plan. In the 2022 Scoping Plan Update, the *2022 Scoping Plan for Achieving Carbon Neutrality*, ARB's proposed scenario for achieving the state's 2030 and 2045 climate goals involves meeting the anticipated increased demand for electricity without any new natural gas-fired resources. Moreover, the plan strives to reduce demand for natural gas across the entire economy. Within the state, ARB intends for oil and gas fugitive methane emissions to be reduced by 50% by 2030 and further reductions as infrastructure components retire in line with reduced fossil gas demand.

3) **Fugitive emissions**. Regardless of the end uses, making natural gas ready for use relies on extensive processing and transportation. These steps are categorized as either "upstream" (exploration and production), "midstream" (processing, compressing, and transporting the gas), or "downstream" (distribution to industrial, residential, or commercial customers).

   The term "fugitive emissions" is used to refer to unintended emissions at any step in this process. Notably, many of these fugitive emissions are not necessarily at the "point of production" of the natural gas. Overall, the majority of methane emissions from natural gas occur in the mid- and upstream processes.

Identifying and addressing points of methane leakage along the natural gas supply chain is a pressing issue. However, identifying fugitive methane emissions is technologically challenging. Given the strong warming effects of methane in the atmosphere, minimizing its release is important to mitigate climate change. Given the value of supplying natural gas to end users, minimizing its release can benefit suppliers' bottom line and much of the methane emission mitigation work can actually save producers money. The International Energy Agency (IEA) has stated that there is a huge opportunity to cut methane emissions from the energy sector. The IEA estimates that more than 70% of current emissions from oil and gas operations are already technically feasible to prevent, and around 45% could typically be avoided at no net cost because the value of the captured gas is higher than the cost of the abatement measure.

4) **Certified gas**. With natural gas drawing increasing scrutiny for its emissions footprint, the industry has responded with a cleaned-up version of its traditional product, known as certified gas. While a universally accepted definition has yet to emerge, broadly this term refers to gas that has been verified by an independent third party to have been produced in a manner consistent with certain environmental, social, and governance standards. Methane emissions are a key performance metric for certified gas, with an emphasis on monitoring and measurement.

   Despite movement in this direction, as of October 2022, only 14% of the United States' natural gas supply was certified. Certification standards vary, but there are three major standards: Project Canary's TrustWell certification, Equitable Origin's EO100 standard, and the MiQ Standard. As an example of what certification standards include, the MiQ Standard grades methane intensity, technology deployment, and operational best practices. Methane intensity is the ratio of natural gas produced to excess methane emitted, though methane emissions are particularly difficult to measure.

5) **Author's statement**:

   > Climate change is upon us, and it poses significant and immediate threats to our states, communities, resources and infrastructure. The best way to slow these impacts in the near-term is to reduce emissions of potent short-lived climate pollutants – "super pollutants" that are both powerful climate forcers and harmful air pollutants – including methane. Our fossil fuel energy systems are one of the largest sources of methane emissions in the U.S., and one of the easiest and lowest cost ways to reduce emissions. Even while we focus on transitioning away from fossil fuels, we can, and should focus on minimizing the impacts of our ongoing fossil fuel use, including methane emissions from imported natural gas. This is the definition of low-hanging fruit in the fight against climate change, and its time the state starts to look at mitigating emissions associated with imported natural gas, just like we already do for imported electricity and transportation fuels.

6) **This bill**. This bill is intended to reduce the leakage of methane from natural gas production by requiring ARB to develop a certification standard for natural gas producing low methane emissions. California imports 90% of its natural gas from other states or countries. Given the enormous market California represents, setting standards for the gas that California buys could have a significant impact on the type of gas available in the market. Even though only

14% of gas sold today is certified, that percentage could climb rapidly as producers try to provide gas that meets the state's standards.

While well intentioned, this bill relies on the presumption that best practices and compliance with the certification will be complied with and continue into the future. The fossil fuel supply chain is subject to unplanned issues, such as well abandonment, leaks during transportation, and even natural disasters, which may result in significant methane emissions. This bill may reduce the methane emissions associated with the natural gas used in the state, but the only way to absolutely avoid fossil fuel releases—including methane emissions—across the entire up-, mid-, and downstream natural gas supply chain is to keep it in the ground.

7) **Suggested amendment**. The *committee may wish to amend the bill* to revise subdivision (g) of section 38592 to ensure that it continues to apply to the Act, as follows:

> (g) ~~This section does not~~ *Nothing in this division shall* relieve any person, entity, or public agency of compliance with other applicable federal, state, or local laws or regulations, including state air and water quality requirements, and other requirements for protecting public health or the environment.

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

REGISTERED SUPPORT / OPPOSITION:

Support

350 Sacramento
Climate Action California
Planning and Conservation League
Project Canary

Opposition

None on file

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